

April 2008

U.S.-CHINA TRADE

USTR's China Compliance Reports and Plans Could Be Improved



Highlights of [GAO-08-405](#), a report to the Chairman, Committee on Finance, U.S. Senate

Why GAO Did This Study

Congress mandated that the United States Trade Representative (USTR) annually assess China's trade compliance and report its findings to Congress. In addition, USTR conducted an interagency "top-to-bottom review" of U.S. trade policies toward China. USTR's resulting February 2006 report outlined U.S objectives and action items.

GAO was asked to (1) evaluate USTR's annual China trade compliance reports to Congress and the degree to which they present information necessary to fully understand China's compliance situation and (2) examine the status of the plans presented in USTR's February 2006 top-to-bottom report. GAO systematically analyzed the contents of USTR's compliance reports from 2002 to 2007 and reviewed information on the status of agencies' monitoring and enforcement activities.

What GAO Recommends

To improve U.S. monitoring and enforcement related to China, USTR should (1) systematically identify and report the number, type, and disposition of issues in its annual compliance reports to Congress; (2) update and improve the plans in its 2006 top-to-bottom report; and (3) take steps to assess its implementation of these plans. USTR did not comment on GAO's recommendations but expressed concern about quantifying compliance information and said the top-to-bottom report was a one-time policy document, not a plan. Still, GAO believes effective reporting enhances USTR's ability to provide useful information on China's WTO compliance and the status of U.S.-China trade objectives to Congress.

To view the full product, including the scope and methodology, click on [GAO-08-405](#). For more information, contact Loren Yager at (202) 512-4347 or yagerl@gao.gov.

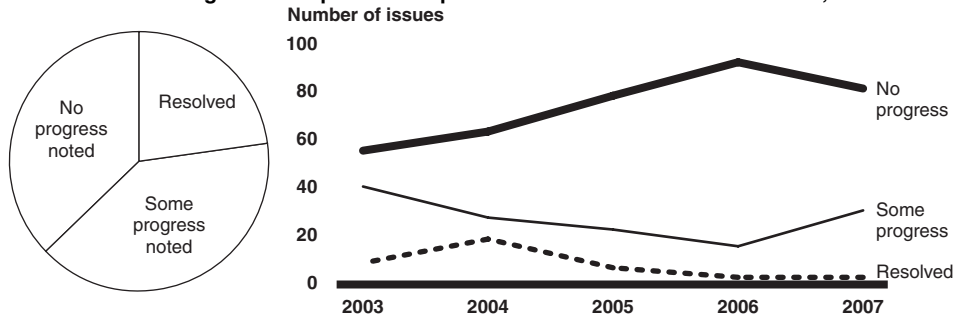
U.S.-CHINA TRADE

USTR's China Compliance Reports and Plans Could Be Improved

What GAO Found

USTR's annual reports to Congress, which detail U.S. industry concerns with China's compliance and progress on resolving such concerns, are very consistent in format and language. However, they lack any summary analysis about the number, scope, and disposition of reported issues that would facilitate understanding of developments in China's trade compliance and better tracking of the effectiveness of U.S. monitoring and enforcement efforts with China. For example, USTR's narrative reports make it difficult to understand the relative level of progress China made in each trade area in a given year. USTR reported issues that spanned nine trade areas and ranged from very specific issues to broader concerns; however, USTR's narrative reports make it difficult to ascertain specific changes or trends. GAO's systematic content analysis quantified the number, type, and disposition of trade issues and identified 180 individual compliance issues from 2002 to 2007. GAO analysis showed that China resolved a quarter of these issues, but made no progress on one-third of them. Also, GAO's analysis revealed that China's progress in resolving compliance issues varied by trade area and has been slowing over time, especially since 2004, when most progress was made.

Resolution and Progress of Reported Compliance Issues in Total and Over Time, 2003-2007



Source: GAO analysis of USTR data.

GAO could only partially determine the status of U.S. agencies' implementation of USTR's 2006 top-to-bottom report, which outlines broad objectives and priority goals for U.S.-China trade relations as well as specific action items. GAO found that key trade agencies made considerable progress implementing planned action items. They increased bilateral engagement with the Chinese and monitoring and enforcement capacity by increasing staffing levels and training opportunities, but staffing gaps and limited Chinese language capacity are challenges at some agencies. However, GAO could not determine agencies' progress toward achieving some U.S. objectives and goals identified in the report. USTR does not formally assess its progress or measure program results. The lack of linkages between U.S. objectives and planned action items and undefined terms make it difficult to assess whether the steps agencies described taking were effective. Furthermore, the report has not been updated to reflect recent developments.

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Abbreviations

AD/CVD	Antidumping/Countervailing Duty Operations
FAS	Foreign Agricultural Service
HHS	Department of Health and Human Services
JCCT	Joint Commission on Commerce and Trade
SED	Strategic Economic Dialogue
TPRG	Trade Policy Review Group
TPSC	Trade Policy Staff Committee
TRM	Transitional Review Mechanism
TBT	technical barriers to trade
USDA	United States Department of Agriculture
USPTO	United States Patent and Trademark Office
USTR	United States Trade Representative
VAT	value added tax
WTO	World Trade Organization

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United States Government Accountability Office
Washington, DC 20548

April 14, 2008

The Honorable Max Baucus
Chairman
Committee on Finance
United States Senate

Dear Mr. Chairman:

Recognizing that monitoring and enforcing China's trade commitments, as specified in China's December 2001 World Trade Organization (WTO) accession agreement, might prove difficult, Congress mandated that the United States Trade Representative (USTR) review and assess China's compliance and annually report these findings to Congress.¹ According to these reports, China's record in resolving compliance issues is mixed, although China has taken significant steps to implement its trade commitments and open its markets to foreign goods and services since its accession.² Many of China's WTO commitments were phased in over the first 5 years and have largely been implemented, but compliance with some has proven especially difficult.

In addition to these annual compliance reviews, USTR conducted a one-time interagency "top-to-bottom review" of U.S. trade policies toward China. USTR's review considered GAO's prior work, which identified opportunities to improve U.S. government efforts in this area. USTR reported on the results of this review in February 2006 and concluded that the United States was entering a new more mature phase in its relationship with China that required it to readjust its trade resources and priorities to meet new challenges.

¹U.S.-China Relations Act of 2000 (Pub. L. No. 106-286, Div.B, Title IV, § 421(a), 114 Stat. 880a 903).

²See USTR, *2002 Report to Congress on China's WTO Compliance* (Washington, D.C.: Dec. 11, 2002); USTR, *2003 Report to Congress on China's WTO Compliance* (Washington, D.C.: Dec. 11, 2003); USTR, *2004 Report to Congress on China's WTO Compliance* (Washington, D.C.: Dec. 11, 2004); USTR, *2005 Report to Congress on China's WTO Compliance* (Washington, D.C.: Dec. 11, 2005); USTR, *2006 Report to Congress on China's WTO Compliance* (Washington, D.C.: Dec. 11, 2006); and USTR, *2007 Report to Congress on China's WTO Compliance* (Washington, D.C.: Dec. 11, 2007).

In response to your request to understand the U.S. government's progress in monitoring and enforcing China's trade commitments, we reviewed (1) USTR's series of annual reports titled *Report to Congress on China's WTO Compliance* and (2) USTR's February 2006 top-to-bottom report, *U.S.-China Trade Relations: Entering a New Phase of Greater Accountability and Enforcement*. We (1) evaluated the degree to which USTR's annual reports to Congress on China's WTO compliance present information necessary to clearly understand China's compliance situation and (2) examined the status of USTR efforts to implement the action items and achieve the objectives presented in its February 2006 top-to-bottom report.³

We reviewed and systematically analyzed the detailed narrative descriptions of China's compliance issues in USTR's 2002 to 2007 reports to Congress, quantified the number of compliance issues reported in each year by USTR, and categorized the progress USTR reported in resolving particular compliance issues.⁴ Our analysis relied on USTR's reports, and we did not do our own independent assessment of China's compliance with its trade commitments or of the actions taken by USTR or other agencies. We interviewed key industry associations and verified with them that USTR's annual reports are generally fair and complete representations of U.S. industry concerns.⁵ To assess USTR's progress in implementing its top-to-bottom report, we reviewed the document to identify the objectives, related priority goals, action items, and implementing steps. We then had USTR and three key agencies (Departments of Commerce, State, and Agriculture) explain how they implemented the objectives, priority goals, action items, and implementing steps, and provide documentation to support their responses. To the extent possible, we independently verified their responses against information in agency reports, planning documents, WTO and Joint Commission on Commerce and Trade (JCCT) documents, and staffing data. In addition, to support our review, we interviewed officials at USTR, the Departments of Agriculture (USDA),

³USTR, *U.S.-China Trade Relations: Entering a New Phase of Greater Accountability and Enforcement, Top-to-Bottom Review* (Washington, D.C.: Feb. 11, 2006).

⁴In a prior GAO report, GAO, *U.S. China Trade: Opportunities to Improve U.S. Government Efforts to Ensure China's Compliance with World Trade Organization Commitments*, [GAO-05-53](#) (Washington, D.C.: Oct. 6, 2004), we examined the scope and disposition of USTR's 2002 and 2003 *Report to Congress on China's WTO Compliance*.

⁵See appendix I, the objectives, scope, and methodology in [GAO-05-53](#) for detailed explanation of how we systematically verified the content of USTR's 2002 and 2003 reports.

Commerce, and State, and private sector groups in Washington, D.C., and in Beijing, China. We conducted this performance audit from March 2007 to April 2008 in accordance with generally accepted government auditing standards.

Results in Brief

USTR's annual reports to Congress do not have the systematic analysis needed to clearly understand China's compliance situation. The reports, which describe many issues with China's compliance and progress on resolving such issues in detail, are very consistent in format and language. However, they lack summary analysis about the number, scope, and disposition of reported issues, which would facilitate understanding of developments in China's trade compliance and better tracking of the effectiveness of U.S. monitoring and enforcement efforts with China. For example, USTR's narrative reports make it difficult to understand the comparative level of progress China made in each trade area in a given year and identify overall patterns or trends over time. Therefore, we conducted a systematic content analysis of USTR's annual reports in order to quantify the number, type, and disposition of trade issues, and our analysis identified about 180 individual compliance issues from 2002 to 2007. These issues spanned nine trade areas and ranged from very specific issues, such as China failing to establish or designate an official journal dedicated to publication of all laws and regulations, to broader concerns such as a lack of transparency in its quota allocation process. Our analysis of USTR's reports showed that China resolved a quarter of these issues, but made no progress on one-third of them. In addition, our analysis revealed that China's progress in resolving compliance issues appears to be slowing over time, especially since 2003 and 2004, when most progress was made. We also found that China's progress on resolving individual issues varies significantly by trade area. For instance, USTR reported that the highest proportion of issues on which China either made progress or resolved the issue were in the agriculture section, and the lowest proportion of progress was in import regulation.

We were able to only partially determine the status of the U.S. agencies' implementation of USTR's 2006 top-to-bottom report, which outlines broad objectives, priority goals and action items for U.S.-China trade relations and serves as a plan to focus U.S. government resources. On one hand, we found that USTR and the other agencies have made considerable progress implementing the planned action items listed in the report. The key U.S. trade agencies took steps to increase bilateral engagement with the Chinese, expand the U.S. government's capacity to enforce and negotiate by increasing staffing levels in headquarters and overseas, and

improve training opportunities. However, we found that some previously identified management challenges, namely staffing gaps and limited Chinese language capacity, remain at some agencies. On the other hand, we could not fully determine USTR's progress toward achieving the report's broad objectives, which go beyond trade compliance. While this report lays out USTR's plans for U.S.-China trade relations, USTR does not formally assess its progress or measure its results as we have recommended in our past reviews of other USTR plans. The lack of linkages between U.S. objectives and planned action items and undefined terms makes it difficult to assess whether the steps agencies reported taking were effective. Furthermore, the report has not been updated to reflect developments such as the creation of the Treasury-led Strategic Economic Dialogue (SED) and U.S. trade actions against China.

To improve policymakers' and the public's understanding of China's trade compliance situation, USTR should clearly and systematically identify the number, type, and disposition of the trade issues it is pursuing with China and report this and more detailed trend information in its annual China trade compliance reports to Congress.

To help achieve U.S. trade objectives with China, USTR should update and improve the plans reported to Congress in its 2006 top-to-bottom report by considering the recent developments and the results of ongoing U.S. monitoring and enforcement activities and by reviewing how specific implementing steps and action items align with broad objectives and priority goals. USTR should also take steps to monitor implementation of these plans over time.

In responding to our draft report, USTR officials said they appreciated our advice to ensure that USTR is doing the most effective job in reporting on results and they would consider our insights and ideas but did not comment specifically on our recommendations. They asked us to clarify certain aspects of our analysis of their annual reports and raised several concerns. For instance, USTR believed that we undervalued the systematic analysis in their annual reports, that there were inherent limitations and difficulties in developing meaningful quantitative measures, and was concerned about the advisability of providing quantitative analysis in USTR's annual reports. However, we disagree and continue to believe that providing summary analysis -- both quantitative and qualitative -- in the annual reports would enhance understanding about China's compliance situation and provide important information for Congress to conduct oversight and for senior policymakers to assess the success of USTR's and

other key trade agencies' activities. USTR has many options for tailoring such analysis in order to address any concerns they might have.

With regard to the top-to-bottom-review, USTR officials stated that it was a not a plan "in the narrow and specific sense" used in our analysis; instead it was a one-time policy document that was not intended to be updated. USTR stated it does provide updates through USTR's annual reports to Congress on China's WTO compliance. However, it is our understanding that USTR's report on the results of the top-to-bottom review was a plan, based on interviews with USTR staff and our reading of the document. USTR's report has many of the characteristics of a good plan and addresses our 2004 recommendation for a China unit plan in that the report establishes goals and priorities for the various China Affairs Office's activities. While USTR provides numerous reports to Congress on its activities, USTR still has not updated the six objectives and 31 priority-goals specified in the top-to-bottom report to reflect subsequent developments nor formally assessed progress. GAO advocates agency strategic planning and using such plans on an ongoing basis as a management tool. We suggest that USTR reconsider its treatment of this report as a one-time policy statement and that it update and improve the report in order to enhance accountability and inform all stakeholders, including Congress and the public.

We also received technical comments from USTR and the Departments of Agriculture, Commerce, and the Treasury, and we have made changes throughout this report to update information and to clarify our findings as appropriate.

Background

China's December 2001 accession to the WTO resulted in commitments to open and liberalize its economy and offer a more predictable environment for trade and foreign investment in accordance with WTO rules. The U.S. government's efforts to ensure China's compliance with its trade commitments under the WTO are part of an overall U.S. structure, led by USTR, to monitor and enforce foreign governments' compliance with existing trade agreements.⁶ Among other things, USTR is required by law to identify any foreign policies and practices that constitute significant barriers to U.S. goods and services, including those that are covered by

⁶The WTO was established in 1995, and exists to facilitate the implementation, administration, and operation of multiple agreements that govern trade among its member governments to resolve complaints regarding another members' noncompliance with WTO commitments.

international agreements to which the United States is a party.⁷ At least 16 other agencies are involved, but USTR and the Departments of Commerce, State, and Agriculture have the primary responsibilities regarding trade agreement monitoring and enforcement. Each of these four key agencies has within its organizational structure a unit that focuses on China or the greater Asian region.

