Martin-Luther-Universität
Halle-Wittenberg

Beiträge zum Transnationalen Wirtschaftsrecht

Herausgegeben von:
Prof. Dr. Christian Tietje
Prof. Dr. Gerhard Kraft
Prof. Dr. Rolf Sethe

Wang Heng

Analyzing the New Amendments of China's Foreign Trade Act and its Consequent Ramifications: Changes and Challenges

September 2005

Heft 45

Analyzing the New Amendments of China's Foreign Trade Act and its Consequent Ramifications: Changes and Challenges

By

Wang Heng

Essays in Transnational Economic Law
No. 45 / September 2005

Institute for Economic Law
Transnational Economic Law Research Center
Faculty of Law, Martin-Luther-University Halle-Wittenberg

Wang Heng is Deputy Director of the Center of Law for International Investment and Finance, Research Fellow of the Institute of EU Law and Lecturer of the Economic and Trade Law School (Southwest University of Political Science and Law, Shapingba District, Chongqing 400031, China; Email: stonewh6@yahoo.com).

Christian Tietje/Gerhard Kraft/Rolf Sethe (Hrsg.), Beiträge zum Transnationalen Wirtschaftsrecht, Heft 45

Bibliografische Information der Deutschen Bibliothek

Die Deutsche Bibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet unter http://www.dnb.ddb.de abrufbar.

ISSN 1612-1368

ISBN 3-86010-802-6

Schutzgebühr Euro 5

Die Hefte der Schriftenreihe „Beiträge zum Transnationalen Wirtschaftsrecht" finden sich zum Download auf der Website des Instituts bzw. der Forschungsstelle für Transnationales Wirtschaftsrecht unter den Adressen:

www.wirtschaftsrecht.uni-halle.de
www.telc.uni-halle.de

Institut für Wirtschaftsrecht
Forschungsstelle für Transnationales Wirtschaftsrecht
Juristische Fakultät
Martin-Luther-Universität Halle-Wittenberg
Universitätsplatz 5
D-06099 Halle (Saale)
Tel.: 0345-55-23149 / -55-23180
Fax: 0345-55-27201
E-Mail: ecohal@jura.uni-halle.de

TABLE OF CONTENTS

A. Introduction*

After a long period of preparation and negotiation, China acceded to the WTO on 11 December 2001. Pursuant to this, China had made substantial efforts in amending its laws and regulations in an effort to comply with its new-found international trade law commitments and obligations. The effects of these changes go far beyond the expectations of the Chinese public because WTO accession brings to China not only amendments to its enacted laws, but also brings with it the positive spill-over effects of greater transparency of government administration, a rise in Chinese entrepreneurial culture, as well as a greater equality of treatment among domestic business organizations.

In terms of China's legal and regulatory regime pertaining to foreign trade, one of the most crucial steps forward was the amendment to the Foreign Trade Act (FTA) of 1994 passed by the Eighth Meeting of the 10th National People's Congress (NPC) Standing Committee on the 6 April 2004. Further to this, there are also numerous other relevant laws or administrative regulations which have been or will be promulgated in an attempt to catalyze important changes in the regulation of international trade.

In order to review the effects that the WTO has brought to China in the three years since its accession, this thesis begins with an examination of the recent amendment of the FTA, which constitutes the basic and fundamental law governing international trade between China and outside world. Extending from this, this article will also analyze the problems that remain to be solved, and attempt a forecast of future trends in Chinese regulatory reforms in the field of international trade.

B. Changes in China's Foreign Trade Laws: a brief Review

I. History of China's Trade Regime

Since 1949, China has had two different regulation systems which separated domestic trade from foreign trade. There was an attempt to unify domestic and foreign trade with the establishment of the Central Ministry of Trade in November 1949, however, this short-lived experiment was abandoned when it was replaced by the Ministry of Business (*Shang Ye Bu*) and the Ministry of Foreign Trade, which reinstated two different systems for domestic and foreign trade. In March 1982, the Ministry of Foreign Economic Affairs and Trade was established to manage the administration of foreign trade and foreign economic cooperation. Under the arrangement of the State Council, the Ministry of Foreign Economic Affairs and Trade was renamed the Ministry of Foreign Trade and Economic Cooperation in 1993. In March 2003,

---

* This article is prepared for the lecture of the author at the Research Center for Transnational Economic Law at the Faculty of Law, Martin-Luther-University Halle-Wittenberg, December 2004. I would like to thank *Professor Zhao Xueqing*, *Professor Christian Tietje*, *Professor Elizabeth Spahn* and *Mr. Kevin Koh* for their kind comments. This study also benefited from the research funding provided by Southwest University of Political Science and Law.

the Ministry of Commerce (MOFCOM), which governs both domestic and foreign trade, was established to integrate the administration of the Ministry of Foreign Economic Affairs and Trade, as well as certain functions of the former National Planning Commission, and those of the National Economic and Trade Commission. The birth of MOFCOM marked the beginning of a new epoch. The policy of separating domestic trade from foreign trade which spanned a half-century was abolished, and the administration of domestic and foreign trade was finally unified.

Deeply rooted in the planned economy, the separation between domestic and foreign trade had numerous disadvantages. This separation was inefficient and caused higher costs. One clear illustration of this was in the fact that the administrative operating costs of foreign trade corporations in China came to constitute 10% of the typical businesses operating costs, which is much higher than the brokers' rate of commission (2%-3%). Furthermore, the former trade regulation regime was also characteristically against the trend of emerging international trade regulation. The separation of domestic trade and foreign trade would, *inter alia*, have incurred higher costs of administration, higher costs of compliance for trade dealers and might even have led to a disadvantaged position for the domestic industry (if the treatment in foreign trade is more favourable than that of domestic trade) or to trade partners alleging discrimination (if the treatment of foreign trade is less favourable than that of domestic trade). Globalization and fierce competition in trade precipitated the clear need for the establishment of a uniform administrative system in China.

II. Structure of China's Foreign Trade Laws

For many years there were not any national laws adopted by the NPC to regulate foreign trade throughout the nation. In response to this, the FTA was enacted in 1994 to govern foreign trade. After ten years of operation, the FTA appeared ill-equipped to serve its function as China's main legislation on managing foreign trade issues. To address this, the current amendment of the FTA has dramatically changed its former rules, and more importantly, successfully discharged China's WTO obligations. At this time, China has developed a network of foreign trade laws and administrative regulations. Furthermore, there are a series of administrative regulations which set out detailed guidelines for the conduct of China's international trade activities, including the Regulation on the Administration of Import and Export of Goods (RAIEG), Rules on the Registration and Record-making of Foreign Trade Operators, Regulations on Import and Export Duties, Regulations on Countervailing Measures, Regulations on Rules of Origin of Import and Export Goods, as well as further related rules such as the Customs Act, the Chinese-Foreign Contractual Joint Ventures Act, the Chinese-Foreign Equity Joint Ventures Act, the Chinese-Foreign Cooperative Enterprises Act and the Foreign Capital Enterprises Act, amongst others.

