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MEMORANDUM

May 17, 2000

To: **Gene Sperling/Lael Brainard**

From: **Malcolm Lee**
Dan Rosen
Timothy Punke

Re: **May 18 Principals Meeting**

Agenda

Principals are likely to discuss Member positions, the Levin/Bereuter Legislation, yesterday's markup in the House Ways & Means Committee, and possibly upcoming Presidential addresses.

Member Positions

This is the latest list that I have of Undecideds -- from COS's office Wednesday afternoon:

Andrews
Cardin
Clayton
Deutsch
Dixon
Doggett
Fattah
Filner
Gejdenson
Hastings
Jackson-Lee
Kanjorski
Markey
Meek
Napolitano
Oberstar
Pastor
Pickett
Turner
Waxman

Levin and Other Legislative Proposals

Chuck says Levin and Bereuter will roll out the remainder of their package late in the day on Thursday with Republican leadership and other Democrats. According to Posner on Levin's staff, Bereuter is working on Republican leadership to get their agreement on a rule that will create one bill or otherwise ensure House passage of entire Levin-Bereuter package.

Chuck called to inform you that the **House Republicans reviewing the Levin Commission proposal oppose appointment of any private individuals (non-government officials) to the Commission.** Levin's proposal would have allowed the President to appoint two of five appointees from outside the Administration. Chuck recalls Levin's original bill required the President to appoint 5 government officials. Republicans fear giving private individuals access to subpoenaed documents. Chuck believes we will have to accept this.

Where we stand on other issues (to the best of my knowledge):

Subpoena: Levin dug in on subpoena, still willing to go to 2/3 vote. Republicans less hard over than Levin, but are not going to fight him on it. NSC has prepared language narrowing scope of subpoenas, which they are getting to Chuck. See attached.

Definition of PRC Government. No apparent give from Levin on this as of mid-afternoon, according to Ted Posner. Levin feels strongly on this.

Authorization Language: Levin's staff believes "sense of congress funds should be appropriated to/for..." language we have proposed is too weak, but they are open to other formulations to address problem of "authorize to appropriate" language in the document. USTR has suggested that we add "where such authorization is needed," or something along those lines.

You should have a copy of the materials we prepared for the Ways & Means markup on Wednesday. These materials give an comprehensive overview of our position on Levin-Bereuter, English, Cardin, and Stark (environmental proposals).

Review of Ways and Means Vote

On May 17, the House Ways and Means Committee passed a motion to move the Chairman's amendment in the form of a substitute on PNTR, consisting of PNTR plus the Levin safeguard legislation, as HR 4444, out of the Committee to the House. The voting was 34 in favor, 4 opposed, with one member absent, Michael R. McNulty (NY).

Yeas	Nays
Bill Archer (TX), Chairman	John Lewis (GA)
Philip M. Crane (IL)	Fortney Pete Stark (CA)
Charles B. Rangel (NY)	William J. Coyne (PA)
Bill Thomas (CA)	Gerald D. Kleczka (WI)
E. Clay Shaw, Jr. (FL)	
Robert T. Matsui (CA)	
Nancy L. Johnson (CT)	
Amo Houghton (NY)	
Sander Levin (MI)	
Wally Herger (CA)	
Benjamin L. Cardin (MD)	
Jim McCrery (LA)	
Jim McDermott (WA)	
Dave Camp (MI)	
Jim Ramstad (MN)	
Jim Nussle (IA)	
Richard E. Neal (MA)	
Sam Johnson (TX)	
Jennifer Dunn (WA)	
William J. Jefferson (LA)	
Mac Collins (GA)	
John S. Tanner (TN)	
Rob Portman (OH)	
Xavier Becerra (CA)	
Philip S. English (PA)	
Karen L. Thurman (FL)	
Wes Watkins (OK)	
Lloyd Doggett (TX)	
J.D. Hayworth (AZ)	
Jerry Weller (IL)	
Kenny Hulshof (MO)	
Scott McInnis (CO)	
Ron Lewis (KY)	
Mark Foley (FL)	

Two amendments were offered to the Bill, both by Pete Stark (CA). The first would have conditioned China's PNTR status on Taiwan's accession to the WTO. Bob Novick on behalf of the Administration opposed on the grounds that it was at odds with WTO procedure and that we had already committed to ensure Taiwan's accession as the next order of business following China's accession. The motion failed 28 to 10.

The second amendment would have required the administration to institutionalize the existing US ban on Chinese assault weapons and munitions in exchange for PNTR. Novick again opposed after consulting with Malcolm and NSC, noting that PNTR will not compel us to lift the ban, that we have no intention to lift the ban, and that we would not lift the ban as a result of any WTO challenge. The motion failed 16 to 6 with many members away for a House floor vote.

Possible Presidential Addresses

Principals may discuss two possible statements by the President. As you know, consideration is being given to a Sunday night televised address. In addition, Greenspan may do a departure statement with the President on Thursday. Greenspan has already endorsed. See attached Letter.

As requested, following is an elaboration on our suggestions for limiting the subpoena power of the Levin commission. As you know, the current proposal would be for the commission to be composed of 23 individuals -- 9 members of the House (5 from the majority and 4 from the minority party), 9 members of the Senate (again, 5 from the majority and 4 from the minority party) and 5 members appointed by the President.

As currently drafted, Levin's proposal gives the Commission broad powers to:

> "require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, and electronically recorded data <u>as it considers necessary</u>. Subpoenas may be issued over the signature of the Chairman of the Commission or any member designated by the Chairman, and may be served by any person designated by the Chairman or such member." (Emphasis added.)

<u>Option 1: Limiting the Scope of the Subpoena Power.</u>

- We recommend replacing the phrase "as it considers necessary" with "as are necessary for the performance of its functions under this title." This would restrict the scope of the subpoena power because it would take away some of the Commission's discretion. Under the current formulation, subpoenas may be issued if the Chair of the Commission, or his designee, in his or her own judgment, decides that they are "necessary." With our recommended fix, there would be room for the subpoenaed entity or minority members of the Commission to argue that a particular exercise of the subpoena power was not "necessary" for the performance of the Commission's functions.
- The Commission's "functions" would be to monitor the PRC's compliance with: (1) internationally-accepted human rights standards; (2) internationally-recognized worker rights; (3) development of the rule of law; and (4) bilateral cooperation between the U.S. and China on these issues. The Commission is also charged with compiling lists of individuals persecuted by the Chinese government.
- We are concerned that it would not be feasible to limit the scope of the subpoena power by listing certain subsets of the Commission's jurisdiction. For example, it would be difficult politically to justify

accepting subpoenas in the area of human rights monitoring but not the area of development of the rule of law.

Option 2: Require a Supermajority of 19

Require that 19 members of the Commission must vote in favor of a subpoena before it could be issued.

- This would mean that, if the 18 Members of Congress on the Commission were united in their support for a subpoena, they would have to get at least one Presidential appointee to the Commission to go along with them before the subpoena could be issued.
- This may be difficult to sell to Levin, but along with option 3 offers the most protection against misuse of the authority because a Presidential appointee would be required concur in the issuance of any subpoena, including those having foreign policy impact.

Option 3: Require "one of each food group"

Require that at least one Member of Congress from the majority party, one Member of Congress from the minority party, and one Presidential appointee must vote in favor of a subpoena before it could be issued.

- This would give veto power to the Administration provided that the President could persuade all of his appointees to vote against the subpoena.
- It may not be palatable to Levin.

Option 4: Require a Supermajority of 2/3

Require that a 2/3 majority (16 out of 23) of the Commission members must vote in favor of a subpoena before it could be issued.

- Because there would be 10 Members of Congress from the majority party, they would need to get 6 of the Members of Congress from the minority party or the Presidential nominees to vote in favor of a subpoena.
- However, even if all 5 Presidential appointees voted against a subpoena, it could still be issued under this formulation.

- We understand Levin may be willing to go along with this proposal.

Recommendation

We think the most effective way of limiting the subpoena power is to give veto power to the Presidential appointees, provided that they vote together against the issuance of a subpoena. Thus, our preferred options are options 2 & 3.

These options would be strengthened if used together with option 1, but option 1 by itself is not as strong as having veto power.

Attachment -- Background on Ways and Means Markup and Senate Finance Markup -- Wednesday, May 17, 2000

Ways and Means

Mr. Levin, in favor of the Bill, emphasized the importance of safeguards, noting that we walked away from the deal last spring because we did not have it, and praising the negotiation by Sperling and Barshefsky in November. This is the first step with China, he said, with many more to follow. He described a fragile balance between outward-oriented Chinese interested in trade and inward-looking conservatives in China opposed to it, and implored his colleagues to tip the balance in the right direction.

Mr. Cardin clarified that the surge protection would protect us from Chinese steel but not Russian or Korean. He proposed changes to Section 201 and our dumping laws (captive production) to afford stronger import protection with all countries. His motion was opposed as not germane (intending to rewrite US trade laws with nothing to do with China). He withdrew but hoped to raise at some later time.

Mr. Klezca, opposing the Bill, extracted from Novick the point that the benefits of China's accession presented no unique privileges to the United States, but would be enjoyed by all countries. "So there's nothing special here for the US," he concluded. He closed saying he did not want to fling open the doors of the US never to have an opportunity to take up tangential issues again.

Mr. Hougton, bravely, asserted in favor of the Bill that investment overseas, to the extent that would flow from PNTR, was founded on investments at home at a ratio of $1:2.

Mr. Coyne, opposing the Bill, stated his reasons as not wanting to lock in a regime that would not protect worker rights and other rights, and that EPI's study released yesterday suggested job losses for PA.

Mr. Shaw resurrected the Rev-Power case, a long standing dispute over the adherence of a Chinese firm to an international court ruling, demanding further Administration attention to a settlement. He supported the Bill notwithstanding.

Mr. Matsui illustrated the limits of a "tariff-benefits only a la 1979 Agreement" approach, pointing out that with lower auto tariffs a US car maker might send a vehicle to China to enjoy lower tariffs but be forced to use Japanese distribution networks once reaching Chinese shores because we didn't enjoy those rights without PNTR.

Mr. English described his desire for a future amendment improving our CVD law coverage of NME countries (apply CVD law to China now), but withheld for the time being and supported the Bill.

Mrs. Thurman said she would support the Bill but would "jump off the train" if the rest of the items in the Levin Package (e.g., Commission), did not follow in suit.

Mr. Foley complained that Administration letters assuring hearty enforcement, such as given to tomato growers in the NAFTA context, were worthless, and asked how this would be different. But also noted that ending annual NTR debates would go a significant distance toward bolstering campaign finance reform (a novel basis for a pro-NTR vote I thought) by canceling a lobbyist perennial.

Mr. Becerra admonished Novick not just to pursue annual WTO review of China, but to aggressively pursue such. He supported the Bill.

Senate Finance

On May 17, the Senate Finance Committee voted to report S. 2277 to the Senate, a Bill containing clean PNTR language. The vote was 19 to 1. Only Mr. Jeffords objected, out of protest over the incarceration and lack of due process in China of a Middlebury College student.

Mr. Lott commended the Committee for laying the groundwork for a Senate vote. He noted it would not be an easy vote and that the positions of certain Senators could not be taken for granted. He said he hoped to keep the Bill clean of amendments, but would have to look at what the House version contained before reaching judgements.

To reporters afterward, Mr. Moynihan noted his preference for a clean Bill but willingness to look at what the House produced. Asked specifically about the Surge component, he said it was already largely in US law, and would not make too big a difference one way or the other.

One other member, Mr. Hatch, wondered aloud in his remark about the "parallel legislation" being prepared in the House, speculating that it would bring the import surge determination standard down.

There were no amendments offered.