These units have primary responsibilities for coordinating the agencies' China-WTO compliance activities, although numerous other units within the agencies are also involved. The units routinely draw on assistance from experts in these other units to obtain information and expertise, as needed. Additionally, the key agencies have units in China or at the WTO, and staff in those overseas units are also involved in the agencies' compliance activities.

USTR Is Required to Report Annually to Congress on China's Compliance with Its Trade Commitments

USTR's annual compliance reports examine nine broad categories of WTO commitments undertaken by China and include a detailed narrative outlining China's compliance with these commitments. USTR is required to report annually to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral and bilateral commitments made to the United States.⁸ The reports, which are submitted to Congress every year by December 11, the anniversary of China's accession to the WTO, are consistent in format and language. They are approximately 100 pages in length and divided into nine broad sections based on categories of WTO commitments. These sections are (1) trading rights and distribution services, (2) import regulation, (3) export regulation, (4) internal policies affecting trade, (5) investment, (6) agriculture, (7) intellectual property rights, (8) services, and (9) legal framework. In each of these sections, USTR identifies areas where progress has been achieved by China in meeting its trade commitments, and USTR also describes the shortcomings with a lengthy description of the specific, as well as broad compliance issues faced by U.S. industry. As USTR notes, the report does not provide an exhaustive analysis of China's implementation of the particular commitments made in China's WTO accession agreement.

⁷See 19 U.S.C. § 2241(a)(1)(A)(i) and (a)(2)(c).

⁸Pursuant to section 421(a) Div.B. Title IV of Pub. L. No. 106-286.

The report incorporates a broad range of input from key federal agencies and U.S. industry. USTR bases the reports on its own experiences as well as information it collects from federal agencies such as the Departments of Commerce, State, Agriculture, and the Treasury through both an interagency process, as well as by working with officers from these agencies at the U.S. embassy and consulates general in China. In addition, USTR seeks public participation by publishing a notice in the *Federal Register*, holding a public hearing, and incorporating written comments and testimony. Industry associations we interviewed confirmed that USTR fairly represents the concerns and interests of U.S. business in its annual narrative reports on China's compliance.

USTR Conducted an Interagency Top-to-Bottom Review of U.S.-China Trade Relations

Since GAO last reported on China's compliance with its trade commitments in 2004, USTR undertook an interagency top-to-bottom review of U.S.-China trade relations over the past 25 years and issued a report in February 2006.⁹ USTR's report noted that earlier U.S. trade policy with China focused on bringing China into the international trading system and urging China to implement its new WTO commitments. Its report focused on (1) identifying core principles and key objectives of U.S. trade policy with China; (2) assessing the current status and establishing priority goals for each key objective; and (3) identifying the specific action items that will help the United States achieve its priority goals. The report stated that the United States has entered an important new phase of accountability and enforcement in its trade relationship with China and will expect China to play a greater role in strengthening the global trading system. USTR stated in the report that given the importance of U.S. trade with China and the challenges that continually confront the United States as it enters this new period, the United States should readjust its U.S. trade resources and priorities.

⁹[GAO-05-53](#).

USTR's Annual Reports to Congress Do Not Systematically Analyze China's Progress in Resolving Compliance Issues

USTR's annual reports to Congress do not have the systematic analysis needed to clearly provide an understanding of China's compliance situation. While the reports describe many issues with China's compliance and progress on resolving such issues, they lack summary analysis about the number, scope, and disposition of reported problems that would facilitate understanding of key China trade issues and developments and allow the agency to track its effectiveness in monitoring and enforcing China's trade compliance. Therefore, we conducted a systematic content analysis of USTR's reports in order to quantify the number, type, and disposition of trade issues. We identified 180 compliance issues from 2002 to 2007, spanning nine trade areas ranging from very specific issues to broader, more complex concerns. Our analysis further revealed that while China has resolved some issues, most issues have persisted without resolution. In addition, our analysis showed that China's progress in resolving issues varies by trade area. More detailed information on China's slowed progress in certain areas and faster progress in others might help Congress better understand China's compliance. USTR also reported continuous engagement with China through multiple avenues in order to solve compliance issues but has not mentioned taking any action on one-quarter of outstanding compliance issues. Additionally, since USTR's latest report, China made further progress on various compliance issues.

USTR's Annual Reports Lack Systematic Analysis and Comparative Information

While the lengthy detailed narrative in USTR's reports describe many issues with China's compliance, as well as China's successes and progress on resolving such issues, more systematic analysis is needed to clearly understand the overall compliance situation. It is difficult to get a sense for the relative progress being made in each of the nine areas from reading the narrative descriptions. For instance, the reports do not describe how much progress is being made in the area of agriculture relative to the progress being made in intellectual property rights or services. In addition, USTR does not quantify the number of compliance issues or clearly describe the disposition of such issues. USTR also does not clearly identify priority areas or rank the issues in order of importance. While USTR highlights five or six areas of particular concern in the executive summary, some of these areas are crosscutting issues that involve more than one specific trade area. The reports also do not give a clear indication of the level of progress being made overall in each year, or show the relative progress made in one year versus other years. While USTR noted that the progress has slowed in recent years, there is no further information about the degree of this stagnation. Moreover, USTR's narrative reports lack any high-level analysis, which might facilitate better monitoring and enforcement, and raise important questions that might prompt agencies to

adjust their tactics and approaches. Therefore, more specific information on China's slowed progress in certain areas and faster progress in others might help Congress better understand the trade compliance situation in China in a given year.

USTR Reports That China Made Progress on Implementing Its Trade Commitments

In its reports, USTR highlighted numerous areas in which China has successfully implemented its commitments since joining the WTO in December 2001. China's WTO commitments are broad in scope and range from general pledges for how China will reform its trade regime to specific market access commitments for goods and services. In 2006, when deadlines for almost all of China's commitments had passed, and China's transition period as a new WTO member was essentially over, USTR reported that China had taken significant and impressive steps to reform its economy. In 2007, USTR also reported that China made noteworthy progress in adopting economic reforms that facilitated its transition toward a market economy. According to USTR, these actions include repealing, rewriting, or enacting more than 1,000 laws, regulations, and other measures, enacting annual reductions in tariff rates, eliminating nontariff barriers, expanding market access for foreign services providers, and improving transparency. Table 1 provides some examples of China's successful implementation of its WTO commitments from each of USTR's annual reports from 2002 through 2007.

Table 1: Examples of China's Successful Implementation of Its WTO Commitments, 2002-2007

Year	Examples of successful implementation
2002	<ul style="list-style-type: none"> China removed several nontariff barriers. China repealed and revised hundreds of trade laws and regulations.
2003	<ul style="list-style-type: none"> China opened its motor vehicle financing sector. China lifted certain geographic restrictions in the insurance sector ahead of schedule.
2004	<ul style="list-style-type: none"> China implemented the required tariff changes on agricultural goods on schedule. China lifted geographic restrictions in the banking and insurance sectors on schedule.
2005	<ul style="list-style-type: none"> China worked toward bringing its standards regime in line with international standards.
2006	<ul style="list-style-type: none"> China successfully implemented new rules requiring computers to be preinstalled with licensed operating system software.
2007	<ul style="list-style-type: none"> China implemented annual tariff reductions on time.

Source: GAO analysis of USTR's 2002-2007 *Reports to Congress on China's WTO Compliance*.

USTR's Reports Contain a Significant Number and Wide Array of Remaining Compliance Issues

Our analysis of USTR's reports to Congress from 2002 to 2007 identified 180 compliance issues mentioned in the reports spanning all nine areas of China's WTO commitments. The greatest number of compliance issues mentioned were in the areas of import regulation and services, and there were relatively few issues mentioned in legal framework and export regulation (see table 2). China's WTO commitments are broad and complex. Some require a specific action from China, such as to reduce or eliminate certain tariffs. Others are less specific, such as those that require China to adhere to WTO principles of nondiscrimination treatment of foreign and domestic enterprises. Compliance issues also ranged in scope from specific, relatively straightforward issues, such as the late issuance of regulations, to broader and more crosscutting concerns, such as questionable judicial independence, which are more difficult to resolve and assess. The compliance issues can be the result of a range of factors, from political resistance, to lack of technical capacity, to issues of resources and coordination among Chinese ministries.

Table 2: Number of Compliance Issues in Each Trade Area of China's Trade Regime, 2002-2007

Trade area	Number of compliance issues
Import regulation	32
Services	32
Internal policies affecting trade	29
Agriculture	28
Intellectual property rights	24
Trading rights and distribution	22
Investment	7
Legal framework	4
Export regulation	2
Total	180

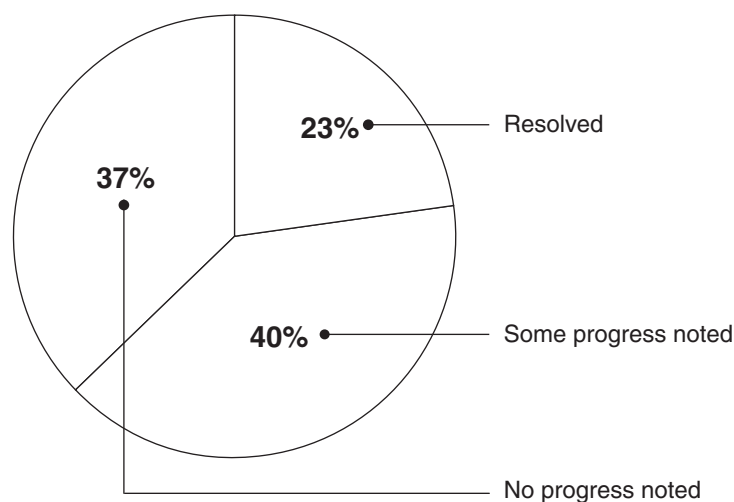
Source: GAO analysis of USTR's 2002-2007 *Reports to Congress on China's WTO Compliance*.

It is important to note that not all compliance issues mentioned in USTR's reports equally affect U.S. exports to China and that some issues are more easily resolved than others. Thus, while USTR's reports identify key areas of concern, the economic importance of many individual issues cannot be easily quantified. USTR does not assign economic value to these concerns in its reports, and we did not attempt to calculate the importance or otherwise prioritize or rank the issues in our analysis.

While China Resolved Some Issues, Most Issues Have Persisted Without Resolution

Our analysis revealed that over 60 percent of the compliance issues USTR reported to Congress were either resolved or progress was made on them from 2003 to 2007. A compliance issue is considered resolved if USTR reported that actions were taken by China that settled the specific issue mentioned. Our analysis shows that almost one-quarter of all compliance issues mentioned between 2002 and 2007 were ultimately resolved (see fig. 1). See table 3 for examples of compliance issues that have been resolved. In addition, none of the issues that were reportedly resolved resurfaced in later reports.

Figure 1: Current Status of All Compliance Issues, 2002-2007



Source: GAO analysis of USTR data.

Table 3: Examples of Compliance Issues That USTR Reported Were Resolved, 2002-2007

Trade area	Examples of resolved compliance issues
Trading rights and distribution	<ul style="list-style-type: none"> Foreign-invested majority owned joint venture enterprises trading rights limited by various requirements Late eligibility requirements for minority owned joint venture enterprises Distribution by [some] minority joint venture wholesaling and commission agents seeking to distribute goods made by other enterprises in China limited by qualifications requirements and other restrictions
Agriculture	<ul style="list-style-type: none"> Tariff-rate quotas for bulk agricultural commodities had small allocation sizes Administration of tariff-rate quota system had burdensome licensing requirements Planned suspension of soybean imports not based on legitimate phyto-sanitary concerns

(Continued)

Trade area	Examples of resolved compliance issues
Internal policies affecting trade	<ul style="list-style-type: none"> • Application of value added tax (VAT) rebate on semiconductors violates WTO national treatment principle • Concern over the use of mandatory standards that do not comply with accepted international standards • Concern over the clarity of requirements and deadlines regarding recycled scrap
Import regulation	<ul style="list-style-type: none"> • Complete regulations for the rules of origin not yet issued • State Council late in issuing necessary regulations • Lack of transparency in the quota allocation process
Services	<ul style="list-style-type: none"> • Motor vehicle financing regulations subject foreign financial institutions to unnecessarily long approval process • Concerns regarding the independence of the regulator • Express delivery services subject to problematic restrictions involving entrustment authority
Intellectual property rights	<ul style="list-style-type: none"> • Concern that Chinese regulations do not provide well-known foreign trademarks national treatment • Foreign companies must use an agent to register trademarks, but domestic companies do not

Source: GAO analysis of USTR's 2002-2007 Reports to Congress on China's WTO Compliance.

Furthermore, according to our analysis, USTR indicated that China made progress, but did not resolve, about 40 percent of the compliance issues reported. An issue was considered to be one in which China made some progress if in any year USTR reported some type of improvement in the situation, or if action taken by the Chinese improved but did not completely resolve the issue. For example, if USTR reported that China announced a commitment to take a certain action, such as revise a law, which would eventually resolve the issue, then this was counted as progress made in the year in which this commitment was made. Progress can range in magnitude from small to substantial on a particular issue, as well as in frequency of occurrence, with some issues making progress in only 1 year and others in many years. For example, China made progress in improving its inconsistent application and duplication in certification requirements related to standards and technical regulations in only 1 of the 6 years the issue was reported. In contrast, USTR reported that China made progress toward improving transparency related to the administration of its tariff rate quota system for bulk agricultural commodities in 4 of the 6 years the issue was reported.

Additionally, our analysis of USTR's reports showed that 37 percent of all compliance issues mentioned from 2002 to 2007 achieved no resolution or any progress over the entire period. An issue was considered to have made no progress if the reports either explicitly noted that no progress had been made on that particular issue or if the reports did not indicate that China took any action to address the issue in the given year. See table 4 for examples of issues that made no progress over the period 2003 to 2007.