C. New Amendment of China's Foreign Trade Act (FTA)

The amendment of the FTA has made significant changes in three key aspects. First, the NPC adjusted those FTA stipulations which were inconsistent with China's

commitments to WTO rules. Second, the FTA has provided for implementation mechanisms and procedures to exercise China's rights as a WTO member in accordance with China's commitments and WTO rules. Third, the legislature has made relevant amendments responding to numerous specific problems, such as intellectual property, administrative efficiency, external trade barriers which were not sufficiently addressed under the original FTA provisions. These amendments respond to the situations which arose after the implementation of the FTA since 1994, as well as specific needs in the promotion of international trade.[1]

This section of the article will address important features of the FTA amendments by analyzing the major issues foreign trade operators would possibly encounter in international trade, and the corresponding means of trade regulation employed by Chinese trade authorities through the amended FTA.

One of the notable changes in the FTA is that the legislation has evolved from that of a protection-oriented approach to a more proactive approach. The latter being the approach widely adopted by the major trading countries such as the United States of America and Japan. The unfair trade barriers and protectionism that China has encountered contribute to this change as well, and the proactive orientation may be helpful to establish a fairer international trade environment for China.

Under the former FTA, foreign trade operations in China required the grant of special permission by the government and could only be conducted by foreign trade operators who were in possession of such permission.[2] The new FTA has abolished the special permission requirement and replaced it with registration procedures,[3] which constitutes a noteworthy breakthrough in the trade administration system of China, and facilitates the development of international trade to a far greater extent than was previously the case.

Another area of amendment is that the present FTA has enabled individuals in China to engage in foreign trade dealings. Under the former FTA, only legal persons and other organizations were qualified as "foreign trade dealers", and Chinese nationals were unable to conduct foreign trade in China.[4] After the amendment of the FTA, the term "foreign trade dealers" now includes individuals in the group authorized to enter into the business of importing and exporting goods as well as services. Only those individuals that have fulfilled the industrial and commercial registration or other practicing procedures in accordance with the law, and engage in foreign trade dealings

---

1 Press Office of MOFCOM, The Major Content and Significance of Amendment of FTA, available on the Internet: <http://www.mofcom.gov/article/200404/20040400205975_1.xml> (visited on 1 May 2004).

2 Art. 4 former FTA. Under the former FTA, a Chinese importer in China must therefore either have a permission to conduct foreign trade business with the imported products or must entrust a Chinese foreign trade operator (similar to an import broker) with the handling of the business. The latter is supposed to be the faster way to transact the business. In the past, the Chinese foreign trade operator usually enters into a commission agreement with the Chinese enterprise which requires import or export.

3 Art. 9 FTA. Foreign trade dealers engaged in import and export of goods or technologies shall register with the authority responsible for foreign trade under the State Council or its authorized bodies unless laws, regulations and the authority responsible for foreign trade under the State Council does not so require.

4 Art. 8 former FTA.

in compliance with this Act and other relevant laws and administrative regulations[5] may be competent to enter into foreign trade.

These amendments to the FTA also manifest themselves in the new principles pertaining to the distribution of quotas. Although under the former trade administration regime quotas were already distributed on the principles of efficiency, impartiality, transparency and fair competition according to the performance and abilities of the applicants. The new law has gone even further in establishing higher standards of transparency, equality, impartiality, and efficiency for the distribution of quotas. This development is based on China's commitment to the principle that the "distribution of import licenses, quotas, tariff-rate quotas or any other means of approval for importation, the right of importation or investment by national or sub-national authorities, is not conditioned on export performance and several other factors."[6] This is in accordance with the over-arching fundamental WTO principles of transparency and non-discrimination.

Furthermore, the new FTA adds some new provisions on state trading, automatic licensing, and the protection of trade-related aspects of intellectual property rights, as well as foreign trade investigation and foreign trade remedies, all of which addresses numerous issues which hitherto were unaddressed under previous national law.

This brings us on to the next question of how foreign businesses should go about their conduct in international trade with their Chinese counterparts. After the amendment of the FTA, the import of goods is (at least in principle) free,[7] but subject to a system of restrictions and prohibitions. These restrictions and prohibitions are applicable to the import and export of goods which fall within the scope provided by Art. 16 of FTA (for example municipal solid waste is prohibited from importation), and cover eleven circumstances under which the restriction of trade is possible, and six circumstances in which import and export could even be completely prohibited.[8] In

---

5 Art. 8 FTA.

6 Art. 7 Protocol on the Accession of the People's Republic of China. Under this article, several other factors include whether competing domestic suppliers of such products exist or whether performance requirements of any kind, such as local content, offset, the transfer of technology or the conduct of research and development in China.

7 Art. 14 FTA.

8 In accordance with Art. 16 FTA, the import and export can be restricted or prohibited:
(1) for safeguarding the state security, public interests and public morals;
(2) for protecting the human health or security, the animals and plants life or health or the environment;
(3) for implementing the measures relating to the importations and exportations of gold or silver;
(4) in the case of domestic shortage in supply or the effective protection of exhaustible natural resources;
(5) (be restricted)in the case of the limited market capacity of the importing country or region;
(6) (be restricted) in the case of the occurrence of serious confusion in the export operation order;
(7) (be restricted) in order to establish or accelerate the establishment of a particular domestic industry;
(8) (the restriction) on the import of agricultural, animal husbandry or fishery products in any form is necessary;
(9) (be restricted) in order to maintain the State's international financial status and the balance of international payment;
(10) the laws and administrative regulations so provide or

addition to this, there are provisions which empower the state to take any measures it deems necessary with regard to the import or export of goods and technologies.[9] Among these conditions, the tenth condition is that the export and import could be restricted or prohibited if the laws and administrative regulations so provide. This ambiguous wording necessitates further clarification. Since it is not practicable for the list of eleven circumstances to cover all the concrete conditions one by one, the FTA uses the generic term of "if the laws and administrative regulations so provide." As broad as these terms may appear, in reality it only means that China would be able to cope with the problems in international trade which do not fall within the other ten categories; furthermore this is also clearly subject to the limitation that China complies with its WTO commitments and obligations. The provisions for trade in services differ. Under another six circumstances, the trade in services may be restricted and prohibited.[10]

Even if trade was not prohibited or restricted under the FTA, it could still be subject to automatic licensing. For some freely importes goods it is necessary for monitoring purposes to apply for an automatic import license.[11] This is permissible under the Protocol on the Accession of the People's Republic of China.[12] To know more about the import and export, the competent authorities for foreign trade may apply automatic licensing to some goods under free import and export under which they shall publicize the category of goods which are subject to automatic licensing. The exporters and importers of these goods need to apply for automatic licensing prior customs clearance, and pursuant to the relevant conditions being met, the competent authority shall grant the license. However, if the exporters and importers of goods under automatic licensing fail to make the application, their goods will then fail to clear customs. It is important to note that the automatic licensing would not block the import or export of the goods which are free to be traded; automatic licensing serves a monitoring purpose only, the government has no absolute right to refuse the license to the exporters and importers in an arbitrary fashion. Chinese authorities seek to better survey the foreign trade situation via the imposition of an automatic licensing requirement on certain goods where they deem it necessary. Under the automatic licensing

---

(11) international treaties or agreements to which the State is a contracting party or a participating party so require.