THE WHITE HOUSE

China Trade Relations Working Group

Keep the Doors to China Wide Open: Solidifying Trade Status Would Keep Pressure on Beijing to Improve on Rights and the Environment

by Dai Qing

L.A. Times
April 20, 2000

BEIJING--I have heard on the news that two of the groups I admire most in the United States--the AFL-CIO and the Sierra Club--are against granting permanent normal trade relations status with China. They both organized large-scale activities, including mass demonstrations, to make their statements to American policymakers and to the public.

As a Chinese environmentalist and human rights activist, I disagree with their position, although I am fully sympathetic with their causes. It is public knowledge that China is among the worst violators of labor rights and basic environmental standards. Walking on almost any street in almost any city, one can easily spot such violations: unemployed workers selling their old stuff, hoping to put some food on their family dinner tables; migrant workers sleeping under bridges and in construction sites, willing to take any job for a roof over their heads; water resources highly polluted by industrial waste; suffocating industrial pollution. Most government officials at all levels are so corrupt that they have become part of the pollution.

The disagreement between me, together with many of my fellow human rights activists and environmentalists in China, and our counterparts in the U.S. is not over the principles of environmental protection and labor rights. Rather, the disagreement is with the means of improving human rights, including labor rights, implementing environmental protection and promoting democracy and freedom.

I believe that permanent normal trade status, with its implication of openness and fairness, is among the most powerful means of promoting freedom in China.

Wei Jingsheng, a prominent dissident now residing in the U.S., argues that in order to improve human rights conditions in China, the international community must constantly put pressure on the Chinese government. Wei is absolutely right about the international pressure, but he is wrong when he suggests that annual renewal of normal trade relations should be taken as an opportunity to provide such pressure. How does international pressure work in promoting human rights and environmental protection in China? I would like to argue that such pressure works only when doors are kept open, when pressure presents positive solutions and, above all, when engagement is involved.

After the communist takeover in 1949, China was cut off from the rest of the world until it began to open up in the late 1970s. Millions of people starved to death or were persecuted, executed or otherwise deprived of the most basic human rights.

International pressure either did not exist or did not work because the outside world had little information about what was happening. China had no need to respond to the international community.

Starting in 1978, the open-door policy completely changed the way China responded to the world. Today, permanent normal trade relations is a powerful means to keep China's doors as open as possible. International pressure works better by providing positive solutions. Poverty promotes ignorance and negligence among the public to environmental issues and human rights abuses. With prevalent poverty in today's China, the government runs a successful propaganda campaign that argues that the right of economic survival overrides other human rights. The Chinese people are looking for positive support from the international community, especially the industrialized world. Permanent normal trade relations would send the Chinese people a powerful and positive message: The most powerful industrialized nation today will work with the Chinese people to build a new world order. This would put enormous pressure on both the government and the general public to meet the international standard not only on trade, but also on other issues, including human rights and environmental protection.

International pressure works best when engagement is implemented. An American congressman once made the point that because China was not a normal state, it made no sense to treat it normally. Yet if the international community does not treat China normally, China will remain abnormal.

Wei compares the annual renewal of trade status to the periodic renewal of a driver's license, which keeps China anxious to a certain level. This is exactly the most destructive way of thinking. The U.S. should never take the role of traffic police in world trade because China, or any nation, should not be subject to the naked authority of another nation. Instead, the U.S. should engage China in the process of becoming a full member of the international community. Permanent normal trade status would be an important part of the engagement plan.

Dai Qing, a Chinese Environmentalist and Investigative Journalist, Is Winner of the 1993 Goldman Environment Award and the 1992 Golden Pen for Freedom Given by the Paris-based International Federation of Newspaper Publishers. She Was Imprisoned in China for 10 Months From 1989 to 1990.

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President

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Office of Congressional Affairs

Date: 5/16

Number of Pages Excluding Cover ___

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FROM: Dario J. Gomez
Congressional Affairs Specialist

PHONE: (202)395-6951 FAX: (202)395-4656

SUBJECT: Amendment by Mac Collins (R-GA) for tommorrow's markup

COMMENTS:

Amendment to H.R. 4444

Offered by Mr. Collins

At the end of title I, add the following (and conform the table of contents accordingly):

SEC. ____. REVIEW OF EXTENSION OF NONDISCRIMINATORY TREATMENT (NORMAL TRADE RELATIONS TREATMENT) TO THE PEOPLE'S REPUBLIC OF CHINA.

(a) Report.—Not later than January 1 of each year beginning in 2001, the President shall prepare and transmit to the Congress a report for the prior fiscal year that contains an analysis of the following:

(1) The effects of the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of the People's Republic of China on the interests of the United States.

(2) The costs and benefits to the United States of the extension of such nondiscriminatory treatment.

(3) The value of the continued extension of such nondiscriminatory treatment.

(4) The extent to which import surges of products of China have occurred in the United States by reason of such nondiscriminatory treatment.

(5) The effect of such nondiscriminatory treatment on the United States textile industry.

(6) The extent to which improvements have been made to the transportation infrastructure of China.

(b) CONGRESSIONAL DISAPPROVAL OF CONTINUED EXTENSION OF NONDISCRIMINATORY TREATMENT.—

(1) GENERAL RULE.—Notwithstanding the other provisions of this title, the provisions of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.) shall apply to the People's Republic of China and the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of China shall cease to be effective if, and only if, a joint resolution described in subsection (c) is enacted into law pursuant to the provisions of paragraph (2).

(2) PROCEDURAL PROVISIONS.—The requirements of this paragraph are met if—

(A) the joint resolution is enacted under subsection (c); and

(B) the requirements of section 125(b)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3535(b)(2)) applicable to resolutions under such section are met with respect to the joint resolution under this section, except that the report referred to in section 125(b)(2) of such Act shall be deemed to refer to a report referred to in subsection (a) of this section.

(c) JOINT RESOLUTION.—

(1) IN GENERAL.—For purposes of this section, the term "joint resolution" means only a joint resolution of the 2 Houses of Congress, the matter after the resolving clause of which is as follows: "That, notwithstanding any other provision of law, the provisions of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.) shall apply to the People's Republic of China and the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of China shall cease to be effective.".

(2) PROCEDURES.—The provisions of paragraphs (2) and (3) of section 125(c) of the Uruguay Round Agreements Act (19 U.S.C. 3535(c)(2) and (3)) shall apply to joint resolutions to the same extent as such provisions apply to resolutions under such section.

(d) REINSTATEMENT OF PRESIDENTIAL WAIVER AUTHORITY UNDER SECTION 402(d) OF THE TRADE ACT OF 1974.—If a joint resolution is enacted in accordance with this section, then the President may exercise the authority of section 402(d) of such Act with respect to the People's Republic of China, notwithstanding paragraph (1)(A) of such section in the case of the first such exercise of the authority.

(e) RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.—This section is enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

RULE OF LAW MISSION ON TRADE AND LEGAL SYSTEM TRIP REPORT AND RECOMMENDATIONS FOR FUTURE WTO-RELATED TECHNICAL COOPERATION WITH CHINA

I. INTRODUCTION

From March 13-24, 2000 a team of three USG officials, a private sector lawyer and a legal academic visited Beijing and Shanghai to present U.S. perspectives on economic rule of law issues. Presentations were made to Chinese government officials, Chinese business and academic groups, and the American private sector on key WTO-related principles such as non-discriminatory treatment, transparency, public participation in legislation and rulemaking, independent appellate procedures and tribunals, and uniform application of laws.

The trip was designed to accomplish several goals: to learn about the process of WTO implementation in China; to assess current levels of understanding of key concepts and implementation skills of Chinese officials; to identify potential subjects and interlocutors for cooperation; to learn what other governments and NGOs are doing in this regard; to discuss and understand the priorities of U.S. business in China; and to formulate recommendations for effective private sector and government-sponsored initiatives to address rule of law and WTO implementation issues.

II. THE U.S. DELEGATION

The delegation ("Delegation") was led by Phoebe L. Yang, Special Coordinator for China Rule of Law at the U.S. Department of State. Accompanying her were Linda A. Wells, Director of the Commercial Law Development Division (CLD) at the U.S. Department of Commerce; James A. Truran, Senior International Trade Policy Advisor at the U.S. Department of Agriculture; Donald C. Clarke, a professor at the University of Washington School of Law specializing in Chinese law; and Daniel M. Price, an international trade lawyer in private practice who previously served as Deputy General Counsel at USTR.

III. MEETINGS IN BEIJING AND SHANGHAI

The Delegation met with representatives of a wide range of government organizations at both the central and the local levels, including State Council, ministerial and municipal agencies.

State Councillor Wu Yi, former head of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), chairs a State Council Working Group charged with overseeing the implementation of China's WTO obligations. The Delegation met with State Council agencies like the Development Research Center (DRC), the Legislative Affairs Office (LAO), and the Office for Restructuring the Economic System, which play important leadership roles in trade and investment policy formation and legislative reform. The State Economic and Trade Commission is also actively involved in the implementation process but the meeting with its officials was cancelled.

MOFTEC also plays a central role in implementing and monitoring international trade obligations, whether through its central offices in Beijing or through the counterpart agencies at the local level (often called Commissions of Foreign Trade and Economic Cooperation (COFTECs)). The Delegation met with MOFTEC's Department of Treaties and Laws, which is participating in or designing many of the training programs now being conducted in China, as well as MOFTEC think tank.

The Delegation also met with more specialized agencies like the State Intellectual Property Office; the Ministry of Agriculture; the Ministry of Personnel; the Customs General Administration; the Chinese Inspection and Quarantine Agency; the Copyright, Trademark, and Patent Offices; and the like all of which play important roles in the implementation of China's WTO obligations in each of their substantive areas of responsibility.

Finally, the Delegation also met with a large number of Chinese academics and Chinese and American business representatives from services, agricultural, and manufacturing sectors.

Copies of the Delegation's schedules in Beijing and Shanghai are attached to this report as Annex A.

IV. SUMMARY OF INFORMATION GATHERED

A. <u>Chinese Officials Eager for Expert-to-Expert Consultations</u>

The Delegation was warmly received by almost all of the government officials and organizations with which we had requested meetings, although several officials requested that our meetings be held in informal settings rather than in their offices. We understand that the only meetings we were unable to secure were either with officials who misperceived the nature of the Delegation as being political (thus potentially making it difficult to avoid discussion of sensitive bilateral issues) or with officials whose involvement in the National People's Congress (NPC) annual legislative session held during our visit precluded them from meeting with us. To the best of our knowledge, of the scores of officials with whom we met, only one (at the Ministry of Agriculture) actually had been involved with the U.S. bilateral negotiations, and he left the meeting immediately after the presentations and before the informal question and answer session began (declining an invitation from the Chinese chairman of the meeting to make a few remarks).

The questions and comments offered by the Chinese officials indicated a high level of interest in the issues and, in most cases, demonstrated that a substantial amount of effort already had been devoted to analyzing what China would need to do in order to bring its laws and practices into compliance with WTO rules and commitments.

Many of the officials with whom we met have been charged with implementing China's WTO obligations. They were most interested in learning more about WTO rules, how these rules have been interpreted by dispute settlement panels, and how the United States implements its obligations. For example, we had extensive and probing discussion of notice and comment processes, the relationship between judicial and administrative agencies, and techniques for ensuring the uniform application of laws at the national and sub-national levels. The Chinese also were interested in the WTO dispute settlement process and the rules governing retaliation should a losing party fail to implement the decision of a dispute settlement panel.

Another area of great interest was the relationship between laws and administrative rules, and among regulators and judges, at the central and local levels. It appears to the Delegation that establishing consistent application of laws throughout the country may be one of the greatest challenges facing China's WTO compliance.

Transparency, uniformity, and compliance were of strong interest to Shanghai officials, businesses, and academics. Representatives of the municipal Economic Commission and the municipal People's Congress appeared to be thinking concretely about these issues and welcomed further exchanges on reforming legislative and regulatory processes. They praised a recent digital video conference organized by the U.S. Department of State's Public Diplomacy Bureau on cost-benefit issues relating to regulatory public notice and comment procedures as a good model for future cooperative efforts.