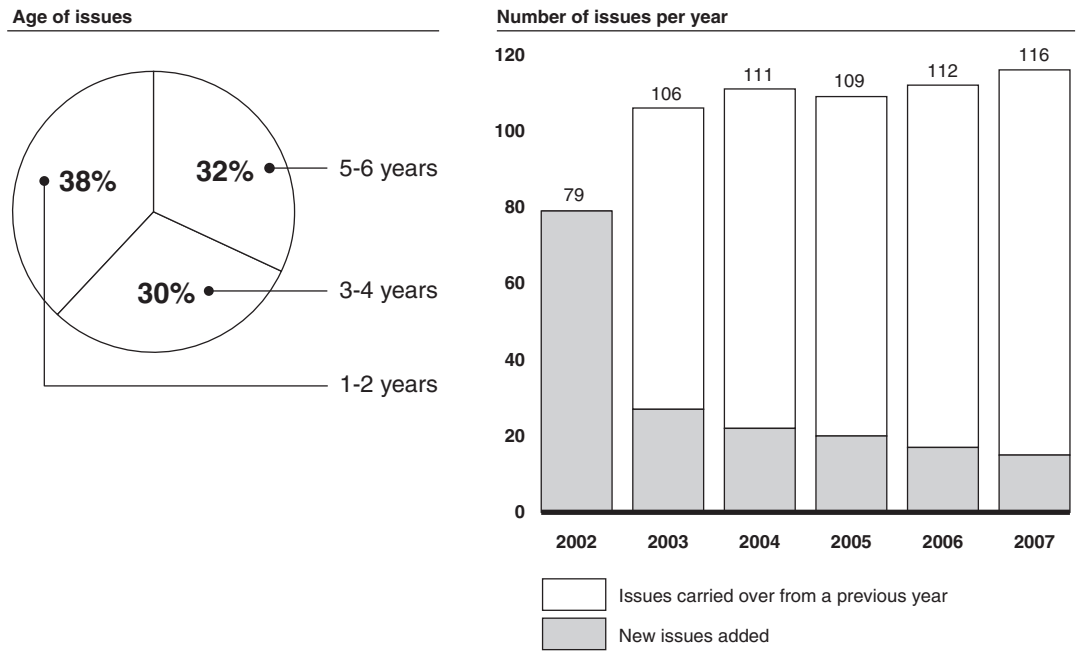
Table 4: Examples of Compliance Issues Where USTR Reported That China Made No Progress, 2003-2007

Trade area	Examples of compliance issues with no progress noted
Import regulation	<ul style="list-style-type: none"> • Chinese customs officials inconsistently apply regulations from one Customs Administration Office to the other. • There is concern over the terms and conditions governing the extension of a safeguard measure.
Services	<ul style="list-style-type: none"> • China restricts access to its markets by foreign credit card companies. • China has still not established an independent regulator in the financial information services sector.
Internal policies affecting trade	<ul style="list-style-type: none"> • Chinese producers are able to avoid paying the VAT through poor collection, special deals, and fraud. • Computation of consumption tax rate for certain products violates WTO national treatment principle.
Intellectual property rights	<ul style="list-style-type: none"> • Low fines in administrative enforcement are ineffective deterrent against violators. • Most judges lack necessary technical training in civil enforcement.
Trading rights and distribution	<ul style="list-style-type: none"> • China has not yet implemented its trading rights commitments insofar as they relate to the importation of books, newspapers, and magazines. • China may not be fully implementing its commitment to allow foreign enterprises to sell gasoline at the retail level.
Investment	<ul style="list-style-type: none"> • Revised investment laws and regulations fail to eliminate requirements to transfer technology. • Officials inappropriately consider export performance and local content when approving an investment or recommending a loan approval.
Agriculture	<ul style="list-style-type: none"> • There is reported selective enforcement of inspection-related requirements for agricultural products.

Source: GAO analysis of USTR's 2002-2007 Reports to Congress on China's WTO Compliance.

In addition, our analysis showed that most compliance issues reported over this period have persisted for many years. For instance, over 30 percent of all issues were mentioned in USTR's annual reports for at least 5 of the 6 years. In addition, less than 40 percent of all issues were present in USTR's reports for 1 or 2 years; the remainder of issues, over 60 percent, was mentioned in the reports for at least 3 years or more (see fig. 2).

Figure 2: Persistence of Compliance Issues and Number of Reported Compliance Issues, 2002-2007



Source: GAO analysis of USTR data.

In addition to the issues that were resolved over the period 2002 to 2007, we discovered that a number of the issues mentioned in the reports were not explicitly resolved but were nevertheless dropped from the report. An issue is considered dropped from the report if the issue was mentioned in 1 or more years of USTR’s report, and not mentioned in a later year, without any discussion about resolution of the issue. In total, 15 percent, or 27 issues, were not explicitly resolved according to USTR’s reports but were dropped from subsequent years, with the ultimate status of such issues remaining unknown. Some of these issues might remain outstanding but USTR chose not to include them in the report for a particular reason, or the issues no longer present concerns for U.S. industry and, therefore, were excluded from the report. A USTR official noted that issues disappear from the report for various reasons, such as the business community no longer considers it an issue, or the Chinese have offered a suitable explanation, ultimately settling the issue.

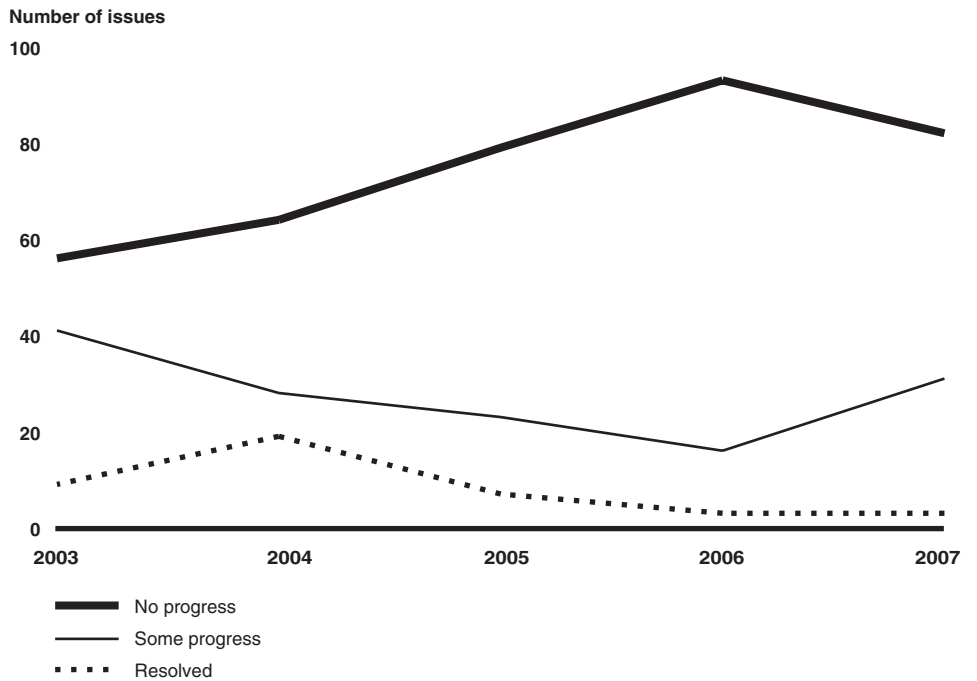
While 37 percent of all issues mentioned in USTR’s reports from 2002 to 2007 were either resolved or dropped, the number of issues mentioned in each annual report remained fairly stable over the period 2003 to 2007 (see

fig. 2). This suggests that, as compliance issues were resolved or dropped from the report, a similar number of new compliance issues arose and were included. USTR reported 15 to 27 new issues in its report each year, with a decreasing number of new issues added over time from 2003 to 2007.

China's Progress on Compliance Issues Slowed Since 2004

While USTR noted generally that China's progress in resolving compliance issues has slowed, our analysis provided information about the degree to which progress has slowed in recent years. In its 2007 annual report, USTR stated that beginning in 2006 and continuing throughout 2007, China's progress toward further market liberalization began to slow. Consistent with USTR's characterization, our analysis showed that while there have been variations over time, the number and proportion of issues being resolved or making progress has slowed, from just under 50 percent of issues in 2003 down to about 30 percent of issues in 2007. For instance, the number of issues resolved in each year has declined since 2004. In addition, the number and proportion of issues that achieved some progress in each year peaked in 2003, declining steadily through 2006, and improved in 2007 (see fig. 3).

Figure 3: China's Progress on Compliance Issues Over Time, 2003-2007



Source: GAO analysis of USTR data.

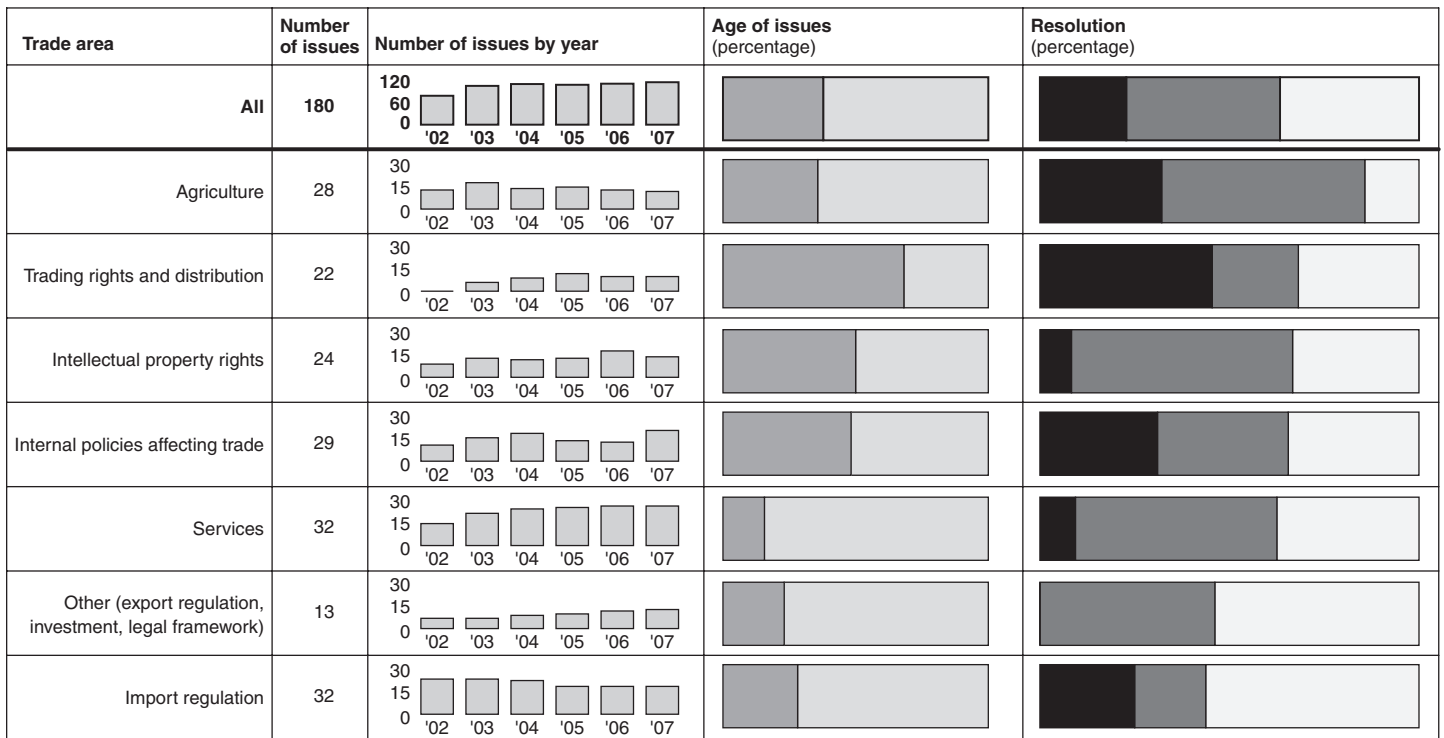
In addition to China's slowed progress over the period, our analysis found that there are an increasing number and proportion of compliance issues where USTR reported no progress, which suggests that issues persist for several years without resolution as new compliance issues continue to arise. According to our analysis, the proportion of issues making no progress rose from just over 50 percent in 2003 to about 70 percent in 2007, with a peak number of issues making no progress in 2006. USTR explained in its 2007 report that U.S. industry is less focused on China's willingness to implement the specific commitments of its entry agreement than on Chinese policies and practices that undermine previously implemented commitments. According to the testimony submitted to USTR by one major trade association, the current concerns lie with more complicated issues such as a deviation from the WTO's national treatment principle, inadequate protection of intellectual property rights, nontransparent legal and regulatory processes, and the development of technical and product standards that may favor local companies. Thus, while USTR reported that China has implemented many of its WTO commitments, many of the outstanding and new issues are broader, more

complex issues that undermine the commitments and reforms already implemented.

Progress Varies by Trade Area in USTR's Annual Compliance Reports

USTR noted that China's record on implementing its WTO commitments is decidedly mixed, without presenting detailed summary information. Through our analysis, we also found that the reported progress varies significantly by trade area (see fig. 4). China has made more progress in some commitment areas—such as trading rights and distribution services, agriculture, and internal policies—having resolved over 30 percent of all issues mentioned in each area, and less progress in other areas such as services and intellectual property rights, where less than 10 percent of issues have been resolved. Overall, while most trade areas have a significant proportion of outstanding issues, the proportion of issues where China is making progress or reaching resolution varies. For instance, in the area of agriculture, the total number of compliance issues mentioned each year is declining slightly, with a large number of issues, about 85 percent, having either reached resolution or achieved some progress from 2003 to 2007. Also, similar to the overall compliance situation, the number of issues making progress or being resolved in the area of agriculture seems to be declining. In fact, USTR mentioned some specific sticking points such as transparency and selective intervention in the market by China's regulatory authorities. USTR explained that, while U.S. exports of many agriculture commodities to China have reached record levels, the increases are largely due to the result of greater demand. Thus, while the results in the agricultural sector seem positive, there are still some important compliance issues that remain outstanding.

Figure 4: Number of Issues and Overall Disposition, by Trade Area



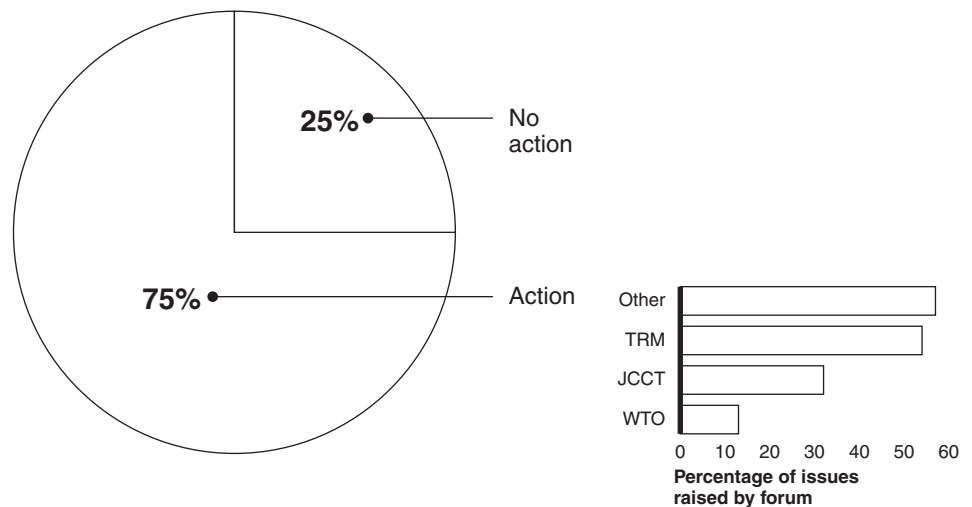
Source: GAO analysis of USTR data.

