

CHINA AND THE WORLD
TRADING SYSTEM

Entering the New Millennium

Edited by

DEBORAH Z. CASS,
BRETT G. WILLIAMS
AND GEORGE BARKER



CAMBRIDGE
UNIVERSITY PRESS

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS
The Edinburgh Building, Cambridge, CB2 2RU, UK
40 West 20th Street, New York, NY 10011-4211, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
Ruiz de Alarcón 13, 28014 Madrid, Spain
Dock House, The Waterfront, Cape Town 8001, South Africa

<http://www.cambridge.org>

© Cambridge University Press 2003

This book is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without
the written permission of Cambridge University Press.

First published 2003

Printed in the United Kingdom at the University Press, Cambridge

Typeface Adobe Minion 10.5/13.5 pt *System* L^AT_EX 2_ε [T_B]

A catalogue record for this book is available from the British Library

ISBN 0 521 81821 4 hardback

CONTENTS

<i>List of figures</i>	<i>page</i> viii
<i>List of tables</i>	ix
<i>List of contributors</i>	xi
<i>Preface</i>	xv
<i>Acknowledgements</i>	xviii
<i>Abbreviations and acronyms</i>	xix
Introduction: China and the reshaping of the World Trade Organization	1
DEBORAH Z. CASS, BRETT G. WILLIAMS AND GEORGE BARKER	
PART I The world trading system	
1 The impact of China's accession on the WTO	19
JOHN H. JACKSON	
2 WTO membership for China: to be and not to be – is that the answer?	31
SYLVIA OSTRY	
3 China and the 'constitutionalization' of international trade law	40
DEBORAH Z. CASS	
PART II The accession	
4 China's WTO accession – the final countdown	55
JEFFREY L. GERTLER	

5	China's accession to the WTO: improving market access and Australia's role and interests	68
	GRAEME THOMSON	
PART III China – the domestic sphere		
6	The state of the Chinese economy – structural changes, impacts and implications	83
	LIGANG SONG	
7	Trade policy reform and China's WTO accession	93
	ELENA IANCHOVICHINA AND WILL MARTIN	
8	China's WTO entry in labour surplus and Marxist terms	115
	RAJ BHALA	
9	Enforcement of WTO agreements in China: illusion or reality?	132
	QINGJIANG KONG	
10	China: trade, law and human rights	156
	ALICE E. S. TAY AND HAMISH REDD	
PART IV Trade in goods		
11	China's interest in the World Trade Organization's deregulation of international textiles trade	175
	IAN DICKSON	
12	China and the Agreement on Technical Barriers to Trade	202
	ICHIRO ARAKI	
PART V Trade in services and competition policy		
13	WTO membership and professional services regulation in China	219
	CHRISTOPHER ARUP	
14	The impact of China's WTO accession upon regulation of the distribution and logistics industries in China	238
	DENE YEAMAN	

15	Regulating the new economy: implications of WTO accession for telecommunications and e-commerce in China IAN MACINTOSH	263
16	Segregation and convergence: the Chinese dilemma for financial services sectors RICHARD WU	283
17	Adopting a competition law in China MARK WILLIAMS	299
PART VI Intellectual property		
18	Chinese trademark law and the TRIPs Agreement – Confucius meets the WTO ANGELA GREGORY	321
19	TRIPs goes east: China's interests and international trade in intellectual property ANTONY S. TAUBMAN	345
20	The impact of China's WTO membership on the review of the TRIPs Agreement DANIEL STEWART AND BRETT G. WILLIAMS	363
PART VII Dispute settlement		
21	Interpreting China's Accession Protocol: a case study in anti-dumping MICHAEL LENNARD	387
22	WTO dispute settlement and sub-national entities in China RAVI P. KEWALRAM	413
	<i>Select bibliography</i>	421
	<i>Index</i>	431