The sense of the Delegation was that the Chinese leadership clearly has charged all ministries to take the steps necessary to bring China into compliance with its obligations. Most Chinese interlocutors expressed strong commitment to accomplish this charge. Many of the officials had a surprisingly high degree of familiarity with the terms and requirements of the WTO, although expertise diminished with the officials' seniority. Not surprisingly, they were less clear about how those principles and rules can be applied in practice, particularly in the Chinese context.

B. <u>Chinese Government WTO Training Programs Underway</u>

The Delegation found that the Chinese officials we met understand that a wide circle of officials will need to participate in helping China to achieve and maintain compliance with its WTO obligations.

To that end, the government has established a three-track training program to familiarize officials and managers with the WTO: (1) one-day introductory programs for the top Party and government official of each province and State Council ministry (or administrative equivalent) being organized by the Ministry of Personnel at the Central Party School; (2) one-day introductory programs for managers of large state-owned enterprises being organized by the State Economic and Trade Commission (SETC); and (3) one-week programs for trade officials at the director general level of provincial and local ministries, including local COFTEC (or equivalent) officials, being organized by MOFTEC at an offsite training center on the outskirts of Beijing. For the third category, MOFTEC indicated that approximately 100 officials would participate in each one-week program, which would be repeated 12 or 13 times over the next year, resulting in approximately 1,300 officials receiving at least an introduction to the basic concepts and requirements of the WTO. The Delegation understood that the government already had conducted about one-third of the planned introductory training programs. The courses are being taught by Chinese law professors, Chinese negotiators, and other Chinese officials.

Some of the officials we met with have participated in the programs as trainers and expressed their discomfort with trying to train others while they were still learning themselves. As a consequence, they placed high priority in their briefing of the Delegation on the need to "train the trainers." Although we believe that the Chinese were really talking about training officials and enterprise managers rather than educators, there clearly is an urgent and unmet need for both, and the theme was echoed many times during our trip by both business groups and government interlocutors.

Officials at the Ministry of Agriculture and the Customs General Administration indicated that their agencies also were conducting training at both the central and regional levels.

C. <u>WTO-Related Programs of Other Donors Also Underway</u>

The Delegation met with local representatives of international, bilateral and non-governmental organizations that are providing assistance on WTO-related issues to discuss their ongoing projects.

The United Nations Development Program (UNDP) representative identified the MOFTEC Treaties and Law Department as its main contact point on WTO-related projects. To date, UNDP work has focused on producing studies helpful to China, for example in its WTO negotiations. UNDP plans to focus further efforts on addressing how China can avoid social disparities resulting from economic change and WTO membership. UNDP's Beijing representative said that UNDP seeks to work with the Chinese government on "experiments" where the latter is still unwilling to work with NGOs and other donors.

The European Union launched a new WTO-related legal assistance program while the Delegation was in Beijing. Organized under an agreement between the International

Law Institute of Beijing University and the Glodis Institute of Erasmus University in Rotterdam, the program will feature, among other things, a series of ten public lectures on substantive and procedural WTO law. The lectures will be given by European and Chinese scholars.

The World Bank indicated that it was assisting with the Chinese government's WTO implementation efforts and with an economic analysis of the impact of China's accession, with particular emphasis on the agricultural sector. The implementation initiative is to assist MOFTEC to establish the enquiry points called for under the WTO agreements. The economic assessment should be completed by June, when it is scheduled to be the focus of a conference in Beijing.

Australia has been operating a graduate certificate training program for Chinese officials selected by MOFTEC at the University of Adelaide for several years. It is envisaged that the program might be upgraded to provide a Masters degree upon completion. Graduates are expected to return to their government positions upon completion, but the Australians said that they felt that their training would still be useful even if the student left government because of the great need to have such market-oriented principles introduced to a wider audience in China.

The Australian representative said that additional cooperative programs were needed to help the Chinese to develop a system to gather and report commodity price information and to improve the skills of Agricultural Extension Service personnel in gathering and disseminating marketing information.

The Germans have an advisory project in commercial law with the National People's Congress which relates to WTO standards and regulations. In addition, they have an extensive training program with MOFTEC's Treaties and Law Department to provide advice and shorter-term training to the MOFTEC and COFTEC (or equivalent) officials as well as state-owned enterprise legal departments. The Germans have also been involved in training Chinese judges and have explored an ongoing relationship with the National Judges College. They also have held projects with the State Council, the State Development Planning Commission and the SETC. Their programs run from a few days to several months in length and have included advisors from many countries. All programs are conducted in English with interpretation to Chinese.

Canada has one completed and three ongoing WTO projects. Canada conducted a now-completed multi-year project training Chinese on WTO terminology and processes to help prepare the Chinese for bilateral and multilateral accession negotiations. Other WTO-related projects include work with the Ministry of Information Industry on developing an Internet policy framework and as well as an industrial and trade policy initiative in the automotive sector. Canada also is working with the Ministry of Agriculture and SDPC on an inventory of national and sub-national agricultural laws, regulations and policies that are inconsistent with WTO disciplines.

The Delegation also met with the Ford Foundation, which is planning to support a ten-day workshop for twenty mid-level Chinese officials to be held at Georgetown University Law Center in June 2000. Being planned by Professors John Jackson and Jim Feinerman, the workshop will feature an international faculty. During the eighteen months following the workshop, Ford will sponsor a series of additional seminars in China on legal systemic changes implicit in WTO membership. These in-China programs will particularly emphasize judicial review of administrative decisions and establishing administrative hearing processes.

The Ford representative also talked at length about the need to incorporate a train-the-trainers approach in all cooperative programs. She expressed the view that this is particularly important to ensure that WTO implementation is supported at the sub-national levels of the Chinese bureaucracy, which will affect the widest number of commercial activities. She also stressed the importance of continuity in training (repeated use of the same trainers and follow-up training for participants in prior programs) to ensure success. Finally, she indicated that the donor community as a whole could work better together to share translations and instructional material.

D. Business Community Seeks Better Understanding of Rights and Industry-Specific Implications of WTO Accession

We found that the American and Chinese business communities were eager to talk with us about both the subjects of the Delegation's presentations and the impact of WTO membership on their individual industries and the Chinese economy as a whole.

American concerns focused primarily on the willingness and ability of central and sub-national Chinese officials to relinquish their powers to control commercial activity or to embrace non-discriminatory application of laws and regulations. They also expressed their wish for basic information about how to find out which parts of the WTO agreements and China's WTO accession agreements would affect their specific industries and for guidance concerning the steps they could take after China's accession to monitor and ensure the Chinese government's honoring its WTO obligations.

The American business representatives who met with the Delegation were unanimously supportive of the idea of providing advice, training and resource materials to the Chinese lawmakers and regulators who will be charged with implementing China's WTO obligations, echoing the consensus in Washington that it is in the U.S. interest to do whatever we can to help the Chinese understand and apply WTO principles and rules.

The Chinese business representatives and academics with whom we met also were highly interested in the subject, but equally unsure of what China's WTO accession would mean or how they could find out whether specific provisions of the WTO or accession agreements addressed their industries. Not surprisingly, they were more concerned about the ability of Chinese businesses to compete on equal terms with foreign enterprises and about social safety net matters.

V. POSSIBLE OBJECTIVES OF U.S. EFFORTS

The primary objective of potential cooperative programs, whether public or private, would be to ensure that the United States and its businesses secure the full benefits of China's WTO membership by enhancing China's efforts to implement its WTO obligations. Moreover, specific knowledge of U.S. judicial, regulatory, and rulemaking processes serves to promote more transparent and procedurally fair legal institutions and procedures as China's legal and economic system.

The Delegation believes that support is needed and would be well received to accomplish four objectives: (1) building understanding and acceptance of the principles underlying WTO rights and obligations; (2) expanding knowledge of WTO agreements, institutions, and operations; (3) improving skills to implement WTO-type requirements by expanding knowledge of how to establish specific mechanisms for implementation, such as enquiry points, publication of laws, and judicial review; and (4) strengthening the institutions (e.g., institutes, interagency trade policy and review committees, government ministries) and professional networks necessary to effectively comply with the duties, and secure the benefits, of WTO membership.

A. Understanding and Acceptance of WTO Principles

We found a high degree of interest in transparency and competition principles, but an uneven degree of understanding about the practical application or significance of those principles.

Programs addressing fundamental concepts would help to ensure that problems with Chinese laws and practices are recognized and resolved more easily by providing a framework in which to analyze and address them. Understanding fundamentals will be essential for officials assessing Chinese laws and regulations, developing solutions for bringing and keeping China in compliance with its obligations, and securing the political and practical support needed to consistently implement those solutions.

B. Knowledge of WTO Agreements, Institutions and Operations

Chinese officials and businesses operating in China need a clearer picture of the constituent parts (the agreements and institutions) of the WTO and the interaction of those parts. Most of those have only a superficial understanding of how the various WTO agreements fit together, and how those agreements fit with a new member's protocol of accession. The level of knowledge about the outcomes of dispute settlement panels and how to find these and other sources of information concerning the practical significance of rules and commitments appears to be uniformly low.

Greater understanding of the rules and procedures of the WTO system should result in greater compliance with them, as well as greater internal consistency in the application of those rules.

C. Implementation of Obligations

Officials from each sector affected by China's WTO accession will need to understand its effect in their own field. Patent, trademark, and copyright officials, for example, will need to master both the theoretical and practical significance of the TRIPS Agreement, their notification and related obligations and how national treatment concepts apply to intellectual property rights.

Training in WTO legal analysis and introduction to the research tools and resources needed in order to stay abreast of new developments is needed.

Training to develop a wider knowledge of how to bring laws, regulations, and procedures into compliance with WTO requirements also is needed. For example, officials would benefit from knowing more about the rulemaking, administrative procedures, and judicial standards of review applied by the United States and other member nations. Many officials have been or will be charged with creating new mechanisms for implementing principles such as transparency, uniformity of laws, and administrative review. We can offer U.S. models to consider.

Additional information and examples of the processes by which a national government can ensure consistent application of national laws throughout its territory also are needed. Seeing how the U.S. and other nations have organized themselves and introduced accountability into their operations will help.

D. Building Chinese Capacity to Sustain Compliance

Assistance programs cannot and should not last forever, but we can use them to ensure that our results become self-sustaining and do not disappear after our funding runs out. To that end, WTO-related programs should incorporate strategies for supporting the development of institutions and personal networks that will continue to work on trade and investment matters.

China will need the capacity to develop and implement sound trade policies without external support. Part of this capacity will depend on the strength of its educators and educational systems, including continuing education of mid-level and senior officials, judges, and law enforcement personnel. A second part will involve enabling and requiring local governments, including courts, to adhere to national laws and regulations. A third part will depend on enhancing national-sub-national government relationships across ministries as well as with the private sector (through, for example, interagency trade policy and review committees) to ensure unified, rational policy formation and implementation. Finally, both the U.S. and Chinese governments would benefit from establishing expert-to-expert relationships that will enable both countries to improve their effectiveness and to facilitate smoother cooperation in the future.

Some of the assistance activities recommended below address institution-building requirements directly: preparation of Chinese reference materials on the WTO, for example. More frequently, institution-building elements are incorporated into the design of activities with additional purposes: the creation of a core interagency network of WTO experts through participation in a common training program, for example.

VI. POTENTIAL COOPERATIVE ACTIVITIES

We have provided below an initial list of cooperative activities that we believe will be needed in China over the course of the next two years. Some of the programs are precursors to others, and some would not be timely immediately; but the list is indicative of the types of activities the Delegation considers necessary for the U.S. to have a substantive part in helping China to achieve compliance with its WTO obligations.