Conversely, other trade areas such as intellectual property rights have seen less progress, with the smallest proportion of issues, less than 10 percent, reaching resolution and a sizable proportion of issues, over 30 percent, not making any progress from 2003 to 2007. In addition, there are an increasing number of compliance issues mentioned in this area, with a peak in 2006. USTR noted in its 2007 annual report that while China has put in place a relatively good set of laws and regulations aimed at protecting intellectual property rights, some critical measures still need to be revised, and China’s overall enforcement of these laws has been ineffective. Thus, while many of the intellectual property laws have been rewritten, there are still many outstanding issues, and more complex issues related to enforcement continue to arise.

Annual Reports Describe the Types of U.S. Actions to Resolve Compliance Issues

USTR engages with China through multiple avenues to solve compliance issues but has not mentioned taking action on several outstanding compliance issues. In its annual reports, USTR outlines various types of actions taken in order to resolve the compliance issues mentioned in the reports. These actions include raising the issue at multiple forums and dialogues with the Chinese, including the U.S.-China JCCT, the Strategic Economic Dialogue (SED), the Transitional Review Mechanism (TRM) or other forums at the WTO, or raising the issue bilaterally with the Chinese through another mechanism. For this analysis, we considered USTR to have taken action on a particular issue if USTR mentioned some type of activity in any of its annual reports, such as the ones listed above. USTR reported taking at least some type of action on most compliance issues mentioned but did not mention taking any type of action on one-quarter of compliance issues mentioned (see fig. 5). Specifically, USTR raised 32 percent of issues at the JCCT, 54 percent of issues at the TRM or other WTO forum, 13 percent of issues at the SED, and 57 percent of issues were pursued bilaterally with the Chinese through some other mechanism. Most of the issues where USTR did not report taking any type of action were in the areas of agriculture, import regulation, intellectual property rights, and internal policies affecting trade.

Figure 5: USTR Action on Individual Compliance Issues



Source: GAO analysis of USTR data.

USTR officials also highlighted that among the actions they reported, they have taken the added step of filing WTO cases against China after bilateral negotiations have made no progress. They noted that the United States has brought six such WTO cases against China (see table 5).

Table 5: List of WTO Cases Filed by the United States Against China

Name of case	Date filed	Outcome
Measures Affecting Financial Information Services and Foreign Financial Information Suppliers	March 3, 2008	Ongoing
Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products	April 10, 2007	Ongoing
Measures Affecting the Protection and Enforcement of Intellectual Property Rights	April 10, 2007	Ongoing
Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments	February 2, 2007	Agreement reached in December 2007
Measures Affecting Imports of Automobile Parts	March 30, 2006	Ongoing
Value-Added Tax on Integrated Circuits	March 18, 2004	Agreement reached in October 2005

Source: WTO.

China Made Further Progress on Various Compliance Issues in December 2007

Since USTR's latest report, gains were made at the December 2007 JCCT and SED meeting that are not mentioned in the 2007 annual report on China's compliance with the WTO. In December 2007, the United States and China participated in the third cabinet-level meeting of the SED and the 18th JCCT meeting; USTR, the Departments of Commerce and the Treasury have all cited numerous areas of progress resulting from those meetings. However, due to the timing of the meetings in late in 2007, the results were not included in USTR's 2007 annual report and, therefore, were also not included in our analysis of such reports. Specifically, the Department of Commerce cited several areas of progress as a result of the December JCCT meeting, including steps taken by China in the areas of intellectual property, product safety, and market access in several industries such as medical devices, agriculture, and telecommunications.

In addition, the Department of the Treasury also noted many areas of progress resulting from the December SED meeting including areas such as integrity of trade and product safety, financial sector reform, environmental sustainability, and transparency (see table 6).

Table 6: Examples of Key Areas of Progress from December 2007 JCCT and SED Meetings

Trade area	Key areas of progress
Intellectual property rights	<ul style="list-style-type: none"> China agreed to strengthen enforcement of laws against company name misuse. The two sides also agreed to cooperate on case-by-case enforcement against such company name misuse.
Product safety	<ul style="list-style-type: none"> China agreed in the JCCT to address specific loopholes in its regulation of bulk chemicals used as active pharmaceutical ingredients. China committed to expand its regulations to control bulk chemicals used as the underlying source of many counterfeit drugs.
Market access	<ul style="list-style-type: none"> China agreed to take action to eliminate remaining redundancies in its testing and certification requirements for imported medical devices, and committed to implement a “one test, one fee” policy, establishing a single conformity assessment system for medical device testing.
Agriculture	<ul style="list-style-type: none"> China agreed to allow six U.S. pork processing facilities to resume exports to China. China agreed to eliminate the requirement to submit viable biotech seeds for testing, which will reduce the possibility of illegal copying of patented agricultural materials.
Telecommunications	<ul style="list-style-type: none"> China confirmed that it will lower the registered capital requirements for U.S. telecommunications service providers to operate in China.
Integrity of trade and product safety	<ul style="list-style-type: none"> The Environmental Protection Agency and China’s General Administration of Quality Supervision, Inspection and Quarantine have signed a Memorandum of Agreement to strengthen cooperation on sound environmental management practices related to imports and exports. The U.S. Department of Health and Human Services (HHS) and China’s State Food and Drug Administration have agreed to expand cooperation in the areas of the safety of drugs and medical devices.
Financial sector	<ul style="list-style-type: none"> China has agreed to allow foreign companies doing business in China, including banks, to issue stocks and bonds in Chinese currency.
Energy efficiency and security and climate change	<ul style="list-style-type: none"> The United States and China reaffirmed their commitment “to reduce, or as appropriate, eliminate tariffs and non-tariff barriers to environmental goods and services” in the WTO.

Sources: GAO analysis of information from the Departments of Commerce and the Treasury.

USTR’s Progress Toward Achieving Top-to-Bottom Report Objectives Cannot be Fully Determined

We were only able to partially determine the status of USTR’s 2006 top-to-bottom report, which outlines objectives for U.S.-China trade relations and serves as a plan to focus U.S. trade resources and priorities in this regard. On one hand, we found that USTR and the other agencies have made considerable progress implementing planned action items listed in the report. The key U.S. trade agencies took steps to increase bilateral engagement with the Chinese and expand the U.S. government’s capacity to enforce and negotiate by increasing staff levels in headquarters and

overseas and improving training opportunities. However, we found that some previously identified management challenges—staffing gaps and limited Chinese language capacity—remain. On the other hand, we could not determine progress toward achieving the top-to-bottom report’s broad objectives, which go beyond trade compliance. While this report lays out USTR’s plans for U.S.-China trade relations, USTR does not formally assess its progress or measure its results as we have recommended in our past reviews of USTR plans. The lack of clear linkages between U.S. objectives and planned action items and vague language make it difficult to determine whether the steps agencies reported taking were effective. Furthermore, the report has not been updated to reflect subsequent developments.

Trade Agencies Have Made Considerable Progress in Implementing Top-to-Bottom Action Items

We found that USTR and the key trade agencies have made considerable progress in implementing the planned action items listed in the top-to-bottom report. We learned that various agencies share responsibility for carrying out the activities planned in this report either individually or collectively. USTR informed us that, of the 25 implementing steps, 10 implementing steps were interagency; USTR was responsible for 6, the Department of Commerce for 5, other agencies for 3, and the Department of State for 1. After assessing the information provided by USTR and the other key trade agencies, we determined that 17 out of 25 steps were implemented or are in the process of being implemented; the status of 8 steps was unclear because the ‘top-to-bottom’ review did not define terms such as ‘strengthen’ and ‘effectiveness’ nor did it provide baseline data from which to measure progress. For example, with regard to strengthening interagency coordination, the report says that export promotion activities will be increased, but without any baseline measurement information we could not determine if there had been an increase in these activities. (See app. II, table 10, which identifies the 10 action items and the accompanying 25 implementing steps, along with agency responsibilities and status.)

We confirmed that key U.S. trade agencies took steps to increase bilateral engagement with the Chinese and expanded the U.S. government’s capacity to enforce and negotiate by increasing staff levels in headquarters and overseas and by improving training opportunities. While assessing these agencies’ implementation of the top-to-bottom report action items, we also followed up on progress made addressing management challenges identified in our 2004 report on U.S. monitoring and enforcement activities related to China. We recommended that the key agencies take various steps to improve performance management pertinent to China WTO

U.S. Government Increased
Bilateral Engagement with
China on Various Trade Issues

compliance efforts and that they undertake actions to mitigate the effects of staff turnover in the agencies China WTO compliance units. We found that some previously identified challenges—staffing gaps and limited Chinese language capacity—remained at some agencies.

As a result of the top-to-bottom report, key trade agencies are undertaking several action items to improve and increase bilateral engagement with China. The U.S. government has utilized two formal consultative mechanisms to address commerce, trade, and financial issues, both of which demonstrated an emphasis on high-level, bilateral engagement. First, the United States uses the JCCT, a forum for dialogue on bilateral trade issues and a mechanism to promote commercial relations. This forum had been elevated to a higher level after a 2003 meeting and refocused to give greater attention to outstanding trade disputes. Second, the United States and China created the SED in September 2006, as another bilateral high-level forum to address the most important, long-term, strategic issues in the United States-China economic relationship. The meeting of the SED, which is convened every six months, is led by a U.S. Cabinet Official and a Chinese Vice Premier, and each dialogue session comprises U.S. cabinet officials and Chinese ministers.

The SED allows both governments to communicate at the highest levels and with one voice on issues of long-term and strategic importance, including issues that extend across multiple departments and agencies. The United States has three core objectives for the SED: (1) to advance the U.S.-China economic relationship by establishing new habits of cooperation; (2) to accelerate China's next wave of economic transition; and (3) to encourage China to act as a responsible global economic power. According to Department of the Treasury officials, there are no formal working groups associated with the SED. Rather, U.S. cabinet officials and Chinese ministers determine strategic areas of focus for the intervening six months between meetings of the SED. For example, at the first SED in December 2006, civil aviation was selected. At second SED, product safety was identified and in December 2007 at the third SED, energy and environment was a strategic area of focus.

According to some U.S. agency officials, there was confusion over the purpose of the SED when, at the May 2007 SED meeting, the United States used the meeting to discuss trade compliance issues. Officials told us that they have since clarified the issue. Department of the Treasury officials told us the JCCT focuses mostly on short-term trade issues, while the SED focuses on solutions to long-term, strategic, economic issues (see table 7 below for list of JCCT work areas).

Table 7: Examples of JCCT Working Groups

JCCT working groups

- Agriculture Working Group
 - Aviation Subgroup
 - Commercial Law Working Group
 - Environment Subgroup
 - High Tech Working Group
 - Information Industry Working Group
 - Insurance Dialogue
 - Intellectual Property Rights Working Group
 - Pharmaceuticals and Medical Devices Subgroup
 - Steel Dialogue
 - Structural Issues Working Group
 - Textile Consultative Group
 - Trade Remedies Working Group
 - Trade Statistics Working Group
 - Travel and Tourism Working Group
 - U.S.-China Legal Exchange
-

Source: Department of Commerce.

USTR planned to strengthen and expand bilateral dialogues on numerous current and potential problem areas, another key action item in the top-to-bottom report. The U.S. government held a number of bilateral dialogues covering 8 different subject areas to address trade issues with China, which demonstrated a continuing emphasis on bilateral engagement (see app. II; table 10, which lists these dialogues). Many U.S. government agencies engaged their Chinese counterparts on a multitude of topics such as agricultural, environmental, labor, subsidies and standards, and telecommunications issues. While some of these dialogues are very active and have resulted in accomplishments such as China's acceding and ratifying the World Intellectual Property Organization Internet Treaties in 2007, others dialogues have not yet been implemented. For instance, both the Environmental Protection Agency and the Department of Labor indicate they have not established formal dialogues with their Chinese counterparts as planned.

There are other means of bilateral engagement. For example, USDA officials told us they prefer to handle issues with their Chinese counterparts using science-based rationale. This often requires USDA Foreign Agricultural Service (FAS) to engage Chinese officials in technical forums and through capacity building initiatives, even though USDA

U.S. Government Expanded Capacity to Enforce China's Trade Compliance and Improved Training, but Staffing Issues Persist

participates in high-level JCCT working groups on agricultural and sanitary and phytosanitary issues.

The number of high-level meetings between senior U.S. and Chinese officials has increased. For instance, the key economic and trade agencies sent more cabinet and sub cabinet delegations to China to engage their Chinese counterparts on trade issues; senior-level delegations to China from various U.S. government agencies increased from 31 in 2006 to 63 in 2007, a level equal to about one a week.¹⁰ Furthermore, this represents a substantial increase from 2002 and 2003, where there were 13 and 23 such meetings, respectively.

Since the top-to-bottom report, the key trade agencies have increased staff in headquarters and overseas to expand the U.S. government's capacity to enforce China's trade compliance and to negotiate with China on trade issues. They also increased staff training opportunities. GAO's prior work recommended that the key trade agencies better manage their human capital to enhance the U.S. government's China WTO compliance efforts and mitigate the effects of staff turnover. Nevertheless, agency officials told us they still experienced staffing gaps and turnover in key overseas offices and shortfalls in language skills.

Staff Levels Increased

Key trade agencies have continued to increase staff positions to meet the demands of the U.S.-China trade relationship (see table 8). Staff resources more than doubled at headquarters and in Beijing since 2004. The estimated number of full-time equivalent staff in units most directly involved with China trade compliance efforts increased from 60 in fiscal year 2003 to 135 in fiscal year 2007. USTR doubled its staff positions in headquarters from 5 to 10 positions and established an internal China Enforcement Task Force that includes staff from USTR's Office of General Counsel and the China Affairs Office to prepare and handle potential WTO cases. USTR also added personnel in its China office to coordinate collection and integration of information on current and potential China trade issues. In response to increased responsibilities arising from the new U.S.-China trade relationship, USTR, Treasury, and Commerce's U.S. Patent and Trademark Office added four new positions at the embassy in

¹⁰These numbers are based on GAO analysis of unverified Department of State information. These numbers do not include congressional delegations.

Beijing. Department of Commerce's and USDA's Foreign Services in China are the largest overseas office for each department. For example, 10 percent of Commerce's Foreign Commercial Service is in China. In addition, as a result of an increased focus on China, the FAS has increased the number of staff that work in China, which now accounts for 10 percent of its overseas staff, according to USDA.¹¹

Table 8: Comparison of Agency Staffing for Key China-Trade Units for Fiscal Years 2003 and 2007 at Headquarters and Overseas

Agency	Main headquarters units	Staffing 2003	Staffing 2007
Headquarters units			
USTR	Office of China Affairs	5	10
Commerce ^a	International Trade Administration		
	• Import Administration	9	55
	• Market Access and Compliance	22	21
	• Manufacturing and Services	0	10
	• Foreign Commercial Service	2	2
State ^b	East Asia and the Pacific-China Desk	3.25	4
	Economic Bureau-Intellectual Property Rights	0	1
Agriculture ^c	Foreign Agricultural Service, Washington	2.5	9.9
Subtotal for headquarters units		44	113
Overseas units in Beijing, China			
USTR	Minister Counselor for Trade Affairs	0	1
Commerce	Trade Facilitation Office		
	• Import Administration	2	2
	• Market Access and Compliance	2	2
	• Manufacturing and Services and National Institute of Standards and Technology	0	1
	U.S. Patent and Trademark Office	0	2

(Continued)

¹¹This is the percentage of FAS personnel stationed in China compared with all FAS personnel stationed overseas, not including contractors detailed to the United States Agency for International Development or locally employed staff working in FAS offices.

