

# FOIA MARKER

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Folder Title:

China (February to March 1999) [5]

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# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                               | DATE       | RESTRICTION |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------|------------|-------------|
| 001. memo                | For Lawrence Summers from Alan Larson. Subject: China - Raising Civil Aviation (2 pages)                                    | 02/02/1999 | P1/b(1)     |
| 002. cable               | re: Civair [partial] (3 pages)                                                                                              | 01/29/1999 | P4/b(4)     |
| 003. agenda              | China WTO Deputies Small Group Meeting (3 pages)                                                                            | 01/21/1999 | P1/b(1)     |
| 004. report              | China (17 pages)                                                                                                            | 03/30/1999 | P1/b(1)     |
| 005. chart               | China Investment (1 page)                                                                                                   | 03/1999    | P1/b(1)     |
| 006. email               | Marnix Koumans To Susan Shirk. Subject: China CivAir (1 page)                                                               | 03/16/1999 | P1/b(1)     |
| 007. draft               | Talking Points for Barshefsky dinner. (1 page)                                                                              | 03/15/1999 | P1/b(1)     |
| 008. cable               | Pages 2 and 3 of unknown cable (2 pages)                                                                                    | n.d.       | P1/b(1)     |
| 009. email               | White House Situation Room to Alexander Arvizu, Scott Busby, Holly Hammonds et al. Subject: CODEL Thomas Meeting. (6 pages) | 04/02/1999 | P1/b(1)     |

### COLLECTION:

Clinton Presidential Records  
National Economic Council  
Malcolm Lee  
OA/Box Number: CF 1176

### FOLDER TITLE:

China (February to March 1999) [5]

2010-1024-F

vz1815

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]  
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]  
P3 Release would violate a Federal statute [(a)(3) of the PRA]  
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]  
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]  
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b(1) National security classified information [(b)(1) of the FOIA]  
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

# Report by House Panel on China Trade Backs Curbs on Supercomputer Exports

By DAVID S. CLOUD  
And CARLA ANNE ROBBINS

Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON--A special House committee on high-technology trade with China is calling for tighter controls on exports of supercomputers, greater security at U.S. nuclear weapons labs and stricter monitoring of foreign investment in defense-related industries.

The classified committee report, according to U.S. officials, details a 20-year effort by China through trade and espionage to acquire U.S. nuclear secrets and other sensitive technologies. Even so, the committee's recommendations are far less sweeping than many high-tech companies feared when the panel, whose chairman is Republican Christopher Cox of California, began its work last year.

The report contains information on China's acquisition from U.S. weapons labs of sensitive nuclear-design information, including critical design secrets for the most modern U.S. warhead. The Clinton administration sent its response to the panel's recommendations to Capitol Hill yesterday.

The tone of the bipartisan findings is remarkably nonaccusatory—in large part because some of the worst violations occurred long before President Clinton took office and under both Democratic and Republican administrations.

## Mixed Reaction

The administration said it agreed broadly with the committee's findings, including that China's acquisition of U.S. technology had harmed U.S. national security, but it had a mixed reaction to the report's 38 recommendations. White House spokesman David Leavy said the administration would conduct its own formal assessment of the damage.

The administration, Mr. Leavy said,

"welcomes the recommendations of the committee. They provide useful proposals for our common objectives."

Congress seized on concerns about China acquiring U.S. technology for military purposes following news reports that two U.S. satellite makers—Loral Space & Communications Co. and Hughes Electronics Corp.—may have helped China improve its missiles' reliability in helping analyze the explosion of two rockets carrying U.S. satellites. Hughes and Loral deny wrongdoing.

The panel's report largely refrains from specific calls for new procedures for government licensing of sensitive technologies with military uses, such as machine tools and encryption software. Indeed, the lawmakers seem at times to go out of their way to reassure U.S. business that, despite calls for tougher scrutiny of high-tech sales, they don't favor more cumbersome licensing procedures that could cost sales.

## Surprise Inspections

In one of its toughest recommendations, the report calls for the reduction or a cutoff in sales of high-speed computers to China if Beijing refuses to accept surprise inspections to verify the computers' end users.

In response to fears that China's nu-

clear establishment may be using the computers, Beijing agreed this past summer to allow announced, on-site inspections of computers. In its response to the Cox report, the administration warns that China would see a demand for surprise inspections as "an infringement of its sovereignty."

Congress last year enacted a law that shifted licensing of commercial satellites from the Commerce Department to the State Department, which reviews sales only for their effect on national security.

Several of the recommendations are aimed at ensuring that the administration implements the intent of that law, which limits the involvement of the pro-export Commerce Department.

The report also calls for Congress to pass legislation that would require U.S. companies involved in "national security-related business" to notify the federal government "of any merger, acquisition, or takeover" by a foreign entity or its U.S. subsidiary. Currently, there is voluntary government notification, and the administration warned that mandatory disclosure might "chill legitimate foreign investment."

To counter China's espionage efforts, the committee recommends as an urgent priority the tightening of security and counterintelligence efforts at U.S. nuclear weapons labs, including review of whether the labs should remain under Department of Energy control.

THE WALL STREET JOURNAL

TUESDAY, FEBRUARY 2, 1999

# Clinton, House Clash on Export Rules Report

By JOHN MINTZ  
*Washington Post Staff Writer*

The White House registered opposition yesterday to several recommendations by a House committee that investigated transfer of U.S. technology to China, citing fears that some of the proposals could resurrect Cold War-type export rules and gum up overseas deals with layers of bureaucracy.

The panel, chaired by Rep. Christopher Cox (R-Calif.), completed its report Dec. 31 but has not released its 700 pages of classified findings or 38 recommendations for preventing the migration of sensitive technologies to countries such as China. President Clinton sent his response to congressional leaders yesterday, and the White House released an unclassified version.

The 32-page document touched on 19 of Cox's proposals. It made clear that while the administration agrees with many of the panel's recommendations, a bitter fight looms on others.

The Clinton administration often has been receptive to U.S. computer and electronics companies alarmed by the prospect that the Cox report might set off a new generation of export controls that would harm

American high-tech sales abroad.

The Cox panel proposed that, in considering whether to approve high-tech exports, agencies that oppose a deal—usually the departments of State or Defense—could more easily delay it than is the case under the current rules. Currently, if an agency opposes an export, it must escalate its concerns to higher ranks within the government and ultimately to the president to obtain a delay.

The White House said the Cox proposal to allow mid-level bureaucrats to stop export deals and demand unanimous approval to allow deals to proceed "would return the dual-use licensing system to the [pre-1995] days of unjustified delays that the executive branch and Congress worked hard for over a decade to reform."

"A lot of people at lower ranks in agencies have personal reasons for holding up a deal, or are afraid to make a decision," said David Calabrese, international trade director for the Electronic Industries Alliance, which represents companies that export \$180 billion in goods a year.

Congress already has transferred approval authority for exporting satellites from the pro-deal Commerce Department to the more security-conscious State Department. Mem-

bers of Congress were acting out of concern about revelations concerning U.S. satellite firms' questionable release of data to Beijing that could help the Chinese ballistic missile program.

State Department officials said they want the approval process to proceed briskly, within 90 days of application. But in the past, it sometimes took a year or more for State officials to approve satellite deals with China, industry executives said.

"It looks like the Cox people want a return to the old way of doing business," said an administration official.

