

# Commercial Diplomat

## International Commercial Diplomacy Forum

### Evaluating the WTO: A Review of the First Five Years

By Alan Wolff

America has very high expectations for the World Trade Organization. The WTO has now completed its first five years. On June 21, the U.S. House of Representatives rejected by a vote of 363-56 a resolution that would have disapproved of the WTO. This was a vote of confidence in the new institution, and it was the right result

It is easy to forget that high tariff barriers and quotas, and a far lower standard of living around the globe, characterized the first half of this century. The WTO is part of a post Second World War economic structure that has served to enhance economic well-being globally.

This does not mean that the job

is done. The WTO was crafted when electronic commerce was not yet a reality. Now there are a host of issues affecting e-commerce -- ranging from taxation to privacy -- that require attention, if the promise of this, the newest part of the trading system, is to be realized. Another area of priority attention must be genetically modified organisms.

The green revolution saved a large part of the world's population from starvation. The search by science for new food solutions must not be undermined by trade protectionism cloaked as consumer protection.

No new round of negotiations will be possible without addressing the concerns raised about labor and the environment. A way must also be found to address pri-

vate restraints of trade. At the same time, a Competition Code in the WTO could easily be the subject of abuse by locking out efficient foreign competitors in the name of preventing "abuse of dominant position."

Reform is desperately needed in WTO Dispute Settlement. No nation would tolerate having a judiciary consisting of rotating panels of individuals, inadequately screened for conflicts or competence, meeting in secret, staffed by bureaucrats who may themselves have active roles in negotiation of substantive issues, unchecked by any legislature. The results have been unacceptably poor: The use of WTO-sanctioned measures to discourage subsidies was undermined in

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### China's WTO Accession: A Fight to the End

By Tate Miller

The tumultuous Seattle Round may have been a setback for advocates of the World Trade Organization, and it may provide ammunition for those who wish to stall China's much touted entry, but it is unlikely to prevent the accession from occurring sooner, rather than later. Even in light of anti-China sentiment in some Washington circles, the U.S. Congress has little choice but to vote Permanent Normal Trade Relations (PNTR) if the United States is to enjoy the benefits of China's accession.

Most Americans recognize that further trade liberalization under the guidance of the WTO is in the best interests of U.S. businesses and consumers. And though imperfect, the WTO of-

fers a potential framework in which China, the United States and other nations can address critical issues such as labor, agriculture and the environment.

The United States has benefited more than any other nation from global trade liberalization. International trade accounts for approximately 25 percent of U.S. gross domestic product, and it is trade agreements within the WTO framework, which now enable U.S. companies to trade more freely in foreign markets. China's accession to the WTO can only increase U.S. trade and thereby expand the associated benefits. Without accession the outlook in the China market for U.S. firms would be bleak.

Currently, U.S. computer manufacturers alone miss out on mil-

lions of dollars in business. They will continue to be blocked if market access is not granted. Moreover, due to lagging Chinese imports of U.S. products, the U.S. trade deficit with China, has now mushroomed to \$57 billion. This is due primarily to high Chinese tariffs, import licenses and quotas, as well as limits on foreign investment. Left unresolved, these market barriers risk sparking a U.S. protectionist backlash that would further damage an already fragile U.S.-China relationship and fail to improve conditions for consumers and workers alike. The only solution is to vote for PNTR and allow American firms to fully benefit from the hard fought agreement. A distinction that should not go

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*The Commercial Diplomat is the quarterly newsletter of the International Commercial Diplomacy Forum, an alumni organization of the Monterey Institute of International Studies designed to enhance member's knowledge of a cross-sector of current and emerging international trade policy issues. It is a network that brings Commercial Diplomats to the forefront of international trade policy.*

## Summer Speaker s

*ICDF provides an opportunity for Commercial Diplomats to network with key trade officials in Washington D.C. ICDF meetings introduce members to the trade community.*

This past summer, alumni met with: Dorothy Dwoskin, Assistant USTR for WTO and Multilateral Affairs, Elizabeth Drake, of the AFL-CIO, and Michael Hart, Senior Associate at Carelton University.

## Alum in the Spotlight: Dana Baikenova

Dana Baikenova, originally from Almaty, Kazakhstan, graduated from the Monterey Institute in the spring of 1999 with a Master of Arts in Commercial Diplomacy. After graduation she became Director of Business Development at Texas Nefta Industries, Inc. in Houston, Texas. The company has offices in Moscow and representatives in Kazakhstan and Azerbaijan.

Texas Nefta is an oil and gas company that facilitates equipment sales and services between equipment and oil companies in many countries around the world including, Azerbaijan, Brazil, Russia, Canada, United States,

Germany, and Kazakhstan. It also provides consultation for companies wanting to do business in the oil industry in the Former Soviet Union, including understanding the rules and regulations involved in the international trade of oil equipment. Texas Nefta's clients include some of the largest oil companies in the region.

Dana's responsibilities in business development include coordinating business in Kazakhstan, making contacts and establishing liaisons with key government officials, key agencies and national oil companies, developing market research and sales projects, par-

ticipating in all aspects of marketing from sales and shipping, arranging international trade transactions, and assisting with negotiation of contracts. This fall she will travel to Kazakhstan to meet with oil and gas companies in this region to negotiate possible contracts between the national oil companies and equipment companies.