Agency	Main headquarters units	Staffing 2003	Staffing 2007
State	Economic Section, External Unit	7.25	7
Agriculture	Office of Agriculture Affairs FAS	5	6
Treasury	Minister Counselor for Financial Affairs	0	1
Subtotal for overseas units		16	22
Total all units		60	135

Sources: GAO summary of USTR, Commerce, State, and USDA data.

Note: Figures do not total precisely due to rounding and are authorized full-time equivalent slots. Overseas data includes U.S. government full-time equivalent slots only; it does not include staff outside of Beijing or Foreign Service Nationals.

^aThe increased number of Import Administration staff working on China was due to the International Trade Administration Reorganization in 2004, which established the China/Non-Market Economy Unit within Import Administration Antidumping/Countervailing Duty Operations(AD/CVD). The China/NME Unit works almost exclusively on China cases. The offices included are AD/CVD Operations Offices 4, 8, and 9 and the Unit's Senior Enforcement Coordinator's Office. The current staffing number for the China/Non-Market Economy Unit is 55. This figure does not include the number of employees in Import Administration's Office of Policy, who work substantially on China issues.

^bIn fiscal year 2007, State estimated that it had another 20 staff that devoted part of their time to China WTO issues.

^cUSDA's FAS division estimates of full-time equivalent staff working on China compliance issues. Figures do not include other USDA agencies' staff (e.g., the Animal and Plant Health Inspection Service or Food Safety and Inspection Service) that have routine responsibilities in supporting the government's work on China-WTO compliance efforts or staff positions inside FAS that are obligated but unfilled.

Staffing Gaps and Turnover Remain

Furthermore, agencies have experienced staffing gaps and shortages. In headquarters, USTR experienced staff turnover from fiscal year 2006 to 2007. USTR's China Affairs Office had four staff depart and hired five additional staff. As of November 2007, the office is authorized to have nine staff but only have eight. The International Trade Administration officials in the Department of Commerce said that there is still a relatively high amount of staff turnover because employees in the Market Access and Compliance acquire a skill set that is highly desirable and attractive to the private sector. Department of Commerce officials noted that one official in the Market Access and Compliance's Office of Chinese Economic Area had moved from headquarters to Beijing since January 2007. Overseas, both the Departments of State and Commerce have experienced staffing challenges. For instance, a senior Department of State official told us there has been a high level of turnover in the economic section at the embassy, which has included curtailed Foreign Service rotations. These changes have resulted in significant gaps in filling positions and reorganizations to compensate for lost expertise. To maintain current staffing levels, the

department has sometimes pulled staff from Chinese language training. Although State added seven positions in China as part of its Global Repositioning Initiative, only five were at the embassy in Beijing, and two staff still had not arrived at post as of the end of 2007.¹² One of the five economic section positions at the Beijing embassy tasked to work on China trade compliance at the embassy has been seconded to work with the senior Department of the Treasury official at post.

Similarly, the Department of Commerce's Trade Facilitation Office has been understaffed and has experienced high turnover in two staff positions according to department officials. One Market Access and Compliance position was vacant for a year, and the office had waited over 6 months for a Director. We were told that the individual has been hired and assumed duty in late February 2008. A senior Department of Commerce official stated that one contributing factor to the high turnover for the Trade Facilitation Office is that department hires experienced people with China business backgrounds, in a highly competitive job market. These individuals are on a limited 2-year noncareer appointment (with the possibility of the appointment being extended to a maximum of 5 years) with no opportunities for promotion.

Training Opportunities Expanded

In 2004, GAO reported that the four key trade agencies lacked specific training relevant to executing China-WTO compliance responsibilities, but since then the Departments of Commerce and State, and USDA have offered staff opportunities for training on trade monitoring and compliance. Training opportunities for staff have increased, but most training is still ad hoc and does not apply specifically to China trade compliance. Department of State staff overseas stated they had sufficient funds for training. In addition, both departments offer courses online for staff. Department of State offers about nine training courses related to WTO compliance issues to its employees, as well as employees from other agencies. In fiscal year 2007, approximately 172 individuals took these courses. Since 2005, Department of Commerce has offered several training courses related to compliance and market access. Commerce employees in International Trade Administration participated in training on

¹²In 2006, the Department of State established the Global Repositioning Initiative to shift hundreds of positions from across the world to critical emerging areas in Africa, South Asia, and elsewhere that will shape U.S. interests in the future.

compliance and market access database. In addition, to ensure data accuracy in the Department of Commerce's case database, about 195 employees have been trained on case procedures and received guidance on how to document their work in the database. USDA officials stated the agency increased training opportunities for its China staff since 2005.

Language Skill Gaps Remain

Senior management from the Departments of Commerce and State expressed concerns about the language skills of China unit staff. For instance, newer staff often have insufficient language skills, according to a senior Commerce official. As of September 2007, the Department of Commerce's Office of Chinese Economic Area offers Mandarin language training and has five staff taking the course; however, Beijing staff confirmed that they were not fluent in Chinese and said they rely on the Chinese Foreign Service Nationals to translate and conduct research to enhance the officers' abilities to perform their duties. Some Department of State staff told us that officers come to the embassy before they have finished their language training. According to a senior Department of State official, this limits them in their official capacities. Although senior department management and staff said they had funds to take language training, the heavy visitor schedule and workload have made it difficult to consistently take advantage of the language instruction available at the post.¹³

Progress Toward Broad U.S.-China Trade Objectives Is Difficult to Determine

We could not determine agencies' progress toward achieving the plan's broader U.S.-China trade objectives for several reasons. First, USTR officials said that while the top-to-bottom report is their planning tool, they have not formally assessed the progress they have made in implementing it, although USTR officials told GAO that USTR periodically reviewed their progress and made informal internal assessments. However, USTR did not provide GAO any of its informal internal assessments. Second, assessing USTR's progress toward achieving its objectives and priority goals for U.S.-China trade is difficult since the objectives and priority goals are clearly linked to the action items in the report. Furthermore, some of the action items use undefined terms such as

¹³GAO has reported on language skills shortfalls, including Chinese. See GAO, *State Department: Staffing and Foreign Language Shortfalls Persist Despite Initiatives to Address Gaps*, [GAO-07-1154T](#) (Washington, D.C.: Aug. 1, 2007).

USTR Uses the Top-to-Bottom Report as a Planning Tool but Does Not Formally Assess Its Progress in Implementing It

“strengthen” and “effectiveness” and others do not include baseline information from which to measure progress. As a result, it is difficult to ascertain how the agency’s action items and implementing steps contribute to achieving the larger U.S. trade objectives and priority goals with China. Third, USTR has not updated the report despite major changes in the U.S.-China trade relations since conducting the top-to-bottom review, such as the establishment of the Department of the Treasury-led SED in September 2006 and filing of several dispute settlement cases.

USTR officials told us they use the top-to-bottom report as the planning tool for USTR’s China Affairs Office, and it guides USTR’s as well as the U.S. government’s engagement with China on trade issues. Nevertheless, USTR officials told us they do not formally assess the progress they have made in implementing it. Rather, they said that in their regular discussions on China, they are inevitably touching on the issues in the top-to-bottom report. In Washington, D.C., and overseas, managers and staff we interviewed at other agencies said they were aware of the report, but that it was not used as a guide for planning their China trade compliance priorities.

The top-to-bottom report indicated that the Trade Policy Review Group (TPRG) and Trade Policy Staff Committee (TPSC) were to conduct monthly reviews of the progress made in achieving the key objectives identified in the report to help ensure coordination of China trade policy formulation and implementation and appropriate focus among agencies on key U.S. trade objectives with China.¹⁴ However, USTR said that although these groups discuss key objectives and priority goals, they do not track progress made on achieving the action items. The TPSC Subcommittee on China met 5 times in 2007 between January and August to discuss various issues such as WTO disputes, SED and JCCT dialogues, and coordination with U.S. trading partners. The TPRG met 10 times between March 2006 and June 2007 to discuss a variety of issues related to its strategy in WTO dispute settlement. In addition, no minutes are kept on either the TPRG or the TPSC so we could not determine to what extent these objectives were informally discussed in these meetings.

¹⁴USTR administers and chairs both the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), which is composed of 19 federal agencies and offices; make up the sub-cabinet level mechanism for developing and coordinating U.S. Government positions on international trade and trade-related investment issues.

Results Not Measured

Furthermore, as discussed in the previous section of our report, USTR still does not attempt to measure the results of its efforts to resolve trade compliance problems with China, even though they are an integral part of many U.S.-China trade objectives. USTR's top-to-bottom review drew upon GAO past reviews of monitoring and enforcement efforts. In GAO's 2004 report, for example, we found that the specific units within the agencies most directly involved with China compliance activities lacked specific strategies for ensuring that they supported their agency's goals, and they also did not assess their unit's results. We noted that planning and measuring results were important components to ensuring that government resources were used effectively to achieve the agencies' goals. In addition, we stated that good planning and management links overall agency goals to individual unit activities and priorities.¹⁵ We recommended that these agencies take steps to improve performance management pertinent to the agencies' China-WTO compliance efforts. Specifically, we said that USTR should set annual measurable targets related to its China compliance performance measures and assess the results in its annual performance plan.

Other Key Agencies Have Some Related Plans

We asked the other agencies to provide us with their China unit plans. However, the Department of State provided their information too late for us to assess. The Department of Commerce's International Trade Administration has developed a strategic plan, and it has China objectives and goals that are broad; however, there is no performance measures related to China and the information provided on China is not very specific. The International Trade Administration's Office of China Economic Area which has major responsibility for China compliance and trade issues does not have a specific unit plan, although Department of Commerce officials told us that the activities undertaken by the Office of

¹⁵For examples of how to improve planning and to better measure results, see GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005); GAO, *Results-Oriented Government: Improvements to DHS's Planning Process Would Enhance Usefulness and Accountability*, [GAO-05-300](#) (Washington, D.C.: Mar. 31, 2005); GAO, *Results-Oriented Government: GPRA Has Established a Solid Foundation for Achieving Greater Results*, [GAO-04-38](#) (Washington, D.C.: Mar. 10, 2004), and GAO, *Results-Oriented Government: Using GPRA to Address 21st Century Challenges*, [GAO-03-1166T](#) (Washington, D.C.: Sept. 18, 2003).

Lack of Linkages and Specificity Make It Difficult to Assess Progress

the Chinese Economic Area are fully consistent with the International Trade Administration's Office's strategic plan. The Market Access and Compliance unit which is over the Office of China Economic Area does have a draft plan but it does not mention China specifically. USDA's Office of Country and Regional Areas and the Office on Negotiations and Agreements have developed unit plans for China, but the documents have not been officially approved by agency management.

Assessing USTR's progress toward achieving its objectives for U.S.-China trade is difficult since the broad objectives and the more specific action items are not clearly linked in the top-to-bottom report. The top-to-bottom report sets forth the following six U.S.-China trade objectives:

- *Participation*—integrate China more fully as a responsible stakeholder into the global rules-based system of international trade and secure its support for efforts to further open world markets;
- *Implementation and compliance*—monitor China's adherence to international and bilateral trade obligations and secure full implementation and compliance;
- *Enforcement of U.S. trade laws*—ensure that U.S. trade remedies and other import laws are enforced fully and transparently, so that Chinese imports are fairly traded, and U.S. and Chinese products are able to compete in the U.S. market on a level playing field;
- *Further market access and reform*—secure further access to the Chinese market and greater economic reforms in China to ensure that U.S. companies and workers can compete on a level playing field;
- *Export promotion*—pursue effective U.S. export promotion efforts with special attention to areas of particular U.S. export growth potential in China; and
- *Proactive identification and resolution of trade problems*—identify mid- and long-term challenges that the trade relationship may encounter, and seek proactively to address those challenges.

However, these six objectives and 31 related priority goals are not linked to the 10 action items and 25 specific implementing steps. (See table 11 in app. II for a list of the six objectives and 31 related priority goals.) As a result, it is difficult to ascertain how the agency's action items and implementing steps contribute to progress and achieve the larger U.S. trade objectives with China. Therefore, we asked USTR to identify which

objective each action item and implementing step is supposed to help achieve. There was a wide range in the level of planned activity to achieve different objectives. Based on the information USTR provided, we found that 11 implementing steps focused on one objective concerning implementation and compliance, while other objectives concerning proactive identification and resolution of trade issues and export promotion each only had 1 implementing step associated with them. Furthermore, the scope and specificity of some objectives and their related priority goals, did not match the actions meant to implement them. Therefore, it is not clear that the planned priority goal actions, if implemented, would fully address all of USTR's objectives. For example, as part of planned export promotion efforts, they intended to give special attention to noncoastal parts of China, from small/medium enterprises, from high-tech firms, and in sectors where the United States is competitive; in contrast, the planned action related to export promotion is very general in nature, is discussed in the context of strengthening interagency coordination, and does not mention any of these specifics.

It was also difficult to assess progress because terms in the plan do not provide a means to understand how USTR or other government agencies might determine when an action item had been achieved. Several action items state that particular initiatives will be expanded, strengthened, or increased; however, no strategy or baseline information is provided to allow one to determine how this would be done or whether actions on the part of agencies have actually expanded, increased, or strengthened the program. For example, one action item is to "increase effectiveness of high-level meetings with China's leaders," but the implementing steps do not state how greater effectiveness will be accomplished; instead, the step is limited to "continue to hold high-level meetings." Similarly, with regard to strengthening interagency coordination, the report says that export promotion activities will be increased, but without any details or measurement information we could not determine if there had been an increase in activity or how this might lead to strengthened coordination.

Plans Have Not Been Updated

Finally, it is difficult to assess the status of U.S.-China trade objectives because the report does not reflect some important developments. USTR has not updated its plans. USTR stated in its report that these are "initial steps" and that additional action items would be developed and

implemented in consultation with Congress and other stakeholders to ensure meaningful progress in achieving the reports' key objectives.¹⁶ However, the action items in the report have not been updated since its issuance over 2 years ago in February 2006.

There have been several important developments in U.S.-China trade since the top-to-bottom review occurred, which are not reflected in USTR's report. The creation of the SED is a new high-level forum and now involves the Department of the Treasury. The United States has filed five dispute settlement cases at the WTO against China since February 2006 (see table 5). Also, U.S. industries have filed numerous trade remedy petitions against Chinese imports under U.S. trade laws, including requests for safeguard actions and antidumping and countervailing duty investigations. In 2007, Commerce made the determination to apply the countervailing duty law to Chinese imports, representing a major change from its long-standing policy of not applying this law to non-market economies.