A. WTO Immersion Course

A series of eight to ten one-week programs to be offered approximately once per month in Beijing to a core group of mid-level "rising star" officials drawn from most if not all of the key trade and investment agencies, plus approximately two educators who will be involved in ongoing trade policy training (perhaps from some of the Party schools). The core group would attend all programs in order to develop an overall understanding of the WTO and its application, as well as to develop ongoing working relationships with their colleagues from other ministries. Individual programs also would be attended by a small number of officials interested in the subject being covered that week (e.g., additional patent officials attend the IP program; additional customs officials attend the tariff program). Formal sessions would be coupled with small group and individual consultations. In most cases, a one-week session would include two days of training and three days of more informal programming. Subjects to be covered over the course of the entire series of one-week programs might include:

Introduction to International Trade
Transparency/Administrative Actions/Lawmaking
Customs (classification, valuation, rules of origin, etc.)
GATS (framework, financial services, professional services, telecom, etc.)
Investment/TRIMs
TRIPS and Enforcement of Intellectual Property Rights
Government Procurement/State Trading
Textiles
Agriculture
Trade Remedies (AD/CVD/Safeguards)
Dispute Settlement (WTO/Arbitration)
Institution Building (trade policy formulation/implementation; private sector input/advisory groups)

B. Course on the Interaction of Central and Sub-National Trade and Investment Rules

A three-session series of programs, each session composed of a two-day seminar coupled with three days of consultations, to be led by a lawyer specializing in WTO issues, an official from the State Relations Division of the Office of the U.S. Trade Representative, an American law professor, and appropriate Chinese counterparts. Presentations by American and Chinese business representatives addressing the impact of inconsistent application of laws on commercial interests also would be incorporated. Chinese participants would include officials from regulatory agencies, courts, legislative affairs offices, and economic restructuring offices at the national and sub-national levels. For continuity, the same core group of Chinese participants would take part in each of the three sessions.

The first session would cover the potential WTO implications of different application of laws and regulations at the central and various sub-national levels. It will identify issues of non-uniformity and discuss potential consequences should those issues go unaddressed.

The second session would include a comparative analysis of what other nations do to prevent or correct such problems and discussion of the potential preventative and corrective measures that would be appropriate in China. Speakers would include Chinese, U.S., and other non-Chinese experts.

The third session would review China's post-accession experience and future prospects for harmonization of the laws and regulations affecting trade and investment.

C. Review of Administrative Actions Course

A three-session series of programs, each session composed of a two-day seminar coupled with three days of consultations, to be led by a U.S. federal judge, a U.S. administrative law judge, a private American lawyer, and appropriate Chinese counterparts. Chinese participants would include officials from regulatory agencies, courts, legislative affairs offices, and economic restructuring offices at the national and municipal levels, as well as Chinese academics. For continuity, the same core group of Chinese participants would take part in each of the three sessions.

The focus of the first session will be the relationship between regulators, the public, and the judiciary. Topics to be covered would include notice and comment, rulemaking and adjudication functions of regulators, and intra-agency and judicial review of administrative actions, among other things. The program will address both practical issues and WTO requirements with respect to each subject. Speakers will come primarily from the U.S.

The second session would focus on potential implementation strategies for China, and include a comparative discussion of a wide variety of Western and Asian systems, current Chinese practices, and potential Chinese reforms. Speakers would be a mix of Chinese, U.S., and other non-Chinese experts.

The third session, to be held several months after the second session, would review the prior discussions and consider the status of progress in implementation of transparency and review processes in China. Chinese speakers would predominate.

D. Legislative and Regulatory Drafting Skills Development Program

A two-day seminar coupled with three days of consultation led by U.S. Congressional staffers, U.S. Executive Branch officials, and appropriate Chinese counterparts. Issues covered would include comparative analysis of the Chinese and American legislative and regulatory systems (how a bill becomes law/how regulations are promulgated), WTO transparency requirements, economic benefits of transparency, and the importance of precision in drafting. Chinese participants would include officials responsible for drafting and reviewing legislation drawn from the national and sub-national People's Congresses, Legislative Affairs Offices, and Treaties and Laws Departments of various ministries at the national and sub-national levels.

E. Economic Impact Analysis Cooperative Program

A three-part series of exchanges between U.S. and Chinese officials responsible for analyzing the economic impact of WTO accession, trade reforms, and tariff reductions, including training in U.S. modeling and information gathering techniques. Emphasis would be placed on the importance of considering both direct and indirect impacts of reforms (i.e., the impact of services liberalization on information technology consumers as well as on telecom companies themselves). The first exchange would be a two-week visit to China by two American economists, probably from the International Trade Commission. Subsequent sessions may be in China or the U.S., as appropriate. Chinese participants would include economists from both national and sub-national agencies.

F. Sectoral Implementation Courses:
- Intellectual Property Rights
- Standards Formulation & Implementation
- Public Procurement

Three topic-based series of implementation programs, each covering one of the three subjects named above. Each series would include three to four one-week seminars in China (not necessarily always Beijing) spaced three to four months apart, on various issues relating to the selected topic. The core group of Chinese participants would include mid-level "rising star" officials drawn different parts (operationally and geographically) of agencies concerned with that particular subject, plus a few judges and educators who will be involved with the issue on an ongoing basis.

Unlike the sessions of the WTO Immersion Course on the same subjects, which are policy-based, these seminars would place particular emphases on implementation issues and techniques.

The core group would attend all programs in order to develop an overall understanding of the WTO's application to the specific subject, as well as to develop working relationships with their colleagues from other ministries. Individual programs also would be attended by a small number of officials interested in the particular aspect of the subject being covered that week (additional border agents to a "how to stop pirated goods from entering the country" session of the IP seminar series or additional judges to a "role of the judiciary in enforcing intellectual property rights" session, for example). One- or two-day formal training sessions would be coupled with three-day small group and individual consultations.

On the basis of our consultations, we recommend that at least three separate Sectoral Implementation Courses be conducted: Intellectual Property Rights, Standards Formulation and Implementation, and Public Procurement.

G. State-Owned Enterprise Seminar

A one-day program conducted by the same team leading the Public Procurement Immersion Course. The seminar would familiarize managers of state-owned enterprises with the WTO obligations applicable to their operations.

H. Industry Sectoral Seminars

One or two-day seminars addressing the impact of WTO accession on specific industries or economic sectors, from the perspectives of both domestic Chinese trade and Chinese exports. The seminars should serve as an opportunity to discuss the obligations of WTO membership with respect to the subject sector; the economic benefits of those obligations; and the steps necessary to implement those obligations in a practical, transparent and non-discriminatory manner. The seminars also should develop a public-private dialogue in both nations concerning the creation and application of rules affecting the subject sectors.

The potential speakers for this program would depend on the chosen topics, but could include U.S. Government officials from the Department of Commerce, the Office of the United States Trade Representative, the U.S. Small Business Administration, the Department of Treasury, the U.S. Securities and Exchange Commission, the U.S. Federal Reserve Board or other U.S. bank regulators, State Insurance Commissions, Bar Associations, private companies and trade associations, and the appropriate counterparts from Chinese ministries and public agencies.

Among the sectors we would recommend be addressed in such sectoral seminars are manufacturing industries (including automobiles), agricultural goods, banking, insurance, accounting, legal, construction, telecommunications, and other service industries. Electronic commerce would be another recommended sectoral focus.

I. Trade Remedies Seminar

A two-day seminar led by officials from the U.S. Department of Commerce and the U.S. International Trade Administration, and perhaps the Court of International Trade. The seminar would explain the U.S. trade remedies system and the steps Chinese exporters to the U.S. should take to ensure that the terms of sale of their products are not considered to be unfair. Chinese participants would include managers and attorneys of Chinese exporters, as well as MOFTEC and SETC Treaties and Laws Department lawyers and selected sub-national counterparts. The U.S. training team also would be expected to give a short, side presentation to officials who will serve as commercial attaches at Chinese embassies abroad, so that they will understand what is happening when dumping or subsidy claims are levied against Chinese goods.

J. WTO Speakers Bureau

A CEO/Senior Government Officials (current or former) "Speakers Bureau" designed to give program organizers a ready source for persons who might address WTO issues in formal or informal settings unrelated to their primary purpose for being in China.

The Speakers Bureau could operate in three dimensions: (1) providing a standing list of individuals who could be identified as potential speakers for U.S. State Department Public Diplomacy (PD), AmCham, and other non-governmental programs; (2) establishing a system for notifying PD, AmCham, and others of upcoming visits to China of individuals who would be willing and able to make WTO-related remarks; and (3) providing a vehicle for notifying the U.S. coordinator of PD-sponsored visits to China or the U.S., so that the coordinator can flag opportunities to raise WTO points or incorporate WTO programming into the visits.

To be most effective, these opportunities should include background and on-the-record interviews with journalists.

K. Digital Video Conference Series

A series of twenty digital video conferences with Beijing, Shanghai, Guangzhou, Shenyang, and/or Chengdu experts on special issues which arise over the course of China's implementation of WTO requirements. The selection of topics would be flexible and made according to issues which arise in the course of other training programs or by request from Chinese officials, academics, and legal experts; but might include topics such as cost-benefit analyses of regulatory practices that allow for public notice and comment or judicial review of administrative adjudicatory decisions.

L. Current Officials/Experts Consultative Network

A list of Americans willing to answer faxed or e-mailed questions from Chinese officials to be provided to corresponding Chinese officials/experts.

M. WTO Primer for Chinese Officials

A booklet in Chinese and English explaining WTO fundamental principles, agreements, institutions, and dispute settlement process as well as the relationship between bilateral agreements, the accession protocol, and the basic agreements (could be a joint project of Chinese and U.S. experts).

N. WTO Primer for Chinese and American Business

A booklet in Chinese and English explaining WTO agreements, institutions, and dispute settlement process as well as the relationship between bilateral agreements, the accession protocol, and the basic agreements. The booklet could also cover how to present concerns to a host government which is potentially non-compliant with WTO requirements as well as how to work with one's own government to press the matter one's concerns about such non-compliance. This should be a joint project of Chinese and U.S. experts following up preparation of the officials' primer.

O. Executive Summary of the WTO on Video

A two- to three-hour videotape or DVD presentation by U.S. and Chinese experts reviewing key WTO concepts and implementation issues that could be circulated to national and sub-national government agencies, academic and research institutions, and the Chinese and foreign business communities in China. The purpose of the video would be to provide a basic introduction to the WTO to persons who are interested in the subject, whether or not they will be directly involved in implementing China's obligations. We expect that the presentations on the video would be divided into segments that could be viewed separately by audiences with varying levels of interest (i.e., the first hour might cover the basic framework, the second hour might cover basic implementation issues, and the third hour might cover the impact of accession on specific sectors of the economy or legal system in China.)

P. WTO Libraries

The Economic, Commercial, and Public Diplomacy Sections of the U.S. Embassy and the U.S. Consulates in China, MOFTEC, the State Development Research Center, and the State Legislative Affairs Office, as well as each of their counterparts in key localities, should be provided with a small (25-volume) collection of English language WTO reference materials.

Q. Agriculture Courses, Exchanges and Workshops

Unlike other potential areas of cooperation, a series of courses, exchanges, and workshops already is being planned by the U.S. Department of Agriculture under the "Agreement on U.S.-China Agricultural Cooperation" signed in April 1999. Activities in support of WTO participation will include workshops in both China and the U.S. on WTO implementation. In addition, a team of high-level representatives from the Ministry of Agriculture and other key ministries and bureaus will visit the U.S. for a three-week training course. This will be followed by a larger Ministry of Agriculture funded team who will spend between two and three months working with U.S. academics, legal experts, and government officials on issues associated with WTO membership. Finally, small teams from the U.S. Department of Agriculture are prepared to conduct workshops in China in conjunction with U.S. commodity organizations in an effort to enhance the understanding of international trade and trading rights at regional levels.