[9] For instance, Art. 17 FTA stipulates that in the case of the import or export of the goods and technologies relating to fissionable and fissionable materials or the materials from which they are derived as well as the import and export relating to arms, ammunition and implementation for war, the State may take any measures as necessary to safeguard the state security. The State may, in the time of war or for the protection of international peace and security, take any measures as necessary in respect of import and export of goods and technologies. The similar provision, Art. 27, applies to the international trade in services.

[10] Pursuant to Art. 26 FTA, these six circumstances include (1) restrictions or prohibitions are needed to safeguard the state security, public interests or public morals; (2) restrictions or prohibitions are needed to protect human health or security, the animals and plants life or health or the environment; (3) restrictions are needed to establish or accelerate the establishment of a particular industry; (4) restrictions are needed to maintain the balance of international payment of the state; (5) restrictions or prohibitions are needed as laws and administrative regulations so provide or (6) restrictions or prohibitions are needed as the international treaties or agreements to which the State is a contracting party or a participating party so require.

[11] Art. 15 FTA and Art. 22 RAIEG.

[12] Art. 8 Protocol on the Accession of the People's Republic of China.

mechanism, the import and export of certain goods would be subject to closer examination by the Chinese government.

Another field that typically involves foreign trade issues with China is state trading. For example under Art. 11 FTA, MOFCOM and other relevant agencies under the State Council would jointly publicize the category of goods (silver for instance is subject to state trading) which are subject to state trade control, under which the state handles the foreign trade in certain goods through state enterprises.[13] The State has the discretion to permit non-state enterprises to engage in the import and export of such goods; in the absence of such permission being granted enterprises are not allowed to participate in the import or export of goods.[14]

The question that arises in the context of these measures then is how China could implement the aforementioned limitations. The import of goods is not automatically restricted, prohibited or subject to automatic licensing or state trading in unless the goods concerned fall into one of the above mentioned categories. While on the one hand restrictions or prohibitions are usually made pursuant to Art. 18 (1) FTA by MOFCOM formulating, readjusting and publicizing a category of goods whose import is restricted or prohibited; this is also the case for automatic licensing and state trading.[15] On the other hand, MOFCOM can, independently or in conjunction with other relevant authorities under the State Council, specifically decide to restrict or prohibit the import of specific goods.[16] In the latter case, in accordance with the requirements of Arts. 16 and 17 FTA, MOFCOM must obtain the approval of the State Council, and decide, on an interim basis, to impose restrictions and prohibitions on the import and export of goods and technologies not included in the lists under the former category. This in effect means that the import of goods is free as long as MOFCOM has not declared otherwise. If the products are not listed in a catalogue pursuant to Art. 11 (1) FTA, Arts. 22, 45 RAIEG or subject to a special decision of MOFCOM in accordance with Art. 18 (2) FTA, then the import concerned would not be subject to any restriction or prohibition.

With regard to the trade in services, a similar structure applies. The authority responsible for foreign trade under the State Council in conjunction with other relevant authorities under the State Council shall, in accordance with the provisions of Articles 26, 27 of FTA and other relevant laws and administrative regulations, determine, adjust and publish the market access list of international trade in services.[17] The difference is that the FTA does not expressly authorize the competent authorities to impose restrictions and prohibitions on international trade in services not included in the lists under the aforementioned provision.

D. Challenges for China three years into WTO accession

China's adjustment to WTO rules has been reflected in the amendment of the

[13] Art. 11 FTA and Arts. 45-52 RAIEG.
[14] Arts. 47, 51 RAIEG.
[15] Arts. 22, 45 RAIEG.
[16] Art. 18 (2) FTA.
[17] Art. 28 FTA.

laws, regulations and rules pursuant to the obligations imposed upon China. As a result of the accession, China faces a number of serious challenges. This article will now proceed to analyze some of the main challenges facing China, and put forward some viable approaches to managing these challenges.

I. The Non-market Economy Issue in the Anti-Dumping Cases against China

Under China's commitment to the WTO, China may theoretically be treated as a non-market economy for up to 15 years after its date of accession.[18] The importing WTO member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.[19] With respect to many trading partners, such as the United States of America, Chinese manufacturers cannot realistically be expected to obtain market economy status in the next ten years. This notwithstanding, China has become a very popular target of antidumping measures.[20] It is the general opinion in China that the antidumping measures against China have, in many cases, been abused and are tantamount to a non-tariff trade barrier. This may be part of the reason why the Chinese and some foreign critics work for the abolishment of antidumping measures.

The reasons for the abuse of antidumping measures are evident. As mentioned above, the antidumping measure would be helpful for the protection of domestic industries of the importing WTO members. The non-market economy status provisions make it even easier to protect these markets. In one recent integrated electronic compact fluorescent case in which the EU took antidumping measures against China,[21] the EU Council repeatedly stated that all criteria of market economy treatment must be applied to each undertaking individually. The Court of First Instance of the EU agreed with this viewpoint. Council Regulation (EC) No. 384/96, as amended, still requires a demonstration that market economy conditions prevail in the producer or producers of the like product with regard to the manufacture, production and sale of that product. It seems that the wording "producer or producers" is different from the term "industry", which is the term used in the Protocol on China's Accession to WTO. Focusing on a single "producer" or just a few "producers" is certainly substan-

---

18 Art. 15 (1) Protocol on the Accession of the People's Republic of China.

19 Art. 15 (2) Protocol on the Accession of the People's Republic of China.

20 The Community has currently 32 definitive anti-dumping measures in force and 22 ongoing anti-dumping investigations (6 new cases and 16 reviews) against China. The most important products by import volume subject to measures are bicycles and their parts, fluorescent lamps, dead-burned magnesium and fluorspar. The US has currently 52 anti-dumping measures in force against China on products such as chemicals, non-iron and steel products (e.g. potassium permanganate, pure magnesium, steel concrete reinforcing bars), available on the Internet: <http://europa.eu.int/comm/trade/issues/bilateral/countries/china/pr280604_en.htm> (visited on 18 August 2004).

21 See Case T-255/01, *Changzhou Hailong Electronics & Light Fixtures Co. Ltd., Zhejiang Yankou Group Co. Ltd v Council of the European Communities*, paragraph 35, available on the Internet: <http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&docj=docj&numaff=T-255%2F01&datefs=2003-10-23&datefe=2003-10-24&nomusuel=&domaine=&mots=&resmax=100>, (visited on 2 August 2005).

tially different from focusing on an entire "industry", and it seems the "producer or producers" standard is not consistent with the WTO rules for Chinese Accession.[22]

How can China approach this problem? The solutions may include, but not be limited to, the following aspects. It is very important for Chinese enterprises to bear in mind that it is vital to operate consistently inside of the WTO rules and other international rules which are of great importance in terms of the accounting records. The economic detriment of failing to comply with international and domestic accounting requirements provides strong impetus for coordination and self-discipline amongst Chinese producers and manufacturers to be strengthened. This would help to prevent the negative phenomenon of a price war, which may occur in the importing country or region and often triggers the antidumping measures.