Conclusions

Clearer information on the number and disposition of trade issues with China and the trends over time helps Congress and the public understand the results of U.S. government monitoring and enforcement activities. It also better informs policymakers trying to adjust tactics in response to new developments and shift resources to where they can be the most effective. Measuring program results on an ongoing basis can be a powerful management tool. For example, analyses like the ones we conducted could prompt policymakers to shift priorities to focus on trade areas with the greatest number or most persistent unresolved issues. Also, it is possible that lessons can be learned from the tactics and approaches used in those areas where the most issues have been resolved.

Similarly, USTR's top-to-bottom review produced a 2006 governmentwide plan for U.S.-China trade relations. Since then, the key trade agencies have taken steps to implement the various action items this plan laid out, including an expansion of U.S. monitoring and enforcement capacity, increased number of bilateral forums for U.S.-China dialogue about trade and economic issues, and proactively identifying and resolving trade

¹⁶USTR told us they held 39 briefings or meetings with members of Congress in the past 2 years since the top-to-bottom report was written but were not able to identify the degree to which they specifically discussed progress toward achieving their objectives.

issues with China. However, it is not always clear how these activities will achieve the many objectives the United States has regarding trade relations with China. A clearer linkage between planned activities and objectives, and regular progress reviews could help agencies adjust priorities, focus their efforts, and ensure that there is movement toward all objectives. Furthermore, this plan for engaging China would be strengthened if it reflected new developments, like the creation of the SED, and the results from ongoing U.S. government monitoring and enforcement activities described in USTR's annual trade compliance report to Congress. The upcoming change in administration, new Congress, expected changes in Chinese leadership, and 2-year anniversary of the top-to-bottom report, provide USTR with an opportune time to update its plan.

Recommendations for Executive Action

To improve policymakers' and the public's understanding of China's trade compliance situation, we recommend the USTR clearly and systematically identify the number, type, and disposition of the trade issues it is pursuing with China and report this and more useful trend information in its annual China trade compliance report to Congress.

To help achieve U.S. trade objectives with China, we recommend USTR update and improve the plans reported to Congress in its 2006 top-to-bottom report by considering recent developments and the results of ongoing U.S. monitoring and enforcement activities and by reviewing how specific implementing steps and action items align with broad objectives and priority goals. We also recommend USTR take steps to formally monitor implementation of these plans over time.

Agency Comments and Our Evaluation

We provided a draft of this report to USTR and the Departments of Agriculture, Commerce, and State for their comment. USTR provided written comments, which are reprinted and evaluated in appendix III. USTR officials said they appreciated our advice to ensure that USTR is doing the most effective job in reporting on results and they would consider our insights and ideas, but they did not comment directly on our recommendations. USTR asked that we clarify our analysis of agency actions taken and the persistence of compliance issues; we made revisions, where appropriate. USTR believed that we undervalued the systematic analysis of China's WTO compliance in USTR's annual reports. In addition, USTR believed that the quantitative analysis of progress made reveals inherent limitations and difficulties in developing meaningful quantitative compliance measurements. Moreover, USTR expressed

concern about the advisability of providing quantitative analysis in USTR's annual reports. However, we disagree and still believe that providing summary analysis – both qualitative and quantitative – would enhance understanding about China's compliance situation and provide important information for Congress to conduct oversight and for senior policymakers to assess the success of USTR's and other key trade agencies' activities. USTR has many options for tailoring such analysis in order to address any concerns they might have.

With regard to the top-to-bottom-review, USTR officials stated that it was a not a plan “in the narrow and specific sense” used in our analysis; instead it was a one-time policy document that was not intended to be updated. USTR stated it does provide updates through USTR's annual reports to Congress on China's WTO compliance. Furthermore, USTR stated that the report's action items were short-term steps and were not in themselves designed to achieve the objectives and priority goals. However, it is our understanding that USTR's report on the results of the top-to-bottom review was a plan, based on interviews with USTR staff and our reading of the document. USTR's report has many of the characteristics of a good plan and addresses our 2004 recommendation for a China unit plan in that the report establishes goals and priorities for the various China Affairs Office activities. In addition, USTR's report implies that updates were going to be provided, however, we agree that USTR's report includes no requirement or explicit promise to present revised objectives, goals, subsequent actions, or the degree of progress in a new version of the report. While USTR provides numerous reports to Congress on its activities, USTR still has not updated the six objectives and 31 priority-goals specified in the top-to-bottom report to reflect subsequent developments nor formally assessed progress. GAO advocates agency strategic planning and using such plans on an ongoing basis as a management tool. We suggest that USTR reconsider its treatment of this report as a one-time policy statement and that it update and improve the report in order to enhance accountability and inform all stakeholders, including Congress and the public.

In addition, we received technical and editorial comments from Department of Agriculture and Commerce officials that sought to clarify our description of information they provided about the departments' China-related activities, such as Commerce staffing information and the correction of minor errors. We revised our report, as appropriate, in response to these comments. The Department of State did not provide any comments on our draft report.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the U.S. Trade Representative; the Secretaries of Commerce, State, and Agriculture; and interested congressional committees. We also will make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff has any questions regarding this report, please call me at (202) 512-4128. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO contact and staff acknowledgments are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink that reads "Loren Yager". The signature is written in a cursive style with a large initial "L" and "Y".

Loren Yager
Director, International Affairs and Trade

Appendix I: Objectives, Scope, and Methodology

To assist Congress in better understanding the United States Trade Representative's (USTR) reporting on the U.S. government's progress in monitoring and enforcing China's trade commitments, we reviewed two key USTR reports, its annual December 11 report to Congress on *China's WTO Compliance* and its February 2006 top-to-bottom report, *U.S.-China Trade Relations: Entering a New Phase of Greater Accountability and Enforcement*. We were asked to (1) evaluate the degree to which USTR's annual reports to Congress on China's World Trade Organization (WTO) compliance present information necessary to clearly understand China's compliance situation and (2) examine the status of USTR efforts to implement the action items and achieve the objectives presented in its February 2006 top-to-bottom report.¹

To examine the scope and disposition of compliance issues, we reviewed USTR's *Report to Congress on China's WTO Compliance from 2002 to 2007*.² These annual reports, mandated by Congress in conjunction with China's 2001 accession to the WTO, incorporate a broad range of input from key federal agencies, as well as the business community. To assure ourselves that the reports generally included the main compliance issues and concerns that had arisen, we interviewed three key industry associations, which together represent over 1,300 companies in over 40 industries, in Beijing, China, and Washington, D.C., about USTR's annual reports, and these groups noted that they were generally satisfied with the report's portrayal of the compliance situation in China.³ We identified each unique compliance issue that was reported by USTR in the narrative of each of their annual reports. Our identification was based on USTR's description and definition of problems in the narrative of the report. USTR's categorization of issues in the report and the manner in which issues were grouped and presented, also guided the identification of individual issues. We did not include areas where China initially complied

¹USTR, *U.S.-China Trade Relations: Entering a New Phase of Greater Accountability and Enforcement, Top-to-Bottom Review* (Washington, D.C.: Feb. 11, 2006).

²In a prior GAO report in October 2004 ([GAO-05-53](#)), we examined the scope and methodology and disposition of USTR's 2002 and 2003 *Report to Congress on China's WTO Compliance*. We relied on this prior analysis of the 2002 and 2003 reports and continued using the same methodology to analyze the 2004 through 2007 annual reports.

³In the prior GAO report ([GAO-05-53](#)), we also systematically cross-checked the reports with testimony and reports submitted to the Trade Policy Staff Committee, Subcommittee on China-WTO Compliance, as part of its 2002 and 2003 hearings on China-WTO compliance and other relevant reports. This analysis also found the USTR reports to be a generally fair and complete representation of U.S. industry concerns.

fully with its commitments and, therefore, no issues were raised, these were considered successes as reported in table 2. In all, we identified 180 issues in the six annual reports.

To analyze the disposition of the compliance issues, we reviewed the narrative descriptions provided in the reports and made determinations according to three broad categories: No Progress Noted, Some Progress Noted, and Resolved. We categorized an issue as “No Progress Noted” if the report text either explicitly stated that no progress had been made or did not indicate that China had undertaken any actions to address the issue. We categorized an issue as “Some Progress Noted” if the report text indicated that China had undertaken any action to address the issue but had not completely resolved it. We categorized issues as “Resolved” if the report language clearly indicated that the compliance issue was resolved and the U.S. government was no longer pursuing a resolution of that particular issue (see table 9 for additional details). Two of our staff independently identified each compliance issue and made initial determinations of the dispositions. After those staff had reconciled differences in their initial identification and disposition of issues, additional staff reviewed issues and dispositions to ensure consistency and accuracy in the dispositions.

Table 9: Description of GAO Categories for Disposition of China’s WTO Compliance Issues and Examples of Disposition

Disposition category	Description of disposition category	Example of disposition of issue
No progress noted	USTR reported that China has made no progress in resolving a compliance issue or did not otherwise note progress on an issue.	The issue that comment periods for technical barriers to trade (TBT) regulations are unacceptably brief was present from 2002 to 2007. In 2007, USTR reported that the United States has consistently highlighted during regular meetings that the comment periods established by China for the TBT measures continued to be unacceptably brief.
Some progress noted	USTR reported that China had undertaken some action to resolve a compliance issue; however, the issue was not yet fully resolved.	The issue that application of standards for foreign raw poultry and meat are not based on scientific evidence and violates national treatment persisted between 2002 and 2007. In December 2005, China’s regulators were in the process of drafting new pathogen standards.
Resolved	USTR reported that China had successfully undertaken steps to resolve compliance issue and that the issue was no longer a concern for the United States or the affected industry.	The issue of small allocation sizes for tariff rate quotas for bulk agricultural commodities persisted between 2002 and 2004. In 2004, during the run-up to the April 2004 Joint Commission on Commerce and Trade (JCCT) meeting, China implemented new regulatory provisions calling for the increase of quota allocation sizes.

Source: GAO analysis of USTR’s 2002-2007 Reports to Congress on China’s WTO Compliance.

We did not attempt to identify the relative importance of the compliance issues as the report text does not provide clear indications that would

allow us to make that determination. However, we based our analysis on the premise that all these compliance issues had been considered serious enough by USTR to include in its annual reports. Indeed, USTR reported that it focused the report on trade concerns raised by U.S. stakeholders that merit attention within the WTO context. In some instances, we noted that after a compliance issue in a particular area had been resolved, other issues arose in the same area. For example, in some areas, after a particular commitment was implemented, other restrictions were imposed that made it difficult for U.S. companies to realize the full benefits of the commitment. In those instances, we identified two separate issues and noted their dispositions according to the evidence. As a result, our total count of issues includes several that are related, but that were identified as separate problems in USTR's reports.

In addition, for the 2004 through 2007 annual reports, we quantified the number of issues where USTR mentioned taking various types of actions in order to resolve the issue in the narrative of the report. These actions include raising the issue at multiple forums and dialogues with the Chinese, including the JCCT, the Strategic Economic Dialogue (SED), the Transitional Review Mechanism (TRM), or other forums at the WTO, or raising the issue bilaterally with the Chinese through another mechanism. For example, regarding the concerns from the U.S. telecommunications industry about interference from Chinese regulators regarding standards and contract negotiations, USTR reported that they raised this issue during a 2004 JCCT meeting. Therefore, we noted that USTR took action toward resolving this issue at the JCCT.

To assess USTR's progress in implementing the objectives and action items presented in its February 2006 top-to-bottom report, *U.S.-China Trade Relations: Entering a New Phase of Greater Accountability and Enforcement*, we analyzed the document by identifying the six objectives and each of the associated priority goals. After that, we delineated the 10 action items and each of their associated implementing steps. We created a chart and divided the implementing steps under each associated action item. Next, we asked USTR to (1) identify the agency responsible for implementing each action item, (2) complete the chart, (3) indicate whether the action item was implemented and if so how was it implemented, and (4) provide supporting documentation for each response. Since we had observed that the action items were not clearly linked to the report's objectives, we asked USTR to identify which objective the action item addressed. We also asked the Departments of Commerce and Agriculture to complete a chart for their individual agencies; identify which action item they were responsible for

implementing, indicate the status of this action item, and provide supporting documentation for their responses. We asked the Department of State to provide documentation for the one step that USTR said this department was solely responsible for implementing.

We conducted this performance audit from March 2007 to April 2008, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Status of Top-to-Bottom Review

Table 10 identifies the 11 action items and the accompanying 25 implementing steps, along with agency responsibilities and status in the top-to-bottom review.

Table 10: Action Items, Implementing Steps, Responsibilities, and Status

Action items and implementing steps	Agency responsible for implementing	Status of implementing step
Action item 1: Expand enforcement capacity		
1. Establish a China Enforcement Task Force and establish a Chief Counsel for China Trade Enforcement.	USTR	Implemented
2. Add at least seven new positions in China to report on economic developments, including monitoring compliance issues.	State	Implemented
3. Add more Intellectual Property Rights attachés and intellectual property rights foreign service nationals in Beijing and Guangzhou.	Commerce (U.S. Patent and Trademark Office [USPTO])	Implemented
4. Expand intellectual property rights small and medium-sized enterprises Advisory Program, which provides U.S. companies with a free, 1-hour consultation with an experienced intellectual property rights attorney on protecting and enforcing intellectual property rights in China.	Commerce	Difficult to determine; because no baseline from which to judge. Commerce distributed a flyer to advertise the program and reached out to hundreds of U.S. companies.
5. Expand mechanism to transfer certain intellectual property rights cases to Chinese authorities. Enables the U.S. government to pass, to China's government for action, vetted cases of intellectual property rights infringement involving U.S. rights holders who have been unable to effectively enforce their intellectual property rights in China.	Commerce (USPTO)	Program not expanded; China notified Commerce in June 2007 that China had suspended the program.
6. Begin technical exchanges with Chinese to enforce intellectual property rights at its own borders and reduce China's exports of counterfeit goods.	Homeland Security (Customs and Border Protection)	Implemented
7. Continue seminars offered by U.S. officials to Chinese legislators on drafting intellectual property rights laws.	Commerce (USPTO)	Implemented
Action item 2: Expand USTR capability to obtain and apply comprehensive, forward-looking information regarding China's trade regime and practices to U.S. trade policy formulation and implementation		
8. Add personnel in China Office in support of China Enforcement Task Force.	USTR	Implemented
9. Create an Advisory Committee on Trade Policy and Negotiations China Task Force.	USTR	Implemented
Action item 3: Expand U.S. trade policy and negotiating capacity in Beijing		
10. Post a senior trade official at the U.S. Embassy.	USTR	Implemented

(Continued)