Cox also proposed that U.S. officials can demand on-site inspection of Chinese laboratories that import high-performance computers, without prior notice. If the Chinese refuse the surprise inspections, then the performance level of computers sent to China would be lowered.

"Requiring any foreign country to accept visits without notice would be viewed as an infringement of its sovereignty and would therefore be extraordinarily difficult to implement," said the Clinton statement.

Cox inserted the demand for these inspections because of past Chinese subterfuge in handling U.S. technology. He also proposed that the United

States establish a new global body to impose "binding" controls on technology transfers. It would replace the Western trade group known as COCOM, which stopped the sale of sensitive gear to the Eastern Bloc during the Cold War.

"We don't think it's possible to recreate a global body like COCOM," an administration official said. "There was a common enemy then, but now the Soviet Union is gone. . . . We don't think it's achievable or desirable to build an international coalition that regards China as an enemy."

"I'm not sure you could get consensus from American industry [to restrict high-tech sales to nations such as China], much less from the French, the Swedes or even the Brits," said Dave McCurdy, president of the Electronic Industries Alliance. "Rolling back the clock to pre-1989 is difficult or impossible."

The White House said it agrees with many other Cox proposals, all of which were unanimously accepted by the panel's nine members. For example, Clinton supports tightening security at Department of Energy laboratories. The Cox panel said Chinese spies have stolen secrets from the labs that have helped them develop nuclear weapons.

The Washington Post

TUESDAY, FEBRUARY 2, 1999

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SENSITIVE

E.O. 12958: N/A

TAGS: EAIR, CH

SUBJECT: CIVAIR; U.S. PROPOSAL ON ELEMENTS OF A BILATERAL AGREEMENT

REF: 99 BEIJING 310

1. SENSITIVE BUT UNCLASSIFIED. PROTECT ACCORDINGLY.  
CONTAINS PROPRIETARY INFORMATION.
2. (U) THIS IS AN ACTION MESSAGE.
3. (SBU) DURING CIVAIR MEETINGS LAST MONTH IN BEIJING AND IN WASHINGTON, EB DAS MARCHICK OFFERED TO PROVIDE CAAC VICE MINISTER SHEN A PAPER DISCUSSING THE BENEFITS OF AIRLINE CODESHARING. SUBSEQUENTLY, CAAC DEPUTY DIRECTOR GENERAL WANG REQUESTED (REFTEL) A SPECIFIC U.S. PROPOSAL IN ADVANCE OF THE NEXT ROUND OF CIVAIR NEGOTIATIONS ON FEBRUARY 24. USING TALKING POINTS BELOW, EMBASSY IS REQUESTED TO PASS THE TEXTS OF THE USG PROPOSAL AND CODESHARING PAPER TO SHEN, WANG, AND OTHER INTERLOCUTORS AS APPROPRIATE.
4. (SBU) BEGIN TALKING POINTS  

O THE U.S. APPRECIATED HEARING VM SHEN'S VIEWS ON NEXT STEPS IN LIBERALIZING OUR CIVIL AVIATION RELATIONSHIP, BOTH DURING HIS MEETING IN WASHINGTON WITH TRANSPORTATION SECRETARY SLATER, AND DURING THE VISIT OF DEPUTY ASSISTANT SECRETARIES MARCHICK AND MIMS TO BEIJING.

O WE HAVE CONSIDERED AND ACCEPT THE CHINESE VIEW THAT A STEP-BY-STEP APPROACH OVER THE NEXT SEVERAL YEARS IS THE BEST WAY TO PROCEED.

O WITH THAT IN MIND, WE ARE PLEASED TO PRESENT TO YOU A U.S. PROPOSAL FOR YOUR CONSIDERATION. YOU WILL NOTE THAT IT CONTAINS SIGNIFICANTLY FEWER NEW RIGHTS THAN DID OUR PROPOSAL OF LAST YEAR. FOR EXAMPLE, 40 NEW FREQUENCIES INSTEAD OF 69, THREE NEW DESIGNATIONS INSTEAD OF FOUR, ETC.

O IN ADDITION, WE ARE PROVIDING A PAPER THAT DESCRIBES HOW

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CODESHARING RIGHTS -- WHICH WE BELIEVE SHOULD BE EXPANDED -- CAN GREATLY BENEFIT CARRIERS, CONSUMERS, AND THE ECONOMIES OF BOTH OUR COUNTRIES. THE PAPER CONTAINS PROPRIETARY BUSINESS INFORMATION. WE ASK THAT YOU TREAT IT AS SUCH.

O WE LOOK FORWARD TO RECEIVING YOUR FURTHER VIEWS AND TO THE NEXT ROUND OF NEGOTIATIONS BEGINNING FEBRUARY 24.

END TALKING POINTS.

5. (SSU) THE U.S. PROPOSAL

BEGIN TEXT.

U.S.-CHINA CIVIL AVIATION NEGOTIATIONS  
U.S. PROPOSAL

WE HAVE CAREFULLY CONSIDERED THE CHINESE POSITIONS EXPLAINED BY VICE MINISTER SHEN. BASED ON HIS SUGGESTION, WE AGREE WITH HIS GOAL OF A STEP-BY-STEP APPROACH OVER THE NEXT FEW YEARS. AS A RESULT OF THESE DISCUSSIONS AND FOLLOW-UP DISCUSSIONS WITH OUR INDUSTRY AND OTHER INTERESTED PARTIES, WE HAVE SUBSTANTIALLY MODIFIED OUR THINKING.

WE HOPE THIS NEW PROPOSAL CAN SERVE AS THE BASIS FOR CONTINUED FRUITFUL DISCUSSIONS. IT TAKES INTO CONSIDERATION THE CHINESE VIEW THAT ITS CARRIERS ARE NOT YET PREPARED FOR AN OPEN SKIES AGREEMENT, BUT COULD SUBSTANTIALLY BENEFIT FROM ENHANCED COOPERATION WITH U.S. CARRIERS AND INCREMENTAL GROWTH IN THE MARKET. WE ARE PLEASED TO NOTE THAT U.S. AND CHINESE CARRIERS ARE IMPLEMENTING SOME OF THE CODE SHARE RIGHTS PROVIDED FOR IN THE AGREEMENT NEGOTIATED IN DECEMBER 1995. INITIAL POSITIVE RESULTS ARE JUST BEGINNING TO BECOME AVAILABLE, AND WE HOPE FOR CONTINUED SUCCESS IN THIS AREA.

WE PROPOSE THE FOLLOWING CORE ELEMENTS OF AN AGREEMENT FOR DISCUSSION IN FEBRUARY:

O FORTY NEW FREQUENCIES TO BE PHASED IN OVER THREE YEARS

O THREE NEW DESIGNATIONS TO BE PHASED IN OVER THREE YEARS

O ADDITIONAL CODE SHARE POINTS IN THE U.S. AND CHINA, SOME OF WHICH, IN BOTH CHINA AND THE U.S., TO BE AVAILABLE IMMEDIATELY

O SAME-COUNTRY AND THIRD-COUNTRY CARRIER CODE-SHARING RIGHTS

O IMPROVEMENTS IN THE CHARTER REGIME.  
THERE ARE, OF COURSE, OTHER ISSUES BOTH SIDES WILL WANT TO RAISE FOR DISCUSSION. IN TERMS OF FREQUENCIES AND DESIGNATIONS, WE HAVE SUBSTANTIALLY REDUCED OUR OBJECTIVES TO ACCOUNT FOR THE CHINESE GOVERNMENT'S CONCERNS AND CHANGED MARKET CIRCUMSTANCES. THE LEVEL OF ACCESS SHOULD BE RELATED TO THE LENGTH OF A NEW AGREEMENT.