FIGURES

6.1	Ownership shares in China's GDP: 1988.	<i>page</i> 85
6.2	Industrial structure of Chinese economy.	86
6.3	Employment structure by industry.	88
8.1	The Fei–Ranis labour surplus model.	118
21.1	The interpretation of WTO agreements including accession protocols.	394–5

TABLES

5.1	Improved and WTO-bound market access for agricultural products.	<i>page 78</i>
5.2	Improved and WTO-bound market access for industrial products.	79
6.1	Bank lending to private enterprises, 1999.	89
6.2	Macroeconomic indicators, 1995–2000.	91
7.1	Products covered by state trading and designated trading.	96
7.2	Changes in average tariff rates in China.	97
7.3	Final tariff bindings on selected agricultural products.	101
7.4	Weighted average tariffs in China with and without WTO accession.	103
7.5	Percentage growth rates over the period 1995–2005.	106
7.6	Output, exports and imports as a share of the world economy.	108
7.7	China's output and wages.	109
7.8	China's trade by commodity and composition of value added.	110
7.9	Welfare change due to China's accession to the WTO.	111
11.1	Effects of US quotas on imports from China, 1994–1999.	176
11.2	Effects of EU quotas on imports from China, 1994–1999.	177
11.3	Number of tariff lines under quota: all textiles and clothing.	185
11.4	Number of tariff lines under quota: apparel.	187
11.5	Number of tariff lines under quota: wool products (US market only).	187

11.6	Effects of ATC acceleration on quota volumes and growth rates.	188
11.7	Effects of ATC quota-acceleration programme: all clothing and textile products.	189
11.8	Effects of ATC quota-acceleration programme: apparel.	190
11.9	Effects of ATC quota-acceleration programme: wool products (US market only).	191

The impact of China's accession on the WTO

JOHN H. JACKSON

Introduction

As of 11 December 2001, China became a full member of the World Trade Organization (WTO), after traversing a long and, some would say, tortured, fifteen-year accession path. I believe that this accession is the most significant activity in the WTO's seven-year life so far. The significance has many dimensions, and the ramifications are profound and extensive. For this chapter,¹ I do not write as an expert on China, but only reflect contributions made about China by many renowned experts as well as by the other excellent chapters presented in this volume.

Of the many dimensions of the impact of China's accession, at least three stand out, namely: (1) the all-important and potentially profound impact of accession on China, its trade and economic policy, its governmental structure and its society; (2) the impact of the accession of China on the WTO itself; and (3) the impact of this event and subsequent Chinese activities on China's relationship to the rest of the world, and the consequent effect on geo-political structures and alignments generally. This chapter will focus only on the second of these dimensions, but clearly these different dimensions are intimately related to each other, as other chapters in this volume demonstrate.

This chapter is divided into two major substantive parts, followed by some conclusions. The first part outlines the landscape of our explorations, noting the global context of the WTO and trading relations generally, with which China will be participating more fully. The second part turns to the special task of this chapter, and notes six different subjects (*inter alia*) that

¹ First presented as a paper at the conference on 'China and the World Trade Organization', 16–17 March 2001, Australian National University Faculty of Law, Canberra, Australia.

need to be appreciated about China's impact on the WTO. Finally, I briefly conclude with a few broad generalizations.

The global landscape of accession to the WTO

The policy foundations of the world trading system and the WTO

The first basic subject, and the starting point of the landscape addressed here, is the importance of markets and their effective and efficient operation. Although there can be sceptical queries and challenges to the centrality of markets as an economic organizing principle, the last few decades appear to have justified reliance on these principles in contrast to alternative modes of economic organization. The evidence appears strong in the light of past and recent history that markets can create and distribute a degree of wealth undreamed of in previous eras.

However, while markets have great advantages, there are also disadvantages. There are clearly losers in the free-market game. The firm belief, which seems empirically justified, is that the benefits are in excess of the costs. In other words, the benefits on those advantaged are more numerous than the penalties on those disadvantaged. But there is something poignant about the welfare of the losers, as evidenced during some of the recent backlash against globalization.

