Case Number: 2010-1024-F

FOIA MARKER

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Folder Title: China PNTR - Levin-Bereuter Discussions [3]				
Staff Office-Individual: National Economic Council-Lee, Malcolm				
Original OA/ID Number: CF 1177				
Row: 23	Section: 5	Shelf: 6	Position: 1	Stack: V

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax cover sheet	Birthdates and Social Security Numbers. [partial] (1 page)	03/23/2000	P6/b(6)
002. agenda	Annotated Agenda. (2 pages)	03/2000	P1/b(1)

COLLECTION:
Clinton Presidential Records
National Economic Council
Malcolm Lee
OA/Box Number: CF 1177

FOLDER TITLE:
China PNTR - Levin - Bereuter Discussions [3]

2010-1024-F
vz1863

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

PNTR

Talking Points for Lael Brainard with Business Reps

Recent Developments

- We are coming off of a good week last week in the China PNTR campaign.

    - Taiwan's President-elect Chen offered talks with Beijing and expressed support for both China's and Taiwan's accession to the WTO following his election. The PRC leadership appeared to tone down its pre-election rhetoric.

    - Lee Hamilton traveled to Taiwan in a private capacity, and Ambassador Holbrooke had talks in Beijing. Sandy Berger will be in Beijing this week for more talks. Cross strait relations, the importance of dialogue, peaceful resolution, and reiteration of our one China policy are important parts of our message.

    - In Geneva, Secretary Albright made a strong case on behalf of our human rights resolution condemning China's human rights practices. The vote will be in April. [We do not expect much support from Europeans while their trade talks with China are ongoing, and it is unclear whether they will be very supportive thereafter either.]

    - On the trade front, the Chinese issued the necessary regulations to implement our agriculture SPS agreement on wheat, citrus and meat. We are urging China to follow up with purchases.

    - U.S. trade negotiators had constructive formal and informal discussions in Geneva with both the Chinese and with other members of China's WTO Working Party. China submitted information on a host of trade laws that must be changed, and U.S. delegation members met informally with several of our trading partners to work on elements of the protocol and working party report. The next meeting will be no later than early or mid-May, depending to some extent upon how quickly the Europeans and Chinese conclude.

    - EU Commissioner Lamy is in Beijing today for the most recent round of trade talks. We are hopeful they will conclude, but there is no reason to wait for a vote on PNTR. The President's legislation requires that he certify that the final terms and conditions of China's accession are at least equivalent to the terms and conditions of our November agreement before China receives PNTR. So Congress can approve the legislation, and PNTR will be granted only when the President certifies.

The Campaign

- Administration continues its all out efforts. With the prospect of a vote prior to Memorial Day [press reports say Armey is willing to set a date], the President will continue his meetings with members and to speak out on behalf of PNTR.

- Secretary Daley and Secretary Glickman will lead Congressional delegations of House memebers to China (Beijing, Shanghai, Hong Kong) to underscore the Agreement's benefits.

- We are finding that there is still a huge education effort needed at the most basic level.

    - It is not yet fully understood that this is a one-way agreement that requires no market opening by the United States.

    - Many do not understand that this is not a vote on whether China gets into the WTO, it is a vote on whether the U.S. gets the benefits. China enters the WTO whether or not we grant PNTR.

    - We continue to hear arguments that the U.S. can reap the full benefits of this agreement without PNTR.

- So we are engaging member by member. Each member of the Cabinet has been assigned a set of members. Many remain undecided and will not likely make their final decisions until the vote is set. [Do not discuss numbers, there are not reliable numbers on either side yet.]

- We are consulting broadly about member's questions and concerns and trying to address them.

- Are we in negotiations? No, I would not use term. We are listening and consulting. Some members do have specific ideas. We sent up a clean bill. PNTR cannot be conditioned on anything to be consistent with WTO rules.

- But we are listening to ideas that would make sense from a policy perspective and that will **BROADEN** the bipartisan consensus for PNTR.

    - We are all interested in strong and effective enforcement.

    - The Administration supplies Congress with extensive reporting on human rights and other issues, and Congress has an oversight role on foreign policy.

- You have seen the proposals out there: Levin, Baucus, Bereuter. What are your thoughts? With the objectives of both broadening bipartisan consensus and maintaining strong policies, do you find any of these constructive or acceptable?

****
*** ACTIVITY REPORT ***
****

RECEPTION OK

TX/RX NO.	0146
CONNECTION TEL	2024825875
CONNECTION ID	
START TIME	03/24 17:43
USAGE TIME	02'36
PAGES	3
RESULT	OK

#1

Overview of China WTO Accession Benefits to the United States

The United States is uniquely positioned to benefit from the China WTO Accession Agreement (CWAA). U.S. workers will gain from significant new employment opportunities and additional high-paying jobs associated with the increased production of goods for export. U.S. companies will gain from significant opportunities to export more agricultural products, manufactured goods, and services. U.S. producers will gain from strong safeguard mechanisms that protect from import surges and unfair trade policies. ~~The~~ U.S. ~~trade regime~~ will not change as a result of China's accession to the WTO. The United States will continue to have its same tariffs, trade rules, ~~and~~ additional safeguards in place after China accedes to the WTO. with

Market access

Deep cuts for tariffs in manufactured products sectors[1] affecting most U.S. exports—averaging an across-the-board 60 percent cut in tariffs for industrial products. Important gains include a 62.5 percent cut in tariffs for pulp, paper and printed material and elimination of tariffs for information technology products including electronics, telecommunications equipment, and computer equipment.

Tariff bindings for every sector. U.S. industries gain greater certainty of access with China's commitment not to raise tariffs on any products above the negotiated ceiling (bound) rates.

Huge reduction in paperwork costs—a boon to smaller exporters. Simplification, harmonization of customs procedures and licensing will slash costs of processing export orders~~, and raise profits.~~

Elimination of quotas and non-automatic licenses for all manufactured products by year 2005. Only a handful of quotas will remain after year 2003. While quotas are being phased out, the quota level will be higher than our current export levels and will increase by 15 percent each year until the quota is eliminated.

By joining the WTO, China is committing to establish a tariff-only import regime for **agricultural products**; all non-tariff barriers will be eliminated. Any other measure, such as inspection, testing, and domestic taxes must be applied in a manner that is consistent with WTO rules requiring a transparent and nondiscriminatory system and all health-related restrictions must be based on sound science.

China also committed to implementing agriculture tariff-rate quotas (TRQs) on economic rather than political criteria. These commitments are designed to ensure a transparent and consistent system for allocating shares of the TRQ to end users and creating provisions to ensure that quota-holders are not impeded in utilizing their allocations.

China has committed not to use export subsidies for agricultural products when it joins the WTO. This China's commitment is particularly useful for ~~addressing potential~~ exports of corn, rice, and cotton, which in the past have displaced U.S. product from third-country markets.

Bilaterally, China agreed to the terms for removal of scientifically unjustified restrictions on importation of **U.S. wheat and other grains, citrus and meat.**

Foreign exchange balancing requirements—which link a company's level of imports to its level of exports—will be eliminated upon accession. This allows U.S. companies to make market-driven decisions about what to import and export instead of Chinese government ~~driven decisions~~. decisions driven by the

Local currency banking will be allowed starting with foreign clients upon accession, followed by Chinese enterprises two years after accession and Chinese individuals five years after accession. Foreign currency business will be allowed without geographic restrictions upon accession. China currently limits foreign banks to foreign currency business in selected cities.

Foreign securities firms may currently only trade in a limited number of stocks designated for foreign investors and then only via shared commissions. Upon accession, China will allow foreign firms to trade these shares with no Chinese intermediary. By three years after accession, foreign entities may establish securities joint ventures (JVs) with a minority equity share for foreign investors to underwrite all shares and corporate and government debt, and trade all these securities except those equity shares restricted to Chinese investors. Also upon accession, foreign entities may establish minority JVs to manage assets of all sorts.

Insurance licenses will be granted on a prudential basis, without numerical restrictions or discretionary economic needs tests. China currently allows selected foreign companies (~~and~~ four U.S. companies) to operate in China on ~~a~~ limited basis in only two cities. including

Majority equity share for foreign non-life insurance entities will be permitted upon China's accession. Wholly-owned subsidiaries will be allowed two years after accession. Life insurance joint ventures will be permitted at 50 percent equity share upon accession.

Earlier access to and more control of distribution systems in China allowing U.S. companies to operate commission agents' services, franchising services, wholesaling, retailing and direct sales of their own products in three years post accession for almost all products.

Foreign companies will also be permitted greater control and access to other services related to distribution, including maintenance and repair, rental and leasing, advertising, technical testing and freight

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inspection, packaging, courier, storage and warehousing, and freight forwarding agency services.

The right to trade (import and export) will be permitted for almost all products within three years of accession.[1] Currently, the right to trade is strictly limited; only companies that receive specific authorization or who import goods to be used in production have such rights.

Telecommunications services are currently not permitted to be supplied by foreigners in China. However, with its accession, China has agreed to allow foreign participation for both value-added and basic services. China has also agreed to undertake all the obligations contained in the WTO Reference Paper on pro-competitive regulatory principles. Telecom services which foreigners can supply under the ~~CWEA~~ Agreement include e-mail, voice mail, online information and database retrieval, facsimile, paging, cellular, ~~satellite~~, and internet services, via any technology including satellites.

Professional service providers will now be permitted to operate in China and receive national treatment for accounting, auditing, bookkeeping, management consulting, legal, tax consulting, architectural, engineering, and computer services.

The elimination of local content requirements will result in better access for U.S. exports and eliminate unfair incentives or requirements to use domestic goods.

U.S. exports and investments will be ~~free from~~ in government-imposed conditions such as technology transfer, research and development ~~for~~ China, and offsets. Upon China's accession, such conditions may only be negotiated between the parties to a contract and not imposed or enforced by the government.

eliminates this

U.S. companies can sell their products in China and not be forced to export a certain percentage back to the United States or elsewhere. This ~~fact means that U.S. companies will not have any~~ non-market incentive to use China as an export platform.

Francine? chose this over CF's!

State-owned and state-invested enterprises will be required to buy and sell based on commercial considerations ~~enabling~~ making the purchase process ~~to be~~ more transparent for U.S. companies and providing new sales opportunities for U.S. firms.

China has agreed to establish judicial review procedures for the prompt review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings related to its WTO obligations. The tribunals will be independent of the agencies entrusted with administrative enforcement.

Greatly improved enforcement of ~~WTO rules~~ through the WTO dispute settlement process. The United States will now have allies in other WTO members to address violations of international trade norms.

China's commitments

Current U.S. practice of using a special, non-market economy methodology when calculating dumping margins in antidumping investigations involving imports from China will remain in effect for 15 years. Chinese industries will continue to have the burden of proving to the U.S. government that market economy conditions prevail in their industry to avoid application of this methodology.

China will apply its trade-related laws uniformly throughout all of China including land and seaports.

China will be required to apply equally the value-added tax (currently at 17 percent for most products) to domestic goods as well as imports under the WTO national treatment provisions.

The United States will have access to a product-specific safeguard mechanism for 12 years which will allow the U.S. to address more easily/rapidly any increasing Chinese imports in a targeted fashion, if they cause or threaten to cause market disruption to a U.S. industry.

China has agreed to incorporate under the WTO the textile-specific safeguard provided for in the U.S.–China Bilateral Textile Agreement.

---

[1]For more information on tariff reductions, see tariff summary table.