It has been a long-held concern that the trade unions, councils of commerce and the like fail to operate effectively inside China. Unfortunately, the recent amendment of the FTA fails to provide a workable solution to these concerns. In addition, China has managed to get the recognition of market economy status from some WTO members such as South Africa, New Zealand, Singapore, Malaysia, and Thailand.[23] China lodged its request for Market Economy Status (MES) in June 2003, and provided supporting documentation in September 2003. However, in July 2004 the EU refused to grant MES to China. The reason given by the EU for denying MES to China is that China failed to satisfy the criteria for market economy treatment in four aspects: (1) decisions about prices, costs and inputs made in response to market signals and without significant state interference, with costs of inputs substantially reflecting market values; (2) a uniform and universal set of basic accounting records consistent with the requirements; (3) firms subject to bankruptcy and property laws guaranteeing legal certainty and stability; (4) the presence of an independent financial sector.

The effective resolution of these issues present fundamental economic, legal, and social challenges to China, necessitating broad and systematic reform efforts. It would be unwise for China not to make efforts to improve in these areas. However, it is arguable that setting the standards for MES so unreasonably high in the short term might constitute a very difficult task for China in which the costs of MES compliance outweigh the potential benefits of WTO participation. Furthermore, the issue of MES is not only a legal one, but to an even higher degree is also a political question. The EU needs to develop and articulate consistent and transparent standards applied even-handedly to all MES applicant countries in order to maintain its credibility and legitimacy. Different standards based on access to oil seem to be the actual basis for the difference in treatment, leaving many Chinese disappointed and cynical about the credibility of these so-called objective and consistent market regulations.

While the EU's four objections are very difficult to address immediately, some of their objections could be met in the near future. Even though the costs to China may be substantial, reforming China's bankruptcy law, for instance, seems a high and fairly pressing priority to establish a market system in China. Moreover, the political relationship and dialogue with all of China's trade partners needs to be further enhanced.

---

[22] See *Heng*, Wang, What is the way out for China in the antidumping cases?, in Snyder, Francis/Tang, Qingyang (eds.), China-EU Antidumping, Law Press of China, Beijing 2005.

[23] Up to 28 June 2004, there are eight countries which have recognized the market economy status of China.

Current Chinese-EU methods of conducting annual dialogues between the MOFCOM Minister and the EU Trade Commissioner exemplify approaches that have been demonstrably effective in solving issues such as the special safeguard measures on textile products. However, such dialogues need to be further strengthened by increasing their frequency as well as by instating some sort early warning system, for example: the EU might advise China that the latter's export of certain textile products is approaching the export volume agreed by both sides. This would be useful for China in the regulation of its exports in these product sectors, and reduce possible losses which incurred if the goods are blindly shipped to European ports, but are excluded from entry into the EU market because exports of these goods have reached the agreed volume.

Another approach that Chinese enterprises could utilize is to negotiate with investigating authorities, adopting a flexible strategy to make compromises that are less severe than the potential anti-dumping duties (ADD). These 'Compromise strategies' have the advantage of reducing the risk of ADD, while enabling the enterprise to minimize its potential loss of market share. Chinese enterprises also prefer to cooperate with relevant parties, including down-stream producers, NGOs, and importers. In this context is important to bear in mind that Chinese culture generally favors harmonious discussions rather than sharply adversarial bargaining. Such compromises with investigating authorities, as well as negotiations and cooperation with NGOs and down-stream producers and importers in the importing country, would help settle the antidumping case in a manner that is more amenable to Chinese business culture. Such alternative strategies may also be beneficial to the importing country because it will maximize the potential for smooth cooperation on the conduct of overall trade relations. Settling disputes assists all parties by minimizing the potential losses of market share for all parties concerned, and the downstream producers and customers continue to have access to a full and vigorous market with many competitors from which to choose.

One possible suggestion for progression in China is for MOFCOM to provide more specific and detailed assistance in structuring the discussions pursuant to these 'Compromise Strategies'. For example, MOFCOM might provide more opportunities for settlement discussions, perhaps with a MOFCOM official serving as the moderator for the meetings.

A second major issue complicating ADD settlement negotiations regards maintaining a unified position among the various competing Chinese enterprises inside the Chinese trade union assisting those enterprises responding to potential or actual ADD cases. Coordinating the efforts of companies that are competing with each other in the market context also presents some very interesting theoretical challenges in the ADD context. This would entail the voluntary exercise of self-discipline of producers in certain industries whereby they voluntarily promise not to dump goods. It is hoped that the strengthening of a culture of mutually beneficial self-regulation of Chinese companies would help to reduce the prevalence of anti-dumping charges taken against China. It might also mean that the Chinese firms under the anti-dumping allegations would cooperate to demonstrate that market economy conditions prevail amongst producers of the like product in question. On a practical note this also allows for companies to pool resources and afford themselves more highly qualified legal advice

than they would otherwise be able to in their anti-dumping cases. More importantly, the new amendments to the Chinese FTA do not address the problem of how Chinese trade unions could be more effective in encouraging competitors facing ADD suits to cooperate. Although it is not difficult to obtain information regarding individual enterprises which are not complying with self-regulation arrangements made by the Chinese trade union, there are significant problems in enforcing sanctions on non-compliant enterprises. This is a long-standing problem which, as yet, remains unresolved. One possible solution to this could be to include the enactment of the Trade Union Act and effective law enforcement. This law should help trade unions play a more important role in the self-disciplinary coordination, and to strengthening the position of trade unions. Moreover, reform is also required to improve the trade unions themselves. Trade unions should be separated from governmental agencies and function on a market-oriented basis.

Last but not the least is the challengeing of practices inconsistent with WTO rules by recourse to the Dispute Settlement Body (DSB). Where the settlement of a dispute is not feasible, Chinese enterprises must persuade the Chinese government to bring a case before the DSB. A single enterprise is not normally strong enough to persuade the government to launch such a procedure, so the role of trade unions becomes even more significant. This is because China has recently acceded to the WTO, there is not as yet much experience with regard to projecting how this field will develop.

II. Transitional Product-Specific Safeguard Mechanisms

If products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions so as to cause, or threaten to cause, "market disruption" to the domestic producers of like or directly competing products, the WTO Member may consult with China. If the consultation fails, the WTO Member affected shall be free, with respect to such products, to withdraw concessions or otherwise to limit imports only to the extent necessary to prevent or remedy market disruption.[24]

The use of the product-specific safeguard mechanism was included in the Chinese WTO obligation. An interesting insight into the socio-political context of this issue is that the Chinese impression at the time was that such measures were very rarely if ever invoked. Much to the surprise and consternation of China, it turned out that such measures are in reality frequently threatened by the US and EU against China. In particular, the US threats are more frequent in number as well as more offensive in tone, causing many Chinese to feel that they were mislead during the WTO negotiations regarding the significance of the special-product safeguard measures.

If one considers the great trade volume and the high levels of protectionism, this problem becomes even more significant. Compared to the comparable language of "serious injury"[25] in the Agreement on Safeguards, the wording "market disruption" is

---

[24] Art. 16, Protocol on the Accession of the People's Republic of China.