END TEXT.

6. (SBU) CODESHARING PAPER

BEGIN TEXT.

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## BENEFITS OF U.S.-CHINA CODESHARING

DATA IS BUSINESS CONFIDENTIAL  
NOT FOR DISTRIBUTION

AT OUR RECENT MEETINGS IN BEIJING AND WASHINGTON WE DISCUSSED THE BENEFITS ADDITIONAL CODESHARING WOULD BRING TO CHINESE AND U.S. CARRIERS. WE HAVE DEVELOPED SOME ADDITIONAL ANALYSES THAT WE WOULD LIKE TO SHARE WITH YOU.

THE BENEFITS OF CODESHARING STEM FROM LINKING TWO CARRIERS' NETWORKS. THIS LINKAGE ENABLES BOTH CARRIERS TO ADD PASSENGERS TO THEIR FLIGHTS, OFFER MORE DESTINATIONS, AND SUPPORT NEW FREQUENCIES. CODESHARING ALSO ENABLES AND SUPPORTS TECHNOLOGY SHARING IN AREAS SUCH AS COMPUTER RESERVATION SYSTEMS.

P4/(b)(4)

[002]

NETWORKS EXHIBIT LARGE ECONOMIES OF SCALE. REDUCING THE SCALE REDUCES THE BENEFITS. THE RESTRICTIONS ON INTERIOR CODE-SHARE POINTS IN THE EXISTING BILATERAL AGREEMENT SEVERELY LIMIT THE POTENTIAL BENEFITS THAT CODESHARING CAN BRING TO BOTH PARTNERS -- BENEFITS ARE REDUCED TO THE EXTENT THAT NETWORKS ARE ARTIFICIALLY CONSTRAINED. THIS IS ALSO THE CASE WITH RESTRICTIONS ON DESIGNATIONS. AS THE NUMBER OF DESIGNATED CARRIERS INCREASES, THE NUMBER OF POSSIBLE CODESHARING PARTNERSHIPS ALSO INCREASES. BECAUSE THE VARIOUS CARRIERS IN EACH COUNTRY HAVE DIFFERENT ROUTE NETWORKS, MORE PARTNERSHIPS WOULD RESULT IN EVEN FURTHER EXPANSION OF ROUTE NETWORKS AND NEW AND IMPROVED SERVICES TO INTERIOR REGIONS. IN CHINA, IMPROVED INTERIOR SERVICE WOULD PROMOTE THE GOAL OF ECONOMIC DEVELOPMENT IN THOSE REGIONS.

U.S. CARRIERS AND THEIR PARTNERS HAVE BENEFITED FROM INCREASED TRAFFIC THROUGH CODESHARING IN OTHER COUNTRIES. EXPERIENCE WITH TRANS-ATLANTIC ALLIANCES SHOWS THAT CITY-PAIRS SUPPORTING ONLY ONE PASSENGER PER DAY ON AVERAGE ACCOUNT FOR ONE-THIRD OF THE TOTAL PASSENGERS CARRIED BY THE ALLIANCES.

P4/(b)(4)

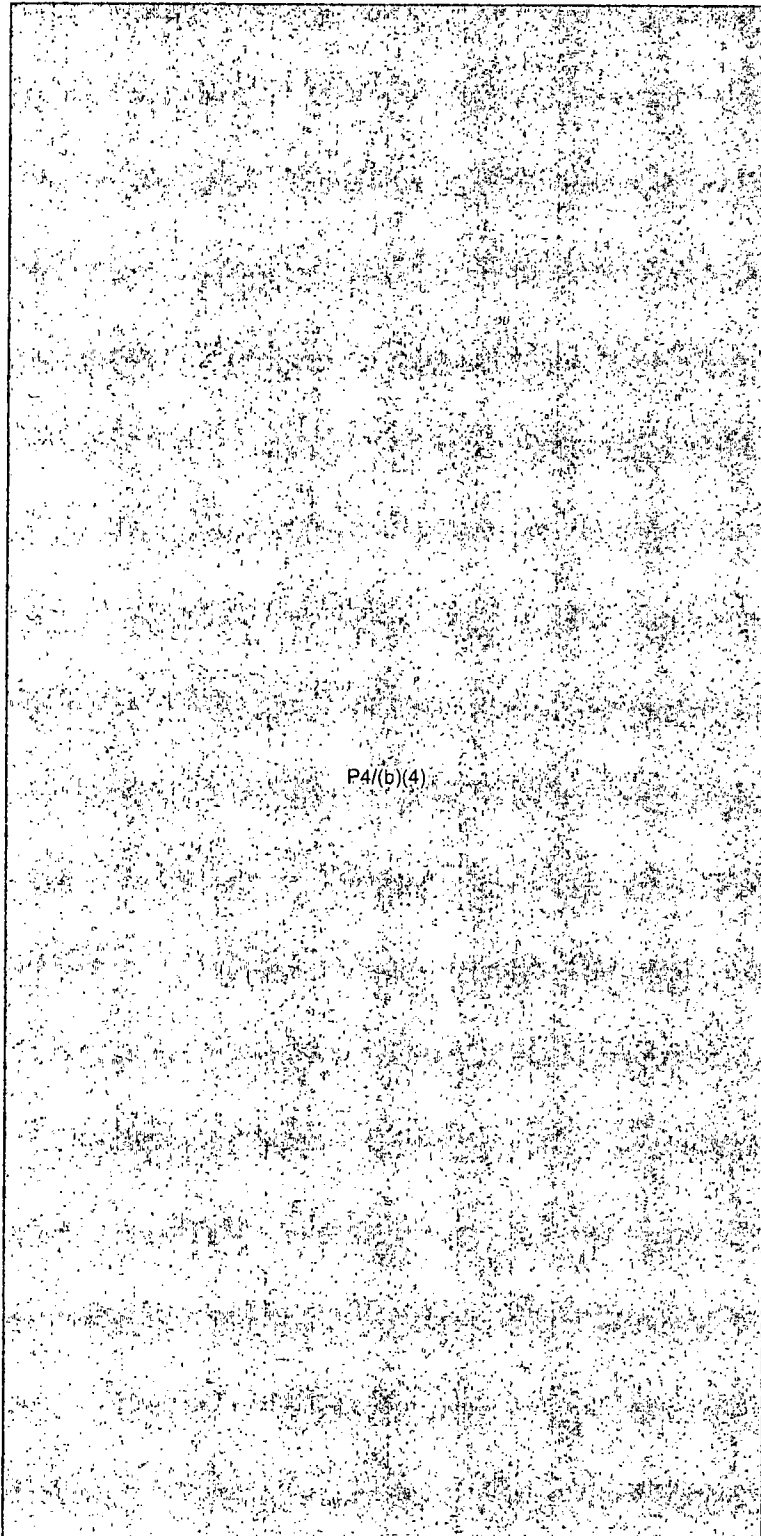
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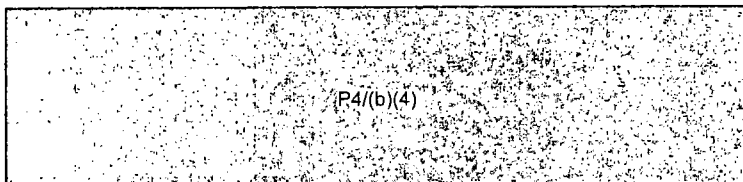
P4(b)(4)