Dana has been studying this field for some time; at Monterey she completed her Masters Project on pipeline issues in the Caspian Sea region.

## Services Negotiations on the WTO Agenda

*By Steven Hatley*

World Trade Organization Members are set to quicken the pace of services trade negotiations this autumn, with the recent U.S. submission on its framework proposal for services liberalization. While rules-based work has been progressing in the WTO's Council for Trade in Services and its subsidiary bodies, the U.S. proposal and a similar submission by the European Union go further in proposing spe-

cific negotiating guidelines and procedures.

One area of contention may be whether Members agree in advance to set deadlines for the negotiations. The United States has proposed specific timelines for the talks, beginning December 2000 and concluding by December 2002. However, the EU proposal avoids deadlines, perhaps to give impetus to the EU's ambition to bundle the talks into a wider multilateral trade round by

the end of this year.

Nevertheless both the U.S. and EU proposals set an ambitious agenda. Highlights of the U.S. submission include:

- *The use of innovative negotiating approaches.* While Uruguay Round negotiators adopted the traditional request-offer approach, alternatives such as model schedules for commitments, cluster approaches to negotiate related services across

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## Alum on the Move

- In June, **Jason Buntin** (98) participated in U.S.-EU negotiations on mutual recognition of services in Brussels. In July, he also participated in the WTO Trade Policy Review of the European Union in Geneva.
- **Andrew Dryer** (00) is interning this summer with Dewey Ballantine LLP. In the fall, he will start law school at the University of Michigan.
- In June, **Courtenay Carr** (99) helped organize and participated in the Coalition for Intellectual Property Rights annual conference in Moscow.
- **Heather Grell** (98) traveled in

July to Geneva to participate in the WTO Technical Barriers to Trade (TBT) Committee and a Special LDC Workshop on the Implementation of the TBT Agreement.

• **Jennifer Jahnke** (00) is a Presidential Management Intern at the Department of Labor, in the Office of International Economic Affairs on International Trade Issues.

• **Tate Miller** (99) is CEO of China Western Homes, Inc., in Beijing. In addition, he works with American trade associations and corporations as well as the U.S. Embassy in Beijing, speak-

ing on various China-U.S. business issues. This fall he will teach at Shangdong University.

• **Michael Nogen** (00) joined the U.S. Council for International Business to work on telecommunications and information policy.

• **Mike Nunes** (98) recently returned from South America, where he met with business and government officials in Chile and Argentina for an USITC electric services investigation.

• **Ashok Menon** (99) joined Nathan Associates Inc. as an Associate in their International

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### ICDF Board of Directors

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## Evaluating the WTO (continued)

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the *UK Bar* case. The capability of the WTO rules to reach sophisticated forms of government protection was fatally impaired in the *Japan Photographic Film and Paper* case.

What was at stake in these two cases was fundamental to the WTO. In *UK Bar* case, the panel overruled the national administrators of the U.S. trade laws, and held that certain subsidies could not be offset, although this was never agreed to by the negotiators in the WTO Uruguay Round trade negotiations. This created new obligations for the United States. The panel exercised a legislative, not a judicial function. In the *Japan Photographic*

*Film and Paper* case, WTO dispute settlement could not discern despite tens of thousands of pages of evidence gathered by the United States, with the support of the European Union, that the Government of Japan had acted in violation of its obligations, although it did almost everything in its power to create a nontransparent anticompetitive market structure that effectively froze out imports.

"Dispute settlement" has proved too often to be an oxymoron. The U.S. "won" two cases against WTO-inconsistent EU agricultural restrictions that yielded no additional market access in Europe, but resulted in increased restrictions on EU prod-

ucts into the U.S. market. In a show of spite, the EU upset a 20-year old agreement it had with the United States that compensated for the economically unsound manner in which the GATT/WTO system handles rebates of VAT and income taxes. (The *Foreign Sales Corporation* case).

Japan, not known for its open market, has attacked the U.S. antidumping law in "dispute settlement" proceedings. It feels that this is a no-lose strategy, even though its dumping has been so egregious as to be singled out for condemnation by President Clinton in a State of the Union Message, an unprecedented action by any U.S. president.

In its June 21 vote, Congress gave the WTO the benefit of the doubt. But unless the WTO provides solutions to foreign market access problems, curbs trade distortions and allows its members to continue to take actions against unfair trade practices, that support will erode rapidly.

*Alan Wm. Wolff chairs the International Trade Practice of Dewey Ballantine in Washington D.C. He is one of the founders of the International Commercial Diplomacy Project and the Monterey Institute for International Studies trade program. For more materials authored by Wolff and the Dewey Ballantine trade group, please look at [dbtrade.com](http://dbtrade.com)*

## On the Move (continued)

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Trade Practice Office, where he manages technical assistance projects related to developing countries and international trade. He was recently in South Africa and Botswana.