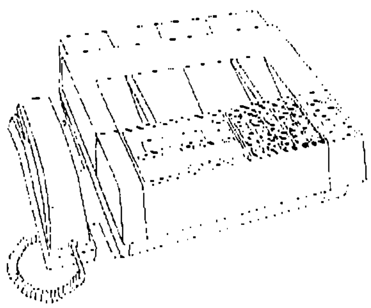
~~[2]The ability to import fertilizers, crude oil, and processed petroleum is still under negotiation by the U.S. and other WTO members.~~

ADDITIONAL INFORMATION AND ASSISTANCE

The reports for each of the 50 states are available at www.chinapntr.gov, as well as supplemental information on the benefits of China's membership in the World Trade Organization for U.S. industry and agriculture. Additional information on agricultural products is available from www.fas.usda.gov and speeches and testimony are provided on www.ustr.gov.

For counseling and assistance regarding exporting to China, call the Trade Information Center at 1-800-USA TRAD(E) or the Agriculture FAS Trade Assistance Office at 202-720-7420.

To discuss problems you are experiencing in exporting to China or a Chinese trade barrier you are encountering that is limiting your ability to export, please contact the Commerce Department's Trade Compliance Center. The fastest means to contact the Trade Compliance Center is the internet at http://www.mac.doc.gov/tcc. It can be reached also via e-mail (tcc@ita.doc.gov), fax (202-482-6097), or phone (202-482-1191).



U.S. DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE ADMINISTRATION
TRADE DEVELOPMENT
INDUSTRIAL TRADE STAFF

FAX MESSAGE

Date: 3-24-00

TO: Malcolm Lee **FAX:** 456-9290

FROM: Sarah Sipkins/Heather Wood **TEL:** 202/482-2831
FAX: 202/482-5875

Number of Pages (including this page): 3

RE: China State reports

Overview w/ USTR comments. All of these changes/edits have been incorporated.

****
*** ACTIVITY REPORT ***
****

RECEPTION OK

TX/RX NO.	0145
CONNECTION TEL	202 395 3639
CONNECTION ID	
START TIME	03/24 16:55
USAGE TIME	00'27
PAGES	1
RESULT	OK

OFFICE OF THE U.S. TRADE REPRESENTATIVE
OFFICE OF MONITORING & ENFORCEMENT
600 17TH STREET, NW
WASHINGTON, D.C. 20508
Office (202) 395-3582 Fax (202) 395-3639

FACSIMILE TRANSMITTAL SHEET

TO:	Commerce	Eric Biel	482-8368	482-6212
	NSC/NEC	Malcolm Lee	456-9299	456-9290
	State	Bryan Samuel	647-2532	647-1537
	Treasury	Mary Chaves	622-0237	622-5304

FROM: A. Jane Bradley
Assistant United States Trade Representative for Monitoring & Enforcement

DATE: March 24, 2000

PAGES: 1 (Including this cover sheet)

COMMENTS :

There will be a China safeguard mechanism meeting on Tuesday, March 28, 2000 from 2:00 to 4:00 at USTR in room 223-A.

If you have any questions, please call Sharon Johnson at 395-3150.

****
*** ACTIVITY REPORT ***
****

RECEPTION OK

TX/RX NO.	0144
CONNECTION TEL	
CONNECTION ID	
START TIME	03/24 15:36
USAGE TIME	00'27
PAGES	1
RESULT	OK

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax cover sheet	Birthdates and Social Security Numbers. [partial] (1 page)	03/23/2000	P6/b(6)

COLLECTION:

Clinton Presidential Records
National Economic Council
Malcolm Lee
OA/Box Number: CF 1177

FOLDER TITLE:

China PNTR - Levin - Bereuter Discussions [3]

2010-1024-F
vz1863

RESTRICTION CODES

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

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Fax Cover Sheet

DATE:	March 23, 2000	**CODE:**	270
TO:	Malcolm Lee	**PHONE:**	
		FAX:	202.456.9290
FROM:	Andy Weinstein	**PHONE:**	202.879.9351
		FAX:	202.393.2758

Number of pages, including cover sheet: 1

MESSAGE

Malcolm,

Below is the clearance Information for Monday's meeting at 4pm. I will get back to you with the additional information you requested regarding interest on the issue as well as other White House involvement if any.

Anthony T. Podesta
P6/(b)(6)

Claudia James
P6/(b)(6)

[001]

Sophia Collier
P6/(b)(6)

Thanks,
Andy

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CHINA PNTR ECONOMIC POLICY WORKING GROUP

March 24, 2000.

AGENDA

I. **Update from USTR**

- Working Party Discussions
- EU-China Negotiations
- Fertilizer

II. **Levin Proposal: Follow-Up From Wednesday Meeting**

III. **Implementation of the Safeguard Mechanism**

THE U.S. CHAMBER OF COMMERCE

INTERNATIONAL DIVISION
1615 H Street, N.W. • Washington, D.C. 20062-2000
Tel. 202/463-5460 • Fax 202/822-2491

Facsimile Transmission

Date:	March 24, 2000
To:	Malcolm Lee
Location:	NEC
Fax:	12024569290
From:	Myron Brilliant
	Managing Director, Asia
Subject:	Invitation
No. of pages (including cover sheet):	3

TO: Malcolm

FROM: Lael

Please take a quick look. Lael would like your thoughts on this. She will probably be free to discuss around 11:30 am this morning.

Thanks.

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 (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] in case of effect on other [illegible])

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.		
	ITC makes report public in federal register.				
165 (195) (225) (255)	Deadline for President to request supplemental information.				
195 (225) (255) (285)	Deadline for ITC to provide supplemental information				

210 (240) (270) (300)	Deadline for Presidential Action. President submits to Congress a document describing the action and reasons for taking such action				
225 (255) (285) (315)	Deadline for Presidential action if receive supplemental information.				

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-b)
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] of effect on other [illegible])

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.		
	ITC makes report public in federal register.				
165 (195) (225) (255)	Deadline for President to request supplemental information.				
195 (225) (255) (285)	Deadline for ITC to provide supplemental information				

210 (240) (270) (300)	Deadline for Presidential Action. President submits to Congress a document describing the action and reasons for taking such action				
225 (255) (285) (315)	Deadline for Presidential action if receive supplemental information.				

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.

CHINA PNTR ECONOMIC POLICY WORKING GROUP

March 24, 2000.

AGENDA

I. Update from USTR

- Working Party Discussions
- EU-China Negotiations
- Fertilizer

II. Levin Proposal: Follow-Up From Wednesday Meeting

III. Implementation of the Safeguard Mechanism

Withdrawal/Redaction Marker
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002. agenda	Annotated Agenda. (2 pages)	03/2000	P1/b(1)

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National Economic Council
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FOLDER TITLE:

China PNTR - Levin - Bereuter Discussions [3]

2010-1024-F
vz1863

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Levin

Safeguard Proposal

- Presidential action after an affirmative determination under section 406 is governed by pre-1988 section 201 standards. Section 406(b)(2)

- Under pre-1988 section 201, an affirmative determination by the ITC established a presumption that the President would provide import relief to the affected domestic industry.

- Specifically, the statute directs the President to provide import relief "***unless he determines that provision of such relief is not in the national economic interest of the United States***,...." Section 202(a)(1)(A) (pre-1988)

- Proposal: clarify the standard by which the President shall determine whether relief is "not in the national economic interest of the United States" by importing the section 301 standard.

    - Under section 301, the USTR is not required to take action against an unfair trade practice "where the taking of action . . . would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action, taking into account the impact of not taking such action on the credibility of the provisions of this chapter." Section 301(a)(2)(B)(iii)

    - Pre-1988 section 202(c) enumerates the factors that the President shall consider in determining whether to provide relief and what form such relief should take. While section 202(c) does not specifically state that the enumerated criteria are factors that the President must consider in evaluating whether action is "not in the national economic interest of the United States", criteria (4), (5), (6), (7) and (9) in section 202(c) clearly relate to that determination.

    - Therefore, we propose replacing the chapeau in section 202(c) with the following: "In making the determination under section 202(a)(1)(A), the President shall determine if relief is not in the national economic interest of the United States where the taking of such action would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action; **taking into account the impact of not taking such action on the credibility of the provisions of this section. In making this determination, the President shall take into account...**"

Old 202

SEC. 202. PRESIDENTIAL ACTION AFTER INVESTIGATIONS.

(a) After receiving a report from the Commission containing an affirmative finding under section 201(b) that increased imports have been a substantial cause of serious injury or the threat thereof with respect to an industry, the President—

(1)(A) shall provide import relief for such industry pursuant to section 203, unless he determines that provision of such relief is not in the national economic interest of the United States, and

(B) shall evaluate the extent to which adjustment assistance has been made available (or can be made available) under chapters 2, 3, and 4 of this title to the workers and firms in such industry and to the communities in which such workers and firms are located, and, after such evaluation, may direct the Secretary of Labor and the Secretary of Commerce that expeditious consideration be given to the petitions for adjustment assistance; or

(2) if the Commission, under section 201(d), recommends the provision of adjustment assistance, shall direct the Secretaries of Labor and Commerce as described in paragraph (1)(B).

(b) Within 60 days (30 days in the case of a supplemental report under subsection (d)) after receiving a report from the Commission containing an affirmative finding under section 201(b) (or a finding under section 201(b) which he considers to be an affirmative finding, by reason of section 330(d) of the Tariff Act of 1930, within such 60-day (or 30-day) period), the President shall—

(1) determine what method and amount of import relief he will provide, or determine that the provision of such relief is not in the national economic interest of the United States, and whether he will direct expeditious consideration of adjustment assistance petitions, and publish in the Federal Register that he has made such determination; or

(2) if such report recommends the provision of adjustment assistance, publish in the Federal Register his order to the Secretary of Labor and Secretary of Commerce for expeditious consideration of petitions.

(c) In determining whether to provide import relief and what method and amount of import relief he will provide pursuant to section 203, the President shall take into account, in addition to such other considerations as he may deem relevant—

(1) information and advice from the Secretary of Labor on the extent to which workers in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapter 2 or benefits from other manpower programs;

(2) information and advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapters 3 and 4;

(3) the probable effectiveness of import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relative to the position of the industry in the Nation's economy;

(4) the effect of import relief on consumers (including the price and availability of the imported article and the like or directly competitive article produced in the United States) and on competition in the domestic markets for such articles;

(5) the effect of import relief on the international economic interests of the United States;

(6) the impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(7) the geographic concentration of imported products marketed in the United States;

(8) the extent to which the United States market is the focal point for exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(9) the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

(d) The President may, within 15 days after the date on which he receives an affirmative finding of the Commission under section 201(b) with respect to an industry, request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to such industry in a supplemental report.

SEC. 203. IMPORT RELIEF.

(a) If the President determines to provide import relief under section 202(a)(1), he shall to the extent that and for such time (not to exceed 5 years) as he determines necessary taking into account the considerations specified in section 202(c) to prevent or remedy serious injury or the threat thereof to the industry in question and to facilitate the orderly adjustment to new competitive conditions by the industry in question—

(1) proclaim an increase in, or imposition of, any duty on the article causing or threatening to cause serious injury to such industry;

(2) proclaim a tariff-rate quota on such article;

(3) proclaim a modification of, or imposition of, any quantitative restriction on the import into the United States of such article;

(4) negotiate, conclude, and carry out orderly marketing agreements with foreign countries limiting the export from foreign countries and the import into the United States of such articles; or

(5) take any combination of such actions.