[002]

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(P4)(b)(4)

[002]

THE EARLY POSITIVE RESULTS IN THE U.S.-CHINA MARKET ARE CONSISTENT WITH WHAT WE HAVE OBSERVED WITH ALLIANCES THAT HAVE BEEN OPERATING FOR LONGER PERIODS AND MORE EXTENSIVELY IN ATLANTIC MARKETS. PARTNER CARRIERS DERIVE THE GREATEST BENEFITS WHEN THEY CAN OFFER THEIR CUSTOMERS THE LARGEST POSSIBLE NETWORK IN EACH OTHER'S MARKETS. CHINESE AND U.S. CARRIERS WILL LIKEWISE BENEFIT THE MOST WHEN WE EXPAND THE CODE-SHARING PROVISIONS OF THE CURRENT AGREEMENT.

END TEXT.  
PICKERING

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THE WHITE HOUSE  
WASHINGTON

February 8, 1999

**MEMORANDUM FOR DISTRIBUTION**

FROM: LAEL BRAINARD

SUBJECT: NEC Deputies Meeting on China WTO

There will be a deputies meeting on China WTO tomorrow February 9, from 2:30 to 4:00 pm, in Room 239. This meeting will be principals only. Please provide the necessary clearance/confirmation information to Sharon Yuan at 456-5353.

DISTRIBUTION:

Jeff Frankel (CEA)  
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Timothy Geithner (TRS)  
Gus Schumacher (USDA)  
Richard Fisher (USTR)

**NEC DEPUTIES MEETING ON CHINA WTO**

Tuesday, February 9, 1999

2:30 - 4:30 pm; Room 239, OEOB

**AGENDA**

**I. Protocol Issues**

- Antidumping - Non-Market Economy Provision
- Safeguards - General, Specific, Textiles
- Subsidies
- Other (e.G., Balance of Payments, Technology Transfer and other NTMs, Transitional Review, Government Procurement, Equity Ownership)

**II. Market Access Issues**

- Agriculture
- Services
- Industrial Goods

**III. Legislative/Negotiation Plan**

- Schedule for Negotiations
- Congressional/Industry Consultations on WTO Accession
- Normal Trade Relations

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#### Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

#### Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

# Withdrawal/Redaction Marker

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE             | DATE    | RESTRICTION |
|--------------------------|---------------------------|---------|-------------|
| 005. chart               | China Investment (1 page) | 03/1999 | P1/b(1)     |

### COLLECTION:

Clinton Presidential Records  
National Economic Council  
Malcolm Lee  
OA/Box Number: CF 1176

### FOLDER TITLE:

China (February to March 1999) [5]

2010-1024-F  
vz1815

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Sharon H. Yuan

03/26/99 09:51:53

AM

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Record Type: Record

To: Lael Brainard/OPD/EOP, Malcolm R. Lee/OPD/EOP, Melissa G. Green/OPD/EOP

cc: Brian A. Barreto/OPD/EOP

Subject: From Inside Trade - China WTO

ADMINISTRATION WRESTLES WITH POLITICAL ASPECTS OF CHINA  
WTO DEAL

---

Date: March 26, 1999 - Inside US Trade -

The Clinton Administration is engaged in a high-level internal debate on whether it is politically wise to press ahead with a market access deal for China's World Trade Organization accession in time for a visit by Chinese Premier Zhu Rongji next month, according to informed sources. But senior officials gave no indications in congressional briefings this week that the internal debate has slowed down the negotiations, they said.

White House Chief of Staff John Podesta told a group of House members yesterday (March 25) that the Administration would feel compelled to go ahead with a deal if it were acceptable, sources said.

U.S. Trade Representative Charlene Barshefsky and Deputy U.S. Trade Representative Richard Fisher conveyed a similar message to separate congressional briefings this week. These officials emphasized that China's attitude towards WTO accession has drastically changed in the last four weeks, sources said. They highlighted China's willingness to consider concessions on such difficult issues as market access for agricultural goods, a sector in which China has agreed to a system of tariff-rate quotas for bulk commodities, sources said.

At the same time, officials emphasized that the two sides have not reached a deal yet, sources said. But these sources speculated that the Administration must believe it is "in the ballpark" for an agreement to engage in such an intensive briefing schedule.

In its sounding of Congress, USTR has found House members to be generally negative on China WTO accession, and the Senate to be more supportive, sources said. The China issue is likely to be a divisive one for the Democratic Caucus, sources said.

A group of House Democrats briefed by Barshefsky this week were also very critical of a WTO accession deal, and questioned the U.S. ability to enforce any of the commitments China is making, sources said.

They pointed out that China has persistently failed to honor its commitments to human rights, labor rights, and environmental standards, sources said. In addition, members pointed out that China has pursued policies that have led to a record U.S. trade deficit.

House Republicans who have taken a strong stance in favor of trade with China may find it difficult to come out in favor of a WTO deal if the current level of anti-China rhetoric persists, sources said. Rep. Jim Kolbe (R-AZ) told reporters this week that the current climate makes it difficult to prevail with the argument that the U.S. should keep trade issues separate from national security ones.

In the internal Administration debate, political advisors are arguing that any market access deal with China, irrespective of its merits, could be construed as a sellout. Striking a deal in April, these officials argue, would cast President Clinton as an apologist for China at a time when anti-China rhetoric is peaking over revelations that China stole U.S. nuclear technology.

In contrast, foreign policy advisors are arguing that the Administration should press for a deal and rely on business to sell it to Congress. But some officials are questioning how hard business groups would really fight on behalf of a deal, particularly since they are not necessarily united in their position on the terms of WTO accession.

Despite the signals that the Administration is pressing ahead with the negotiations, some sources said the current political climate will likely make the Administration more cautious about what constitutes an acceptable deal. That is bound to delay an agreement, these sources said.

Commerce Secretary Bill Daley signalled this week that the Administration is not deterred by the current anti-China rhetoric. "Right now may not be the best time, but then again there is always something going on in our relationship with China in some people's minds that is not good," he said. "We just have to decide what's a good deal and go with it."

Daley spoke to reporters after a March 23 Senate Finance Committee hearing, where he emphasized that the U.S. has been pressing for real market access in China as part of the accession deal. "No way we are going to bring the deficit down unless we are able to get into that market," he said.

U.S. Trade Representative Charlene Barshefsky emphasized after the hearing that the U.S. industry will be the final arbiter of what constitutes a good agreement with China. "I think that U.S. industries will assess whether any trade agreement is a good deal and if U.S. industries believe it is a good deal, it seems to me that it is probably a good indication that it is," she said. She said this trade agreement like any other would be considered "on its merits."

Informed sources said Barshefsky has made similar arguments in closed door briefings.

At this point, there is no major effort from industry to cool the anti-China rhetoric in Congress to clear the way for a possible WTO deal, sources said. This may be largely due to the fact that details about a possible market access deal are too sketchy, sources said. So far, many of the concessions discussed have not been presented in written form (Inside U.S. Trade, March 19, p. 1).