VII. POTENTIAL SOURCES OF FUNDING

Based on our discussions, the most pressing need is for education of government officials in WTO rules and principles. To that end, we and leaders of the American business community have discussed their consider funding the WTO Immersion Course and the WTO Introductory Video described in VI.A. and VI.N. respectively. We believe that these two programs will have the most immediate impact and lay the foundation for further work.

Additional funding for the other programs described above will be sought from other private trade and business associations, NGOs, multilateral organizations, and the U.S. Government.

VIII. NEXT STEPS

In consultation with the Permanent Normal Trade Relations Working Group and U.S. officials in China, the Delegation should:

1. Debrief interested USG and non-USG groups consulted in preparation for the trip;

2. Follow up with the American Chamber of Commerce and the U.S.-China Business Council in Beijing regarding potential resources and possible programming ideas;

3. Develop notional budgets for each proposed activity;

4. Identify other private trade and business associations and NGOs who might be interested in supporting U.S. efforts;

5. Prepare a brief description of the goals of the U.S. effort for dissemination and discussion with the entities identified in item 4 (above);

6. Make programmatic preparations such as identifying experts, resource materials, potential contractors, etc.

11/12/13 04:50 FAX

05/16/00 14:31 ☎202 647 6820 EAP/CM 001

United States Department of State

Washington, D.C. 20520

FROM: BOB GOLDBERG
Deputy Director for Economic Affairs
Office of Chinese and Mongolian Affairs

TEL: 202-647-6796
FAX:202-647-6820

TO:

Tim [illegible]

☐ PER DISCUSSION ☐ FOR CLEARENCE ☐ FYI

Not fully cleared
May be some modifications
by Susan Shirk or
Bryan Samuel

Levin - Membership and Voting

Background: The current version of the Levin Congressional/ Executive Commission would have 23 members, 9 drawn from the House of Representatives, 9 from the Senate, and five from the Executive Branch. Five of the 9 from each of the House and Senate would be selected from the majority party and four would be from the minority party. Executive Branch members would include one from the State Department, one from the Department of Labor, one from the Department of Commerce and two at-large representatives; all would be appointed by the President. Commission decisions would be made by majority vote of the members present and voting, with two thirds of the Members constituting a quorum for the purposes of voting.

Points:

- The President should have full discretion in making the Executive's appointments of five members to the Commission.
- Assuming full discretion in making those appointments, we would have no problem with Executive appointees voting on Commission decisions.

Question:

Why does the President need "discretion" in appointing Executive branch members? Why not use the same model as Helsinki Commission, where three members of the Executive Branch - State, Commerce and Defense - sit on the Commission?

Answer:

-- Helsinki was sui generis, a response to unique set of historical circumstances.

-- It has been exceedingly successful as an international initiative, supported by the 55-members of the Organization on Security and Cooperation in Europe.

-- Levin, by contrast, is a U.S. initiative, without the involvement of China and other countries.

-- To preserve the independence of the Commission and prevent placing policy officials in a position where they might find themselves at variance with Administration positions, we believe it best that the President be allowed to appoint private citizens who would exercise their best judgment as members.

-- The Administration is prepared to work closely with the Commission, to brief the Commission as requested and ensure that Administration reports of interest are sent to the Commission.

Levin - WTO Recommendations

Background: Under the current version of the Levin Congressional/ Executive Commission, the Commission would issue a report to the President and Congress not later than 12 months after the enactment of the Commission. The report "may contain recommendations for legislative or executive action."

Points:

- The Administration welcomes the opportunity to review a Commission report on its findings.
- Any recommendations that the Commission makes should clearly be consistent with America's WTO obligations.
- The Administration will take the Commission's recommendations into consideration - but will not consider them binding - when formulating policy.

Question:

Is the Administration prepared to carry out recommendations which the Commission will make in its annual report?

Answer:

-- At this point, your question is speculative since we do not know what the Commission's recommendations will be.

-- However, we will certainly read the Commission's reports with great interest.

-- The Administration intends to make sure that all of its policies and actions are consistent with our WTO obligations.

Levin - Subpoena Power

Background: The current version of the Levin Congressional/ Executive Commission would allow the Commission to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, e-mails as it considers necessary. Subpoenas may be issued over the signature of the Chairman of the Commission or any other member designated by the Chairman and may be served by any person designated by the Chairman or such member.

Points:

- The Administration does not favor subpoena power for the Commission.

- We are concerned that the frequent subpoena of documents and perhaps even subpoena of documents not currently envisioned as falling under the Commission's purview could interfere with an agency's deliberative process.

- The Commission could also request that Congress subpoena documents on its behalf, a process that we believe would make the Commission more judicious in its requests for information.

- The Commission's strength should be that it operates by consensus and is a forum for cooperation, both in terms of its own deliberations as well as its interactions with the Administration.

Question:

Why is the Administration not in favor of subpoena power for the Commission?

Answer:

-- First, the Administration plans to be in constant contact with the Commission and is prepared to share documents and reports that would help the Commission carry out its mandate.

-- We are, however, concerned that frequent subpoena of documents could interfere with the deliberative processes of individual agencies.

-- We are prepared to explore any and all alternatives to subpoena power, including ways in which the Commission and the Administration might consult and come to agreement on release of information to the Commission.

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*** ACTIVITY REPORT ***
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RECEPTION OK

TX/RX NO.	0456
CONNECTION TEL	
CONNECTION ID	
START TIME	05/16 14:44
USAGE TIME	01'38
PAGES	6
RESULT	OK

Definition of "Government of the Peoples Republic of China"
Levin Bill Section 4(2)

Levin's Bill defines the Government of China for the purposes of this legislation as:

> GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA.—The term ''Government of the People's Republic of China'' means the central Government of the People's Republic of China and any other governmental entity, including any provincial, prefectural, or local entity, and any enterprise that is controlled by the central Government or any such governmental entity or as to which the central Government or any such governmental entity is entitled to receive a majority of the profits.

We have advised striking the latter portion of the definition as follows:

> GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA.—The term ''Government of the People's Republic of China'' means the central Government of the People's Republic of China and any other governmental entity, including any provincial, prefectural, or local entity~~, and any enterprise that is controlled by the central Government or any such governmental entity or as to which the central Government or any such governmental entity is entitled to receive a majority of the profits.~~.

The reasons are as follows:

- Under U.S. law, companies owned by governments are not viewed as being the government (separate juridical entities).
- Many state-owned enterprises are presently being transferred away from traditional Government of China management and ownership.
- The definition above would inadvertently include many Chinese firms that are private sector managed but have nominal relationship to some Chinese government entity, and moreover, would include Chinese foreign joint ventures where the foreign party has a 49% stake or less.
- Non-transparent accounting practices make it untenable to determine whether the Chinese government receives the "majority of profits" in any given case. Further, this definition might create an incentive to avoid improving transparency, and disincline Chinese firms to avail themselves of newly available US accounting services exported to the Chinese market.
- Many of the provisions in the bill that this language implicates are not related to actions by a company but only actions of "governmental" bodies, e.g., only the government can promulgate laws and regulations.
- Under section 102 of the draft bill, however, the Commission would be responsible for

monitoring the “acts of the People’s Republic of China” which reflect compliance with or violation of human rights, in particular those contained in the International Covenant on Civil and Political Rights.

- Section 102(c) relating to Victims Lists requires the Commission to compile and maintain lists of persons believed to be imprisoned, detained, or placed under house arrest, tortured or otherwise persecuted by the Government of the People’s Republic of China in pursuit of the enumerated rights. Under the current definition, this would require examination of the practices of companies and a determination of whether they are engaging in these onerous practices.

- Section 102(d) relates to monitoring the development of the rule of law and refers, for example, to the processes by which statutes, regulations rules and other acts of the Government of the People’s Republic of China are developed and become binding within China. Including companies within this definition simply makes no sense in this context. This problem exists throughout this section.

Tasker for markup materials

NEC/Lee Overarching themes/questions

Administration's template for positions at mark-up

No amendments to PNTR bill
Amendments have to be related to implementation of China agreement – no amendments to trade laws for this reason
Amendments only if do not erode support
Separate bills vs. one bill (for Senate if Baucus introduces Levin equivalent, Admin position)

USTR Administration's bill

Standard graduation from Jackson-Vanik

What will President certify? What does "at least equivalent" mean?

PNTR after accession – what has to happen until China becomes a member? What will we expect from China before membership?

NEC/Lee Levin bill

Administration's position: endorse fully: support, but have language changes; as long as bipartisan, support
Amendments to Levin?

Explanation of each of titles

State Commission – comparison to Helsinki; statement of support

- Including Scope
- Membership & Voting
- Subpeona
- WTO-consistent recommendations (Ex-Im, IMF/WB etc)

USTR Surge – how does it work; how does it implement protocol; how does it compare to 201/406
Amendments to it – perishable products?

USTR/DOC Compliance $ – what used for?
(others per USTR, Specific questions by agency)

DOS/DOC/DOL Technical assistance
deviation from current law – Admin. support?

what will each agency do?

Treasury	Prison Labor Task force

Trade law provisions

DOC	English – application of CVD law to nmes – HR3198

Cardin

NEC/Lee	Amendment to 201 – Admin position (from 1505)
DOC	Captive production – Admin position (from 1505)
DOC	Sunset rules ad/cvd
USTR	WTO DS Commission
DOC	Amicus brief in cold-rolled re captive production

Other issues

DOC	Cox JV II
NSC/DOS	Cuba policy
NSC/DOS	Article 21 – Taiwan
WH Leg	Annual NTR waiver

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THE UNITED STATES TRADE REPRESENTATIVE
Office of the General Counsel

Executive Office of the President
Washington, D.C. 20508

3-9-00 Date

6 Number of Pages Excluding Cover

Time Sent

TO:	NAME:	AGENCY:	PHONE #:	FAX #:
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	Malcolm Lee			69290

FROM: Catherine Field

PHONE:

FAX #: (202) 395-3639

CONTACT: If you have any problems with this document, please contact 202-395-3150.

SUBJECT: Rangel Letter

COMMENTS:

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

March 8, 2000

The Honorable Charles B. Rangel
U.S. House of Representatives
Washington, DC 20515-6348

Dear Congressman Rangel:

This letter and the attached analysis responds to your letter regarding permanent normal trade relations ("PNTR") for China and the Agreement on Trade Relations Between the United States of America and the People's Republic of China ("1979 Agreement"). I appreciate the opportunity to reconfirm the Administration's position that granting PNTR to China is necessary if we are to guarantee for American businesses, workers and farmers the full market access opportunities and rules commitments in the bilateral WTO accession agreement negotiated in November 1999.

Our WTO accession agreement includes specific, comprehensive and enforceable commitments that benefit the wide spectrum of U.S. industry, service providers and agriculture, providing new opportunities for U.S. workers and strong protections against injurious imports from China. The 1979 Agreement, a 3-page document based on part of the GATT 1947, does not capture the full range of China's commitments in the accession agreement. Only Congress' passage of PNTR does so.

The argument that the 1979 Agreement would provide the United States the full benefits of China's commitments to other WTO Members is legally unsustainable. While the 1979 Agreement may provide the basis for the United States to claim certain limited benefits, relying on the 1979 Agreement would deprive the United States of irtually all market access negotiated for services, critical elements necessary for meaningful market access for goods, key provisions negotiated to safeguard against injurious imports, as well as other special rules commitments and vital enforcement rights. The rights conferred by the 1979 Agreement would leave U.S. interests across all sectors at a substantial competitive disadvantage with foreign interests that would enjoy the full benefits of China's WTO membership.