(b)(1) On the day the President determines under section 202 to provide import relief, including announcement of his intention to negotiate an orderly marketing agreement, the President shall transmit to Congress a document setting forth the action he is taking under this section. If the action taken by the President differs from the action recommended to him by the Commission under section 201(d)(1)(A), he shall state the reason for such difference.

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E. RELIEF FROM MARKET DISRUPTION BY IMPORTS FROM COMMUNIST COUNTRIES

Section 406 of the Trade Act of 1974, as amended

[19 U.S.C. 2436; P.L. 93–618, as amended by Reorganization Plan No. 3 of 1979 and P.L. 100–418]

SEC. 406. MARKET DISRUPTION.

(a)(1) Upon the filing of a petition by an entity described in section 202(a), upon request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the International Trade Commission (hereafter in this section referred to as the "Commission") shall promptly make an investigation to determine, with respect to imports of an article which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry.

(2) The provisions of subsections (a)(3), (b)(4), and (c)(4) of section 202 shall apply with respect to investigations by the Commission under paragraph (1).

(3) The Commission shall report to the President its determination with respect to each investigation under paragraph (1) and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such market disruption and shall include such finding in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

(4) The report of the Commission of its determination with respect to an investigation under paragraph (1) shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(b) With respect to any affirmative determination of the Commission under subsection (a)—

(1) such determination shall be treated as an affirmative determination made under section 201(b) of this Act (as in effect on the day before the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988); and

(2) sections 202 and 203 of this Act (as in effect on the day before the date of the enactment of such Act of 1988), rather than the provisions of chapter 1 of title II of this Act as amended by section 1401 of such Act of 1988, shall apply with respect

to the taking of subsequent action, if any, by the President in response to such affirmative determination;

except that—

(A) the President may take action under such sections 202 and 203 only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made; and

(B) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.

(c) If, at any time, the President finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a). If the President further finds that emergency action is necessary, he may take action under sections 202 and 203 referred to in subsection (b) as if an affirmative determination of the Commission had been made under subsection (a). Any action taken by the President under the preceding sentence shall cease to apply (1) if a negative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the Commission's report of such determination is submitted to the President, or (2) if an affirmative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the action was taken by the President pursuant to such determination becomes effective.

(d)(1) A petition may be filed with the President by an entity described in section 202(a) requesting the President to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 405 with respect to imports of an article which is the product of the country which is the other party to such agreement.

(2) If the President determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

(e) For purposes of this section—

(1) The term "Communist country" means any country dominated or controlled by communism.

(2)(A) Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

(B) For purposes of subparagraph (A):

(i) Imports of an article shall be considered to be increasing rapidly if there has been a significant increase in such imports (either actual or relative to domestic production) during a recent period of time.

(ii) The term "significant cause" refers to a cause which contributes significantly to the material injury of the do-

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(e) Any action taken by
shall cease to apply (1)
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mestic industry, but need not be equal to or greater than any other cause.

(C) The Commission, in determining whether market disruption exists, shall consider, among other factors—

(i) the volume of imports of the merchandise which is the subject of the investigation;

(ii) the effect of imports of the merchandise on prices in the United States for like or directly competitive articles;

(iii) the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and

(iv) evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.

F. AUTHORITY TO AUCTION IMPORT LICENSES

Section 1102 of the Trade Agreements Act of 1979

[19 U.S.C. 2581, P.L. 96–39, as amended by P.L. 100–418]

SEC. 1102. AUCTION OF IMPORT LICENSES.

(a) IN GENERAL.—Notwithstanding any other provision of law, the President may sell import licenses at public auction under such terms and conditions as he deems appropriate. Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

(b) DEFINITION OF IMPORT LICENSE.—For purposes of this section, the term "import license" means any documentation used to administer a quantitative restriction imposed or modified after the date of enactment of this Act under—

(1) section 125, 203, 301, or 406 of the Trade Act of 1974 (19 U.S.C. 2135, 2253, 2411, or 2436),

(2) the International Emergency Economic Powers Act (50 U.S.C. App. 1701–1706),

(3) authority under the notes of the Harmonized Tariff Schedule of the United States, but not including any quantitative restriction imposed under section 22 of the Agriculture Adjustment Act of 1934 (7 U.S.C. 624),

(4) the Trading With the Enemy Act (50 U.S.C. App. 1–44),

(5) section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854) other than for meat or meat products, or

(6) any Act enacted explicitly for the purpose of implementing any international agreement to which the United States is a party, including such agreements relating to commodities, but not including any agreement relating to cheese or dairy products.

LEVIN CHINA SAFEGUARD PROPOSAL

Facsimile Cover Sheet

To: Malcolm Lee

Phone:

Fax: 456 9290

From: **Viji Rangaswami**
Democratic Trade Counsel
Committee on Ways and Means

Phone: 202-225-2451
Fax: 202-226-1602

Date:

Total No.
Pages:

Message:

H.R. 3393
The Trade Enhancement Act of 1999

Summary and Purpose of Bill

For 25 years, section 301 of the Trade Act of 1974 has been essential to the effective conduct of U.S. trade policy. Section 301 investigations conducted by the Office of the U.S. Trade Representative ("USTR") have opened foreign markets for U.S. workers, farmers and businesses. These investigations have also led to negotiation of multilateral and bilateral agreements that liberalize trade, expand markets and strengthen rules of fair and open competition for manufactured and agricultural products and services, and improve protection of intellectual property rights. Today, benefits from these agreements flow not only to the United States, but to all WTO Members.

It has been more than a decade since Congress enacted the last substantial group of amendments to section 301 in the Trade and Competitiveness Act of 1988. During this time, there have been important changes to the world trading system, such as the completion of the World Trade Organization and its agreements. At the same time, as international trade and economic integration have grown, new barriers have arisen or have become more apparent. Together, these developments require that we update section 301 to ensure that the United States is equipped to deal with these and other trade challenges in the next decade and beyond.

Some of the most difficult and important market barriers today involve anticompetitive conduct by private entities that is encouraged, supported, or tolerated by foreign governments. This conduct implicates both the trade laws and the antitrust laws. Responding to such conduct requires updating both section 301 and the Sherman Antitrust Act so that the two bodies of law may be used together in a mutually reenforcing way.

H.R. 3393 will update U.S. law in three respects, each of which is vital to American farmers, workers and businesses:

1. Title I of H.R. 3393 will create a Special 301 mechanism (called "SPS Special 301") specifically to address market access barriers that are disguised as health and safety measures. These trade barriers block legitimate market access for food, beverages and other animal and vegetable products.

2. Title II of H.R. 3393 will provide USTR with enhanced

authority to investigate and, when necessary, apply remedies in cases involving barriers to trade resulting from the coordinated acts, policies, and practices of governments and private entities. It also will authorize USTR to refer private anticompetitive components of such cases to the Attorney General for investigation under the Sherman Act. It further will require action by the Attorney General in matters referred by the Trade Representative within a prescribed period of time.

3. Title III of H.R. 3393 will authorize USTR to draw inferences adverse to the interests of foreign respondents in cases where foreign governments, quasi-government entities, and private entities to which regulatory authority has been delegated fail to provide information relevant to an investigation.

Title I: Addressing Market Access Barriers Disguised as Health and Safety Measures

Title I of the bill will provide new and strengthened mechanisms under U.S. law for the U.S. government to challenge market access barriers masquerading as health and safety measures and ensure that all WTO Members are fully abiding by their obligations under the WTO Agreement on Sanitary and Phytosanitary Measures (the SPS Agreement).

Problem. Over the last four years, the number of trade problems related to the misuse or misapplication by foreign countries of sanitary or phytosanitary (SPS) measures has increased substantially. This new form of WTO-inconsistent protection is an important and growing obstacle to U.S. exports in critical agricultural sectors, such as citrus, apples and other fruits and vegetables, and beef, pork and other meat products. Often, SPS measures are thinly disguised attempts to protect a foreign agricultural sector from more competitive U.S. exports.

Valid SPS measures that are supported by current scientific evidence would not be considered trade barriers and would not be subject to the provision described below.

A key problem has been the proliferation of barriers on individual products or narrow product categories. This fragmented pattern of protection has made it very difficult for the Office of the U.S. Trade Representative, the U.S. Department of Agriculture and other U.S. government agencies to adopt an effective strategy to address all—or even a substantial percentage of—the numerous barriers that exist. This is because it is far easier to maintain in place a series of outmoded, unsupported measures than it is to mount an effective challenge to each of them, one by one. ?

In short, it has become clear that effectively challenging SPS barriers requires a disproportionately large commitment of resources. Further, a number of WTO Members have made the task even more difficult by refusing to provide access to relevant evidence. In this way, these WTO Members have used their control of evidence to obstruct the WTO dispute resolution system. (For more on this subject, see Title III below.)

Market access barriers disguised as health and safety measures have taken a number of forms. For example, a number of foreign countries have denied market access to U.S. exports based on "reciprocity." That is, a foreign country will block exports of U.S. food, beverage, and other animal and vegetable products, ostensibly for health reasons, but actually as retaliation for the legitimate, science-based application of U.S. health regulations to the foreign country's own exports. In other cases, countries simply block or severely restrict imports based on 30- or 40-year old decisions or data that have little if any scientific validity today. Such barriers must be eliminated.

Since 1995, the SPS Agreement has provided a mechanism in key cases—including EU–Beef Hormones and Australia–Salmon—to address effectively trade barriers disguised as health regulations. These cases in general have established helpful precedents (putting to the side implementation issues). However, these decisions have proven to be of limited use with respect to the wide range of barriers U.S. exporters face around the world, because no single government, not even the U.S. government, can muster the resources to challenge all or even the vast majority ~~of barriers.~~

The U.S. government can mount effective challenges to only a small number of the most obvious and egregious WTO-inconsistent SPS measures. A number of foreign governments have come to rely on this dilemma as a green light to establish and/or maintain WTO-inconsistent SPS measures that block exports from the United States and other countries.

Proposals. The attached legislative proposals will begin to rectify the shortcomings in the current system of remedies under U.S. law and the WTO Agreements. The first proposal is to create a Special 301 mechanism to address illegitimate SPS measures, similar to the current Special 301 mechanism to address failure to enforce intellectual property rights. The second proposal is to amend the Generalized System of Preferences (GSP) to include compliance with the SPS Agreement as a criterion in determining countries' eligibility for the continued receipt of trade preferences. Together, these proposals will enable USTR to address collectively (on a country-by-country basis) barriers to trade that USTR might not be able to address individually in a resource-effective manner.

These mechanisms will strengthen the ability of the United States to call attention to countries that violate SPS rules in more than just isolated instances. They also will provide incentives for those countries to bring their application of SPS measures into line with WTO standards.

Title II: Addressing Public-Private Market Access Barriers

Title II of the bill is directed at an equally important problem: newly apparent forms of foreign protection that rely on informal and opaque market access barriers, often characterized by private, trade-impairing conduct operating against a backdrop of government acquiescence, facilitation, or promotion.

Problem. The success of the GATT system at reducing tariffs and readily identifiable non-tariff barriers has revealed that some countries maintain a set of opaque, less formal barriers to market access. Like peeling away layers of an onion, the demise of more conventional trade barriers has made the harmful impact of these remaining obstacles more apparent—and the urgency of eliminating them even greater.

These barriers typically have both a private and a governmental component. The private component is conduct by businesses or trade associations that impedes the ability of U.S. companies to transport, distribute, advertise, price, market, or sell their goods, or restrains competition in any other way. The private conduct in turn is authorized, created, enabled, supported or allowed to continue by government measures or actions. One example of such an action is the delegation of regulatory authority to private or quasi-public entities, such as trade associations. The transfer of governmental power to such entities may authorize, enable or facilitate private anticompetitive conduct. The harm to U.S. interests stems from the private conduct operating in conjunction with the governmental measures or acquiescence.