Trade associations representing producers of fertilizers and chemicals this week urged the Administration not to settle for the concessions China has offered up to now. In a March 25 letter, the Fertilizer Institute urged President Clinton to insist that any accession agreement include commitments allowing companies to distribute fertilizer and to lift China's state controls on trading in the sector, according to a copy reprinted below.

Up to now, China has insisted on carving out certain fertilizers from any concessions on distribution and state trading rights, sources said. On distribution, China wants to exclude chemical fertilizers, retail auto trade, pesticides, salt, crude oil, alcohol, tobacco, newsprint, and pharmaceuticals, sources said. On state trading, China wants to maintain an import monopoly on chemical fertilizers, processed petroleum products, vegetable oils and cotton, they said.

Also in agriculture, the two sides have settled on wheat tariff rate quota of about 7 million tons, which is about three times what China imports now, sources said. This quota has a growth rate of about seven percent, according to these sources.

But the two sides remain far apart on market access for oilseeds and vegetable oil, sources said. Oilseeds now face no quantitative restrictions and a low tariff, but China wants to establish a TRQ or

alternatively impose a tariff of 15 to 30 percent, sources said. The applied tariff on oilseeds is now 3 percent, they said.

Agreeing to these terms would constitute a cutback of current access, which is unacceptable to U.S. industry, sources said. On vegetable oil, China is insisting on a TRQ, but U.S. industry wants it to be larger than has been offered, sources said.

The Chemical Manufacturers Assn. has urged the Administration to insist that China sign on to the tariff harmonization initiative for chemicals launched in the Uruguay Round, according to private-sector sources. The U.S. should not agree to exceptions for China, but could offer longer phaseout periods to China, they said.

In addition to chemical tariffs, the U.S. has problems with China's offers on wood and paper, sources said.

The U.S. is also pressing China for a better deal on an auto import quota, sources said. China has offered a quota valued at \$2 billion, as well as a 15 percent growth on this quota, which it promises to phaseout along with other non-tariff measures on Jan. 1, 2005, sources said.

On auto production, China is still insisting that foreign participation in joint ventures can at most be 50 percent, sources said.

In the services areas, problems remain on securities, banking and telecommunications, sources said. On banking, China has offered foreign firms the ability to do business in local currencies but only for commercial transactions, not retail business, sources said.

On insurance, China has signalled it would be willing to lift geographic limits within five years, sources said. It has also offered foreign firms a wider range of firms with whom it could enter joint ventures, sources said.

China will focus its negotiations for WTO entry on the U.S. and European Union for a few more weeks before engaging other trading partners in May, according to government sources attending a March 19 informal session of the WTO working party on China's accession. If these market access negotiations were successful, WTO members could then hold a working party meeting in June that could tackle the rules that would be applied to China's accession, they said.

Rules will be reflected in the protocol of China's accession as well as in the working party report.

The March 19 meeting largely consisted of informing other WTO members about the status of the U.S. negotiations with China, negotiators said. Chinese Vice Minister Long Yongtu told the meeting that Premier Zhu Rongji is personally involved in the talks, and had clashed with the agriculture minister over the concessions that China should make on market access. He emphasized that the Chinese leadership realizes the importance of agricultural concessions, sources said.

U.S. business representatives have said they have been working on impressing upon China the need to make significant concessions in order to have a successful agriculture deal.

Staff-level U.S. negotiators are in China this week pressing on a number of issues, including China's ban on wheat from the Pacific northwest. EU Commissioner Leon Brittan will visit China on April 22-23, along with staff-level negotiators, and the U.S. and EU will hold a bilateral summit on May 12, when China will likely be discussed, sources said.

Barshefsky this week laid out several reasons why China seems more interested than ever in joining the WTO. One is that inward investment flows will slow substantially this year, partially because the

Chinese system is "unpredictable and the rule of law is weak," she told reporters after the Senate Finance hearing. In addition, there is a concern among Chinese leaders that domestic reforms have slowed and that WTO accession may be a means of imposing economic reforms on the "internal body politic" that would otherwise be politically difficult to achieve, she said.

In addition, China has long said it wants to avoid not being a member of WTO at the next round of negotiations in the WTO, she said. The U.S. answer to that has been that China must make the necessary concessions to enter the WTO, she said.

Meanwhile, legislation to give Congress a stronger role in reviewing the accession deal has temporarily stalled in the wake of the Senate vote to table an amendment by Sen. Tim Hutchinson (R-AR) instead of attaching it to the Senate emergency appropriations bill, congressional sources said. The Hutchinson amendment would require a congressional resolution before the U.S. agrees to allow China to join the WTO.

Sens. Jesse Helms (R-NC) and Ernest Hollings (D-SC) postponed the expected introduction date of March 19 to review how best to proceed, they said. The amendment is likely to emerge after Zhu's visit, according to these sources.

ISSUES FOR COS TRADE BREAKFAST:CHINA WTO1. Strategic Issue:

- Do we want a deal this year?
- What are the political consequences?
- What are the diplomatic consequences of derailing the negotiations at this juncture?

2. Tactical Issues if We Go for a Deal:Timing:

- Can we delink the WTO deal from the Zhu visit?
- How long would we need to postpone the deal to lower the intensity on the security/ espionage/human rights issues?

Congressional Strategy:

- Do we need to do anything additional to derail the Hutchinson amendment?
- Should we be working on an alternative with Roth or discouraging it as premature?
- Is there any way to avoid a two-vote process?

STEEL

- What is our posture on 201 reform for the Senate Finance Hearings on Tuesday?

## Steel

House: Visclosky quota bill passed 289-141. (R's 128 no, 91 yes; D's 197 yes, 13 no). Levin-Houghton introduced their legislation Tuesday, and would like Podesta to call Archer to urge he move their bill through Committee. Levin's staff not optimistic about their bills prospects in House. More hopeful about moving it in Senate. Need to take Gephardt's temperature if we are to make real run in the House, and decide whether we should put the bulk of our efforts in the Senate. Levin's staff wants to know if we have any new more positive position on their bill following introduction.

Senate: Senate Finance will hold hearings on Visclosky bill this Tuesday in order to assert jurisdiction. They remain concerned about Lott. Roth's staff has called us to urge Daley and Barshefsky to testify. Podesta discussed possible Section 201 injury standard legislation with Moynihan last Saturday. His staff says they do not envision introducing a 201 bill before next Tuesday's hearing, but are very interested in hearing our views on Section 201 legislation generally and Levin-Houghton specifically. NEC/USTR/WHLeg staff will meet with Minority Finance Committee staff Friday to discuss our views on Levin-Houghton. We plan take position articulated in last week's Podesta letter to Archer: Levin-Houghton is constructive approach, we are prepared to work them on something we can recommend President sign. We will outline our problems with Levin-Houghton -- a causation standard drawn from Section 406 that is too weak, narrowing of Presidential discretion, excluding captive sales from U.S. market for purposes of ITC injury determination. See Attachment for details on key differences with Levin-Houghton.