- In June, **Gisela Vergara** (99) participated in the Free Trade Area of the Americas (FTAA) Consultative Group on Smaller

Economies meetings in Geneva. She also participated in a World Bank-Organization of American States seminar on TBT. In August, Gisela will begin work on the FTAA TBT negotiations.

- **Torie Waite** (99) moved from the USITC to the Coalition of Service Industries to work on financial services issues and China's WTO accession.

## China (continued)

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unnoticed is that Congress has no functional control over China's entry into the WTO. If Congress decides to continue annual renewal of NTR, China can still join the WTO. Washington would simply reserve the right to revisit annually China's trading rights. How China would then treat U.S. exports would be up to Beijing, but one can assume U.S. exporters would find themselves disadvantaged compared with their Japanese and European competitors. If PNTR is not given to China, the United States would have no alternative but to invoke GATT Article XXXV dealing with the non-application of the Agreement, forcing China and the U.S. to revert to less fa-

vorable trade terms under their 1979 Trade and Investment Treaty. Providing PNTR permits U.S. firms to enjoy the full benefits of China's WTO membership. Those fundamentally opposed to China's entry believe that America's trade policy only benefits corporate interests, because it provides access to cheap labor and offers little in the way of benefits to U.S. workers in return. Additionally, Americans are passionate not only about their individual rights but about human rights protection and labor benefits in general. Most Americans, do not believe that individual rights should be sacrificed for a more prosperous America.

The China-U.S. Accord. WTO admission has traditionally re-

quired a prospective member to open its markets, implement a sound legal system, play by the rules on intellectual property rights, apply customs laws uniformly, and offer national treatment with respect to foreign investment. Although China is far from fulfilling all these requirements, it has apparently satisfied the United States enough to gain support for WTO admission. The U.S.-China agreement reportedly affords American companies greater access to China's immense market. China, on the other hand, must now allow trade disputes to be settled through the WTO Dispute Settlement Body, thus extending international rule-of-law to China trade.

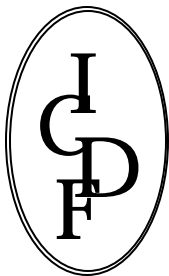
The most important strategic

challenge facing current WTO members is how to deal with China if it is unable to live up to the commitments it has made in its WTO accession agreement. Current WTO members need to think through how to best integrate with China into the WTO. The process of integration will be cumbersome but necessary to get China to adhere to international trading rules. Clearly, getting China into the multilateral trading system will not solve all the problems associated with Chinese trade, but the United States and the WTO have no choice but to bring China into the fold, sooner rather than later.

*Tate Miller is CEO of China Western Homes in Beijing.*



CD alum and students relaxing at Geza's lake house



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### Services *(continued)*

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sectors and "formula" approaches to achieve targeted liberalization are also available to negotiators. The U.S. submission proposes that these alternatives may prove more efficient in achieving substantive liberalization.

- *Specific inclusion of developing country interests.* Recognizing that all Members should have a stake in the negotiations, the U.S. proposal aims to provide technical assistance for developing country Members and schedule needs-assessment as a regular Council agenda item.

- *New GATS disciplines.* The U.S. proposal specifically aims to build progress in the GATS subsidiary bodies into the negotiating guidelines and procedures. Members are deliberating rules on safeguards, subsidies and government procurement and possible new disciplines on domestic regulation in the areas of transparency, necessity, equivalence and international standards.

The U.S. framework is very clear in stating that the negotiations must result in meaningful liberalization of trade in services, with broader sectoral coverage and improved classification schemes to better reflect the commercial realities of today's global marketplace. Many hope that after the summer recess Members will begin rolling out sector-specific proposals on classifications and negotiating approaches to start building consensus in advance of the deadlines proposed by the United States. The prognosis for such a dynamic to develop is good. All countries have an abiding interest in harnessing services liberalization to spur economic growth, and the time is ripe for rebuilding momentum in Geneva.

*Steven Hatley recently completed a PMI rotation as Deputy Director for WTO Services Negotiations at USTR and will be returning to the Department of Transportation in late August.*

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### Summer Internships

• **Nourlan Abildinov** (01) interned with the International Commercial Diplomacy Project (ICDP) in Washington, D.C., where he worked on capacity-building proposals to facilitate commercial diplomacy training in Kazakhstan.

• **Rachel Kreissl** (01) interned at the Environment Office of USTR, where she worked on the U.S.-Jordan FTA and attended meetings related to the environment, transparency, and WTO reform.

• **Dean Matlack** (01) spent the summer with the American Electronics Association, in Washington, D.C., where he worked on the China Permanent Normal Trade Relations (PNTR) bill, focusing on the coordination of representatives from the high-tech industry in their efforts to garner support for PNTR's passage, as well as organized a meeting of European Ambassadors for a high-tech briefing.

• **Enh-Amgalan Sengee** (01) interned with the U.S.-Mongolian Business Council (USMBC) and ICDP in Washington, D.C. At USMBC, he worked on new political developments in Mongolia. At ICDP, he developed a proposal to establish commercial diplomacy training in Mongolia.

• **Keith Spain** (02) is in Vladivostok, Russia, for a year on an International Research and Exchange Board Fellowship to study economics and ecotourism.