A number of countries are using joint public-private market access barriers to gain a regulatory advantage over exports from the United States and other countries. Since the 1950's, the GATT system has condemned various forms of "indirect protection." The public-private informal barriers that are the subject of Title II of this bill are only the latest example of indirect protection. This protection is preventing the United States from realizing the full benefits of market access that we negotiated in the Uruguay Round and prior negotiating rounds. If these informal, collaborative forms of protection are allowed to continue and to grow unimpeded, there is a real and substantial risk that they will undermine confidence by American workers, farmers and businesses in the effectiveness of the GATT/WTO system.

Neither existing U.S. law, nor the agreements of the WTO currently provide an effective means to address this problem of joint public-private barriers to trade and competition. Section 301 of the Trade Act of 1974, which provides the U.S. Trade Representative with the authority to take action against foreign acts, policies or practices that are unjustifiable, unreasonable or discriminatory and that burden or restrict U.S. commerce, only partially addresses the problem of joint public-private barriers. Section 301 currently authorizes a response to a foreign government's toleration of private anticompetitive conduct. However, it does not expressly address other forms of government support for private anticompetitive conduct, collaborative public-private barriers, or the underlying private conduct.

The Foreign Trade Antitrust Improvements Act of 1982 (Public Law No. 97-290, Sec. 402) authorizes the U.S. Department of Justice and the Federal Trade Commission to take enforcement action against foreign anticompetitive conduct that restrains U.S. exports. However, this authority has been rarely exercised, and there is no requirement that it be exercised in appropriate cases.

The WTO Agreements to date have proven even less well suited than U.S. domestic law to dealing with newly apparent forms of indirect protection, such as regulatory protection and joint public-private market access barriers. For example, WTO rules prohibit discrimination against imports in transportation, distribution, sale and offering for sale of all products; however, these rules have not proven to be a reliable and effective means of redress against government and joint government-private sector actions that block or impede the ability of imported products to use these key means and channels of market access. Similarly, WTO rules require that governments publish regulations and other documents necessary so that businesses and governments are able to understand fully the commercial legal and regulatory environment in a foreign market; however, again, the WTO to date has failed to apply these rules in a way that achieves that result. Therefore, these joint public-private barriers, though presenting a significant barrier to trade, have not been addressed under existing trade disciplines.

Proposal. To bridge the gap in existing U.S. law and GATT/ WTO rules, H.R. 3393 amends both section 301 and the Sherman Antitrust Act. The bill enhances the Trade Representative's authority under section 301 and sets up a structure that will trigger action under both section 301 and the Sherman Act in cases involving private anticompetitive conduct coupled with governmental support, encouragement, endorsement, or acquiescence.

The bill enhances the Trade Representative's authority by expanding and clarifying the definition of conduct that is actionable under section 301.

Broadly speaking, section 301 contemplates two categories of foreign government measures that can give rise to retaliatory action by USTR: (1) measures as to which action by USTR is <u>mandatory</u>, and (2) measures as to which action by USTR is <u>discretionary</u>.

Mandatory action is triggered by a determination that a foreign government is (a) denying U.S. rights under a trade agreement or violating or otherwise denying benefits to the United States under such an agreement, or (b) engaging in <u>unjustifiable</u> acts, policies, or practices that burden or restrict United States commerce.

Discretionary action is triggered by a determination that a foreign government is engaging in <u>unreasonable</u> or <u>discriminatory</u> acts, policies, or practices that burden or restrict

United States commerce. An act, policy or practice may be unreasonable if it is unfair or inequitable, even if it does not violate any legal rights of the United States.

H.R. 3393 expands and clarifies the definitions of both unjustifiable and unreasonable acts, policies, or practices. To the existing definition of unjustifiable acts, policies, or practices, the bill adds

> "[acts, policies or practices that] constitute fostering by a foreign government of systematic anticompetitive activities by persons or among persons in one or more foreign countries that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods or services to a foreign market or diverting foreign goods or services toward the United States market."

Under current law, a foreign government's toleration of such activities may be unreasonable conduct, authorizing USTR to take responsive action at its discretion. This bill elevates the fostering of such activities to the status of unjustifiable conduct, requiring USTR to take responsive action.

H.R. 3393 also adds to the definition of unreasonable acts, policies, or practices. That term is defined in an illustrative, non-exclusive list of conduct described in section 301(d)(3)(B) of the Trade Act. One category of conduct described in that list is foreign government toleration of systematic anticompetitive activities by enterprises in the foreign country. Section 203(b) of H.R. 3393 expands that category of unreasonable acts, policies, or practices in two respects:

> The new definition encompasses anticompetitive conduct coordinated between or among foreign countries—not just within a single foreign country.
>
> The new definition encompasses anticompetitive conduct that has the effect of diverting goods or services to the U.S. market—not just conduct that keeps U.S. goods and services out of foreign markets.

In addition to modifying the definitions of the operative terms in section 301, H.R. 3393 establishes a new mechanism for referral by the Trade Representative to the Attorney General of cases involving anticompetitive conduct by private parties. If, at the conclusion of her investigation under section 301, the Trade Representative determines that a foreign government has engaged in conduct mandating or permitting retaliatory action, she must also determine whether there is reason to believe that the conduct involves anticompetitive activities by any person or persons. If it does, she must refer the matter to the Attorney General for further investigation under the Sherman Antitrust Act.

H.R. 3393 requires that the Attorney General undertake an investigation in matters referred by the Trade Representative. Such investigations ordinarily must be completed within 180 days of referral. If the Attorney General determines that there is reason to believe that persons have violated or are violating the Sherman Act, she must either issue a complaint and serve it on such persons, thereby commencing an action in federal court, or submit a report to committees of jurisdiction in Congress (i.e., the House Committees on Ways & Means and the Judiciary and the Senate Committees on Finance and the Judiciary) explaining her decision to refrain from issuing a complaint.

If the Attorney General determines that there is not reason to believe that persons have violated the Sherman Act—notwithstanding the referral by the Trade Representative—she also must report to committees of jurisdiction in Congress.

Title III: Addressing Foreign Non-Cooperation in Investigations

Title III of the bill is directed at instances in which a foreign government or entity refuses to cooperate with an investigation by USTR of market access barriers. This title expressly authorizes USTR to draw inferences adverse to the foreign respondent in such instances.

Problem. In recent years, there have been several instances in which a foreign government refused to cooperate with USTR in the conduct of a section 301 investigation or the enforcement of a bilateral trade agreement. In certain cases, these attempts to obstruct the conduct of an investigation extended even to refusing to meet with Cabinet-level and other senior Administration officials. These actions prevent the United States from developing a factual basis to understand and resolve important trade problems and issues and, in addition, contradict longstanding norms of diplomatic behavior.

Investigating foreign market access barriers usually requires the cooperation of a foreign government or entity. Relevant evidence typically is located in the territory of a foreign state and is often in the control of the government. USTR must rely on the foreign government either to provide evidence or to require private parties within its jurisdiction to provide evidence. By failing to cooperate, the foreign government can effectively obstruct an investigation. As a result, USTR may be unable to determine whether U.S. interests are being harmed by foreign government measures or other causes. Under current law, there is no sanction for foreign government non-cooperation.

Proposal. Title III of the bill amends section 301 to establish a sanction for foreign non-cooperation. The sanction takes the form of an inference adverse to the interests of the foreign respondent that USTR would draw in the event of non-cooperation in the provision of relevant evidence. The adverse inference would be limited to the issues on which the foreign government refused to cooperate. This sanction is modeled on discovery sanctions that courts and administrative bodies in the United States commonly apply.

Section-by-Section Description of Bill

Title I: Addressing Sanitary and Phytosanitary Measures

Section 101: Title I may be cited as the "Special 301 for Sanitary and Phytosanitary Measures Act."

Section 102: This section establishes a new "Special 301" for sanitary and phytosanitary measures, similar to the existing Special 301 for intellectual property rights (hereafter, "IPR Special 301," contained in section 182 of the Trade Act of 1974). The new SPS Special 301 is contained in new section 183 of the Trade Act of 1974. Section 183 closely tracks section 182.

SPS Special 301 requires USTR to identify countries that maintain measures ostensibly labeled as health and safety measures that deny fair and equitable market access to U.S. food, beverage, and other plant and animal products. It also requires USTR to identify which of these countries are "priority" foreign countries. These identifications will be made at the same time that USTR makes its Super 301 and IPR Special 301 identifications.

For purposes of SPS Special 301, priority foreign country practices will be: (1) the most onerous or egregious SPS measures; (2) measures having the greatest adverse impact on U.S. products; and (3) measures as to which little or no progress towards a negotiated resolution is being made.

In identifying priority foreign country practices, USTR will take into account information from other U.S. government agencies, the WTO's SPS Committee, other international organizations, and interested parties. USTR also will take into account the history of SPS measures in the country at issue and of U.S. efforts to remove such measures that act as market access barriers.

USTR may remove countries from or add them to the priority foreign country list, as appropriate. Removals from the list must be reported to Congress, along with an explanation.

The term "sanitary or phytosanitary measures" is defined as it is defined in Annex A to the Agreement on the Application of Sanitary and Phytosanitary Measures ("the SPS Agreement"). A foreign country measure would be susceptible to identification under SPS Special 301 if it violates international law or an agreement to which the United States and the foreign country are parties, or if it constitutes a discriminatory nontariff trade barrier. New section 183 contains an illustrative list of discriminatory nontariff trade barriers. The illustrative list includes a foreign country's refusal to accept U.S. sanitary or phytosanitary measures as equivalent to its own where U.S. officials have "objectively demonstrated to the foreign country that the measures achieve the foreign country's appropriate level of sanitary or phytosanitary protection."

Identification of an SPS measure as a priority foreign country measure under SPS Special 301 triggers a requirement that, no later than 30 days after the identification, USTR initiate a section 301 investigation concerning that measure. Section 102 of this bill establishes the triggering mechanism by amending paragraph (2) of section 302(b) of the Trade Act of 1974, which currently contains the triggering mechanism for IPR Special 301.

Section 103: This section amends the Generalized System of Preferences by making the extent to which a country's SPS measures are based on scientific evidence a factor in determining the country's eligibility for GSP benefits.

Title II: Addressing Joint Public-Private Market Access Barriers

Section 201: This Title may be cited as the Market Access and Structural Reform Act of 1999.

Section 202: This section sets forth findings that support the reforms contained in the subsequent sections. In particular, this section draws attention to the increasing use of joint public-private market access barriers in foreign countries. It notes the discriminatory impact that this increased use has had on U.S. exports and the inadequacy of current law to deal with the problem.

Section 203: This section amends the definitions in section 301(d) of the Trade Act.

One of the triggers for mandatory action by the Trade Representative under section 301 is the presence of an act, policy or practice of a foreign country that is unjustifiable and burdens or restricts United States commerce. The term "unjustifiable act, policy, or practice" is defined in paragraph (4) of section 301(d). Section 203 of this bill amends the definition of "unjustifiable act, policy, or practice" to include any act policy or practice that:

> "constitutes fostering by a foreign government of systematic anticompetitive activities by persons or among persons in one or more foreign countries that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods or services to a foreign market or diverting foreign goods or services toward the United States market."

Under current law, a foreign government's toleration of such activities may be unreasonable conduct, authorizing USTR to take retaliatory action at its discretion. Section 203 elevates the fostering of such activities to the status of unjustifiable conduct, requiring USTR to take action.