Another important subject that has arisen in the last three or four decades is globalization. This phenomenon has intrinsically changed the structure of international trade and international economic relations. There are those who assert that globalization is not a new phenomenon, and that the turn of the previous century saw a tremendous amount of globalization and free movement of various economic activities. There are, in fact, some major differences about today's situation. Certain technological breakthroughs in the last decades have had an immeasurable effect in shrinking the world. These technological phenomena are enormously influential upon us, on at least two counts. One is the dramatic drop in costs and time of transportation, and the second is the dramatic drop in costs and time of communication. Transportation and communication used to be natural barriers to trade. As those barriers dropped dramatically in the last three or four decades, the world began to experience a free-trade context that presented all sorts of new pressures and adjustments. Markets that have these technical advantages must be able to cope with the effects of this new

phenomenon, such as the enormous increase in international interdependence and the speed with which economic situations can have an impact across borders.

Markets and institutions

My third proposition is taken directly from economists, and particularly some articulate, Nobel Prize-winning economists of the last three or four decades, namely Douglass North and Ronald Coase.² The proposition is that markets will not work without appropriate institutions. By institutions, I mean human institutions, a great many of which are law or rule-oriented institutions. Rule-oriented human institutions are critical and, without them, markets will fail. Evidence of that was shown in the Asian financial crisis, and more recently in situations such as major bankruptcies. Not all institutions must be governmental institutions, but in reality many of them are.

The fourth proposition of this policy framework series is that the WTO is *the* current principal institution for the global market, for globalization and for interdependence. The challenge for the WTO is to manage the problems that will inevitably emerge from the context of the markets currently in place in the world. So the question becomes, can the WTO, as an institution, cope with that enormous challenge? There are considerable worries about whether the WTO is ready for it. It is not the only institution on the landscape; there are others – the World Intellectual Property Organization, the World Health Organization, and the Food and Agriculture Organization and, on the financial side, there are the IMF and the World Bank. Then, of course, there are regional and bilateral institutions. But the WTO is front and centre at present, and there are advantages as well as disadvantages to that position. People fear the role of the WTO because they fear a concentration of power. They are also suspicious of any institution that seems (*seems* is the appropriate word) to be making decisions that hurt people's pocketbooks.

A fifth proposition is that an important necessity of the institutions that I have alluded to is *rule-orientation*. In 'econo-speak', rather than 'legalese', what is at stake is the so-called 'risk premium'. That is, with a certain amount

² See Douglass C. North, *Institutions, Institutional Change, and Economic Performance* (New York, 1990); Ronald H. Coase, *The Firm, the Market, and the Law* (Chicago, 1988).

of rule stability, there can be a reduction in the risk involved in the billions of decisions made every day by millions of entrepreneurs in a market-oriented system. It is that reduction in risk that will facilitate better allocation of resources and a better world economy, and prevent unscrupulous actors from taking advantage of market failures.

China's membership in the WTO

China's membership in the WTO presents a series of challenges, including a conceptual challenge to the institution. It is a challenge for international trade that is quite profound and affects dozens of issues and principles, many of which were thought to be reasonably settled. The issue of most favoured nation status (now known as permanent normal trade relations) was thought to be decided, and yet for China, selective safeguard questions are again controversial. Maybe it was thought that anti-dumping – the scandal of trade policy – was resolved, but challenges are still emerging from both sides of that issue. One can enumerate a whole list of other unsettled issues, including the institutions, structure and future of the WTO.

There are also significant *non-economic*, or non-trade-related, challenges of China's accession. One of the most succinct inventories in that regard is in a speech by US Senator Max Baucus, delivered on 27 February 2001, which mentioned the large number of issues at play – arms sales, the Taiwan situation, the UN human rights programme and resolution, missile defence at both theatre (Taiwan) level and at the US national level, Taiwan and US/Japan security, developments in the Korean peninsula, non-proliferation questions, the Export Administration Act, developments in APEC, particularly the autumn Shanghai meeting and the potential Bush visit.³

That list (plus the impact of the events of 11 September 2001) begins to paint a complex picture, with China's accession emerging as a very important subject, and it is not only a question of trade or economics.

