

TECHNICAL ASSISTANCE COMPLETION REPORT¹

Department: Office of the General Counsel

TA No., Country and Name		Amount Approved: \$700,000	
TA 3672-PRC: WTO Membership and Foreign Trade Law Reform		Revised Amount:	
Executing Agency PRC Ministry of Foreign Trade and Economic Cooperation (subsequently renamed the Ministry of Commerce)	Source of Funding TASF	Amount Undisbursed: \$142,666	Amount Utilized: \$557,334
TA Approval Date: 14 June 2001	TA Signing Date: 30 September 2001	Fielding of First Consultant(s): 16 November 2001	TA Completion Date Original: 31 October 2002 Actual: 30 September 2008 Account Closing Date Original: 31 October 2002 Actual: 12 May 2009
Description			
<p>The Government (the Government) of the People's Republic of China (PRC) was, in acceding to the World Trade Organization (WTO) Agreement in 2001, committed to put into place laws and trade-related administrative practices in compliance with the WTO Agreement, which became binding on the PRC immediately upon its accession to the WTO. This required enactment of over 200 laws and regulations. In addition, the PRC faced the great challenge of integration into the world trade system.</p> <p>This TA was developed primarily to assist the Government with tasks relating to preparing new and revising pertinent laws, and active participation in the global and regional trade system.</p>			
Expected Impact, Outcome and Outputs			
<p>The principal expected impact of the TA was the successful integration of the PRC into the global trade system through the PRC's performance of its obligations and commitments under the WTO, and its active participation in the world trade system.</p> <p>The outcome of the TA would be increased capacity of the PRC to comply with the WTO rules, actively participate in global trade negotiations and promote regional cooperation.</p> <p>The outputs of the TA included: (i) knowledge transfer through seminars and consultants' reports on key international trade laws; (ii) updated information with experts' in-depth analysis on the issues of the Doha round of global trade negotiations (Doha Round Negotiations); and (iii) a comparative study on free trade agreements (FTAs).</p> <p>Under the TA design, a lead role was provided for the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) (which was subsequently restructured and renamed the Ministry of Commerce) as the Executing Agency (EA) since it was at the center of the Government in policy making and regulation of foreign trade and investment and charged with the authority and responsibilities for compliance with WTO requirements, participation in Doha Round Negotiations, and regional cooperation. As such, the implementation arrangements were appropriate and effective. The terms of reference for the consultants and resource persons were well prepared for the above-mentioned tasks. The actual implementation period was exceeded due to the revised scope of the TA.</p>			
Delivery of Inputs and Conduct of Activities			
<p>Inputs provided for the following TA components included: (i) assistance in legislation making relating to key trade laws including on anti-dumping, subsidies, countervailing duties, safeguard mechanisms and transnational mergers and acquisitions (M&A rules), and the institutional set up and increase of transparency; (ii) assistance in participation in the Doha Round Negotiations; and (iii) assistance in regional cooperation and FTA negotiations. Overall, the performance of the consultants was satisfactory. The performance of the EA was highly satisfactory.</p>			

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(i) Trade Laws and M&A Rules

This component of the TA was highly productive. The major inputs under this component included expertise transfer from resource persons and top class international consultants (five person months) on trade law. The resource persons' inputs were provided at two seminars on trade laws conducted for senior level PRC trade officials, academics, legal professionals, and international experts. Through providing inputs comprising resource persons and consultant services (two person months) the TA also assisted MOFTEC in developing M&A rules, a key area for meeting the commitment of opening the market to foreign investments.

The combined inputs of resource persons and consultants helped the beneficiaries of the TA acquire a broad knowledge base on the subject matters in a relatively short period of time and lay the basis for a deep level of expertise with the in-depth study report on specific key subject matters.

Additionally, the TA assisted (i) a visit of PRC officials to the WTO in Geneva to study the institutional set-up for WTO-compliance, and (ii) translation of the related trade laws and regulations for public access at MOFTEC's official website to meet the WTO requirement on transparency.

(ii) Participation in Doha Round Negotiations

The inputs to assist in PRC's participation in the Doha Round Negotiations were delivered intensively through an international symposium, designed to cover a broad range of Doha Round Negotiation issues: dispute resolution mechanisms under WTO, WTO agreements on agriculture, anti-dumping measures, trade-related aspects of intellectual property rights, safeguard measures, trade-in services, trade-related investment measures, technical barriers to trade and application of sanitary and phytosanitary measures, and rule of origin. The leading experts appearing at the symposium were from Japan, Korea, Australia, Belgium, Germany, the United States and the PRC. The design of the inputs for this component of the TA proved such approach was efficient and productive in satisfying the urgent need for such knowledge in the PRC which just became a member of WTO.