Section 203 also amends the definition of "unreasonable acts, policies, or practices." That term is defined in an illustrative, non-exclusive list contained in section 301(d)(3)(B) of the Trade Act. One category of conduct described in that list is foreign government toleration of systematic anticompetitive activities by enterprises in the foreign country. Section 203 of H.R. 3393 expands that category of unreasonable acts, policies, or practices in two respects.

First, the category as amended encompasses anticompetitive conduct coordinated between or among foreign countries (not just within a single foreign country). Second, it encompasses anticompetitive conduct that has the effect of diverting goods or services to the U.S. market (not just conduct that keeps U.S. goods and services out of foreign markets).

Section 204: Under the existing section 301 scheme, USTR undertakes an investigation into foreign country conduct pursuant to a petition by an interested person or its own initiative. At the conclusion of the investigation, it reaches a determination as to whether the foreign country has denied the United States rights under a trade agreement or engaged in other "unjustifiable" or " unreasonable" acts, policies or practices that burden or restrict U.S. commerce. An affirmative finding requires responsive action (in the case of denial of rights under a trade agreement or unjustifiable acts, policies, or practices) and permits responsive action (in the case of unreasonable acts, policies, or practices).

Section 204 of this bill amends the section 301 scheme to require an additional determination at the conclusion of an investigation. If USTR determines that U.S. rights have been denied or a foreign government has engaged in conduct requiring or permitting retaliatory action, it must also determine whether the conduct involves anticompetitive conduct by any natural or corporate person or persons. If the latter determination is affirmative, USTR must refer the matter to the Attorney General for investigation into whether the activities at issue constitute violations of the Sherman Act (15 U.S.C. 1-7).

Section 205: This section establishes a transition rule. It authorizes the Trade Representative to examine outstanding section 301 determinations to determine whether they involve burdens or restrictions on U.S. commerce that have not been eliminated and whether they involve anticompetitive conduct by any persons. If they do involve anticompetitive conduct by any persons, these cases must be referred to the Attorney General in the same manner as new cases under section 204 of this bill.

Section 206: This section amends the Sherman Act by creating new section 6b in Title 15 of the U.S. Code, which sets forth the procedures to be followed by the Attorney General upon referral of a matter by the Trade Representative.

Upon referral of a matter by the Trade Representative, the Attorney General will be required to undertake an investigation into whether the matter involves violations of the Sherman Act. Ordinarily, this investigation must be completed within 180 days. However, in complex or complicated cases, the Attorney General may extend her investigation by an additional 90 days, following publication in the Federal Register of her determination that such additional time is necessary.

At the conclusion of her investigation, the Attorney General must determine whether there is reason to believe that a person or persons have violated or are violating any provisions of the Sherman Act. If her decision is affirmative, she must either issue a complaint and serve it upon the alleged violators, thereby commencing a federal court action, or issue a report explaining her decision to refrain from issuing such a complaint. The latter report must be submitted to the Ways & Means and Judiciary Committees in the House of Representatives, and the Finance and Judiciary Committees in the Senate.

Reasons to refrain from commencing a federal court action despite a determination that there is reason to believe the Sherman Act is being or has been violated may include: (i) a settlement agreement reached with the alleged violators; (ii) enforcement action undertaken in the alleged violators' home country which, in the judgment of the Attorney General is likely to lead to cessation of the conduct at issue; (iii) inability to obtain personal jurisdiction over the defendants consistent with due process requirements; and (iv) considerations of comity.

The Attorney General also must submit a report to the foregoing congressional committees of jurisdiction if, at the conclusion of her investigation, she determines that there is not reason to believe that persons have violated or are violating any provisions of the Sherman Act.

Title III: Addressing Foreign Non-Cooperation in Investigations

Section 301: This section creates new section 311 to the Trade Act of 1974, which authorizes the Trade Representative to draw an inference adverse to the interests of a respondent as a sanction for non-cooperation in an investigation under section 301 of the Trade Act. The inference must have a reasonable basis, which may consist of information provided by other U.S. government agencies or departments and from other interested persons.

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A BILL

To establish a framework for relations between the United States and the People's Republic of China.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[Skipped]

SEC. 2. FINDINGS.

The Congress finds the following:

(1) In 1979, the United States opened trade relations with the People's Republic of China by entering into a bilateral trade agreement, which was approved by joint resolution enacted pursuant to section 405(c) of the Trade Act of 1974.

(2) Since ~~1979~~1980, the President has consistently extended nondiscriminatory treatment to products of the People's Republic of China, pursuant to his authority under section 404 of the Trade Act of 1974.

(3) Since ~~1979~~1980, the United States has entered into several additional trade-related agreements with the People's Republic of China, including a memorandum of understanding on market access in 1992, 2 agreements on intellectual property rights protection in ~~1995~~ 1992 and ~~1996~~1995, and an agreement on agricultural cooperation in 1999.

(4) Trade in goods ~~and services~~ between the People's Republic of China and the United States totaled almost $95,000,000,000 in 1999, compared with approximately $18,000,000,000 in 1989, representing growth of approximately 428 percent over 10 years.

(5) The United States merchandise trade deficit with the People's Republic of China has grown from approximately $6,000,000,000 in 1989 to over $68,000,000,000 in 1999, a growth of over 1,000 percent.

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(6) The People's Republic of China currently restricts imports through relatively high tariffs and nontariff barriers, including import licensing, technology transfer, and local content requirements.

(7) United States businesses attempting to sell goods to markets in the People's Republic of China have complained of uneven application of tariffs, customs procedures, and other laws, rules, and administrative measures affecting their ability to sell their products in the Chinese market.

(8) On November 15, 1999, the United States and the People's Republic of China concluded a bilateral agreement concerning terms of the People's Republic of China's eventual accession to the World Trade Organization.

(9) The commitments that the People's Republic of China made in its November 15, 1999, agreement with the United States promise to eliminate or greatly reduce the principal barriers to trade with and investment in the People's Republic of China, if those commitments are effectively enforced.

(10) The record of the People's Republic of China in implementing trade-related commitments has been mixed. While the People's Republic of China has generally met the requirements of the 1992 market access memorandum of understanding and the ~~1995~~ 1992 and ~~1996~~ 1995 agreements on intellectual property rights protection, other measures remain in place or have been put into place which tend to diminish the benefit to United States businesses, farmers, and workers from the People's Republic of China's implementation of those earlier commitments. Notably, administration of tariff-rate quotas and other trade-related laws remains opaque, new local content requirements have proliferated, restrictions on importation of animal and plant products are not always supported by sound science, and licensing requirements for importation and distribution of goods remain common.

(11) The human rights record of the People's Republic of China is a matter of very serious concern to the Congress. The Congress notes that the Department of State's 1999 Country Reports on Human Rights Practices for the People's Republic of China finds that "[t]he Government's poor human rights record deteriorated markedly throughout the year, as the Government intensified efforts to suppress dissent, particularly organized dissent.". ~~[STATE CHECKING LANGUAGE]~~

(12) The Congress deplores violations by the Government of the People's Republic of China of basic human and worker rights that are referred to in the Department of

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State's 1999 Country Reports on Human Rights Practices for the People's Republic of China, including the banning of the Falun Gong spiritual movement, denial ~~to criminal defendants~~ in many cases, particularly politically sensitive ones, of effective representation by counsel and public trials, extrajudicial killings and torture, forced abortion and sterilization, restriction of access to Tibet and Xinjiang, perpetuation of ''reeducation through labor'', and denial of the right of workers to organize labor unions or bargain collectively with their employers.

SEC. 3. POLICY.

It is the policy of the United States—

(1) to develop trade relations that broaden the benefits of trade, and lead to a leveling up, rather than a leveling down, of labor, environmental, and other standards across national borders;

(2) to pursue effective enforcement of trade-related and other international commitments by foreign governments through enforcement mechanism of international organizations and through the application of United States law as appropriate;

(3) to encourage foreign governments to conduct both commercial and noncommercial affairs according to the rule of law developed through democratic processes;

(4) to encourage the Government of the People's Republic of China to afford its workers internationally recognized worker rights;

(5) to encourage the Government of the People's Republic of China to protect the ~~basic~~ human rights of people within the territory of the People's Republic of China, and to take steps toward protecting such rights, including, but not limited to—

(A) ratifying the International Covenant on Civil and Political Rights ~~and the International Covenant on Economic, Social and Cultural Rights~~;

(B) allowing freedom of movement within the territory of the People's Republic of China, including the special autonomous regions ~~territory~~ of Tibet and Xinjiang and to foreign countries; and

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(C) affording a criminal defendants the righ~~ts to effective assistance of counsel, public trials, and freedom from unduly long detention prior to trial; and~~ to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; the right to be informed if he does not have legal assistance, of this right; the right to have legal assistance assigned to him in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it; the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law; the right to be presumed innocent until proved guilty according to law; and the right to be tried without undue delay.

(6) to ~~condemn~~ highlight in the United Nations Human Rights Commission and in other appropriate fora violations of human rights by foreign governments and to seek the support of other governments ~~for such condemnations~~ in pressing for improvements in human rights and labor rights practices.

SEC. 4. DEFINITIONS.

In this Act:

(1) DISPUTE SETTLEMENT UNDERSTANDING.— The term "Dispute Settlement Understanding" means the Understanding on Rules and Procedures Governing the Settlement of Disputes referred to in section 101(d)(16) of the Uruguay Round Agreements Act (19 U.S.C. 3511(16)).

(2) 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~~.

(3) INTERNATIONALLY RECOGNIZED WORKER RIGHTS.—The term "internationally recognized worker rights" has the meaning given that term in section 507(4) of the Trade Act of 1974 (19 U.S.C. 2467(4)).

(4) WORST FORMS OF CHILD LABOR.—The term "worst forms of child labor" has the meaning given that term in Convention Number 182 of the International Labor Organization.

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(5) NAFTA.—The term ''NAFTA'' means the North American Free Trade Agreement approved by the Congress under section 101(a) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3311(a)).

(6) TRADE REPRESENTATIVE.—The term ''Trade Representative'' means the United States Trade Representative.

(7) WTO.—The terms ''WTO'' and ''World Trade Organization'' mean the organization established pursuant to the WTO Agreement.

(8) WTO AGREEMENT.—The term ''WTO Agreement'' means the Agreement Establishing the World Trade Organization entered into on April 15,1994.

(9) WTO MEMBER.—The term ''WTO member'' has the meaning given that term in section 2(10) of the Uruguay Round Agreements Act (19 U.S.C. 3501(10)).

TITLE I—CONGRESSIONAL-EXECUTIVE COMMISSION ON THE PEOPLE'S REPUBLIC OF CHINA

SEC. 101. ESTABLISHMENT OF CONGRESSIONAL-EXECUTIVE COMMISSION ON THE PEOPLE'S REPUBLIC OF CHINA.

There is established a Congressional-Executive Commission on the People's Republic of China (in this title referred to as the ''Commission'').

SEC. 102. FUNCTIONS OF THE COMMISSION.