As I noted, this letter and the attached analysis reconfirms the Administration's position. I invite you to share them with your colleagues, as well as any witnesses that testified before the Committee. In the meantime, if we can provide additional information, please do not hesitate to contact me. I look forward to continuing to work with you and the Committee on this very important effort.

Sincerely,

Charlene Barshefsky

Attachment

ATTACHMENT

The 1979 Agreement

The Agreement on Trade Relations Between the United States of America and the People's Republic of China ("1979 Agreement") is one of nineteen bilateral commercial agreements negotiated pursuant to Section 405 of the Trade Act of 1974 (19 U.S.C. 2435) with countries covered by the so-called "Jackson-Vanik" amendment. The 1979 Agreement with China contains just ten articles, and, as with other countries with which we have negotiated Jackson-Vanik agreements, creates relatively few rights and obligations for the United States and China. As described in a Ways and Means trade staff memorandum included in the Committee Report on the Congressional hearings on the 1979 Agreement:

> The Agreement with the PRC ... takes the form more of a set of principles, concepts, and a framework for nondiscriminatory bilateral trade relations obligating both Governments but yet to be worked out in specific measures and procedures.[1]

Articles II, III and V of the 1979 Agreement are most relevant to the issue you raise and each is discussed below.[2]

Article II sets forth an obligation for the United States and China to accord most-favored-nation (MFN) treatment[3] to each other's products, but only as defined in certain provisions of GATT

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[1] Trade staff memorandum on Trade Act Requirements for Extension of Most-Favored Nation and Other Trade Benefits and Their Application to the People's Republic of China, *reproduced in* H.R. Doc. No. 96-209, at 7 (1979) ("Staff Memorandum").

[2] Article I contains the general statement that the parties shall "undertake to adopt all appropriate measures to create the most favorable conditions for strengthening, in all aspects, economic and trade relations . . . so as to promote the continuous long-term development of trade between the two countries." It also states that commercial transactions will be "effected on the basis of contracts" and "concluded on the basis of customary international trade practice and commercial considerations such as price, quality, delivery, and terms of payment." The latter provision was meant to limit the ability of the Chinese government to introduce political considerations into commercial transactions. Article IV provides that the United States and China agree to "encourage and support the trade promotion activities" of government trade offices and to provide facilities "as favorable as possible" for the operation of such offices." Article VI addresses the protection of patents, trademarks, copyrights, and industrial property rights. Article VII provides for consultations on any problems arising in bilateral trade between the United States and China. Article VIII encourages settlement of contract disputes through "friendly consultations, conciliation, or other mutually acceptable means"; and, if such efforts fail, authorizes arbitration, the results of which should be recognized and enforced by their respective authorities. Article IX permits each signatory to "take any action for the protection of its security interest." Article X establishes that the Agreement has a three-year duration, which is automatically extended for additional three-year terms unless a party notifies its intent to terminate at least 30 days prior to the end of a term. Separately, a party may suspend the agreement if it does not have domestic legal authority to carry out its obligations.

[3] MFN tariff treatment is now known as NTR tariff treatment under U.S. law.

1947. The GATT is only one of the twenty-five agreements that impose substantive commitments on all Members of the World Trade Organization (WTO). An MFN requirement based on the corresponding GATT Articles does not encompass the full range of obligations in those twenty-five agreements. Thus, China and the United States are obligated, under the 1979 Agreement, to provide MFN tariff treatment to each other's goods and provide non-discriminatory treatment with respect to customs formalities, internal taxation and distribution, transportation, warehousing and the like for imported goods. However, this provision does not cover rights, for example, that are now subject to the General Agreement on Trade In Services (GATS), a separate agreement under the WTO. Specifically, our right under the 1979 Agreement is limited to granting U.S. exports access to China's infrastructure (e.g., access to wholesale and retail outlets, trucking and other forms of transport, maintenance and service shops) on the same terms as goods from other countries and does not extend to owning or operating one's own distribution system.

Article II also incorporates the requirement of section 405 (b)(1)(B) that the parties "reciprocate satisfactorily concessions with regard to trade and services, particularly tariff and non-tariff barriers to trade, during the term of this Agreement." This provision establishes a basis for evaluating the benefits of the Agreement based on commercial transactions between U.S. and Chinese companies and does not create an independent obligation to permit each party's companies to provide services.

Article III fulfills the Section 405(b)(8) requirement that bilateral commercial agreements include business facilitation provisions to promote trade, such as permitting the establishment of tourist offices and the facilitation of entry and establishment of commercial representatives. Article III obligates the United States and China "to accord firms, companies and corporations, and trading organizations of the other party MFN treatment" (i.e., U.S. firms will be treated no less favorably than firms of other countries in China) in the facilitation of their business operations, for example, by promoting visits and commercial exchanges, permitting the establishment of business offices, and improving the facilities needed for the favorable conduct of business, such as office space and residential housing, telecommunications, and visa issuance.[4]

Provisions on business facilitation are contained in all of the nineteen bilateral agreements and their scope and purpose have been interpreted in the context of the specific provisions contained in Article III and corresponding provisions of similar Agreements. Article III does not establish a broad MFN requirement for economic and trade relations *per se*, nor does it require either China or the United States to permit the other party's companies to provide the services listed. The reference to telecommunications, for example, simply obliges China and the United States to provide each other's companies with the same level of telecommunications services that third countries' companies receive. Where the 1979 Agreement refers to the issue of services, it does so specifically through language such as that in Article V of the Agreement.

[4]Staff Memorandum at 8.

Article V addresses financial aspects of trade. The United States and China agreed that payments for transactions must be in freely convertible currencies or made otherwise in accordance with agreements signed by the transacting parties. They also agreed to provide "all necessary facilities for financial, currency and banking transactions" for the other country's nationals and companies on "terms as favorable as possible" and on an MFN basis. Article V does not, however, require China to permit U.S.-based financial institutions to establish offices in China. Instead, it merely obliges the parties to "look with favor" on allowing each other's financial institutions that may be present in the market to participate in "appropriate aspects of banking services related to international trade and financial relations," without defining what such "appropriate aspects" are, and to permit those financial institutions already established in each other's territory to provide such services on an MFN basis.

THE 1979 AGREEMENT DOES NOT CONFER THE FULL BENEFITS OF THE WTO ACCESSION AGREEMENT

Based on the terms of the 1979 Agreement, the United States would not be entitled to a wide range of rights and market opportunities under the WTO Agreement, including many of the significant commitments we obtained in the bilateral accession agreement concluded in November 1999. Virtually all market access negotiated for services, several critical elements for meaningful market access for goods, key provisions negotiated to safeguard against injurious imports, as well as special rules commitments and vital enforcement rights would not be available.

Among the rights available under Article II of the 1979 Agreement is the right to tariff reductions that China will make. These reductions, however, will be of limited, if any, value absent other rights not available under the 1979 Agreement. The following example is instructive. What value are reductions in auto tariffs if the company cannot distribute autos, provide financing to customers, or repair and maintain the car? U.S. companies would have rights to engage in these activities only under the accession agreement, not the 1979 Agreement. Moreover, conditions for importing, such as local content, offset, and technology transfer, which are prohibited under the accession agreement, but not the 1979 Agreement, will further undermine the value of tariff reductions.

While U.S. imports would be permitted access to China's distribution operations on the same basis as imports from other countries, U.S. firms would not have the right to own, operate or manage their own distribution service, hire their own employees, and utilize their own infrastructure. The right to engage in all of the activities related to the distribution of goods, including wholesaling and retailing, maintenance and repair, testing and quality control, transport, packaging, advertising and other related services is critical to obtaining meaningful market access, but none of these would be available unless the bilateral accession agreement becomes operative with respect to the United States.

Virtually all of China's services commitments would be unavailable to U.S. service providers under the 1979 Agreement. Thus, China's telecommunications market access commitments, including Internet, satellite, paging, and other value-added services would be not available to U.S. companies. Similarly, the commitments in the WTO Basic Telecommunications Agreement would not apply. None of the market access commitments with respect to life and non-life insurance would apply. The full range of professional services opportunities, including those for architectural, legal, accounting, and engineering service providers, negotiated in the bilateral accession agreement would also be denied to U.S. firms. Indeed, China's commitment to "grandfather" existing rights of companies at the time of accession would not apply to U.S.-invested companies. China could thus roll back existing rights of U.S. companies, which is relevant to all businesses now established in China. With respect to financial services, while Article V of the 1979 Agreement may provide a basis for arguing that MFN treatment is required for limited types of financial services, U.S. firms would not be able to provide services related to securities and auto financing and the commitments in the WTO Financial Services Agreement would not apply.

The 1979 Agreement contains no enforcement mechanisms for government-to-government disputes and is, under Article X, subject to termination at will every three years. It is undisputed that under the 1979 Agreement the United States could not avail itself of the dispute settlement provisions of the WTO Agreement with respect to trade with China. Subjecting trade with China to a rules-based system with strong enforcement mechanisms is essential. Otherwise, any trade rights we might assert under the 1979 Agreement could only be pursued through unilateral action, sharply reducing predictability in the trading relationship and subjecting the United States to counter-retaliation.

The dispute settlement process is a critical weapon in the United States's enforcement arsenal. Consider, for example, the adverse effects on U.S. agricultural interests if the United States does not have dispute settlement rights.

Our ability to enforce the tariff-rate quotas (TRQs) we negotiated, including the special TRQ administration provisions, with respect to bulk agricultural commodities like wheat, corn, rice, cotton and soybean oil, would be undermined. Only other WTO members would be able to challenge China's deviations from specific commitments on the administration of TRQs, including commitments to allocate shares of the TRQ according to a strict timetable and allowing a portion of the trade under the TRQ to be conducted by entities other than state trading enterprises. Under the 1979 Agreement, the United States could act only if this deviation discriminated against U.S. exports. The United States would have to rely on third countries to enforce the very rights we negotiated.

Unlike other WTO members, the United States would not be able to challenge a Chinese export subsidy that disadvantaged U.S. exports in third country markets. For example, if China used export subsidies to sell corn in Asian markets, the United States (the world's largest corn exporter) would not have the right to challenge this unfair trade practice. Again, the United States would have to rely on third countries to represent our interests.

Similarly, only other WTO members would be able to challenge the full range of China's domestic subsidies. The United States would have recourse to U.S. trade remedy laws only to protect the U.S. market, and could not address unfair competition in China or third-country markets.

Additionally, in its trade with other WTO members China would have an obligation to follow the science-based requirements of the SPS agreement. However, under the 1979 Agreement, the United States could challenge a measure only if it unjustifiably discriminated against U.S. exports, *i.e.*, we would not have grounds to challenge a measure that was not supported by scientific risk assessment.

Finally, the special rules commitments we negotiated would not be available to the United States, even assuming there was a forum in which to assert the rights negotiated. Thus, for example, the prohibition negotiated against conditioning imports or investment on performance requirements, including technology transfer and offsets, and the restrictions on enforcing local content and similar provisions would not apply to U.S. enterprises. While U.S. law contains safeguard mechanisms and provisions to deal with unfair trade, the provisions we negotiated in November 1999 to protect against surges and to continue to apply our non-market economy methodology establish an agreement by China to accept these rules without resorting to retaliatory action.

In sum, the argument that the 1979 Agreement confers on the United States the full benefits of the comprehensive WTO accession agreement with China is without legal foundation and stretches credulity. The 1979 Agreement is a bilateral agreement subject to the interpretation of the parties without the benefit of an objective dispute settlement mechanism and is itself subject to termination. The WTO accession agreement presents the United States the first real opportunity to subject China to a rules-based system on the basis of specific, comprehensive, meaningful and enforceable market access commitments, as well as significant protections against import surges and other special rules commitments. Only passage of PNTR will secure these benefits for the United States.