[25] A Member may apply a safeguard measure to a product only if that Member has determined such product is being imported into its territory in such increased quantities, absolute or relative to domestic production and under such conditions as to cause or threaten to cause "serious injury" to

certainly easier to invoke. In fact, the American Textile Manufacturing Institute (ATMI) initiated requests to the Committee for the Implementation of Textile Agreements (CITA) as early as 2002, applying for product-specific safeguard measures against five types of textile products from China.

It is because of the commitment made during the WTO accession that China has little discretion in terms of interpretation of the provisions. That does not mean that there is no way out. One approach for the Chinese facing product-specific safeguard measures might be in the form of better coordination among the producers through the chamber of commerce and other organizations, such as trade unions. Coordinating among Chinese exporters in a cooperative way through the trade unions prior to any potential market disruption, as discussed above, is however difficult to execute and often leads to unfair results. The other solution might be a political one. In the Sino-US relationship for example, the dialogue and meeting between the high-ranking officials seem to work. The problem however is significant for Chinese enterprises because once the product-specific safeguard measure process is invoked, the Chinese enterprises are in a defensive position. Furthermore, because these special safeguard measures are fairly easy to invoke and even abuse, the potential for disputes is quite significant.

III. The Unsatisfactory Performance of China's Financial Sector

Having examined the more significant reforms that have occurred in China post-WTO accession it is self-evident that the accession to WTO has brought great changes and new impetus to the financial industry in China. As of October 2004, 62 foreign banks from 19 nations and regions have established 204 operating institutions in China, 105 of which have been permitted to conduct their operations in the local currency (RMB) in China. In addition to this, nine Chinese banks have been allowed to attract foreign shareholders. Foreign participation in China's financial sector greatly facilitates the development of the Chinese financial industry. In this part, the article will go on to discuss the problems of China's financial sector.

In the context of the financial sector, although the non-performance of loans has decreased, they continue to remain a heavy burden for China's banks. The situation is even more challenging for China's rural financial kooperatives, which historically provided financial services to its members. However, due to poor management and other factors, the non-performance of loans has become a substantial problem and they have consequently been unable to maintain sufficient capital adequacy. It is not an easy task for Chinese financial institutions to compete with foreign financial conglomerates while bearing such a heavy load. Another problem is that China failed to predict the effects of opening up the financial market. Prior to the changes precipitated by WTO accession, China was confident of its vast network of business offices of financial institutions throughout its territory, and was of the opinion that foreign counterparts could hardly compete with China's financial institutions in this field. With three years of experience however, foreign financial institutions have successfully attracted the

---

the domestic industry that produces like or directly competitive products. The Agreement on Safeguards, Art. 2 (1).

best customers, and Chinese financial operators have difficulty competing with them in service and returns. Some examples of how Chinese banks have been unable to rise to the challenge of competing with their international counterparts include the following. The vast network of business offices of the state-owned Chinese banks is not economically efficient; on the contrary it has caused great problems such as excessive overhead costs and excessive management levels, reducing central management control effectiveness. Eventually some Chinese financial institutions, such as banks, begun to close those business offices which failed to make profits. For instance the Agricultural Bank of China closed a number of economically inefficient branches. However, the agricultural industry's financial needs are as a consequence going unmet. This presents a dilemma for Chinese policymakers who face a severe shortage of financing for the crucial development of rural areas. In the field of international financial business some Chinese banks still fail to provide customers with credit cards which could be used overseas.

Few Chinese banks and other financial institutions have their branches in the EU, Japan and the US. It makes it difficult for Chinese financial institutions to compete with other banks and brokers in the international financial market.

In many cases, foreign financial institutions are very interested in the investment banking service and in providing banking services to corporations of their own nationality doing business in China. Japanese banks, for example, usually provide loans to Japanese enterprises, not to Chinese ones. Very few foreign banks will provide loans in the internal Chinese domestic economy, even if they are willing to collect commissions from Chinese enterprises to list their company in foreign stock markets. Statistically, over the past few years foreign banks have not provided large numbers of loans to Chinese local enterprises. Foreign banks still tend to perceive China's loans market as being more risky than some investment banking services, and as such they tend to only be interested in a few leading local companies, joint ventures, and other firms invested in by multinational enterprises. Foreign financial institutions also take the leading role in highly technical services like portfolio management, and the public listing of Chinese companies abroad. However, this notwithstanding, few foreign banks are providing comprehensive services inside China.

However, this does not mean that China is conservative in opening up its financial sector. On the contrary, the two cities of *Xi An* and *Shenyang* have been opened up ahead of schedule to foreign financial institutions in order to engage in RMB business. The underlying idea is to facilitate the development of Western China.

There remain some problems deserving further efforts on the part of China and its main partners so as to promote the international trade in services. One example is market access for foreign banks restricted by relatively high capital requirements imposed on European bank subsidiaries in China, which seems to have decreased gradually in recent periods. On the other hand it is important to bear in mind that these prerequisites are nothing novel, for example pursuant to German law, the capital reserves of a bank's headquarters cannot be counted into that of its German branch unless the bank's headquarters are in the EU, Japan or the US. There is also a capitalization requirement on the headquarters of the foreign bank branch in Germany.[26]

[26] MOFCOM, Country-Specific Trade and Investment Barrier Report (2003), p. 114. It is noteworthy that the opinions in this report do not necessarily reflect the position of the government.

Another noteworthy issue is the pricing of the shares of China's financial institutions. If one good Chinese financial institution sets its price very low, this will be detrimental to other Chinese banks interested in attracting foreign strategic investors, setting off a race to the bottom which is a short-sighted strategy for China's banking sector. Once more it shows how important the chamber of commerce and self-regulation are to maintaining a robust Chinese economy over the long term.

Although some Chinese financial institutions are doing a better job, it is always clear that there are more challenges lying ahead of the Chinese financial sector. Some of the solutions to these problems will be in the form of legislative efforts, however it must be borne in mind that other efforts will also be crucial. For instance the establishment of a credit rating and reference system throughout China would be very effective in reducing the risks of the financial institutions. Another solution may be the engagement of excellent financial professionals with better control of risks, and the provision of better services, which may take a long time. The lack of highly qualified financial professionals and the brain drain of top professionals from local financial institutions to foreign ones make it very difficult for Chinese financial enterprises to compete with their foreign counterparts. All this means that joint efforts from legal and human resources, credit rating, and other perspectives are needed to promote the development of the Chinese financial sector.

If there is a severe crisis in the services, especially financial services, China has stipulated at least two safety valves. One is that imports and exports can be restricted in order to maintain the state's international financial status and the balance of international payments.[27] The other is that in the event that the increase of services provided to China by service suppliers from other countries or regions causes or threatens to cause injury to the domestic industries that provide like or directly competitive services, the state may take remedies as necessary to eliminate or mitigate such injury or threat of injury and provide the industry with the necessary support. This resembles the safeguard measures for trade in services.[28] The problems of how and when to invoke these stipulations still remains unclear. There are no detailed rules involving these measures. Undoubtedly these provisions would hardly be available under normal conditions. The serious problems of the Chinese services industry, particularly the financial sector, remain. There is a long way to go for Chinese service providers.