(a) MONITORING COMPLIANCE WITH HUMAN RIGHTS.—The Commission shall monitor the acts of the People's Republic of China which reflect compliance with or violation of ~~basic~~ human rights, in particular those contained in the International Covenant on Civil and Political Rights, including, but not limited to, effectively affording—

~~(1) the right to associate freely without having to register with any government entity;~~

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~~(2) the right to engage in free expression (including free religious expression) without fear of any prior restraints;~~

~~(3) the right to assemble freely without having to register with any government entity;~~

~~(4) the right to travel freely, within the People's Republic of China (including the provinces of Tibet and Xinjiang) and to foreign countries;~~

~~(5) the right of criminal defendants to counsel, to open trials, to a presumption of innocence prior to trial, and to be free from unduly lengthy detention before trial;~~
~~(6) the right to be free from compulsory labor;~~

~~(7) the right to be free from the worst forms of child labor;~~

~~(8) the right to be free from torture and other forms of cruel or unusual punishment; and~~

~~(9) the right to a physical environment that does not harm or threaten to harm the health or safety of human, animal, or plant life.~~

(1) the right to engage in free expression (including free religious expression) without fear of any prior restraints;

(2) the right to peaceful assembly without restrictions in accordance with international law;

(3) the right to liberty of movement and freedom to choose a residence within the People's Republic of China (including the special autonomous regions of Tibet and Xinjiang), and the right to leave China and return;

(4) the right of a criminal defendant--

(A) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing;

(B) to be informed if he does not have legal assistance, of this right;

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(C) to have legal assistance assigned to him in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it;

(D) to a fair and public hearing by a competent, independent, and impartial tribunal established by law;

(E) to be presumed innocent until proved guilty according to law; and

(F) to be tried without undue delay; and

(5) the right to be free from torture and other forms of cruel or unusual punishment.

(~~b~~ c) VICTIMS LISTS.—The Commission shall 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 due to their pursuit of the rights described in subsection (a) + (b). In compiling such lists, the Commission shall exercise appropriate discretion, including concerns regarding the safety and security of, and benefit to, the persons who may be included on the lists.

(c) MONITORING STATUS OF INTERNATIONALLY RECOGNIZED WORKER RIGHTS.—The Commission shall monitor the status of internationally recognized worker rights in the People's Republic of China[, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health].

(d) MONITORING DEVELOPMENT OF RULE OF LAW.—The Commission shall monitor the development of the rule of law in the Peoples's Republic of China, including, but not limited to—

(1) progress toward the development of institutions of democratic governance;

(2) processes by which statutes, regulations, rules, and other legal acts of the Government of the People's Republic of China are developed and become binding within the People's Republic of China;

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(3) the extent to which statutes, regulations, rules, administrative and judicial decisions, and other legal acts of the Government of the People's Republic of China are published and are made accessible to the public;

(4) the extent to which administrative and judicial decisions are supported by statements of reasons that are based upon written statutes, regulations, rules and other legal acts of the Government of the People's Republic of China; and

~~(5) the extent to which laws of the of the People's Republic of China are applied to non-citizens in a manner different from or the same as the manner in which they are applied to citizens; and~~

(5) ~~(6)~~ the extent to which administrative and judicial decisions are independent of party or governmental interference and are reviewed by entities of appellate jurisdiction.

(e) BILATERAL COOPERATION.—The Commission shall monitor and encourage the development of programs and activities of the United States Government and private organizations with a view toward increasing the interchange of people and ideas between the United States and the People's Republic of China and expanding cooperation in areas that include, but are not limited to—

(1) developing the rule of law in the People's Republic of China;

(2) increasing enforcement of internationally recognized worker rights; and

(3) increasing enforcement of human rights described in subsection (a).

(f) CONTACTS WITH NONGOVERNMENTAL ORGANIZATIONS.—In performing the functions described in subsections (a) through (e), the Commission shall, as appropriate, seek out and maintain contacts with nongovernmental organizations, including receiving reports and updates from such organizations and, when appropriate, ~~investigating~~ evaluating such reports.

(g) ANNUAL REPORTS.—The Commission shall issue a report to the President and the Congress not later than 12 months after the date of the enactment of this Act, and not later than the end of each 12-month period thereafter, setting forth the findings of the Commission during the preceding 12-month period, pursuant to the monitoring required by subsections (a) through (d). The Commission's report may contain recommendations for legislative or executive action.

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(h) SUPPLEMENTAL REPORTS.—The Commission may submit to the President and the Congress reports that supplement the reports described in subsection (g), as appropriate, ~~based upon developments which, in the judgment of the Commission, are likely to have an important impact on relations between the United States and the People's Republic of China~~pursuant to the monitoring required by subsections (a) through (d).

(i) INFORMATION TO CONGRESS.—The Commission shall, upon request, provide information to Members of the House of Representatives and Senate.

SEC. 103. MEMBERSHIP OF THE COMMISSION.

(a) SELECTION AND APPOINTMENT OF MEMBERS.— The Commission shall be composed of 23 members as follows:

(1) Nine Members of the House of Representatives appointed by the Speaker of the House of Representatives. Five members shall be selected from the majority party and four members shall be selected, after consultation with the minority leader of the House, from the minority party.

(2) Nine Members of the Senate appointed by the President of the Senate. Five members shall be selected, after consultation with the majority leader of the Senate, from the majority party, and four members shall be selected, after consultation with the minority leader of the Senate, from the minority party.

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~~(3) One representative of the Department of State, appointed by the President of the United States from among officers and employees of that Department.~~

~~(4) One representative of the Department of Commerce, appointed by the President of the United States from among officers and employees of that Department.~~

~~(5) One representative of the Department of Labor, appointed by the President of the United States from among officers and employees of that Department.~~

(~~6~~3)~~Two at-large representatives~~Five Members~~,~~ appointed by the President of the United States~~from among the officers and employees of the executive branch~~.

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(b) CHAIRMAN AND COCHAIRMAN.—

(1) DESIGNATION OF CHAIRMAN.—At the beginning of each odd-numbered Congress, the President of the Senate, on the recommendation of the majority leader, shall designate one of the members of the Commission from the Senate as Chairman of the Commission. At the beginning of each even-numbered Congress, the Speaker of the House of Representatives shall designate one of the members of the Commission from the House as Chairman of the Commission.

(2) DESIGNATION OF COCHAIRMAN.—At the beginning of each odd-numbered Congress, the Speaker of the House of Representatives shall designate one of the members of the Commission from the House as Cochairman of the Commission. At the beginning of each even-numbered Congress, the President of the Senate, on the recommendation of the majority leader, shall designate one of the members of the Commission from the Senate as Cochairman of the Commission.

SEC. 104. VOTES OF THE COMMISSION.

Decisions of the Commission, including adoption of reports and recommendations to the executive branch or to the Congress, shall be made by a majority vote of the members of the Commission present and voting. __ voting Members of the Commission shall constitute a quorum for purposes of conducting business.

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SEC. 105. EXPENDITURE OF APPROPRIATIONS.

For each fiscal year for which an appropriation is made to the Commission, the Commission shall issue a report to the Congress on its expenditures under that appropriation.

SEC. 106. TESTIMONY OF WITNESSES, PRODUCTION OF EVIDENCE; ~~ISSUANCE OF SUBPOENAS;~~ ADMINISTRATION OF OATHS.

In carrying out this title, the Commission may ~~require, by subpoena or otherwise~~, request the attendance and testimony of such witnesses and the production of such books,
records, correspondence, memoranda, papers, documents, and electronically recorded data as it considers necessary. ~~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~~

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~~member.~~ The Chairman of the Commission, or any member designated by the Chairman, may administer oaths to any witness.

SEC. 107. APPROPRIATIONS FOR THE COMMISSION.

(a) AUTHORIZATION; DISBURSEMENTS.—

(1) AUTHORIZATION.—There are authorized to be appropriated to the Commission for fiscal year 2001 and each fiscal year thereafter such sums as may be necessary to enable it to carry out its functions. Appropriations to the Commission are authorized to remain available until expended.

(2) DISBURSEMENTS.—Appropriations to the Commission shall be disbursed on vouchers approved—

(A) jointly by the Chairman and the Cochairman; or

(B) by a majority of the members of the personnel and administration committee established pursuant to section 108.

(b) FOREIGN TRAVEL FOR OFFICIAL PURPOSES.— Foreign travel for official purposes by members and staff of the Commission may be authorized by either the Chairman or the Cochairman.

SEC. 108. STAFF OF THE COMMISSION.

(a) PERSONNEL AND ADMINISTRATION COMMITTEE.—The Commission shall have a personnel and administration committee composed of the Chairman, the Cochairman, the senior member of the Commission from the minority party of the House of Representatives, and the senior member of the Commission from the minority party of the Senate.

(b) COMMITTEE FUNCTIONS.—All decisions pertaining to the hiring, firing, and fixing of pay of personnel of the Commission shall be by a majority vote of the personnel and administration committee, except that—

(1) the Chairman shall be entitled to appoint and fix the pay of the staff director, and the Cochairman shall be entitled to appoint and fix the pay of the Cochairman's senior staff member; and

(2) the Chairman and Cochairman shall each have the authority to appoint, with the approval of the personnel and administration committee, at least 4 professional staff members who shall be responsible to the Chairman or the Cochairman (as the case may be) who appointed them. Subject to subsection (d), the personnel and administration committee may appoint and fix the pay of such other personnel as it considers desirable.

(c) STAFF APPOINTMENTS.—All staff appointments shall be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates.

(d) QUALIFICATIONS OF PROFESSIONAL STAFF.— The personnel and administration committee shall ensure that the professional staff of the Commission consists of persons with expertise in areas including human rights, internationally recognized worker rights, international ~~trade and~~ economics, law (including international law), Chinese politics, economy and culture, and Chinese language.

(e) COMMISSION EMPLOYEES AS CONGRESSIONAL EMPLOYEES.—

(1) IN GENERAL.—For purposes of pay and other employment benefits, rights, and privileges, and for all other purposes, any employee of the Commission shall be considered to be a congressional employee as defined in section 2107 of title 5, United States Code.

(2) COMPETITIVE STATUS.—For purposes of section 3304(c)(1) of title 5, United States Code, employees of the Commission shall be considered as if they are in positions in which they are paid by the Secretary of the Senate or the Clerk of the House of Representatives.

SEC. 109. PRINTING AND BINDING COSTS.

For purposes of costs relating to printing and binding, including the costs of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of the Congress.

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TITLE II—MONITORING AND ENFORCEMENT OF THE PEOPLE'S REPUBLIC OF CHINA'S WTO COMMITMENTS

Subtitle A—Review of China's Membership in WTO

SEC. 201. REVIEW WITHIN THE WTO.

~~The President shall~~The USTR should seek within the World Trade Organization an annual review of the compliance by the People's Republic of China's with its terms of accession to the WTO.

Subtitle B—Authorization To Promote Compliance With Trade Agreements

SEC. 211. FINDINGS.

The Congress finds as follows:

(1) The opening of world markets through the elimination of tariff and nontariff barriers has contributed to a ~~55~~56-percent increase in exports of United States goods and services since 1992.

(2) Such export expansion has helped fuel the longest economic expansion in United States history.

(3) The United States Government must continue to be vigilant in monitoring and enforcing the compliance by our trading partners with trade agreements in order for United States businesses, workers, and farmers to continue to benefit from the opportunities created by market-opening trade agreements.

(4) The People's Republic of China, as part of its accession to the World Trade Organization, has committed to eliminating significant trade barriers in the agricultural, services, and manufacturing sectors that, if realized, would provide considerable opportunities for United States farmers, businesses, and workers.

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(5) For these opportunities to be fully realized, the United States Government must effectively monitor and enforce its rights under the agreements on the accession of the People's Republic of China to the WTO.

SEC. 212. PURPOSE.