The potential impacts of China's membership on the WTO

I agree with those (including other authors in this volume) who say that the WTO is facing a large number of problems, and many of those problems

³ Max Baucus, 'The contours of a bipartisan China policy', speech given at the Nixon Center, Washington, D.C., 27 February 2001, available at <http://www.senate.gov/~baucus/td52.html>. See also Max Baucus, 'Re-assessing U.S.–China policy' (2001) 21(1) *SAIS Review* 303–6.

do parallel the magnitude of some of the problems of China's entry. There are a number of needed reforms of the WTO. Many who have spent time in Geneva might agree with the following analogy to the United States government, in Washington D.C. In the United States, many speak about an 'inside the beltway' phenomenon⁴ that suggests a particular mentality among decision-makers that is not always tuned in to the constituents who are going about their daily lives and struggling with all the facets accompanying those decisions. But there is also an 'inside the beltway' mentality in Geneva (there is virtually a beltway there, but there is a lake interrupting part of it). There is an attitude toward the WTO that many often find disconcerting. Those inside the Geneva 'beltway' seem to cling to a series of principles that have not really been given very much inspection. It is not that these principles are particularly bad in all respects; it is just that they have not been examined and there is a tendency not to want to examine them.

One of those principles, or 'mantras', is that the WTO is a 'member-driven organization'. This principle can be quite destructive and undermining of the organization, and has often kept the organization on a very short leash. The checks and balances in the WTO Charter,⁵ as well as the outrageously low level of funding, are just two of the many aspects of this issue. Another mantra that I point to as one of the most potentially problematic is the *consensus* principle. The consensus principle has enormous value to it, but it also has the potential to lead to paralysis. It seems to me that one can currently see some of the paralysis that results when an organization has over 140 members. Some of these problems already existed with 70 members, but now they are becoming exacerbated. A few nations are using the consensus system to 'ransom' the organization to achieve certain alternative goals. They want to be paid for restraining themselves from the breaking of consensus in certain situations. Thus, there is a need for some rethinking of the practicality of this principle.

In an article I published in 1998, I explored the concept of consensus in the context of what I called the 'emerging problems of the dispute settlement system'.⁶ In so far as there is, in fact, paralysis, or the inability

⁴ John H. Jackson, 'The WTO "constitution" and proposed reforms: seven "mantras" revisited' (2001) 4 *Journal of International Economic Law* 67–78.

⁵ The phrase 'WTO Charter' refers to the Agreement Establishing the World Trade Organization, actually part of a larger treaty resulting from the Uruguay Round negotiations. See Agreement Establishing the World Trade Organization (1994) 33 *ILM* 13, 15.

⁶ John H. Jackson, 'Dispute settlement and the WTO: emerging problems' (1998) 1 *Journal of International Economic Law* 329–51.

to achieve some of the reforms that are necessary to move ahead, there is a tendency to throw things at the dispute settlement system that may not belong there. The fact that the dispute settlement system has been working well makes it susceptible to this tendency. Among other things, the dispute settlement jurisprudence is extraordinarily interesting, rich, deep and detailed; more so, perhaps, than any other similar institution at an international law level in the history of the world. This jurisprudence is not about minor technical problems such as postal union rules; it is about big cataclysmic issues that affect important issues such as whether or not governments and prime ministers fall. But the dispute settlement system can only shoulder so much, and it may not be able to handle the effects of the paralysis of the decision-making and diplomatic processes.

China's impact on the WTO has at least six different facets. These run together and they are not in separate boxes with sharp partitions, but these six facets are used as the structure of the rest of this chapter.