(iii) Participation in Regional Cooperation

Delivery of inputs for this component started with a small brainstorming workshop, which helped develop a conceptual framework for a comparative study on FTAs. Then an international consultant was engaged (three person-months) to conduct a study on FTAs. The inputs for this component were very effectively delivered, resulting in a high quality comparative study report, which facilitated PRC's participation in regional cooperation.

Overall, the combined broad-based inputs and in-depth studies proved to be a very cost effective way of providing inputs. The inputs were generally of high quality in terms of updated information and in-depth analysis, due to the fact that it was possible to invite leading experts in the relevant areas. There were no major deviations from the planned inputs and activities during TA implementation. The EA was very satisfied with the TA outputs. The performance of ADB and EA was highly satisfactory.

Evaluation of Outputs and Achievement of Outcome

(i) Trade Laws and M&A Rules

The outputs with respect to the trade laws and M&A rules comprise a compendium of knowledge regarding (i) the history and background of WTO agreements on anti-dumping, subsidies, countervailing duties, safeguard measures and transnational M&A; (ii) jurisprudence developed from the implementation of the above WTO agreements and laws and practice in major trade partners on the above WTO agreements, and (iii) PRC laws, regulations, and administrative procedures affecting and affected by the WTO-compliant process.

The presentation materials and consultants' reports on trade laws and M&A rules were delivered promptly and were cost-effective and well received. These outputs had positive impacts on outcomes, i.e., development of a WTO compliant legal regime including trade laws relating to anti-dumping, subsidy and countervailing duties, safeguard measures, and import and export of goods, and rule of origin and M&A rules.

Furthermore, the TA inputs facilitated the establishment of the WTO Department and Fair Trade Department within MOFTEC, both dedicated to international trade issues under the WTO regime. Translated PRC trade law materials were posted on MOFTEC's website and in this way the TA assisted PRC in meeting its WTO commitment to increasing transparency.

(ii) Legal Issues in Doha Round Negotiations

The presentation materials at the international symposium on Doha Round Negotiations covered key issues in the global trade negotiations. The quality and usefulness of such outputs were well acknowledged by the EA. However, the slow progress in the Doha Round Negotiations obscured the PRC's role in this process and thus the effect of the TA measured by the contribution of PRC to the Doha Round Negotiations appears to be limited.

(iii) Regional Cooperation

The inputs to improve participation by PRC in regional cooperation focused on a comparative study of the selected FTAs that were concluded between major trade partners.

The end product of the study included a comparative study report, a matrix listing the major FTAs covered by the study and the subject matters dealt with by such agreements, and a collection of the texts of the FTAs covered by the study. This report was a very useful tool in sorting out the large variety of FTAs, comparing the texts of the different FTAs covering a same subject matter.

The costs of the consulting services were reasonable. The EA recognized that the report was of great help in their negotiation and conclusion of FTAs. Based on the work for this comparative study, ADB decided to develop a toolkit with a broadened coverage to benefit other ADB members.

Overall Assessment and Rating

Through intervention in key areas of strategic importance, the TA succeeded in (i) assisting with the preparation and adoption of key trade laws and M&A rules; (ii) strengthening the capacity of MOFTEC officials in participating in the Doha Round Negotiations; and (iii) strengthening the EA's capacity in participating in regional cooperation. Overall, the TA strengthened the integration of PRC in the international trade system after its joining the WTO. This has not only changed the PRC's internal legal system, trade policy and administration in trade related areas, but also strengthened the capacity of the PRC which would in turn contribute to the global and regional trade and economic system. The TA closing date was extended six times and TA implementation took six years. The main reason for the long delay was due to the unanticipated delays in the Doha Round Negotiations, which in turn, caused the loss of momentum and incentives for the EA to further push forward the capacity building on Doha Round Negotiation issues. After a long delay in TA implementation of the additional component focused on Doha Round Negotiations, at the initiative of the Mission, the EA shifted its focus from Doha Round Negotiations to issues relating to regional cooperation. Despite such long delay mainly caused by the external environment, the TA was able to achieve the broadened objectives described above, which will have long-term impact and thus make the TA sustainable. The TA is overall rated successful.

Major Lessons

Different from the initial TA design, which had focused only on ensuring PRC's compliance with WTO rules, through change of TA scope exercises, the TA was also able to assist PRC to actively participate in global trade negotiations and regional cooperation. The flexibility shown in implementation of the TA helped to achieve results beyond those under the original TA design. However, one general lesson is that for Law and Policy Reform (LPR) TAs with the objective of capacity strengthening, particularly when involving legislation making and ensuring consistency between domestic law and international obligations arising from international trade negotiations and regional cooperation, there is a need to provide for flexibility and sufficient implementation time in the design.

Recommendations and Follow-Up Actions

It is recommended that during the planning process for LPR TAs in the PRC, ADB focus on integrating flexibility into TA implementation. This flexibility should be closely tied with regular and detailed discussions with EAs.