Appendix II: Status of Top-to-Bottom Review

Action items and implementing steps	Agency responsible for implementing	Status of implementing step
Action item 4: Increase coordination with other trading partners		
11. USTR will increase coordination with other trading partners.	Interagency	Difficult to determine; no baseline data provided; coordination with other trading partners is occurring—USTR cites 14 instances.
Action item 5: Deepen and strengthen regional engagement		
12. Pursue increased trade liberalization with Asian economies and within the Asia-Pacific Economic Cooperation, including the Free Trade Agreement with Korea.	USTR	Difficult to determine; because deepen/strengthen are not defined
Action item 6: Increase focus on regulatory reform in China		
13. Promote regulatory reform regarding (1) structural reform, (2) subsidies under the WTO, (3) sanitary and phytosanitary standards obligations under the WTO, and (4) development of antimonopoly laws.	Interagency	Being implemented
Action item 7: Increase effectiveness of high-level meetings with China's leaders		
14. Continue to hold high-level meetings with Chinese leaders via JCCT.	Interagency	Difficult to determine because effectiveness is not defined
Action item 8: Strengthen and expand bilateral dialogues on numerous current and potential problem areas		
15. <i>Dialogue on participation in global institutions</i> - This involves the (a) Pursuing Doha Development Agenda, (b) WTO Government Procurement Agreement Accession, (c) World Intellectual Property Organization Internet Treaties accession, and (d) Increase Chinese participation in Agricultural Standard-Setting Bodies.	<i>Interagency</i> (a)USTR (b)Interagency (c)Commerce (USPTO) (d)Interagency	<i>Being implemented</i> (a) Being implemented (b) Being implemented (c) Implemented (d) Being implemented
16. <i>Dialogue on services</i> -Address China's policies related to services, including (a) telecommunications, (b) direct selling industry, (c) distribution sector, (d) information technology, (e) health care, and (f) post financial attaché in Beijing and launch financial regulators dialogue.	<i>Interagency</i> (a) Interagency (b) Interagency (c)Commerce (d) Commerce (e) Commerce/Health and Human Services (f) Treasury	<i>Being implemented</i> (a) Being implemented (b) Being implemented (c) Being implemented (d) Being implemented (e)Being implemented (f) Implemented
17. <i>Dialogue on subsidies and structural issues</i> Address subsidies through (a) WTO and JCCT working group and (b) launch steel dialogue.	<i>Interagency</i> (a) Interagency (b) Interagency	<i>Being implemented</i> (a) Being implemented (b) Being implemented

(Continued)

Appendix II: Status of Top-to-Bottom Review

Action items and implementing steps	Agency responsible for implementing	Status of implementing step
18. <i>Dialogue on standards</i> (a) Launch Standards and Conformity Assessment Program in Beijing and (b) Technical Exchanges and Roundtables with China's General Administration for Quality Supervision, Inspection and Quarantine.	<i>Interagency</i> (a) Commerce/TDA (b) Commerce	<i>Being implemented</i> (a) Being implemented (b) Being implemented
19. Dialogue on labor issues	Department of Labor	Being implemented
20. Dialogue on environmental protection	Environmental Protection Agency	Being implemented
21. <i>Dialogue on China's administration of antidumping laws</i>	Commerce	Being implemented
22. <i>Dialogue on transparency and uniform application of laws</i>	Interagency	Being implemented
Action item 9: Strengthen U.S. government interagency coordination		
23. TPRG and TPSC to conduct monthly reviews of strategies and progress made in achieving the key objectives in the February 2006-U.S.-China Trade Relations report.	Interagency	Difficult to determine; meetings are held, but no minutes are kept so not able to determine if strategies and progress are assessed.
24. TPCC will increase export pro motion activities.	Interagency	Difficult to determine; no baseline information is available; however, China is the largest post for Commerce with 125 employees and several activities have taken place.
Action item 10: Strengthen the executive-congressional partnership on China trade		
25. Initiate regular briefings for members and staff to discuss the status of the top-to-bottom review.	USTR	Unable to determine if partnership has been strengthened, but USTR briefed congressional members.

Sources: GAO analysis of USTR, Departments of Commerce and State, and USDA information.

Table 11 is a list of the six objectives and 31 related priority goals in the top-to-bottom review.

Table 11: Top-to-Bottom Objectives and Priority Goals

Objective 1: Participation. Integrate China more fully as a responsible stakeholder into the global rules-based system of international trade and secure its support for efforts to further open world markets.

- Secure greater participation within the Doha negotiations.
- Have China join the (1) WTO Government Procurement Agreement, (2) accede to the **World Intellectual Property Organization** Internet Treaties, and (3) join World Organization for Animal Health.
- Secure greater participation in international standard-setting organizations.

Objective 2: Implementation and compliance. Monitor China's adherence to international and bilateral trade obligations and secure full implementation and compliance.

- Enhance intellectual property rights protection.
- Ensure that standards and regulations are consistent with WTO requirements.
- Eliminate market access barriers for services that may be inconsistent with WTO obligations.
- Eliminate industrial subsidies, industrial policies and preferences for state-owned enterprises that may be inconsistent with WTO obligations.
- Eliminate sanitary and phyto-sanitary barriers and export subsidies for agricultural products that may be inconsistent with WTO obligations.
- Ensure that China's administration of antidumping laws is consistent with WTO obligations.
- Ensure that China complies with WTO requirements regarding transparency of laws and uniform application of laws.

Objective 3: Enforcement of U.S. trade laws. Ensure that U.S. trade remedies and other import laws are enforced fully and transparently, so that Chinese imports are fairly traded, and U.S. and Chinese products are able to compete in the U.S. market on a level playing field.

- Ensure full and transparent enforcement of U.S. trade remedy laws and agreements (e.g., antidumping laws).
- Ensuring China's compliance with U.S. rules for food safety, invasive species
- Seizing counterfeit products and those made with forced/bonded labor at U.S. borders.

Objective 4: Further market access and reform. Beyond what is granted under China's current commitments, secure further access to the Chinese market and greater economic reforms in China to ensure that U.S. companies and workers can compete on a level playing field.

- Promote China's reliance on market forces
- Foster rule-based competitive regulations.
- Expand market access in intellectual property rights-intensive sectors (e.g., publishing).
- Address market access issues in the telecommunication sector.
- Address market access issues in the financial services sector.
- Ensure independence of regulators.
- Reduce tariffs and nontariff barriers to manufactured and agricultural U.S. exports.
- Promote reform of the health care system.

Objective 5: Export promotion. Pursue effective U.S. export promotion efforts with special attention to areas of particular U.S. export growth potential in China.

- Promote exports to noncoastal parts of China.

(Continued)

Appendix II: Status of Top-to-Bottom Review

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- Promote U.S. exports from small/medium enterprises.

 - Promote U.S. exports from high-tech firms.

 - Promote U.S. exports in competitive sectors.

 - Coordinate WTO-compliance and other trade promotion with specific export goals.

Objective 6: Proactive identification and resolution of trade problems. Identify mid- and long-term challenges that the trade relationship may encounter, and seek proactively to address those challenges.

-
- Coordinate U.S. government interagency focus on specific priority trade goals.

 - Develop a full-range of options for addressing trade concerns.

 - Enhance capability to obtain information regarding China's trade regime and practices.

 - Formalize input from stakeholders to identify prospective trade issues.

 - Monitor and measure China's compliance with specific obligations.
-

Source: GAO analysis of USTR's top-to-bottom report.

Appendix III: Comments from the United States Trade Representative

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

March 26, 2008

Mr. Loren Yager
Director
International Affairs and Trade
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. Yager:

I am writing to convey the comments of the Office of the United States Trade Representative (USTR) on the two-part draft report of the Government Accountability Office (GAO), *US-CHINA TRADE: USTR's China Compliance Reports and Plans Could Be Improved* (draft Report). We appreciate the advice offered by GAO to ensure that we are doing the most effective job in reporting on the results of the Administration's efforts to ensure that China complies with its World Trade Organization (WTO) commitments. The draft Report contains a number of useful insights and ideas that we will consider carefully.

USTR's Annual Reports

The first part of your draft Report addresses USTR's annual reports to the Congress on China's WTO compliance. In this regard, by statute, USTR is required to submit annual reports to the Congress on "compliance by the People's Republic of China with commitments made in connection with its accession to the World Trade Organization, including both multilateral commitments and any bilateral commitments made to the United States." See 22 U.S.C. § 6951. In fulfilling this requirement, USTR submits annual reports to the Congress that comprehensively describe not only China's WTO commitments and the efforts that China has made to comply with those commitments, but also the Administration's efforts to secure China's compliance where China has not fulfilled its commitments.

As your draft Report notes, key U.S. industry associations consider these annual reports to be fair and complete. These annual reports also reflect the substantial progress that has been achieved through the Administration's efforts. Your draft Report attempts to quantify this progress and finds that more than 60 percent of compliance issues that arose during the period from 2002 through 2007 were resolved or made progress. We would add that, since China joined the WTO in 2001, our goods exports to China have grown by 240 percent, reaching a total of \$65 billion in 2007 and making China our third largest export market (behind Canada and Mexico). Similarly, our services exports have nearly doubled, growing from \$5.6 billion in 2001 to \$10.9 billion in 2006 (the latest year for which data is available).

We note that the first part of your draft Report concludes that it would be useful for USTR to include more data in its annual reports measuring China's progress in complying with its WTO obligations in quantitative terms. USTR will explore how that objective could be accomplished, taking into account: (1) the inherent limitations and difficulties involved in accurately quantifying this type of subject matter; (2) our mutual goal of not having a quantification and

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reporting structure that makes it more difficult to achieve substantive progress; and (3) the most effective deployment of resources.

USTR would like to highlight some issues of concern with the first part of your draft Report. As discussed below, the draft Report seems to undervalue the systematic analysis of China's WTO compliance already contained in USTR's annual reports. We also believe that the quantitative analysis of "progress made" used in GAO's draft Report reveals the inherent limitations and difficulties in developing meaningful quantitative compliance measurements, particularly at the level of detail used by GAO. Separately, we have serious concerns about the advisability of providing the kind of quantitative analysis advocated by GAO in USTR's annual reports.

1. *The draft Report undervalues the systematic analysis of China's WTO compliance contained in USTR's annual reports.*

The draft Report at first seems to recognize the systematic analysis of China's WTO compliance contained in USTR's annual reports. It acknowledges the detailed narrative information presented each year in those reports regarding China's progress and shortcomings in complying with its WTO commitments, the utilization of a common template in which the relevant information is presented from year to year, and the demonstrated ability of the readers of the reports to judge the comprehensiveness and fairness of that information. However, the draft Report seems to ignore these findings and concludes instead that USTR's annual reports "lack systematic analysis" and therefore does not facilitate a clear understanding of China's compliance situation.

The title of the draft Report concludes that USTR's annual reports can be improved. USTR is always open to improving its communications with the Congress and the public regarding trade policy matters. It is, in our view, not accurate to state that the entire USTR report lacks systematic analysis, simply because it does not utilize a numerical methodology preferred by GAO.

The draft Report uses narrow and, in our view, overly simplistic concepts of "systematic" and "understanding." For GAO, it appears that an analysis can only be "systematic" and "facilitate understanding" if it is "quantitative." We do not think that is the case. Indeed, as USTR's annual reports have demonstrated over the years, a report can provide systematic – and very informative – analysis without reliance on detailed quantitative measurements. More importantly, we believe the approach adopted by USTR in its annual reports is superior to GAO's approach in providing meaningful information given the diverse nature and number of issues addressed.

2. *GAO's own quantitative analysis reveals the inherent limitations and difficulties in developing meaningful quantitative compliance measurements.*

The draft Report recommends that USTR add more quantitative analysis to its annual reports to Congress on China's WTO compliance. Specifically, after finding that USTR addresses well over 100 WTO compliance issues in any given year and attempting to place these issues into categories like "resolved," "progress made" and "no progress made," GAO calls for USTR to

See comment 1.

See comment 2.

“improve” its annual reports by providing similar quantitative analysis in future reports. GAO recommends that USTR’s future reports include a summary quantitative analysis of the number, scope and disposition of WTO compliance issues, and it also criticizes previous reports because they do not include a ranking of the (more than 100) issues in order of importance, a quantitative demonstration of the relative progress made in one trade area versus another and a quantitative demonstration of overall progress from one year to the next.

In USTR’s view, there are several factors that make it difficult to engage in the quantitative approach to analyzing China’s WTO compliance set forth in the draft Report and that may cause the results of such an analysis to be unreliable – and even misleading. The draft Report seems to recognize some of these factors, but not others.

The draft Report acknowledges that China’s WTO commitments can be very specific (such as reducing a tariff) or broad and complex (enforcement of intellectual property rights) and that the compliance issues that arise can similarly be relatively straightforward to resolve or much more difficult. The draft Report also acknowledges that compliance issues can be the result of factors ranging from political resistance to lack of coordination among ministries to technical incapacity.

The GAO analysis, however, does not seem to take into account other relevant and important points that USTR brought to GAO’s attention.

For example, a critical threshold issue affecting the validity of the draft Report’s quantitative analysis is the question of how even to decide what constitutes an “issue,” i.e., how broadly or narrowly to define an “issue” so that one can quantitatively measure progress. Two GAO staffers apparently tried to agree between themselves as to whether a particular matter should be counted as an “issue” in the GAO analysis. However, it is not clear what criteria they used to accomplish this task or how they applied those criteria. Matters being addressed by USTR often have several components. Is each component a separate issue, or is the entire matter one issue? Decisions about how to define an issue in this type of situation can greatly affect the outcome of any quantitative analysis, and there is not necessarily one correct answer. For senior policymakers, how broadly or narrowly to define and approach an issue is a matter of judgment.

In USTR’s view, compliance issues also vary widely in their significance to U.S. industry, and this variation can significantly complicate or undermine the value of quantitative analyses. Some issues can have relatively minor significance for the affected U.S. industry, while other issues can be of crucial importance to the affected U.S. industry. Some issues affect only one U.S. industry or a few companies, while other issues affect a range of companies and industries. U.S. policymakers consider these critical nuances when determining how and when to devote resources to pursue particular compliance issues, just as they consider the reasons behind China’s non-compliance and the likelihood of a successful outcome when the issue is raised with the Chinese government. These nuances make it meaningless to calculate numbers to compare one compliance issue to another, much less to treat them all the same as the draft Report does in its quantitative analysis. The draft Report tries to elude this problem by stating that GAO is operating under the premise that all of the compliance issues should be “counted” because they have all been considered serious enough by USTR to be included in its annual reports. However,

just because USTR's annual reports are comprehensive does not mean that all compliance issues addressed in those reports can or should be weighted equally.