IV. Some Problems of the Current FTA

The problems of the current FTA include, but are not limited to, the following aspects. The vague and generically drafted provisions in the FTA allow a tremendous degree of discretion for administrative agencies which potentially could lead to situations where they act *ultra vires* and exceed their jurisdiction. Another consequence of this is that the imprecision of the stipulations in the FTA make it difficult for authorities to effectively handle the challenges encountered in the fast-changing environment

---

[27] Art. 16 FTA.

[28] With regard to the safeguard mechanisms for trade in services, see e.g. *Lee*, Yong-Shik, Safeguard Mechanisms for Trade in Services, in: Wang, Guiguo/Smith, David (eds), WTO and China: The Road to Free Trade, Law Press, Beijing 2002, pp. 144-181.

of open-market international trade. For example, the lack of clear guidelines for investigating and responding to trade barriers attenuates the Chinese administrative agencies' ability to respond effectively to unfair trade barriers imposed by foreign trade partners and to the abuse of intellectual property right (IPR). For instance, the FTA provides three very brief stipulations regarding IPR protection in foreign trade. Only one article deals with the abuse of IPR in foreign trade.[29] Under this article, the competent authorities of foreign trade could take necessary measures to deal with the abuse. However, it just provides a very rough stipulation about the remedies, and fails to specify the forms and conditions of different remedies available under such circumstances. It would be better if the FTA were perfected and made more detailed. Moreover, the FTA is much less detailed and specific in some of its provisions than the counterpart trade regulations in the US, EU, Japan and Canada.

The actual implementation of the FTA is also another crucial element to consider. Although tax refunds for export trade are readily available to larger and medium-sized enterprises, this is unfortunately not the case for tax refunds issued to newly-established small businesses engaged in foreign trade. In practice, firms in this segment of the market often find that they cannot receive these tax refunds because of serious problems with invoice fraud prevalent amongst smaller enterprises in the past. This presents a real dilemma: if tax refunds are made available to smaller enterprises, the potential for abuse remains high and China's existing tax enforcement resources are as yet insufficient to monitor potential fraud; however, if tax refunds are denied to smaller enterprises, this will unfairly hamper economic growth in that crucial sector of the Chinese economy, particularly creating disadvantages between smaller Chinese enterprises and their foreign competitors.

V. Other Challenges

There are numerous challenges for China, and it is difficult to discuss all the problems in this article. Besides the aforementioned challenges, there are many other problems.

According to a recent survey at the end of 2004, China's industrial output fell below expectations. The background to this is that China had attempted to control investments and lending in a failed attempt to cool certain overheated economic sectors, including steel, coal and housing. Imposing safeguard measures on imported steel in China has contributed to the problem of price increases overheating this sector. Safeguard measures often provide short-term benefits, but exacerbate the underlying problems in the longer term. Before any safeguard measures are undertaken, thorough statistical analysis is needed. However, in the economic context of China this is not easy because of the obvious need for speed when a sudden surge of imports floods the market. On the one hand it might be very time-consuming to conduct a comprehensive statistical analysis. On the other hand safeguard measures are adopted to handle the sudden increase of imports, which have negative effects on the importing market. As such, the failure to take these measures could lead to higher damages to the importing countries. Therefore it presents a dilemma that should be carefully and timely bal-

[29] Art. 30 FTA.

anced in the case of suddenly and unexpectedly increasing imports.

Other obstacles include the fact that the agricultural industry faces major difficulties in its development. Unlike the EU, which is wealthier, and WTO Members able to provide very generous subsidies to their agricultural sector, China cannot offer its farmers subsidies because of its WTO accession commitments. In fact, China cannot afford to give away as much financial support to the agricultural sector as other advanced WTO members. The EU subsidies often go to large agricultural businesses. In contrast, in China the number of small-scale subsistence farmers tends to be greater, less educated and financed, remotely located, saddled with low-quality land, and have overall less access to sophisticated farming technology than their European or American counterparts. Currently, *san long* (agriculture, peasants and rural areas) is a top priority for the Chinese government. Although Chinese citizens have to make substantial sacrifices in order to fulfill China's WTO commitments, it is politically and morally questionable that it is the impoverished peasant farmer on whom the bulk of this burden falls, rather than wealthier agri-business counterparts in some WTO members.

This problem is not unique to China. The vast amounts of agricultural subsidies provided by the EU have terribly distorted the international agricultural market, clearly undermining the free trade policies espoused by these WTO Members. This is also a severe concern for other WTO Members who are not in a position to provide agricultural subsides and are therefore put in a severely disadvantaged position in the international agriculture trading system.

Other problems that may curb China's economic growth still exist, including the fact that China's current structure and economic growth mode do not fully accord with market economy rules. For instance, reductions in the scale of fixed-asset investment to avoid inflation still could see possible rebounds. Furthermore the government's strategies to successfully cope with the situation after China's WTO grace period remain to be seen.[30]

China has a network of rules for foreign trade. However its position on domestic trade is somewhat less satisfactory. With the exception of several vague administrative regulations, the NPC has yet to enact any comprehensive or effective legislation pertaining to this issue. One of the first priorities for MOFCOM and other government agencies should be the establishment of uniform domestic trade rules to ensure their consistency with China's foreign trade rules. With such uniformity, the foreign and domestic trade regimes will be able to interact more harmoniously and efficaciously.

There are anti-competitive activities in international trade. The Anti-Monopoly Act is another important step, which is expected to be enacted in the first half of 2006. The long-standing concern is that the competitiveness of China's domestic corporations will be negatively affected. In fact there is an urgent need to regulate anti-competitive conduct in the market, some of which is carried out by foreign businesses. If we take a look at the legislation of the US and other WTO Members, their anti-monopoly legislation also allows certain exceptions. A number of WTO Members have successfully designed clauses to facilitate small and medium-sized enterprises to

---

[30] See Economy to Maintain Fast, Stable Momentum, China Daily, 4-5 December 2004, available on the Internet: <http://www.chinadaily.com.cn/english/doc/2004-12/04/content_397271.htm> (visited on 2 August 2005).

export their products. China has enacted the Anti-Unfair-Competition Act which is expected to be amended soon. China is working towards the regulation of anticompetitive behaviors from a bilateral perspective. An agreement was signed on in May 2004 between the EU's Trade Commissioner *Mario Monti*, and Chinese MOFCOM Minister *Bo Xilai*, with the aim of setting up a framework for an effective dialogue on competition law-related issues. This bilateral dialogue is the first of its kind engaged in by China. The objective is to set up a permanent consultation framework in order to promote greater transparency in the following matters: (1) rules and infringement of rules related to cartels and abuse of dominant positions; (2) controls of mergers in a global economy;(3) liberalization of public services or public utility sectors; and (4) technical assistance to China in those sectors. All these measures constitute a good start, but as yet only functions as a structural guide and proposal that need to be further developed if they are to produce any practical rules capable of addressing international trade issues. Moreover, this type of negotiation will contribute to China's ability to choose an appropriate strategy on trade and competition policy within the WTO framework. These types of dialogue are especially important given the relative lack of specificity in current WTO regulations on trade and competition.

The protection and promotion of China's exports as well as resistance against unfair treatment have been incorporated into the FTA, and should be further studied. In practice, unfair trade barriers and protectionism have impeded and distorted international trade involving China. [31] Another task which China must bear in mind is its capacity in building domestic businesses, particularly in the field of services.