**Key Issue: What is our posture on 201 reform for the Senate Finance Committee hearing Tuesday?**

**Key Points:**

- Need to work to ensure Visclosky dies in Senate.
- We should support 201 reform in Senate. Working with Moynihan-Roth to develop Section 201 legislation puts us in a better position to defeat Visclosky, and enables President to be defined by something other than quota bill veto threat..
- Roth wants to use steel legislation as engine for broader trade legislation (e.g., fast track, CBI, Africa Trade). Moynihan does not necessarily share that view. Do we want to use Section 201 legislation as engine for fast track, other trade legislation?

## ATTACHMENT

Preliminary Assessment of Levin-Houghton, introduced Tuesday, H.R. 1120. Still analyzing.

- They did not accept our 201 causation standard language (bill contains Section 406 definition of cause which we have opposed).
- We still have WTO concerns about excluding captive (e.g., intracompany) sales from the scope of the market the ITC looks at to determine whether injury has occurred.
- Took some but not all of our suggestions on Houghton's language, which attempted to limit the President's discretion following an affirmative ITA injury finding.
  - 203(a), which goes to whether and what kind of relief the President should provide after an affirmative ITC injury determination, would consider whether action "will not have an adverse impact on the United States **SUBSTANTIALLY** out of proportion to the benefits of such action". We had suggested this language without the word "substantially".
  - 203(2)(F), the section on factors the President should take into account in determining whether and what relief to provide, would create a presumption in favor of providing relief in balancing (I) economic and social costs of not providing relief to workers and communities against (ii) effects on consumers/competition and (iii) international obligations regarding compensation (required after third year of safeguard relief). Levin-Houghton bill reads: "except that the President shall give **substantially** greater weight to the factors set out in clause (I) than those set out in clauses (ii) and (iii)", rather than our suggestion "except that the President shall give **greater weight** to the factors set out in clause (I) than those in clauses (ii) and (iii) **unless he considers that doing so would be inconsistent with the overall economic interests of the United States**."
  - Levin/Houghton accepted our suggestion on national security as a factor for the President to consider in deciding whether to provide relief under Section 201 "the potential for harm to the national security of the United States".

## CHINA WTO

**Negotiating Schedule:** Cassidy's team leaves for Geneva Thursday March 18 for China WTO Working Party meeting. He will also have pull aside with Vice Minister Long. Returns Monday, then Cassidy team goes to Beijing Tuesday. Barshefsky will go to Beijing at end of next week or early following week if Cassidy has narrowed issues to a few. Barshefsky needs to be back for Passover on 31st.

**Industry Briefings:** USTR this week briefing all industry sectors. Telecommunications and insurance briefings went well. High tech pleased. Telecom industry, led by AT&T, put more emphasis on China signing on to WTO Telecom Agreement rules than on obtaining majority ownership. Likewise, insurance industry might accept clarification of criteria for granting licenses, even if all eleven companies waiting do not get licenses. On tariffs, still need more on soybeans, autos, wood/paper/chemicals. Protocol issues will be discussed in more detail in coming weeks. Treasury has briefed banking and securities sectors, and privately says these issues will ultimately be manageable.

**Congressional Briefings:** Barshefsky holding Executive Sessions with Ways and Means and Finance, and I believe is meeting with leadership. Ways and Means staff reaction was that briefings were very constructive, but still enormous mistrust that we are bent on concluding a political deal, and palpable anger that we have failed to consult. Consultation has to continue, and both House and Senate want to give Congress more defined role in approving package than permanent NTR vote. Finance and Ways and Means staff say members do not want to be presented with fait accompli during Zhu visit and be consulted thereafter. They want to know what the deal is, and have the opportunity to shape it. Close consultation essential. Sandy Berger meets with Thomas/Feinstein group Thursday afternoon on broader China issues.

**China WTO Legislation:** Clearly highest priority for discussion at breakfast meeting. Real risk of Hutchinson attaching legislation requiring advance Congressional approval of China WTO accession package to supplemental appropriations bill, which could be taken up any time. Hutchinson has not yet circulated language. Neither majority nor minority staff on Finance know what he will introduce. Both are fearful Hutchinson legislation could pass in current environment absent an alternative. Helms-Hollings have not yet introduced their bill, but it is expected to track Gephardt's, which would require the U.S. to withdraw from the WTO if Congress does not approve China's accession to the WTO. Roth's staff is working on several alternatives, the mildest of which would require President to submit bilateral agreement to Congress in advance U.S. supporting China's accession to the WTO. USTR has problems with this draft (deal will be picked apart, Chinese will hold back best offers, diminishes leverage of Zhu visit, constitutional problems), but is working on crafting a consultation and layover alternative to keep in our back pocket. Other alternatives being considered by Roth's staff include a public notice and comment period prior to accession, a period for passing a resolution of disapproval following accession, or a vote on permanent NTR prior to accession.

Need to get better fix on where members are. WH Leg is whipping Dems and Roths staff are talking to Republicans. Lott's staff unsure where he will be. Roth will go to Stevens and ask

him to keep China WTO legislation off the bill. WH Leg reports Daschle's staff doubtful supplemental appropriations coming up because they will be finished Friday morning, but recommended we keep working just in case.

### **Business Community**

Mobilizing. ECAT has sent a letter from key business & agriculture groups to Lott warning that Helms/Hollings/Gephardt is damaging, redundant to permanent NTR and a rush to judgement. They will meet Thursday at 2:30 to assign Hill calls. Also concerned about McConnell, Stevens and Nichols. They are meeting with their core group in Senate (Gramm, Murkowski, Baucus, Feinstein) on Friday. They have discussed possible alternatives with Senate Finance, but have argued strenuously it is too early to start looking for alternatives.

# Withdrawal/Redaction Marker

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                 | DATE       | RESTRICTION |
|--------------------------|---------------------------------------------------------------|------------|-------------|
| 006. email               | Marnix Koumans To Susan Shirk. Subject: China CivAir (1 page) | 03/16/1999 | P1/b(1)     |

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National Economic Council  
Malcolm Lee  
OA/Box Number: CF 1176

### FOLDER TITLE:

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2010-1024-F  
vz1815

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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
INDUSTRY SECTION  
600 17TH STREET NW  
WASHINGTON, DC 20506  
(202) 395-5656  
(202) 395-9674 FAX



DATE:

3/16

TOTAL PAGES: \_\_\_\_\_

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| Melcom Lee |                |         | 69290 |
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FROM:

Gordon

PHONE: \_\_\_\_\_

CONTACT: IF YOU HAVE ANY PROBLEMS RECEIVING THIS FAX CALL (202)395-5656

SUBJECT:

Attached confirms our

NOTE:

cautious optimism - could share w/Hill.

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## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                  | DATE       | RESTRICTION |
|--------------------------|------------------------------------------------|------------|-------------|
| 007. draft               | Talking Points for Barshefsky dinner. (1 page) | 03/15/1999 | P1/b(1)     |

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**Lee, Malcolm R.**

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**From:** Keith, James R.  
**Sent:** Tuesday, March 16, 1999 9:09 PM  
**To:** Lee, Malcolm R.  
**Subject:** Chief of Staff request for six month priorities ~~{SECRET}~~

**Importance:** High

**Message Flag:** Follow up  
**Flag Status:** Flagged

Malcolm:

NSC has been tasked to concisely lay out priorities over next six months, including NTR and Zhu visit. We need to say what we want to accomplish, what opposition we will face, context, and timetable. Attached document is per mandated format. Would you please take a look at NTR and WTO material for accuracy, amendment, addition, refinement, etc? Key is to keep it short.