The purpose of this subtitle is to authorize additional resources for the agencies and departments engaged in monitoring ~~and~~ enforcement of United States trade agreements and trade laws. [Question: Change to sense of Congress that the funds requested in the President's FY 2001 Budget for the Trade Compliance Initiative be appropriated?]

SEC. 213. [AUTHORIZATION OF APPROPRIATIONS.]

$ amounts? There should be appropriated...

(a) DEPARTMENT OF COMMERCE.—~~There is authorized to be~~Funds should be appropriated to the Department of Commerce, in addition to amounts otherwise available for such purposes, such sums as may be necessary for fiscal year 2001 and each fiscal year thereafter for additional staff for—

(1) activities involving the WTO, including monitoring compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with ongoing negotiations in the WTO, and defending United States ~~safeguard,~~ antidumping, and countervailing duty measures;

(2) enforcement of United States trade laws, including conducting monitoring for potential import surges~~monitoring~~, subsidy ~~[enforcement]~~ [monitoring], and prompt antidumping and countervailing duty investigations under title VII of the Tariff Act of 1930 with respect to products of the People's Republic of China; and

(3) ~~creation of~~ a Trade Law Technical Assistance Center to assist small- and medium-sized businesses, workers, and unions ~~with preparation of petitions to be brought to remedy alleged violations of trade laws~~ in evaluating potential remedies available under ~~the~~ U.S. trade laws.

(b) OVERSEAS COMPLIANCE PROGRAM.—

(1) AUTHORIZATION OF APPROPRIATION.—~~There are authorized to~~Funds should be be appropriated to the Department of Commerce and the Department of State, in addition to amounts otherwise available, such sums as may be necessary

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15 for fiscal year 2001, and each fiscal year thereafter, to ~~create and~~ provide staff for an Overseas Compliance Program. The function of the Overseas Compliance Program ~~shall be~~ to monitor abroad compliance by the trading partners of the United States with international trade obligations and to support the enforcement of United States trade laws.

(2) REPORTING.—~~On October 1, 2001, and on October 1 of each year thereafter, the Secretaries of State and Commerce shall submit to the Congress a report setting forth the findings~~ ~~The National Trade Estimates~~ Report submitted to Congress ~~pursuant to 19 U.S.C. 2241 and~~ the annual report on compliance by the People's Republic of China submitted to Congress pursuant to Section 231 of this Act shall include the findings of the Overseas Compliance Program with respect to China, cre~~ated under paragraph (1) regarding~~ compliance by the trading partners of the ~~United States with international trade obligations.~~ [DELETE?]

(c) USTR.— ~~Funds should be~~ ~~There are authorized to~~ be appropriated to the Office of the United States Trade Representative, in addition to amounts otherwise available for such purposes, such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter, for additional staff in—

(1) the Office of General Counsel, the Monitoring and Enforcement Unit, and the Office of the Deputy U.S. Trade Representative in Geneva, Switzerland, to investigate, prosecute, and defend cases before the WTO and other dispute settlement bodies provided for under trade agreements, and to administer United States trade laws, including 19 U.S.C. 2411, et seq. and other trade laws relating to intellectual property, government procurement, and telecommunications; with respect to China

(2) the Office of Economic Affairs, to analyze the impact on the economy of the United States, including United States exports, of acts of the Government of the People's Republic of China affecting access to markets in the People's Republic of China and to support the Office of the General Counsel in presenting cases to the WTO involving the People's Republic of China;

(3) the ~~a~~ geographic office for the People's Republic of China; and

(4) offices relating to the WTO and to different sectors of the economy, including agriculture, industry, services, and intellectual property protection, to monitor and enforce trade agreement obligations in those sectors~~the Office of the Assistant United States Trade Representative for Trade and Development and the Office of the Assistant United States Trade Representative for Trade and Labor~~.

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(d) DEPARTMENT OF AGRICULTURE.— ~~Funds should be There is authorized to~~ be appropriated to the Department of Agriculture, in addition to amounts otherwise available for such purposes, such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter, for additional staff to increase legal and technical expertise in areas covered by trade agreements and United States trade law, including food safety and biotechnology.

Subtitle C—Relief From Market Disruption to Industries and Diversion of Trade to the United States Market

SEC. 221. ACTION TO ADDRESS MARKET DISRUPTION.

(a) PRESIDENTIAL ACTION.—If a product of the People's Republic of China is being imported into 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, the President shall, in accordance with the provisions of this section, proclaim increased duties or other import restrictions to the extent and for such period as the President considers necessary to prevent or remedy the market disruption.

(b) INITIATION OF AN INVESTIGATION.—

(1) Upon the filing of a petition by an entity described in section 202(a) of the Trade Act of 1974 (19 U.S.C. 2252(a)), upon the request of the President or the United States Trade Representative (in this subtitle referred to as the "Trade Representative"), upon resolution of either the Committee on Ways and Means of the House of Representatives, or the Committee on Finance of the Senate (in this subtitle referred to as the "Committees") or on its own motion, the United States International Trade Commission (in this subtitle referred to as the "Commission") shall promptly make an investigation to determine whether products of the People's Republic of China are being imported into 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 like or directly competitive products.

(2) The limitations on investigations set forth in section 202(h)(1) of the Trade Act of 1974 (19 U.S.C. 2252(h)(1)) shall apply to investigations conducted under this section.

(3) The provisions of subsections (a)(8) and (i) of the Trade Act of 1974 (19 U.S.C. 2252(a)(8) and (i)), relating to treatment of confidential business information, shall apply to investigations conducted under this section.

(4) Whenever a petition, request, or resolution is filed under this subsection, the Commission shall transmit a copy thereof to the President, the Trade Representative, and the Committees.

(c) MARKET DISRUPTION.—

(1) For purposes of this section, market disruption exists whenever imports of an article, like or directly competitive with an article produced by the domestic industry concerned, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.

(2) For purposes of paragraph (1), the term ''significant cause'' refers to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.

(d) FACTORS IN DETERMINATION.—In determining whether market disruption exists, the Commission shall consider objective factors, including—

(1) the volume of imports of the product which is the subject of the investigation;

(2) the effect of imports of the product on prices in the United States for like or directly competitive articles; and

(3) the effect of imports of the product on the domestic industry producing like or directly competitive articles.

(e) TIME FOR COMMISSION DETERMINATIONS, REPORTING.—The Commission shall report to the President and the Committees its determination with respect to market disruption and the basis therefor and shall include in each report any dissenting or separate views. Such report shall be made at the earliest practicable time, but in no case later than 60 days after the date on which the petition is filed, the request or resolution is received, or the motion adopted, under subsection (a), unless a request for relief under subsection (h) is included in the petition. In the case of a request for relief under subsection (h), the Commission shall report its determination on market disruption not later than 90 days after the filing of the petition requesting the relief.

(f) RECOMMENDATIONS OF COMMISSION ON PRO- POSED REMEDIES.—If the Commission makes an affirmative determination under subsection (b), the Commission shall determine the amount of increase in, or imposition of, any duty or other import restrictions necessary to pre- vent or remedy the market disruption. The Commission shall report the proposed remedies to the President and the Committees not later than 20 days after the affirmative determination is made.

(g) OPPORTUNITY TO PRESENT VIEWS AND EVIDENCE ON PROPOSED REMEDY AND RECOMMENDATION TO THE PRESIDENT.—

(1) Within 20 days after receipt of the Commission's report on proposed remedies under sub- section (f), the Trade Representative shall publish in the Federal Register the Commission's proposed remedies and notice of any measure proposed by the Trade Representative to be taken pursuant to subsection (a) and of the opportunity, including a public hearing, if requested, for importers, exporters, and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest. In an investigation including a claim of critical circumstances, publication of the proposed remedies and notice shall be within 15 days after receipt of the report on proposed remedies under subsection (h)(2).

(2) Within 55 days after receipt of the report on proposed remedies under subsection (f), the Trade Representative, taking into account the views and evidence received under paragraph (1) on the measure proposed by the Trade Representative, shall make a recommendation to the President concerning what action, if any, to take to prevent or remedy the market disruption. In an investigation including a claim of critical circumstances, the Trade Representative's recommendation shall be made within 40 days after receipt of the Commission's report on proposed remedies under subsection (h)(2).

(h) CRITICAL CIRCUMSTANCES.—

(1) When a petition filed under subsection (b) alleges that critical circumstances exist and requests that provisional relief be provided under this section, the Commission shall, not later than 30 days after the petition containing the re- quest is filed, make a preliminary determination of whether—

(A) imports of the product which is the subject of the investigation have caused or threatened to cause market disruption; and

(B) delay in taking action under this section would cause damage which it would be difficult to repair.

(2) The Commission shall transmit a report on its determinations under paragraph (1) to the President, the Trade Representative, and the Committees, including the reasons for its determinations. If the determinations under paragraph (1) are affirmative, the Commission shall include in its report its recommendations on proposed measures to be taken to prevent or remedy the market disruption.

(3) If the determinations under paragraph (1) are affirmative, the Trade Representative shall, within 10 days after receipt of the Commission's report, determine the amount or extent of provisional relief that is necessary to prevent or remedy the market disruption and shall provide a recommendation to the President on what provisional action, if any, to take. (4)(A) The President shall determine whether to provide provisional relief and proclaim such relief, if any, within 10 days after receipt of the recommendations from the Trade Representative.

(B) Such relief may take the form of—

(i) the imposition of or increase in any duty;

(ii) any modification, or imposition of any quantitative restriction on the importation of an article into the United States; or

(iii) any combination of actions under clauses (i) and (ii).

(C) Any provisional action proclaimed by the President pursuant to a determination of critical circumstances shall remain in effect not more than 200 days.

(D) Provisional relief shall cease to apply upon the effective date of relief proclaimed under subsection (a) or a decision by the President not to provide such relief.

(i) CONSULTATIONS WITH CHINA.—

(1) Within 5 days after an affirmative determination of market disruption under subsection (b), and within 5 days after affirmative preliminary determinations under subsection (h)(1), the Trade Representative shall request, on behalf of the United States, consultations with the People's Republic of China regarding the issues involved in the investigation.

(2) If no agreement is reached with the People's Republic of China pursuant to consultations under paragraph (1), or if the President determines than an agreement reached pursuant to such consultations is not preventing or remedying the market disruption at issue, the President shall provide import relief in accordance with (j).

(j) STANDARD FOR PRESIDENTIAL ACTION.—(1) Within 15 days after receipt of a recommendation from the Trade Representative under subsection (g) or (h) on the appropriate action, if any, to take to prevent or remedy the market disruption, the President shall provide import relief for such industry pursuant to subsection (a), unless the President determines that provision of such relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action pursuant to subsection (a) would cause serious harm to the national security of the United States.

(2) The President shall determine under paragraph (1) that providing import relief is not in the national economic interest of the United States only if the President finds that the taking of such action would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action, taking into account the impact of not taking such action on the credibility of the provisions of this subtitle.

(k) PUBLICATION OF DECISION AND REPORTS).—(1) The President's decision, including the reasons therefor and the scope and duration of any action taken, shall be published in the Federal Register.

(2) The Commission shall promptly make public any report transmitted under this section, but shall not make public any information which the Commission determines to be confidential, and shall publish notice of such report in the Federal Register.

(l) EFFECTIVE DATE OF RELIEF.—Import relief under this section shall take effect not later than 15 days after the President's determination to provide such relief.

(m) MODIFICATIONS OF RELIEF.—The President may, after receiving a report from the Commission on the probable effect of the modification, reduction, or termination of relief provided pursuant to this section on the relevant industry, take such action to modify, reduce, or terminate relief that the President determines is in the national economic interest.