It has been a long-standing fact that China has been under great pressure to improve the foreign exchange mechanism which closely relates to foreign trade. The viewpoint of China is to take a pragmatic step-by-step approach to liberalize its foreign exchange gradually, and to ensure that China has the competent regulatory capacity to implement this so as to avoid the possible problems as much as possible. One important reason is that many scholars believe that this was the main lesson to be derived from the South-East Asian Financial Crisis of the late 1990s, wherein the lack of effective financial regulation left the affected countries undefended against the negative effects of unregulated currency market speculation and manipulation.

E. Conclusion

The implementation of the FTA is supposed to reach three objectives. First, the law would provide equal conditions for various foreign trade operators in China, speed up the integration of domestic and foreign trade, and further improve and facilitate free trade. Second, the FTA helps to create a fair and predictable foreign trade environment for Chinese and foreign entities, helping to create a win-win situation for, and foster the development of both China and the world community. Third, current trade law is of great significance to the establishment and perfection of a foreign trade monitoring system and balance-of-payments early-warning mechanism under

[31] One latest step is that Regulation on Foreign Trade Barrier Investigation is promulgated by the MOFCOM on 2 February 2005. It means a new movement of China to cope with unfair trade barriers.

the common international practices in order to reasonably protect domestic markets and industries and safeguard national economic security.[32]

Perhaps the most significant positive change precipitated by the recent amendments to the FTA is that individuals and enterprises now play an increasingly important role in international trade administration. This augments the right of trade for individuals to enjoy, China promises to establish a mechanism under which individuals and enterprises can bring to the attention of the national authorities cases of non-uniform application of the trade regime.[33] The Chinese foreign trade dealers are able to report the trade barriers encountered to MOFCOM, and seek its assistance for the promotion of international trade.

Over and above the mentioned changes there are some additional important trends in China. In the area of regional cooperation, China is actively working to establish a free trade area with ASEAN and New Zealand. From the perspective of domestic regulation, the CEPA is another notable step forward which helps to facilitate the development of both the Macau SAR and the Hong Kong SAR. The dispute-resolution mechanism needs to be perfected. The present method of dispute settlement under CEPA is consultation, but it would be problematic if the consultation fails. Arbitration might be another way out. However it is definitely different from international commercial arbitration. The reason is that the sole parties to CEPA are the Chinese Mainland and the Hong Kong SAR, while the parties under the international commercial arbitration are often businesses. The standard commercial arbitration focuses more on disputes in the sense of private law, and it seldom deals with disputes involving public authorities. More importantly, the dispute under the CEPA is the domestic dispute within the People's Republic of China, and it is obviously not an "international" dispute. Therefore if the arbitration is chosen to be the dispute settlement mechanism under CEPA in the future, this arbitration should be carefully tailored so as to effectively handle the disputes under the CEPA. If we choose arbitration as the dispute settlement mechanism under the CEPA, the possible problems might include the question of who the appropriate arbitrators under the CEPA are, how to make sure that the arbitration mechanism can function effectively and efficiently, which form the arbitration would adopt, and which procedures the arbitration should be followed. In other words, if arbitration or other methods have been chosen, it would be another important but difficult issue to design an appropriate mechanism in detail. Another concern is that there might have impacts on the Chinese Mainland. One important task is to strike a balance between the promotion of Hong Kong SAR and Macau SAR, and the prevention of avoiding the rules by establishing a "mail box" in Hong Kong SAR and Macau SAR. In the recent National Meeting on Economic Regulation, China's proactive fiscal polity implemented in the last seven years was replaced by a prudential and steady one.

From the above analysis there is hardly a perfect and ideal solution for these challenges, and many issues are interrelated, deserving joint efforts from China and the outside, both in the legal and non-legal field. In addition, China is orientating itself to

---

[32] Press Office of MOFCOM, The Major Content and Significance of Amendment of FTA, available on the Internet: <http://www.mofcom.gov/article/200404/20040400205975_1.xml> (visited on 1 May 2004).

[33] Art. 2 (A) (4) Protocol on the Accession of the People's Republic of China.

serve as the bridge between developing countries and developed countries in the WTO. To a certain extent, the WTO has put China on the fast track to becoming a market economy with transparency and non-discrimination. There are two major tasks that remain for China to resolve. One is to maintain and further develop its consistency with its WTO obligations – a task which China thus far seems to have managed well. The other, perhaps more challenging task, is to establish rules assisting in China's transition to a market economy. China is now facing many challenges during its transition to a market economy. Given its vast market and its own economic development, China should, if it can get its policies and strategies right, have better performance and contribute more to international trade. This is not only a task for the administrative authorities, but also for scholars, business organizations and other foreign dealers themselves.

Beiträge zum Transnationalen Wirtschaftsrecht
(bis Heft 13 erschienen unter dem Titel: Arbeitspapiere aus dem Institut für Wirtschaftsrecht – ISSN 1619-5388)

ISSN 1612-1368

Bislang erschienene Hefte

Heft 1 Wiebe-Katrin Boie, Der Handel mit Emissionsrechten in der EG/EU – Neue Rechtssetzungsinitiative der EG-Kommission, März 2002, ISBN 3-86010-639-2

Heft 2 Susanne Rudisch, Die institutionelle Struktur der Welthandelsorganisation (WTO): Reformüberlegungen, April 2002, ISBN 3-86010-646-5

Heft 3 Jost Delbrück, Das Staatsbild im Zeitalter wirtschaftsrechtlicher Globalisierung, Juli 2002, ISBN 3-86010-654-6

Heft 4 Christian Tietje, Die historische Entwicklung der rechtlichen Disziplinierung technischer Handelshemmnisse im GATT 1947 und in der WTO-Rechtsordnung, August 2002, ISBN 3-86010-655-4

Heft 5 Ludwig Gramlich, Das französische Asbestverbot vor der WTO, August 2002, ISBN 3-86010-653-8

Heft 6 Sebastian Wolf, Regulative Maßnahmen zum Schutz vor gentechnisch veränderten Organismen und Welthandelsrecht, September 2002, ISBN 3-86010-658-9

Heft 7 Bernhard Kluttig/Karsten Nowrot, Der „Bipartisan Trade Promotion Authority Act of 2002" – Implikationen für die Doha-Runde der WTO, September 2002, ISBN 3-86010-659-7

Heft 8 Karsten Nowrot, Verfassungsrechtlicher Eigentumsschutz von Internet-Domains, Oktober 2002, ISBN 3-86010-664-3

Heft 9 Martin Winkler, Der Treibhausgas-Emissionsrechtehandel im Umweltvölkerrecht, November 2002, ISBN 3-86010-665-1

Heft 10 Christian Tietje, Grundstrukturen und aktuelle Entwicklungen des Rechts der Beilegung internationaler Investitionsstreitigkeiten, Januar 2003, ISBN 3-86010-671-6

Heft 11 Gerhard Kraft/Manfred Jäger/Anja Dreiling, Abwehrmaßnahmen gegen feindliche Übernahmen im Spiegel rechtspolitischer Diskussion und ökonomischer Sinnhaftigkeit, Februar 2003, ISBN 3-86010-647-0