Many thanks. Deadline is noon Wed.



six month priorities.doc

DECLASSIFIED  
E.O. 13526  
White House Guidelines, September 11, 2006  
By VZ NARA, Date 7/1/2013  
2016-1024-F

**Lee, Malcolm R.**

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**From:** Keith, James R.  
**Sent:** Tuesday, March 16, 1999 8:22 PM  
**To:** Lee, Malcolm R.  
**Subject:** Zhu Dinner [UNCLASSIFIED]  
  
**Importance:** High

Capricia Marshall is asking about names for the Zhu dinner:

William Lerach: Partner at Milberg, Weiss, Bershad, haynes & Lerach

Shelby Bryan: Intel Com Group (ICG Communications)

Richard Huber: Chairman, President, CEO Aetna, Inc  
Michael Stephen President Aetna International

Hon. Bennet  
Johnston: Johnston and Associates, past DOE connection

James Kelly: UPS

Seymour Steinberg Chairman, President, CEO New York Life  
Sandra Kristoff: as you know, senior VP with New York Life

Richard McGinn President, Lucent Technologies

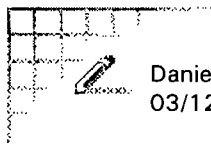
Leo Mullin President, Delta

Lee Raymond Chairman, President, CEO Exxon

Fred Smith Chairman and CEO FDX

Gary Wilson CEO Northwest

I have a little more background if you need it on each--will have to fax it to you though, not in email. For insurance, Aetna and AIG are there; if you go beyond those, would have to invite all 13 trying to get in. For Civair--no clean break except only those there now or only those trying to get in? Pls advise. Jim



Daniel D. Heath  
03/12/99 05:25:54 PM

Record Type: Record

To: Malcolm R. Lee/OPD/EOP  
cc: Lael Brainard/OPD/EOP, Sharon H. Yuan/OPD/EOP  
Subject: Podesta China Ag list

The list is almost there. It tries to cover the main US ag export sectors (not in order of importance):

Citrus (Sunkist is an ok choice);

Meat (US Meat Exporters Federation is ok)

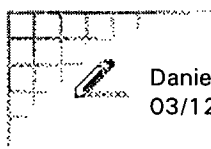
Grains (yes, Cargill's the big US firm, but I'd suggest **Daniel G. Amstutz, President/CEO, North American Export Grain Association**, the group that represents Cargill and all the other US grain exporters. Cargill won't be slighted since Amstutz was a top executive at Cargill, and ex-head of International Wheat Council in London. I'd hesitate inviting the Cargill CEO Micek, because Cargill is currently a lightning rod in Washington agriculture because of its proposed merger with Continental. Daschle opposes the merger and Glickman is cool in speeches. NEAGA is big supporter of Administration policy on China and trade generally. Amstutz is very important in the industry and known to the Chinese. He should be top of the list.)

Cotton (conspicuous omission: China is not taking much of our cotton at the moment but have been a huge customer in the past. Keep it in mind: **National Cotton Council, Jack Hamilton, President**)

Farmers in general (American Farm Bureau is obvious, as the largest and mainstream group, and the main ag support for Administration policy on free trade and China.

Farm business (Farmland is ok, as a cooperative it's a kind of populist Archer Daniels Midland; not prominent on China but friendly toward the Administration.)

I'd be inclined to put Sunkist and Farmland near the bottom of the list because with those two only you'd be singling out commercial firms from among their domestic competitors. The other groups on the list represent all the firms or farmers in each sector.



Daniel D. Heath  
03/12/99 05:25:54 PM

Record Type: Record

To: Malcolm R. Lee/OPD/EOP  
cc: Lael Brainard/OPD/EOP, Sharon H. Yuan/OPD/EOP  
Subject: Podesta China Ag list

The list is almost there. It tries to cover the main US ag export sectors (not in order of importance):

Citrus (Sunkist is an ok choice);

Meat (US Meat Exporters Federation is ok)

Grains (yes, Cargill's the big US firm, but I'd suggest **Daniel G. Amstutz, President/CEO, North American Export Grain Association**, the group that represents Cargill and all the other US grain exporters. Cargill won't be slighted since Amstutz was a top executive at Cargill, and ex-head of International Wheat Council in London. I'd hesitate inviting the Cargill CEO Micek, because Cargill is currently a lightning rod in Washington agriculture because of its proposed merger with Continental. Daschle opposes the merger and Glickman is cool in speeches. NEAGA is big supporter of Administration policy on China and trade generally. Amstutz is very important in the industry and known to the Chinese. He should be top of the list.)

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United States Department of State

Washington, D.C. 20520

**FROM: Hank Levine**  
*Deputy Director for Economic Affairs*  
*Office of Chinese and Mongolian Affairs*

TEL: 202-647-6796

FAX: 202-647-6820

**TO:**

Jim Keith

Malcolm Lee

☐ PER DISCUSSION

☐ FOR CLEARANCE

☐ FYI

Fyi — USTR's current  
line on NTR  
legislation. Are they  
coordinating with NEC or  
NSC?  
Hank

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**Executive Office of the President**

600 17TH STREET, NW

WASHINGTON, D.C. 20508

**OFFICE OF PUBLIC & MEDIA AFFAIRS**



Date: 1

Number of Pages Excluding Cover \_\_\_\_\_

TO:

*DAVID ACKERMAN*

*647-6540*

From:

*Jay Ziegler*

*Assistant USTR for Public & Media Affairs*

Phone:

*(202) 395-3230*

FAX: *(202) 395-7226*

SUBJECT:

COMMENTS:

~~CONFIDENTIAL~~ *CHINA LEGISLATIVE GUIDANCE*

To:

*EAP/CM*

*Mark Koumans*

*7-6820*

Fm:

*EB*

*D. Ackerman*

03/16/99 16:29 202 647 6820  
03/16/99 TUE 14:24 FAX 202 647 6540

EAP/CM & EAP/RA --- NAT SEC COUNCIL  
Bur/Econ & Bus AFF

003/005  
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002

From: Jay Ziegler  
To: EOPGW.JLOCKHART, EOPGW.JSIEWERT, EOPGW.DLEAVY, EOP...  
Date: 3/15/99 7:16pm  
Subject: Guidance on Helms' WTO Legislation

Q: What is the Administration's reaction to Sen. Helms (and others) effort to require congressional approval of a China WTO package?

First, China must prove a willingness to open its markets on commercial terms -- an effort that Republican and Democratic Administrations' have now been at for 13 years. We will see if China comes forward with new market-opening proposals; obviously we are pushing this very hard. We have also said that progress will be driven by substantive market-opening commitments, and that remains our approach in these negotiations.

Second, we are working very closely with the Congress and all affected industries on WTO accession, and will continue to do so.

~~We don't have a position on the bill. We like to get strong commercial~~  
~~policy negotiated first.~~

... if pressed on Helms' bill...

At some point, China's membership in the WTO - which would make all its trade commitments subject to international enforcement - would require a change in the Jackson-Vanick Law, so Congress will have a very direct role in this process.

CC: USTR.USTR\_DC.R, PRS

## CONGRESSIONAL LEGISLATION ON CHINA'S ACCESSION

**Question:** What assurances does Congress have that the Administration will take a tough line on China's WTO accession? Shouldn't we pass legislation that requires specific congressional approval before China can join the WTO? Can China join without the approval of the United States?