First of all, there is the accession process itself. What has China's accession process perhaps already done to the WTO? Second, and related to that, are the particular rules and relationships of the Accession Protocol to the WTO rules. We know there are deviations from the norms in China's case, and clearly there will therefore be some potential impact on the WTO. Thirdly, there is the question of China's implementation of its obligations. A fourth dimension is the dispute settlement system and its impact on the China/WTO relationship and vice versa. Fifth is the question of China and its diplomacy in the WTO; that is, China as a leader of diplomacy with the accompanying coalitions, attitudes towards decision-making, allocation of decision-making as a matter of allocating power between the international and national levels, and the question of sovereignty. Finally, the sixth dimension describes the institutional problems for the WTO. For example, there are something like 150 or 200 items on various lists of suggested reforms for the WTO dispute settlement system. Many of those are minor fine-tuning, but there are also some major issues. This final dimension includes the needed reforms of the non-dispute settlement side of the WTO. The broad question is: what is going to be China's role in these various reforms?

Fundamental to all of these impacts or dimensions is the perception, shared by virtually all knowledgeable observers, that the WTO cannot be truly effective without embracing China as a member, bringing with it the

largest population in the world, and the potential to become the largest economy in the world.

The impact of China's accession process

It is difficult to know what is appropriate in China's accession process. This is one reason why the situation is so important – precisely because it is so unique. There have been problems before in bringing non-market economies into the WTO and the GATT before it. There were some makeshift arrangements with Hungary, Poland and some of the other non-market economies. These arrangements were not entirely satisfactory to all parties involved, but the concerns were mostly small and could be accommodated, and one could brush over some of the tough conceptual problems. It is clear that the rules on state trading in the WTO are woefully inadequate. They do not prevent abuse by a country acceding on terms of so-called 'equality', but which, because of its economic system, has the opportunity to undermine some of the important rules of the WTO system. For example, the country might use state trading in a way that would operate like a tariff in some circumstances, or look like a quota in other circumstances. So it is obvious that the accession process itself has important implications for the WTO as an institution.

However, the China accession process has arguably been constructive. There are some worries about the way in which the United States has gone about the accession process, and the US negotiations with the Chinese have been curious in a sense. As one person close to the process in Washington has said, '[United States Trade Representative Charlene] Barshefsky was able to have a negotiation in which she demanded a lot and gave up nothing, and what a wonderful success that was.' Well, it is a success in a sense, but there must also be something in it for the Chinese.

Protocol rules and special measures

That anecdote leads to a second point. One can parse through the rules that are implied by China's accession protocol, and see some of the differences from previous accession protocols. I cannot analyse all of these differences in this short article as there are dozens, but I can single out a few. One of the things that has been significant is the problem of state trading. It could be,

for instance, that the WTO will attempt to accommodate an economy that is substantially different from the WTO prototype model. That attempt is welcome. But it may actually create some new rules about state trading. Indeed, it may be necessary to reconsider the kind of state trading that persists in some of the *existing* member countries, and whether there needs to be more attention paid to those.

There is also the subsidies question. It is an enormous question, and many definitions will evolve throughout the process of accommodating China into the system. China's government-owned, or state-operated or owned, enterprises are a big challenge to the system, and it is hard to believe that this will not shape some of the thinking about subsidies. Some of those people who are dealing with questions such as countervailing duties at the national level are going to find themselves challenged, to put it mildly. There are obviously going to be some big problems in those areas and one can predict that in a couple of years some of the definitions in the subsidies code will have to be revised, if that is manageable. That is, of course, unless paralysis prevents this from happening.