Heft 12 Bernhard Kluttig, Welthandelsrecht und Umweltschutz – Kohärenz statt Konkurrenz, März 2003, ISBN 3-86010-680-5

Heft 13 Gerhard Kraft, Das Corporate Governance-Leitbild des deutschen Unternehmenssteuerrechts: Bestandsaufnahme – Kritik – Reformbedarf, April 2003, ISBN 3-86010-682-1

Heft 14 Karsten Nowrot/Yvonne Wardin, Liberalisierung der Wasserversorgung in der WTO-Rechtsordnung – Die Verwirklichung des Menschenrechts auf Wasser als Aufgabe einer transnationalen Verantwortungsgemeinschaft, Juni 2003, ISBN 3-86010-686-4

Heft 15 Alexander Böhmer/Guido Glania, The Doha Development Round: Reintegrating Business Interests into the Agenda – WTO Negotiations from a German Industry Perspective, Juni 2003, ISBN 3-86010-687-2

Heft 16 Dieter Schneider, „Freimütige, lustige und ernsthafte, jedoch vernunft- und gesetzmäßige Gedanken" (Thomasius) über die Entwicklung der Lehre vom gerechten Preis und fair value, Juli 2003, ISBN 3-86010-696-1

Heft 17 Andy Ruzik, Die Anwendung von Europarecht durch Schiedsgerichte, August 2003, ISBN 3-86010-697-X

Heft 18 Michael Slonina, Gesundheitsschutz contra geistiges Eigentum? Aktuelle Probleme des TRIPS-Übereinkommens, August 2003, ISBN 3-86010-698-8

Heft 19 Lorenz Schomerus, Die Uruguay-Runde: Erfahrungen eines Chef-Unterhändlers, September 2003, ISBN 3-86010-704-6

Heft 20 Michael Slonina, Durchbruch im Spannungsverhältnis TRIPS and Health: Die WTO-Entscheidung zu Exporten unter Zwangslizenzen, September 2003, ISBN 3-86010-705-4

Heft 21 Karsten Nowrot, Die UN-Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights – Gelungener Beitrag zur transnationalen Rechtsverwirklichung oder das Ende des Global Compact?, September 2003, ISBN 3-86010-706-2

Heft 22 Gerhard Kraft/Ronald Krengel, Economic Analysis of Tax Law – Current and Past Research Investigated from a German Tax Perspective, Oktober 2003, ISBN 3-86010-715-1

Heft 23 Ingeborg Fogt Bergby, Grundlagen und aktuelle Entwicklungen im Streitbeilegungsrecht nach dem Energiechartavertrag aus norwegischer Perspektive, November 2003, ISBN 3-86010-719-4

Heft 24 Lilian Habermann/Holger Pietzsch, Individualrechtsschutz im EG-Antidumpingrecht: Grundlagen und aktuelle Entwicklungen, Februar 2004, ISBN 3-86010-722-4

Heft 25 Matthias Hornberg, Corporate Governance: The Combined Code 1998 as a Standard for Directors' Duties, März 2004, ISBN 3-86010-724-0

Heft 26 Christian Tietje, Current Developments under the WTO Agreement on Subsidies and Countervailing Measures as an Example for the Functional Unity of Domestic and International Trade Law, März 2004, ISBN 3-86010-726-7

Heft 27 Henning Jessen, Zollpräferenzen für Entwicklungsländer: WTO-rechtliche Anforderungen an Selektivität und Konditionalität – Die GSP-Entscheidung des WTO Panel und Appellate Body, Mai 2004, ISBN 3-86010-730-5

Heft 28 Tillmann Rudolf Braun, Investment Protection under WTO Law – New Developments in the Aftermath of Cancún, Mai 2004, ISBN 3-86010-731-3

Heft 29 Juliane Thieme, Latente Steuern – Der Einfluss internationaler Bilanzierungsvorschriften auf die Rechnungslegung in Deutschland, Juni 2004, ISBN 3-86010-733-X

Heft 30 Bernhard Kluttig, Die Klagebefugnis Privater gegen EU-Rechtsakte in der Rechtsprechung des Europäischen Gerichtshofes: Und die Hoffnung stirbt zuletzt…, September 2004, ISBN 3-86010-746-1

Heft 31 Ulrich Immenga, Internationales Wettbewerbsrecht: Unilateralismus, Bilateralismus, Multilateralismus, Oktober 2004, ISBN 3-86010-748-8

Heft 32 Horst G. Krenzler, Die Uruguay Runde aus Sicht der Europäischen Union, Oktober 2004, ISBN 3-86010-749-6

Heft 33 Karsten Nowrot, Global Governance and International Law, November 2004, ISBN 3-86010-750-X

Heft 34 Ulrich Beyer/Carsten Oehme/Friederike Karmrodt, Der Einfluss der Europäischen Grundrechtecharta auf die Verfahrensgarantien im Unionsrecht, November 2004, ISBN 3-86010-755-0

Heft 35 Frank Rieger/Johannes Jester/ Michael Sturm, Das Europäische Kartellverfahren: Rechte und Stellung der Beteiligten nach Inkrafttreten der VO 1/03, Dezember 2004, ISBN 3-86010-764-X

Heft 36 Kay Wissenbach, Systemwechsel im europäischen Kartellrecht: Dezentralisierte Rechtsanwendung in transnationalen Wettbewerbsbeziehungen durch die VO 1/03, Februar 2005, ISBN 3-86010-766-6

Heft 37 Christian Tietje, Die Argentinien-Krise aus rechtlicher Sicht: Staatsanleihen und Staateninsolvenz, Februar 2005, ISBN 3-86010-770-4

Heft 38 Matthias Bickel, Die Argentinien-Krise aus ökonomischer Sicht: Herausforderungen an Finanzsystem und Kapitalmarkt, März 2005, ISBN 3-86010-772-0

Heft 39 Nicole Steinat, Comply or Explain – Die Akzeptanz von Corporate Governance Kodizes in Deutschland und Großbritannien, April 2005, ISBN 3-86010-774-7

Heft 40 Karoline Robra, Welthandelsrechtliche Aspekte der internationalen Besteuerung aus europäischer Perspektive, Mai 2005, ISBN 3-86010-782-8

Heft 41 Jan Bron, Grenzüberschreitende Verschmelzung von Kapitalgesellschaften in der EG, Juli 2005, ISBN 3-86010-791-7

Heft 42 Christian Tietje/Sebastian Wolf, REACH Registration of Imported Substances – Compatibility with WTO Rules, July 2005, ISBN 3-86010-793-3

Heft 43 Claudia Decker, The Tension between Political and Legal Interests in Trade Disputes: The Case of the TEP Steering Group, August 2005, ISBN 3-86010-796-8

Heft 44 Christian Tietje (Hrsg.), Der Beitritt Russlands zur Welthandelsorganisation (WTO), August 2005, ISBN 3-86010-798-4

Heft 45 Wang Heng, Analyzing the New Amendments of China's Foreign Trade Act and its Consequent Ramifications: Changes and Challenges, September 2005, ISBN 3-86010-802-6