U.S. DEPARTMENT OF STATE
Office of the Spokesman

For Immediate Release **May 1, 2000**
2000/493

STATEMENT BY RICHARD BOUCHER, SPOKESMAN

RESPONSE TO COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM'S FIRST ANNUAL REPORT

The following statement was issued by **Harold Hongju Koh, Assistant Secretary for Democracy, Human Rights and Labor**, and **Robert Seiple, Ambassador-at-Large for International Religious Freedom**.

"The Commission on International Religious Freedom, an independent advisory body created in 1998 to report on and make recommendation to the President, Secretary of State, and the Congress on the state of religious freedom around the world, has released its first annual report. We have only just received the final copy of the report, and will study it carefully. This year's report focuses on three countries in particular—China, Russia and Sudan. In its descriptions of violations of religious freedom, the report appears to parallel closely the evaluations of the State Department's annual *Country Reports on Human Rights Practices*, released in February of this year, and the *International Religious Freedom Report*, released in September 1999 (both available at www.state.gov).

"As required by law, the report also makes recommendations for U.S. policy options. We welcome many of the proposals, including the report's call for increased focus on the Sudanese government's abuses of human and religious rights, and its recommendation for increased monitoring of religious liberty at the local level in Russia. The Administration has already enhanced our efforts on each of these issues, and we will look for opportunities to do even more in the future.

"At the same time, the report contains a number of recommendations with which we disagree, especially the recommendation that the Congress impose human rights conditionality on permanent normal trading relations (PNTR) with China. We profoundly believe that conditionality will not advance the cause of religious freedom in China, and will not improve the circumstances of any of the religious adherents about whom we are all deeply concerned. This is because conditionality as proposed by the Commission—and even a vote to reject PNTR—provides little more than the appearance of U.S. leverage against the Chinese government. It would not prevent Chinese entry in to the World Trade Organization (WTO); nor would it deprive China of the economic benefits of WTO membership. What it would do is deprive the U.S. of the full economic benefits of China's market-opening commitments, and severely restrict our ability to positively influence the course of events in China—including our ability to promote religious freedom. It would reduce the role of American companies in bringing higher labor standards to China and in forcing local companies to compete in improving the lives of their workers.

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"However, with unconditional Congressional approval of PNTR, China will enter the WTO bound by the full range of economic commitments contained in the U.S.-China bilateral trade agreement. These commitments will move China in the direction of openness, accountability, reform, and rule of law, all of which will improve the conditions for religious freedom in China. Failure to approve PNTR would deprive the U.S. of the ability to hold China to all of these commitments. Given China's likely entry into the WTO, it would also put us in conflict with WTO rules, which require immediate and unconditional provision of PNTR for all WTO members.

"Despite our fundamental disagreement with the Commission on the issue of conditionality, we share the Commission's deep concern about abuses of religious freedom in China, and we remain committed to sustained U.S. Government efforts to promote religious freedom. President Clinton has made promotion of religious freedom abroad a priority of his presidency and an integral part of our foreign policy. The President created the first-ever Advisory Committee on Religious Freedom Abroad, directed that we expand coverage of religious freedom in the State Department's annual human rights report, and supported and signed the legislation that brought into being the International Religious Freedom Commission.

"As demonstrated by our sponsorship of a recent resolution ~~on~~ China at the UN Human Rights Commission in Geneva, we will continue to keep faith with those in China who face persecution due to their religious practices. We also look forward to continued dialogue with the commission on how best to promote our common goal of improving the observance of religious freedom in China and around the world."

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Friends Committee on National Legislation

. . . a Quaker lobby in the public interest

RE: Support Permanent Normal Trade Relations with China

May 1, 2000

Dear Representative,

Soon you will be asked to vote on granting Permanent Normal Trade Relations (PNTR) with China. We at the Friends Committee on National Legislation (FCNL) recommend that you vote for granting PNTR for China.

We share your concern for advancing human rights, religious freedom, labor rights, and environmental protection for the people of China. We are concerned about the impact of economic globalization on the standard of living and quality of life for workers both at home and abroad. We are also concerned about future cooperation and progress with China in arms control, regional security, negotiations concerning the future of Taiwan, and the pacific settlement of disputes.

We believe that normalization of trade relations with China is an important step toward advancing all of these basic human security concerns over the long term. China experts note that dramatic changes have already occurred within China over the past two decades as a result of more open exchange between China and the rest of the world. Interactions between government officials, businesses, universities, and individuals have led to a growing harmonization between Chinese institutions and their Western counterparts. This is reflected in new laws, government policies, business and labor practices, standards of behavior and expectations.

This engagement has also helped indirectly to nurture movements for social change. The student movement behind the Tiananmen Square demonstrations a decade ago and the recent widespread nonviolent demonstrations by the Falun Gong movement reflect growing movements within Chinese society that are challenging the status quo and expressing popular aspirations. These grassroots movements would not have developed or spread as quickly were it not for the gradual opening of Chinese society that has occurred and increasing interaction with the outside world. Despite the oppressive government responses, it is unlikely that the Chinese government will be able to repress popular movements such as these for long--especially if China continues along the path of economic reform and integration into the global economy.

Such engagement has led to progress with China on several important international security issues, as well. China signed and ratified the Non-Proliferation Treaty and the Chemical Weapons Convention. It signed and awaits U.S. ratification of the Comprehensive Test Ban Treaty, and, since then, it has observed a nuclear testing moratorium. It has participated in the Asian-Pacific Economic Cooperation Forum in ways that have built confidence and diminished regional tensions.

It is far more likely that China will cooperate in these areas and begin to observe international norms of behavior if it is recognized by the U.S. as an equal partner within the community of nations than if it is isolated or excluded. Granting PNTR would encourage continued progress and cooperation in all of these areas of concern. Conversely, denying PNTR and further isolating China would likely close many of these opportunities, perhaps lead to increased oppression, and undermine regional and international security.

Please vote to grant PNTR for China. If you would like additional information or have questions, please feel free to contact me or Ned Stowe, Legislative Secretary, or visit our web site at www.fcnl.org.

Sincerely,

Joe Volk
Executive Secretary

APPEAL OF CONSCIENCE FOUNDATION

RABBI ARTHUR SCHNEIER, D.D.
PRESIDENT

May 1, 2000

Dear Mr. President,

Since 1980, I personally and my colleagues in the Appeal of Conscience Foundation have worked on behalf of religious freedom and human rights in China. Over the years I have seen the ups and downs that have faced the religious communities there with varying degrees of intrusion by the government into religious life.

In the course of my seven visits, including my participation in 1998 as a member of the three U.S. religious leaders delegation to China, appointed by you, Mr. President, I have seen the transformations in a society in transition from the ravages of the Cultural Revolution to economic reform, a greater social openness and growth in the number of religious believers of all faiths.

I believe that religious freedom is still a goal dependent on giving way from the rule of man to the rule of law. Increased contact with the outside world, favorable political conditions between our two countries and China's participation in international organizations requiring acceptance of norms of the international community will encourage this process.

The Sino-American relationship is complex and, of necessity, multi-dimensional, covering trade, security, non-proliferation and issues of religious freedom. The religious communities of both countries can either impede or help advance this important relationship. The greater the web of engagement, the deeper the people to people involvement, the easier it is to tackle the more difficult issues that divide us.

With this in mind, I urge you, Mr. President, and Congress to support Permanent Normal Trade Relations and the inclusion of China in the World Trade Organization. A China integrated into the world economy and international community will benefit its citizens and will become a pillar of building a more open, democratic society based on respect for human dignity, freedom and the rule of law.

Sincerely yours,

The Honorable Bill Clinton
President of the United States
The White House
Washington DC

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Rev. Daniel Baida Su
615 Benham Court
Newark, Delaware 19711

Mr. William Clinton
White House
Washington DC 20502

April 29, 2000

Dear Mr. President,

I just want to send you this letter to let you know how I feel about the Permanent Normal Trade Relations (PNTR) issue being debated in Congress these days. This is the first letter I wrote to an elected official since I became a naturalized American citizen last December.

Please allow me to tell you a little bit about myself first. I was born and raised in China. Despite my Buddhist family background, I chose to become a Christian in China's house church movement, which Beijing government still considers illegal and is subjected to suppression and even persecution. Currently I work for China Outreach Ministries, an evangelical Christian organization headquartered in Fairfax, Virginia. Our organization is committed to reaching out to the 50,000 Mainland Chinese graduate students, scholars and their families currently on US campuses.

I am writing to commend you for your vision and leadership in trying to integrate China into the world community through the PNTR agreement. Even though I cannot honestly say I share your views in all issues, I strongly agree with you that granting PNTR is the right thing to do for both the Chinese people and the American people.

As a clergyman concerned about religious freedom and other human rights issues in China, I am particularly excited that PNTR will bring about dynamic changes in China that will be conducive to promoting the rule of law and individual rights and freedom.

I hope Congress will grant PNTR to China, which will be a major step forward toward the long term goal of improving China's human rights situation.

Thank you very much.

Sincerely,

Daniel Su

[Headquarters: China Outreach Ministries, Box 310, Fairfax VA 22030. www.ChinaOutreach.org]

NORMAL TRADE RELATIONS TREATMENT FOR THE PEOPLE'S REPUBLIC OF CHINA

Section 1: Termination of application of Title IV of the Trade Act of 1974 to The People's Republic of China (China).

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NON-DISCRIMINATORY TREATMENT–Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 *et seq.*), the President may,--

(1) determine that such title should no longer apply to China, and

(2) after making a determination under paragraph (1) with respect to China, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(b) CHINA'S ACCESSION TO THE WORLD TRADE ORGANIZATION (" WTO")–Prior to making the determination provided for in subsection (a)(1) and pursuant to the provisions of section 122 of the Uruguay Round Agreements Act (19 U.S.C. 3532), the President shall transmit a report to Congress certifying that the terms and conditions for China's accession to the WTO are at least equivalent to those agreed between the United States and China on November 15, 1999.

Section 2. Effective Dates –

(a) The extension of nondiscriminatory treatment pursuant to section 1 (a) (1) shall be effective no earlier than the effective date of China's accession to the WTO.

(b) On and after the effective date under subsection (a) of the extension of non-discriminatory treatment to the products of China, title IV of the Trade Act of 1974 shall cease to apply to that country.

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

Office of General Counsel Robert T. Novick
Tel: (202) 395-3150 • Fax: (202) 395-3639

OUTGOING TELECOPIES

To: **Lael Brainard**

Of: 6-2878

From: Robert Novick

Date: 3/24/2000

Number of Pages (Including Cover): 2

Remarks:

Please see attached.