Other considerations also create complications for efforts to develop a meaningful analysis of the "progress" that has been or can be made. It is necessary to recall, as the draft Report itself acknowledges, that there can be many different reasons why progress is not made on a particular issue. It may not simply be political resistance or protectionist objectives; it may be technical incapacity, an underdeveloped regulatory regime, a lack of understanding or an inability to coordinate among ministries. The mere existence of an outstanding compliance issue often may not provide meaningful information about the nature of broader progress achieved in working with the relevant Chinese agency or agencies. In addition, if progress in one trade area is being stymied by an underdeveloped regulatory regime or technical incapacity, it is not meaningful to compare progress achieved in that trade area versus progress in another trade area where the regulator may be restricting market access for purely protectionist purposes – it's comparing apples to oranges. Similarly, a string of successes on relatively minor, easily resolved issues for one affected U.S. industry in one trade area does not mean that more progress is being made in that trade area than in another trade area where a number of issues remain outstanding but one crucial market access issue has been resolved.

When all of these various considerations are taken into account, USTR does not believe that the draft Report's quantitative analysis meaningfully measures the progress being made in a particular trade area or whether more progress is being made in one trade area versus another. USTR believes that the wide variance in complexity, difficulty of resolution, significance and political posture among China WTO compliance issues makes it extremely difficult to use quantitative analysis to develop a meaningful metric for progress. When USTR drafts its annual reports, we believe it would be impractical – and in many respects, misleading – to provide detailed quantifications of progress made or to rank trade areas or individual issues. Instead, as required by statute, we use our annual reports to provide a detailed, balanced and nuanced narrative explanation of China's WTO compliance progress, recognizing the multiple audiences for those reports. In essence, we think it is much more meaningful and helpful to fully qualify and contextualize trade issues with China, rather than provide quantification at a level of detail where it would obscure rather than illuminate important considerations affecting our trade relationship with China.

3. *Even if a detailed quantitative analysis like the one advocated by GAO could be developed to provide reliable results, USTR believes that it would be ill-advised to provide such an analysis in USTR's annual reports.*

Even if a detailed quantitative analysis like the one advocated by GAO could be developed to take into account the factors outlined above and to provide reliable results regarding progress made on China WTO compliance issues, a separate question is whether it would be desirable to provide such an analysis in USTR's annual reports. USTR believes that it would be ill-advised to do so.

Such an analysis would send an ill-advised signal to China – one of the audiences for USTR's annual reports. It would tell China which issues are more important and which ones are less

See comment 3.

important. That type of ranking of issues would not be in the interests of affected U.S. constituencies, particularly the companies or industries whose issues may not be deemed as significant as the issues facing others.

In addition, to the extent that such an analysis tried to compare progress made in one trade area with progress in another, it would again send an ill-advised signal to China. Based on previous negotiations with Chinese officials, we expect that they would use such information to argue that China has already done enough in certain trade areas and that the United States should not expect more.

Even if such an analysis were confined to addressing overall progress from one year to the next, it would still generate similar concerns. China again could use this type of reporting to our disadvantage in future negotiations. For example, China could gauge the amount of its cooperation and avoid further progress by arguing that it has already done as much as the previous year.

4. *The draft Report's separate categorization of compliance issues according to "action taken" and "no action taken" is unclear.*

In addition to placing China WTO compliance issues into categories based on levels of progress made, the draft Report also places them into two other categories, i.e., "action taken" and "no action taken." USTR notes that these two categories are based solely on the four corners of USTR's annual reports to Congress on China's WTO compliance and not on any follow-up discussions with USTR to clarify the state of play on particular issues. For example, even when GAO could not tell from the four corners of USTR's reports whether USTR or other agencies have taken actions to address a particular issue, GAO classified the issue as "no action taken" without seeking clarification from the involved agencies. Although the draft Report does not itemize the issues that it placed under the category of "no action taken," USTR believes that it would be rare for USTR or other agencies not to have taken some action to address an issue described in one of USTR's annual reports to Congress on China's WTO compliance, unless the issue had resolved itself or circumstances had changed so that there was no continued need to pursue that particular issue. On the other hand, to the extent that those reports have not been clear on this point, USTR agrees that in future reports it should provide further clarity about actions taken.

USTR notes that the draft Report does not explain how it categorizes issues when USTR has brought a WTO case after bilateral negotiations made no progress. In fact, GAO does not mention any WTO cases in the part of its draft Report addressing USTR's annual reports to Congress on China's WTO compliance. This is an extremely significant omission. The United States has brought 6 WTO cases against China, many more than any other WTO member.

See comment 4.

Implementation of USTR's "Top-to-Bottom" Review

The second part of your draft Report addresses the Administration's implementation of USTR's "top-to-bottom" review of U.S.-China trade relations. The "top-to-bottom" review is a one-time policy document setting forth a new policy framework for U.S. policymakers following China's completion of its transition period as a new WTO member. Among other things, it includes numerous short-term action items designed to better position the Administration to pursue long-term objectives and priority goals. We were pleased that your draft Report finds that the Administration has implemented or is in the process of implementing all 17 of the action items that you could evaluate, but would also like to highlight several issues of concern with the second part of your draft Report.

See comment 5.

1. *The "top-to-bottom" review is not a "plan" in the narrow and specific sense used by the draft Report.*

We disagree with the draft Report's repeated characterization of the "top-to-bottom" review as a "plan" in the sense that GAO uses this term. The draft Report views the "top-to-bottom" review as a "plan" in a very narrow and specific sense. It essentially argues that USTR created the "top-to-bottom" review as its action plan for U.S.-China relations, and then it seeks to treat this action plan like one in which an agency would normally set forth program goals, describe its plan for meeting those goals, measure program performance in meeting those goals and report on results. However, the "top-to-bottom" review was not intended to be that type of plan. It is a *sui generis* policy document, which was developed based on a promise that Ambassador Portman made to the Senate Finance Committee at his confirmation hearing in 2005. He recognized that China had completed a transition period as a new WTO member and that the United States was entering a new phase in its trade relations with China, *i.e.*, a phase in which China should be held accountable as a mature member of the international trading system. Given those circumstances, he saw significant value in reassessing how we engaged China. The "top-to-bottom" review is exactly that – a review – essentially a one-time white paper, setting forth a new framework for U.S. policymakers at USTR and other agencies as they engage China during this new phase. Many actions could and would flow from the new perspective on China, but the "top-to-bottom" review itself was not intended to establish a new mechanism for measuring performance or adjusting future goals.

See comment 6.

2. *The "top-to-bottom" review did not promise or anticipate the drafting of updates.*

We disagree with the draft Report's statements that USTR promised or anticipated the drafting of updates to the "top-to-bottom" review. USTR did not promise to draft updates of the "top-to-bottom" review, nor does the "top-to-bottom" review indicate that USTR would or should draft updates. The "top-to-bottom" review states: "Based on the results of the review, the Administration will take a series of actions to help ensure that we are best positioned to meet our key China trade objectives. The list below includes initial steps we will be taking. Additional action items will be developed and implemented in consultation with Congress and other stakeholders to ensure meaningful progress in achieving these key objectives." It further states: "USTR will initiate a program of regular briefings for Congressional members and staff, to update them on progress in pursuing the objectives outlined in this report." USTR has since

Appendix III: Comments from the United States Trade Representative

provided and continues to provide regular Congressional briefings on various initiatives, including new ones like the Strategic Economic Dialogue, which the Administration has undertaken, *inter alia*, in pursuit of the objectives outlined in the “top-to-bottom” review. In fact, in response to GAO’s data requests, USTR identified 39 relevant Congressional briefings in 2006 and 2007.

3. *Through annual reports like USTR’s annual reports to Congress on China’s WTO compliance, USTR already provides the written updates that GAO would like to see to the “top-to-bottom” review.*

See comment 6.

The written updates to the “top-to-bottom” review sought by the draft GAO study, *i.e.*, regarding the launching of the Strategic Economic Dialogue, new WTO cases against China and the Commerce Department’s application of U.S. countervailing duty law to China (see pages 4, 30 and 34-35), have already been reported on in writing by USTR in its annual reports to Congress on China’s WTO compliance. It is those annual USTR reports (along with other annual reports prepared by USTR, such as the NTE Report, Special 301 report, Subsidies Enforcement Report and Section 1377 review) that are designed to provide the updates sought by the draft GAO study.


4. *The draft Report misunderstands the relationship between action items, on the one hand, and objectives and priority goals, on the other, in the “top-to-bottom” review.*

See comment 6.

The draft Report focuses on how the Administration has implemented the “action items” identified in the “top-to-bottom” review, and it acknowledges the considerable progress made. However, the draft Report also faults the “top-to-bottom” review for not providing more clarity regarding how the action items “achieve” the “objectives” and “priority goals” identified in the “top-to-bottom” review. The draft Report misunderstands the relationship between action items, on the one hand, and objectives and priority goals, on the other. For the most part, action items were intended as useful short-term steps to be taken to better position the Administration to pursue the “top-to-bottom” review’s long-term objectives and priority goals.

Again, we welcome GAO’s suggestions about how we can more effectively report to the Congress on the Administration’s efforts to ensure that China complies with its WTO commitments.

Sincerely,



Warren H. Maruyama
General Counsel

The following are GAO's comments on the United States Trade Representative's letter dated March 26, 2008.

GAO Comments

1. We disagree that report undervalues the systematic analysis of China's WTO compliance contained in USTR's annual reports. In our report, we acknowledge the detailed narrative information presented by USTR and the consistent format used to present this information in its annual reports on China's WTO compliance. Nevertheless, we believe that the lack of systematic analysis in these reports make it difficult for Congress and the public to understand the overall compliance situation in China. USTR's annual reports lack not only quantitative measurement and analysis, but qualitative summary analysis as well. While there is a significant amount of detailed information contained in USTR's reports, it is difficult to determine the overall progress being made in each of the nine areas. In addition, without systematic analysis of the lengthy narrative descriptions it is difficult to assess the level of progress being made in each year, or the trends over time. While there are other ways to conduct such analysis, our work demonstrates that it is possible to provide both systematic qualitative and quantitative analysis to make the information in the report more meaningful and accessible.
2. We disagree with USTR's statement that the variety and nuances of individual compliance issues make summary analysis meaningless. In fact, we believe the opposite is true. As we noted in our report, we identified each unique compliance issue based on the description and definition of problems in the narrative of the report. The categorization of issues in USTR's reports and the manner in which issues were grouped and presented guided our identification of individual issues. We recognize that it is possible to group the issues differently, and if USTR finds another method of grouping and identifying issues, we encourage USTR to use such methods in providing summary analysis in future reports. In addition, we believe that this type of analysis is important to help Congress and the public better understand the overall compliance situation regarding China. Should USTR choose to define issues differently, we are confident that this will not change the overall results and patterns found through our analysis.

Our report discusses the fact that the compliance issues mentioned in USTR's reports may not all equally affect U.S. exports to China. In addition, we acknowledge that the level of progress made on one particular compliance issue might not be equal to the progress made

on other issues. We agree with USTR that the relative importance of such issues and the relative progress made should guide decisions about how and when to devote resources to pursue particular compliance issues. That is precisely why we believe that more systematic information included in USTR's annual compliance reports will provide further understanding to Congress and other stakeholders (and therefore help improve decision making regarding China's trade compliance). To the extent that USTR believes it is important to give more weight to certain issues or explain other nuances that surround individual issues and the progress made on such issues, we encourage USTR to incorporate these variables when conducting any summary analysis for future reports.

3. We disagree with USTR that it will be ill-advised to provide a detailed quantitative analysis in USTR's annual reports. We believe that more transparency and clarity in USTR's reports enhances understanding about China's compliance situation and provides important information for Congress to conduct oversight and for senior policymakers to assess the success of their activities. Such information would promote a more informed discussion about U.S.-trade policy toward China among all stakeholders. While USTR could decide to more clearly prioritize the almost 180 issues it reports, we did not advocate ranking these issues. In addition, U.S. trade negotiators could use summary information on China's progress (or lack thereof) on resolving compliance issues to better argue that more needs to be done in certain areas and that the United States expects greater progress overall. Nevertheless, USTR would have many options for how to conduct and present such summary information, giving it the flexibility to mitigate any concerns that negotiators might have.
4. USTR states our categorization of compliance issues according to "action taken" and "no action taken" is unclear. Our report states clearly that our analysis of actions taken is based solely on the information provided in USTR's annual reports. In addition, USTR stated that it was unclear how we categorized issues when they had brought a WTO case after bilateral negotiations. We considered any actions mentioned in USTR's annual compliance reports at any WTO forum as "raised at the WTO" including dispute settlement cases. Furthermore, we added information to our report to clearly identify the cases filed by the United States against China.
5. USTR states the "top-to-bottom" report is not a "plan" in the narrow and specific sense used in our report. However, this was not our understanding based on interviews with USTR staff during our review

and our reading of the document. USTR's report on the results of its "top-to-bottom" report addresses our 2004 recommendation for a China unit plan in that the report establishes goals and priorities for the various China Affairs Office activities. GAO advocates agency strategic planning and using such plans on an ongoing basis as a management tool. USTR's report has many of the characteristics of a good plan: it clearly defines objectives, goals, and action items; provides a detailed discussion of the problems; delineates agency responsibilities; provides specific activities and programs; and identifies human resources needed to achieve action items. In a February 2006 news conference announcing the report on the top-to-bottom report, the then U.S. Trade Representative was asked, among other things, how he would measure USTR's progress on U.S.-China trade issues. He replied that "... the way to measure our performance is to go point by point through the report looking at the issues that I've talked about at the outset...." We believe that USTR should reconsider its treatment of this report only as a one-time policy statement.

6. USTR states that the top-to-bottom" report did not promise or anticipate the drafting of update. Based on our analysis of the report, it is implied that updates were going to be provided; however, we agree that the report includes no requirement or explicit promise to present revised objectives and goals, subsequent action items, and the degree of progress in a new version of the report. So we removed language indicating that there was an explicit requirement or promise. However, we suggest that USTR reconsider its treatment of this report as a one-time policy statement. Regular briefings are important, but USTR should have a written record that specifies revised objectives and goals, subsequent action items, and the degree of progress toward achieving them.

USTR states that through annual reports like its annual reports to Congress on China's WTO compliance, USTR already provides the written updates on the "top-to-bottom" report. While USTR provides numerous reports to Congress on its activities, USTR still has not updated the six objectives and 31 priority goals specified in the top-to-bottom report to reflect subsequent developments nor formally assessed progress. We still advocate that USTR update and improve this report, commensurate with its promised actions to help ensure that it is best positioned to meet its key China trade objectives and to ensure meaningful progress toward achieving them.

USTR states that we misunderstood the relationship between action items, on the one hand, and objectives and priority goals, on the other.

We found the relationship between action items and the objectives in the top-to-bottom report were unclear. Therefore, we went through an exercise with USTR staff to identify how and whether short-term action items link to specific long-term objectives and priority goals and report on the outcome. In the future, USTR should formally identify these linkages in an updated plan that includes subsequent action items to ensure they are taking all the steps necessary to achieve their stated objectives.

Our recommendations would enhance USTR's accountability and inform all stakeholders, including Congress and the public, about the status of the U.S. objectives and priority goals for trade relations with China.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the individual named above, Adam Cowles, Assistant Director; Diana Blumenfeld; Martin de Alteriis; Rhonda Horried; and Paul Revesz made key contributions to this report. Karen Deans and Marc Molino provided technical assistance.

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