Safeguards also raise an interesting point. There is much criticism of various parts of the so-called 'product-specific' safeguards clause. The question is whether the safeguards have been selective. Have they gone counter to MFN (PNTR)? That seems to be the real question here, although China is accepting that there will be a safeguard that will apply solely to it. That kind of selectivity can be constructive, it seems to me, and it is part of the trade off in trying to assimilate a society and a market structure that is really quite different from, and could abuse, an equal partnership, or a totally harmonized partnership role in the WTO. The hope is that the use of specific safeguards will be constrained by parameters of procedural transparency. Selective safeguards are something that has been discussed with the Chinese for almost fifteen years. The original position of the Chinese was an absolute 'no' to what they deemed 'second-class citizen' status in the WTO; but China has become more constructive and thoughtful on this matter, realizing that there are adjustments on both sides that have been made and will continue to be made.

The adjustments are going to be enormous. Those adjustments, at times, are going to challenge the stability of Chinese society, and the Chinese leadership is already keenly aware of this. On the West's part, there is a need for sympathy and understanding about that.

China's implementation of the obligations

China's implementation of WTO obligations is partly an adjustment problem. It is also partly a problem of the central government's power *vis-à-vis* local governments. Implementation could have a significant impact on the WTO in this respect. For example, the tendency is to think that compliance is something that, if non-existent in a government's relationship with the WTO, is the government's fault. But there are capacity questions involved in compliance, and the WTO will have to incorporate those capacity issues into its thinking. There are examples of that in the intellectual property area in the WTO, for instance.

China's effect on the WTO dispute settlement system

The fourth dimension of China's impact on the WTO is its effect on the dispute settlement system. Here, one of the questions is, is this going to amount to a 'case flood'? Will WTO member countries bring cases against China in droves very quickly after accession? Many doubt that that is going to happen. In transitional periods, it will be very hard to establish a violation case, so the transition clauses are going to be crucial in preventing too much of a rush to litigation. Could there be non-violation cases? Probably not. There have only been between five and eight non-violation cases in the history of the GATT and the WTO.⁷ The WTO language in the Dispute Settlement Understanding⁸ is quite startlingly different for non-violation cases. So, one could doubt that there will be many of those cases, and in any event, it can be hoped that members will show some restraint in bringing them. In the longer term, will there be a flood of cases brought against China? China is a large economy, and large economies face large numbers of cases. The United States has brought and been defended in more than half of all the WTO cases brought so far.⁹ The European Union dispute settlement participation is almost as great. Large trading entities already face a big caseload. China can thus expect a caseload commensurate to

⁷ John Jackson, William Davey and Alan Sykes, *Legal Problems of International Economic Relations* (St Paul, Minn., 1995), p. 362.

⁸ Agreement Establishing the World Trade Organization, Annex 2, Understanding on Rules and Procedures Governing the Settlement of Disputes.

⁹ See Young Duk Park and Georg C. Umbricht, 'WTO dispute settlement 1995–2000: a statistical analysis' (2001) 4 *Journal of International Economic Law* 213–30.

its size. What are the implications for China? The answer is that it will be a two-way street. China will have to get used to 'lawyering', as they are very aware. Chinese officials manifest an eagerness to learn the rules of the dispute settlement process, and thus, perhaps if they are given a little breathing space for a couple of years, they will have an adequate number of capable people to handle these problems.

China as a diplomatic leader

The fifth dimension of China's effect on the WTO looks at China as a diplomatic leader. What kind of role will it play in diplomacy? It is really asking for trouble to try to predict its role exactly. People who have expertise on this subject tend to think that China on the whole (based on its historical record, and its participation in other international organizations) will be a 'good citizen'. Of course, it will have its own national interests as a very important bottom line, just as the United States or Europe do. But who says the United States and the European Union are always very good citizens? In relation to China's handling of treaty obligations, China's record is not perfect, but it is also not any worse than that of any of the other WTO members. These academics do not foresee a severe impact arising from that; instead, they see that there will be other kinds of diplomacy, in coalition-making affected by certain kinds of regionalism and sovereignty claims.