SAFEGUARD STANDARDS

Section 201	Section 406	Section 125 Regulations
Who has standing to request proceeding: Trade association, firm, certified or recognized union, group of workers *representative of industry*; USTR, House Ways and Means, Senate Finance, or ITC	**Who has standing to request proceeding:** same as Section 201	**Who has standing to request proceeding:** Interested party, including a trade association, firm, certified or recognized union, or group of workers; USTR; House Ways and Means; Senate Finance.
What Petition must contain: 1. Specific information supporting injury claim; 2. Whether provisional relief is sought; 3. Product Description: name and description of imported article concerned, with specific US tariff provision; 4. Representativeness: names and addresses of firms represented in petition; % of domestic production of article that represented firms account for and basis for claiming representation of industry; 5. Import Data: imports for at least each of the most recent 5 full years which form the basis of claim; 6. Domestic production data: total U.S. production of the domestic article for each full year for which data are provided under paragraph (5); 7. Data showing injury: quantitative data indicating the nature and extent of injury; 8. Cause(s) of injury: enumeration and description; 9. Relief sought and purpose of relief, including type, amount, and duration; 10. Efforts to compete: what the industry is doing to make positive adjustments; 11. Critical Circumstances: If alleging, include basis for belief.	**What Petition must contain:** 1. Specific information supporting injury claim; 2. Product Description: name and description of import concerned, with specific US tariff provision; 3. Representativeness: names and addresses of firms represented in petition; % of domestic production of article that represented firms account for and basis for claiming representation of industry; 4. Import Data: for imports from a Communist country for at least each of the most recent 5 full years which form the basis of claim; 5. Domestic production data: total U.S. production of the domestic article for each full year for which data are provided under paragraph (4); 6. Data showing injury: quantitative data indicating the nature and extent of injury; 7. Cause(s) of injury: enumeration and description; 8. Relief sought and purpose of relief, including type, amount, and duration.	**What Petition must contain:** 1. Specific information supporting market disruption claim; 2. Product Description: name and description of the imported article concerned, with specific US tariff provision; 3. Import Data: for imports from China for at least each of the most recent 5 full years which form the basis of the claim; 4. Domestic production data: total U.S. production of the domestic article for each full year for which data are provided under paragraph (3); 5. Data showing injury: quantitative data indicating the nature and extent of injury; 6. Cause(s) of injury: enumeration and description; and 7. Relief sought and purpose of relief, including type, amount, and duration. ? Representation ? Provisional (i-6)
Standard for requesting consultations: May request USTR to initiate consultations.	**Standard for requesting consultations:** May request President to initiate consultations	**Standard for requesting consultations:** USTR must request consultations
Standard of relief: Provisional: clear evidence that increased imports are substantial cause of serious injury or threat thereof & delay would cause damage difficult to repair. Final: Increased imports are a *substantial cause* of serious injury or threat thereof	**Standard of relief:** Emergency: President finds emergency action necessary (no explicit statutory standard for this finding) Final: Imports of like or directly competitive article are increasing rapidly so as to be a significant cause of material injury or threat thereof. Lower burden than Section 201	**Standard of relief:** Provisional: Imports of the product that is the subject of the investigation have caused or threatened to cause market disruption and delay in taking action would cause damage that would be difficult to repair. Final: A product of Chinese origin is being imported into the territory of the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of a like or directly competitive product.

Form of relief: Provisional: increased tariffs Final: increased tariffs; quotas; voluntary export restraints (VERs); auctioned import licenses; adjustment assistance; initiate international negotiations to address underlying cause of increase in imports; submit legislative proposals facilitate efforts of domestic industry to make positive adjustments; any other appropriate and feasible action that President may take under authority of law.	**Form of relief:** Emergency: increased tariffs or quotas Final: increased tariffs or quotas, including orderly marketing agreements. (*Country specific)*	**Form of relief:** Provisional: Form of provisional relief not specified. Final: withdraw concessions or otherwise limit imports only to the extent necessary to prevent or remedy the market disruption.
Duration of relief: Provisional: 200 days Final: Initial relief may not exceed 4 years, which may be extended to 8 years based on additional ITC report.	**Duration of relief:** Emergency: Until ITC reaches a negative determination or decision on final relief made Final: Open ended/ until the country becomes a WTO member and we apply that to agreement to the country.	**Duration of relief:** Provisional: 200 days Final: For such period of time as may be necessary to prevent or remedy the market disruption

2 - 3 years
w/o retaliation

Timeline

Day	Section 201	Day	Section 406	Day	USTR Regs
0	Petition filed. ITC initiates investigation.	0	Petition filed. ITC initiates investigation	0 (20)	Petition filed. USTR initiates investigation, requests consultations with China, and sends Section 332 letter to Commission requesting assistance in gathering additional information If necessary, USTR (after consulting with the petitioner) delays the consultation, request for up to 20 days to verify or improve the petition to ensure an adequate basis for consultation.
				45 (60)	Commission sends report to USTR. TPSC agencies consider determination.
60	ITC determines whether there are "critical circumstances" if alleged in petition.		ITC holds public hearing on injury	60 (80)	Consultations with China end. USTR announces determination on whether imports of products of Chinese origin cause or threaten to cause market disruption. If affirmative, TPSC proposes action to prevent or remedy the market disruption, provides notice of proposed action, and schedules hearing.
			ITC holds public hearing on relief	75 (95)	TPSC holds public hearing.
				80 (100)	TPSC recommends remedy to President.
100	ITC holds public hearing on injury.	90	Deadline for ITC to make determination and submit Report to President	90 (110)	President announces decision on action to prevent or remedy market disruption. (Exclusion in case of effect on other industries)

120 (150) (180) (210)	ITC announces Determination on injury Determination if Commission determines case is "extraordinarily complicated" (investigation must be deemed "extraordinarily complicated" before the 100th day after petition is filed) Determination in cases deemed to have critical circumstances Determination in cases deemed to have "critical circumstances" and be "extraordinarily complicated."				
140	ITC holds public hearing on remedy if necessary.				
150 (180) (210) (240)	ITC issues report to President Report to President in "extraordinarily complicated" determinations Report to President if "critical circumstances" were alleged in investigation Report to President if determination was both "extraordinarily complicated" and has "critical circumstances."	150	Deadline for President to take action.		
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NORMAL TRADE RELATIONS TREATMENT FOR THE PEOPLE'S REPUBLIC OF CHINA

Section 1: Termination of application of Title IV of the Trade Act of 1974 to The People's Republic of China (China).

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NON-DISCRIMINATORY TREATMENT–Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 *et seq.*), the President may,--

(1) determine that such title should no longer apply to China, and

(2) after making a determination under paragraph (1) with respect to China, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(b) CHINA'S ACCESSION TO THE WORLD TRADE ORGANIZATION ("WTO")–Prior to making the determination provided for in subsection (a)(1) and pursuant to the provisions of section 122 of the Uruguay Round Agreements Act (19 U.S.C. 3532), the President shall transmit a report to Congress certifying that the terms and conditions for China's accession to the WTO are at least equivalent to those agreed between the United States and China on November 15, 1999.

Section 2. Effective Dates –

(a) The extension of nondiscriminatory treatment pursuant to section 1 (a) (1) shall be effective no earlier than the effective date of China's accession to the WTO.

(b) On and after the effective date under subsection (a) of the extension of non-discriminatory treatment to the products of China, title IV of the Trade Act of 1974 shall cease to apply to that country.

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

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To: Lael Brainard

Of: 6-2878

From: Robert Novick

Date: 3/24/2000

Number of Pages (Including Cover): 2

Remarks:

Please see attached.

SAFEGUARD STANDARDS

Section 201	Section 406	Section 125 Regulations
Who has standing to request proceeding: Trade association, firm, certified or recognized union, group of workers *representative of industry*; USTR, House Ways and Means, Senate Finance, or ITC	**Who has standing to request proceeding:** same as Section 201	**Who has standing to request proceeding:** Interested party, including a trade association, firm, certified or recognized union, or group of workers; USTR; House Ways and Means; Senate Finance.
What Petition must contain: 1. Specific information supporting injury claim; 2. Whether provisional relief is sought; 3. Product Description: name and description of imported article concerned, with specific US tariff provision; 4. Representativeness: names and addresses of firms represented in petition; % of domestic production of article that represented firms account for and basis for claiming representation of industry; 5. Import Data: imports for at least each of the most recent 5 full years which form the basis of claim; 6. Domestic production data: total U.S. production of the domestic article for each full year for which data are provided under paragraph (5); 7. Data showing injury: quantitative data indicating the nature and extent of injury; 8. Cause(s) of injury: enumeration and description; 9. Relief sought and purpose of relief, including type, amount, and duration; 10. Efforts to compete: what the industry is doing to make positive adjustments; 11. Critical Circumstances: If alleging, include basis for belief.	**What Petition must contain:** 1. Specific information supporting injury claim; 2. Product Description: name and description of import concerned, with specific US tariff provision; 3. Representativeness: names and addresses of firms represented in petition; % of domestic production of article that represented firms account for and basis for claiming representation of industry; 4. Import Data: for imports from a Communist country for at least each of the most recent 5 full years which form the basis of claim; 5. Domestic production data: total U.S. production of the domestic article for each full year for which data are provided under paragraph (4); 6. Data showing injury: quantitative data indicating the nature and extent of injury; 7. Cause(s) of injury: enumeration and description; 8. Relief sought and purpose of relief, including type, amount, and duration.	**What Petition must contain:** 1. Specific information supporting market disruption claim; 2. Product Description: name and description of the imported article concerned, with specific US tariff provision; 3. Import Data: for imports from China for at least each of the most recent 5 full years which form the basis of the claim; 4. Domestic production data: total U.S. production of the domestic article for each full year for which data are provided under paragraph (3); 5. Data showing injury: quantitative data indicating the nature and extent of injury; 6. Cause(s) of injury: enumeration and description; and 7. Relief sought and purpose of relief, including type, amount, and duration. ? Representation ? Provisional (info)
Standard for requesting consultations: May request USTR to initiate consultations.	**Standard for requesting consultations:** May request President to initiate consultations	**Standard for requesting consultations:** USTR must request consultations
Standard of relief: Provisional: clear evidence that increased imports are substantial cause of serious injury or threat thereof & delay would cause damage difficult to repair. Final: Increased imports are a *substantial cause* of serious injury or threat thereof	**Standard of relief:** Emergency: President finds emergency action necessary (no explicit statutory standard for this finding) Final: Imports of like or directly competitive article are increasing rapidly so as to be a significant cause of material injury or threat thereof. Lower burden than Section 201	**Standard of relief:** Provisional: Imports of the product that is the subject of the investigation have caused or threatened to cause market disruption and delay in taking action would cause damage that would be difficult to repair. Final: A product of Chinese origin is being imported into the territory of the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of a like or directly competitive product.

Form of relief: Provisional: increased tariffs Final: increased tariffs; quotas; voluntary export restraints (VERs); auctioned import licenses; adjustment assistance; initiate international negotiations to address underlying cause of increase in imports; submit legislative proposals facilitate efforts of domestic industry to make positive adjustments; any other appropriate and feasible action that President may take under authority of law.	**Form of relief:** Emergency: increased tariffs or quotas Final: increased tariffs or quotas, including orderly marketing agreements. *(Country specific)*	**Form of relief:** Provisional: Form of provisional relief not specified. Final: withdraw concessions or otherwise limit imports only to the extent necessary to prevent or remedy the market disruption.
Duration of relief: Provisional: 200 days Final: Initial relief may not exceed 4 years, which may be extended to 8 years based on additional ITC report.	**Duration of relief:** Emergency: Until ITC reaches a negative determination or decision on final relief made Final: Open ended/ until the country becomes a WTO member and we apply that to agreement to the country.	**Duration of relief:** Provisional: 200 days Final: For such period of time as may be necessary to prevent or remedy the market disruption

2 or 3 years w/o retaliation

Timeline

Day	Section 201	Day	Section 406	Day	USTR Regs
0	Petition filed. ITC initiates investigation.	0	Petition filed. ITC initiates investigation	0 (20)	Petition filed. USTR initiates investigation, requests consultations with China, and sends Section 332 letter to Commission requesting assistance in gathering additional information If necessary, USTR (after consulting with the petitioner) delays the consultation, request for up to 20 days to verify or improve the petition to ensure an adequate basis for consultation.
				45 (60)	Commission sends report to USTR. TPSC agencies consider determination.
60	ITC determines whether there are "critical circumstances" if alleged in petition.		ITC holds public hearing on injury	60 (80)	Consultations with China end. USTR announces determination on whether imports of products of Chinese origin cause or threaten to cause market disruption. If affirmative, TPSC proposes action to prevent or remedy the market disruption, provides notice of proposed action, and schedules hearing.
			ITC holds public hearing on relief	75 (95)	TPSC holds public hearing.
				80 (100)	TPSC recommends remedy to President.
100	ITC holds public hearing on injury.	90	Deadline for ITC to make determination and submit Report to President	90 (110)	President announces decision on action to prevent or remedy market disruption. ([illegible] is [illegible] of effect on other industries)

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