**Answer:** The Administration has taken a tough, consistent, constructive line on China's WTO accession from the beginning. U.S. leadership among the 30 or so countries actively involved in China's WTO accession negotiations has resulted in a strong consensus that China's participation in the organization must be on the basis of adopting WTO rules and making appropriate commitments and concessions for access to China's market. All of this has been done with close consultation and cooperation with the Congress and U.S. trade interests.

A number of current legislative provisions already provide Congress with a substantial role in U.S. decision making for the WTO, specifically on the question of accession. New legislation isn't necessary for Congress to exercise its authority in this area.

- Section 122 of the URAA already requires the Administration to consult closely with the Congress on any accession, particularly before taking any action to approve or support an accession.
- Section 1106 of the 1988 Omnibus Trade and Competitiveness Act adds additional requirements for the President and Congress in considering accession of countries like China which maintain substantial state-run enterprises. It requires the President to determine: (1) whether that country's state trading enterprises account for a significant share of the exports of that country or if imported goods compete domestically (in China) with products of state trading enterprises; and (2) whether such state trading enterprises unduly burden and restrict or adversely affect U.S. trade or are likely to do so.
  - If the findings are affirmative, we must conclude a specific trade agreement to address this problem or, accession can be achieved if Congress enacts a bill. In either case, Congressional action will be critical.
- The conditions on MFN required by Jackson/Vanik and the rest of Part IV of the Trade Act of 1974 require annual review of MFN for China which means we can't apply the WTO to China when the negotiations are completed. So, China could, subject to the provisions already available to the United States, become a member of the WTO without receiving full WTO rights from the United States. This also complicates our situation in the negotiations.
- China is not the only country subject to Jackson-Vanik constraints currently negotiating WTO accession. Others include Russia, Ukraine, Belarus, Kazakhstan, Vietnam, and a number of the smaller NIS. What is done in China's WTO accession process will be seen

as a precedent for the handling of subsequent Jackson-Vanik WTO applicants. The tough, principled approach taken by the United States with China is equally applicable to these other WTO accessions

The WTO is a consensus-based organization -- while there are provisions for voting in WTO accessions, the actual accession procedures wouldn't allow the accession to proceed to a vote without first obtaining a consensus. Our strategy to date has been to press China for a strong commercial agreement and entry based on adoption of WTO rules in China's trade regime. That is the standard required to support a consensus within the WTO and ensure that the U.S. position is supported by other WTO members with strong interests in China's accession.

**Background:** We understand that Congressional support exists for possible legislative proposals that would require specific Congressional approval of China's accession, regardless of whether the United States would apply the WTO to China. China's WTO membership without Congressional concurrence could trigger decisions to begin U.S. withdrawal from the WTO.

Section 122(b) of the URAA requires USTR to consult with appropriate congressional committees before any vote on the accession of a country to the WTO if it would substantially affect the rights or obligations of the United States under the WTO Agreement. USTR is also required to report on the outcome of such votes.

Jackson-Vanik provisions are also relevant to the question of whether the United States can apply the WTO to China. We have repeatedly told the Chinese that Jackson-Vanik precludes the United States from directly applying the WTO to China. WTO rights must be applied on a de facto basis through our bilateral Trade Agreement (which is the basis for us granting MFN treatment to each other.) See separate paper on Jackson-Vanik.

Section 1106 of the 1988 Trade Act applies to countries that have State Trading Regimes and are acceding to the WTO. It requires the President to determine (1) whether that country's state trading enterprises account for a significant share of the exports of that country or if imported goods compete domestically (in China) with products of state trading enterprises; and (2) whether such state trading enterprises unduly burden and restrict or adversely affect U.S. trade or are likely to do so. If the President makes an affirmative determination then the United States must not apply the WTO to that country until such time as we conclude an agreement resolving the particular state trading enterprise problem or Congress enacts a bill that approves application of the WTO to that country.

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President

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OFFICE OF CONGRESSIONAL AFFAIRS



Date: 3/16/99

Number of Pages Excluding Cover 2

NAME

AGENCY

PHONE#

FAX#

Malcolm Lee

6-9290

From:

David S. Kim

Deputy Assistant U.S. Trade Representative for  
Congressional Affairs

Phone:

(202) 395-4619

FAX: (202) 395-4656

SUBJECT:

Per my voice mail message to you, we need to

your help in clearing this asap. Thanks!

COMMENTS:

H.R. 884 (Congressional Approval of China's WTO Accession and U.S. Withdrawal)  
(Mr. Gephardt and 32 Co-Sponsors)

The Administration strongly opposes H.R. 884 which prohibits the United States from supporting China's accession to the World Trade Organization (WTO) unless, within a 90-day period, Congress enacts a joint resolution that specifically allows such support. If China accedes to the WTO without U.S. support, the bill requires the President to submit written notice to the WTO of U.S. withdrawal from the Organization. In addition, Congressional approval of the WTO agreement would cease to be effective 6 months after the President submits the notice of withdrawal.

The Administration opposes H.R. 884 because it is unnecessary and detrimental to U.S. interests, as noted below. The bill would also raise serious constitutional concerns regarding the President's foreign affairs authority and could adversely affect U.S. relations with the 134 members of the WTO.

- As a practical matter, China will not become a member of the WTO without U.S. support, and procedures are already in place protect against such a possibility. Current practice requires that there must first be a consensus within China's Working Party that the protocol package under negotiation should be considered for approval by the WTO's General Council.
  - That package cannot go forward without the United States joining the consensus and we cannot do so without consulting with the Congress.
  - Even assuming that China could become a WTO member, the United States could now invoke the non-application provisions of the WTO Agreement. This means that we would not give China unconditional MFN and we would not have a WTO relationship.
- The Administration is committed to achieving a commercially meaningful accession

protocol before supporting China's membership in the WTO. Congress has an important role in setting our negotiating objectives and evaluating the accession package through an ongoing consultation process that is well established in practice and statute.

- Jackson-Vanik already precludes the granting of unconditional MFN without Congressional action.
  - Additional statutory requirements are unnecessary. The proposal would create a climate of uncertainty and suggests that the entire U.S. trade agenda in the WTO should be dictated by a single issue -- China's participation in the system.
  - Moreover, the proposed legislation does not provide the Administration any new leverage
- 

in the negotiations.

- U.S. policy towards its WTO membership should not be dictated by a single issue. The bill would sacrifice important gains in the WTO -- market access to countries' adherence to trade rules on issues ranging from intellectual property rights to subsidies and use of the dispute settlement system.
- Non-application of the WTO to China is a more effective means of achieving the policy objective of exerting maximum pressure on China to make the needed commitments to join the WTO and enjoy unconditional MFN status.
- The bill raises serious constitutional concerns to the extent that it would inhibit the President's ability to conduct the foreign relations of the United States. This bill could affect our relations with all of the more than 134 members of the WTO and billions in U.S. exports.

Concluding a WTO accession agreement with China that opens its markets to U.S. goods and services and requires China to observe international rules on fair trade and the rule of law is the best way to serve U.S. interests. Creating a mechanism that is prejudiced against supporting China's WTO membership and requiring withdrawal from the WTO if China joins without U.S. support is contrary to U.S. global economic policy interests, particularly when we can take other measures to address our WTO relationship with China.

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