One must look at China as a leader of diplomacy, with a potential for coalition-seeking. One must recognize their attitudes towards decision-making as a matter of allocating power between the international and national levels, and face the question of sovereignty. When speaking about sovereignty, the question often is: where is the best place to make a decision? Is it Geneva? Is it Washington? Is it Sacramento? Is it Berkeley? Or is it in a neighbourhood of Berkeley? That is the broad context that involves many different questions, including the capacity of China's institutions to handle certain kinds of decisions. The questions of the appropriate allocation of decision-making competence and China's institutional capacity to handle certain kinds of decisions constitute the broad context in which China's role in the WTO must be assessed. These questions are embedded very much in the *Eu – Beef Hormones* case, for example.¹⁰ Food safety, after

¹⁰ Appellate Body Report, *European Communities – Measures Affecting Meat and Meat Products (Hormones)*, WT/DS26 and 48/AB/R, adopted 13 February 1998.

all, is important to national governments, and is not always based only on scientific evidence, but on societal attitudes as well. It was a question very evident in the *Shrimp/Turtle* case¹¹ and, indeed, virtually every case has had some aspect of sovereignty embedded within it. There are many other issues that could be involved in this subject, with the interesting potential to have an impact on some of the specific institutions.

For example, the Appellate Body is an institution that could feel such an impact. The Appellate Body now has a seven-member roster. There is a notion (which some of us hope will not be that strong) that certain nations tend to think that they should have one of those Appellate Body seats reserved for them – the United States, European Union and Japan, for example. I would guess that China would assert their 'right' to a seat as well. That takes care of four out of seven seats. What is the rest of the world supposed to do? One solution is to increase the number of seats on the roster, and perhaps that will be one of the results of China's impact on the WTO dispute settlement system.

China's role in addressing needed WTO institutional reforms

A final dimension of China's impact on the WTO is its potential role in the institutional reforms of the WTO. There are a series of areas in need of reform outside of the dispute settlement area. For example, some of the aforementioned 'mantras' need addressing. The consensus rule, the member-driven organization problem, transparency questions, participation questions, and the handling of civil society and NGO questions are all on many people's agendas for reform. In the context of the Uruguay Round texts, there is the problem of how to fill the gaps and resolve the ambiguities without always going to the dispute settlement system. There need to be *negotiated* settlements in some of those situations and thus there is a need for a procedure for those. Negotiations cannot be held hostage to a consensus breaker who has another agenda in mind.

In addition, one must consider how China will view an international coordinating body, particularly an economic one. Is China going to be very national-sovereignty oriented, and try to block any attempts at further, even modest, influence of the international organization on its country? Or is it

¹¹ Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, adopted 6 November 1998.

going to agree that there has to be reform in order for this organization to be more effective.

On the dispute settlement side, there clearly are some reforms needed, in which, again, China will play a role. Perhaps China would be more interested than other countries in developing a significant *mediation* phase between the consultation and the panel process, which some strongly endorse. Questions remain about the transparency of hearings. What should be done about the *amicus* brief question?

Concluding thoughts

Helpful in concluding this chapter is the juxtaposition of two authors' statements about the world, specifically Tip O'Neill's book, which says 'All politics is local',¹² and an article by Peter Drucker in *Foreign Affairs*, which says 'All economics is international.'¹³ There is obviously some tension there, a sort of 'governance tension'. If all economics is international, but politics drives the decision-making and politics is local, there is a problem. So, how do we overcome that dilemma? Some additional questions will hopefully encourage discussion on these matters. The first question is: has China, in the protocol process, been pushed too far – too far for its own good, given the adjustment that it is facing, and too far for the West's own good in developing a more constructive relationship with China? The second question is: at present, given not only the economic issues, but the non-economic and non-trade issues mentioned above, who needs China in the WTO more: China, or the rest of us?

¹² See Thomas P. O'Neill and Gery Hymel, *All Politics is Local* (New York, 1994). 'Tip' O'Neill was the speaker of the House of Representatives.

¹³ See Peter F. Drucker, 'Trade lessons from the world economy' (1994) 73(1) *Foreign Affairs* 99.