SEC. 222. ACTION IN RESPONSE TO TRADE DIVERSION.

(a)MONITORING BY CUSTOMS SERVICE.—In any case in which a WTO member other than the United States requests consultations with the People's Republic of China under the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the World Trade Organization, the Trade Representative shall inform the United States Customs Service, which shall monitor imports of those products of the People's Republic of China that are the subject of the consultation request.

(b) INITIATION OF INVESTIGATION.—Upon the filing of a petition by an entity described in section 202(a) of the Trade Act of 1974, upon the request of the President or the Trade Representative, upon resolution of either of the Committees, or on its own motion, the Commission shall promptly make an investigation to determine whether an action described in subsection (c) has caused, or threatens to cause, significant diversions of trade into the domestic market in the United States.

(c) ACTIONS DESCRIBED.—An action is described in this subsection if it is—

(1) an orderly marketing agreement entered into between a WTO member (other than the United States) and the People's Republic of China pursuant to consultations described in subsection (a), or

(2) an action taken unilaterally by such WTO member, on account of the importation into the territory of that WTO member of products of the People's Republic of China in such increased quantities or under such conditions as to cause or threaten to cause market disruption to domestic producers within the territory of the WTO member.

(d) BASIS FOR DETERMINATION OF SIGNIFICANT DIVERSION.—(1) In determining whether significant diversion or the threat thereof exists for purposes of this section, the Commission shall take into account—

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(A) the monitoring conducted under subsection (a) and other credible evidence;

(B) the actual or likely change in share of total exports from the People's Republic of China that exports of the ~~product to the~~ United States account for;

(C) the actual or likely increase in United States market share held by such imports from the People's Republic of China;

(D) the actual or likely increase in volume of such imports;

(E) the nature and extent of the action taken or proposed by the WTO member concerned;

(F) the extent of exports from the People's Republic of China to that WTO member;

(G) the actual or likely changes in exports to that other country due to the action taken or proposed; and ?

(H) the actual or likely diversion of exports to countries other than the United States. In determining whether a significant diversion of trade or the threat thereof exists, the Commission shall not at- tribute to trade diversion actual or likely increases in imports due to other factors.

(2) For purposes of making its determination, the Commission shall examine changes in imports from the People's Republic of China since the time that the WTO member implemented the action at issue or announced the commencement of the investigation that led to a request for consultations described in subsection (a).

(3) If more than 1 action by a WTO member or WTO members against a particular product is identified in the petition, request, or resolution under subsection (b) or during the investigation, the Commission may consider the actual or likely effects of such actions jointly in deter- mining whether a significant diversion of trade exists.

(e) COMMISSION DETERMINATION; CONSULTATIONS.—(1) The Commission shall make its determination under subsection (b) not later than 45 days after the petition is filed, the request or resolution is received, or the motion adopted, under subsection (b), and shall report its determination to the Trade Representative. If the Commission makes an affirmative determination of significant trade diversion, the Commission shall include in its report its recommendation on increased tariffs or other import restrictions to be imposed to prevent or remedy the trade diversion or threat thereof.

(2) If the Commission reports an affirmative determination of significant trade diversion, or the threat there- of, under paragraph (1), then the Trade Representative shall request consultations with the People's Republic of China or other WTO member, or both.

(f) PUBLIC COMMENT.—If consultations fail to lead to an agreement with China or the WTO member concerned within 60 days, the Trade Representative shall promptly publish notice in the Federal Register of any proposed action to prevent or remedy the trade diversion, and provide an opportunity for interested persons to present views and evidence on whether the proposed action is in the public interest.

(g) RECOMMENDATION TO THE PRESIDENT.—Within 20 days after the end of consultations pursuant to sub-section (e), the Trade Representative shall make a recommendation to the President on what action, if any, should be taken to prevent or remedy the trade diversion or threat thereof.

(h) PRESIDENTIAL ACTION.—Within 20 days after receipt of the recommendation from the Trade Representative, the President shall determine what action to take to prevent or remedy the trade diversion. In taking such action, the President shall not impose tariffs higher, or quantitative restrictions greater, than those existing during the 12-month period prior to the WTO member's request for consultations referred to in subsection (a).

(i) DURATION OF ACTION.—Action taken under sub-section (h) shall terminate upon the termination of the action taken by the WTO member or members involved against imports from the People's Republic of China.

(j) REVIEW OF ACTION.—(1) The Commission shall review action taken under subsection (h) if the WTO member or members involved notify the Committee on Safe-guards of the WTO of any modification in the action taken by them against the People's Republic of China pursuant to consultation referred to in subsection (a). The Commission shall, not later than 60 days after such notification, determine whether a significant diversion of trade continues to exist and report its determination to the President. The President shall determine, within 15 days after receiving the Commission's report, whether to modify, withdraw, or keep in place the action taken under sub- section (h).

SEC. 223. REGULATIONS; TERMINATION OF PROVISION.

(a) TO CARRY OUT RESTRICTIONS AND MONITORING.—The President shall by regulation provide for the efficient and fair administration of any restriction proclaimed pursuant to the subtitle and to provide for effective monitoring of imports under section 222(a).

(b) TO CARRY OUT AGREEMENTS.—To carry out an agreement concluded pursuant to consultations under section 221(i) or 222(e)(2), the President is authorized to prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement.

(c) TERMINATION DATE.—This subtitle and any regulations issued under this subtitle shall cease to be effective 12 years after the date of entry into force of the Protocol of Accession of the People's Republic of China to the WTO.

SEC. 224. AMENDMENT TO SECTION 123 OF THE TRADE ACT OF 1974—COMPENSATION AUTHORITY.

Section 123(a)(1) of the Trade Act of 1974 (19 U.S.C. 2133(a)(1)) is amended by inserting after ''title III'' the following; '', or under subtitle C of title II of the U.S.-China Relations Act of 2000''.

Subtitle D—Report on Compliance by the People's Republic of China With WTO Obligations

SEC. 231. REPORT ON COMPLIANCE.

(a) IN GENERAL.—Not later than 1 year after the entry into force of the Protocol of Accession of the People's Republic of China to the WTO, and annually there-after, the Trade Representative shall submit a report to Congress on compliance by the People's Republic of China with commitments made in connection with its accession to the World Trade Organization, including both multilateral commitments and any bilateral commitments made to the United States.

(b) PUBLIC PARTICIPATION.—In preparing the re- port described in subsection (a), the Trade Representative shall seek public participation by publishing a notice in the Federal Register and holding a public hearing.

TITLE III—TRADE AND RULE OF LAW ISSUES

Subtitle A—Task Force on Prohibition of Importation of Products of Forced or Prison Labor

SEC. 301. ESTABLISHMENT OF TASK FORCE.

There is hereby established a task force on prohibition of importation of products of forced or prison labor (hereafter in this subtitle referred to as the ''Task Force'').

SEC. 302. FUNCTIONS OF TASK FORCE.

The Task Force shall monitor and promote effective enforcement of and compliance with Section 307 of the Tariff Act of 1930 by performingthe following functions:

(1) ~~Oversee investigations by the United States Customs Service~~ Coordinate closely with the United States Customs Service to promote maximum effectiveness of Customs' enforcement of Section 307 of the Tariff Act of 1930. To assure such coordination, the U.S. Customs Service shall provide regular briefings on its investigations of allegations that goods are being entered into the United States, or that such entry is being attempted, in violation of the prohibition in section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) on entry into the United States of goods mined, produced, or manufactured wholly or in part in any foreign country by convict labor, forced labor, or indentured labor under penal sanctions. Such investigations may include visits to foreign sites where goods allegedly are being mined, produced, or manufactured in a manner that would lead to prohibition of their importation into the United States under section 307 of the Tariff Act of 1930.

(2) ~~Assist the Customs Service in seeking agreements with foreign governments to allow members of the Task Force~~ Make recommendations to the Customs Service on seeking agreements with foreign governments to allow

Customs officials to visit sites where goods may be mined, produced, or manufactured by convict labor, forced labor, or indentured labor under penal sanctions.

(3) Work with the Customs Service to assist foreign governments in monitoring the sale of goods mined, produced, or manufactured by convict labor, forced labor, or indentured labor under penal sanctions to ensure that such goods are not exported to the United States.

(4) ~~Oversee the monitoring by the Customs Service~~ Coordinate closely with the U.S. Customs Service to promote maximum effectiveness of Customs enforcement of Section 307 of the Tariff Act of 1930. To assure coordination, the U.S. Customs Service shall provide regular briefings on its monitoring of ports of the United States to ensure that goods mined, produced, or manufactured wholly or in part in any foreign country by convict labor, forced labor, or indentured labor under penal sanctions are not imported into the United States.

(5) ~~Assist~~ Advise the Customs Service in performing such other functions, consistent with existing authority, to ensure the effective enforcement of section 307 of the Tariff Act of 1930.

SEC. 303. COMPOSITION OF TASK FORCE.

~~(a) TASK FORCE MANAGEMENT COMMITTEE.—The Secretary of the Treasury, the Secretary of Commerce, the Secretary of Labor, and the Commissioner of Customs, acting through their respective designees at or above the level of Deputy Assistant Secretary, shall jointly manage the Task Force. Such designees shall constitute the Task Force Management Committee.~~

~~(b) DESIGNATION OF OTHER PERSONS.—The Task Force Management Committee shall designate, from among officers and employees of their respective departments who have investigative, law enforcement, and other skills necessary to perform the functions described in section 302, 20 persons to carry out those functions.~~

and other agencies as appropriate

The Secretary of the Treasury, the Secretary of Commerce, the Secretary of Labor, the Secretary of State, and the Commissioner of Customs, acting through their respective designees at or above the level of Deputy Assistant Secretary, or Assistant Commissioner in the case of Customs, shall compose the task force. The

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Treasury representative shall serve as Chairperson of the Task Force. [OTHER AGENCIES?]

SEC. 304. AUTHORIZATION OF APPROPRIATIONS. OMB

[It is the sense of Congress that sums should be ~~There are~~ authorized ~~to be appropriated~~ for fiscal year 2000, and each fiscal year there~~after,~~ such sums as may be necessary for the Task Force to carry out the functions described in section 302.]

SEC. 305. REPORTS TO CONGRESS. [illegible]

(a) FREQUENCY OF REPORTS.—Not later than the date that is one year after the date of the enactment of this Act, and not later than the end of each 1-year period thereafter, the Task Force ~~Management Committee~~ shall submit to the Congress a report on the work of the Task Force during the preceding 1-year period.

(b) CONTENTS OF REPORTS.—Each report under subsection (a) shall set forth, at a minimum—

(1) the number of allegations of violations of section 307 of the Tariff Act of 1930 that were investigated during the preceding 1-year period;

(2) the number of actual violations of section 307 of the Tariff Act of 1930 that were discovered during the preceding 1-year period;

(3) in the case of each attempted entry in violation of such section 307 discovered during the preceding 1-year period—

(A) the country of origin of the goods involved;

(B) the identity of the exporter of the goods; and

(C) the identity of the person or persons who attempted to sell the goods for export; and

(4) such other information as the Task Force ~~Management Committee~~ considers useful in monitoring and enforcing compliance with section 307 of the Tariff Act of 1930.

Subtitle B—Assistance To Develop Commercial and Labor Rule of Law

SEC. 311. ESTABLISHMENT OF TECHNICAL ASSISTANCE AND RULE OF LAW PROGRAMS.

(a) COMMERCE RULE OF LAW PROGRAM.—

(1) IN GENERAL.—The Secretary of Commerce, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, is authorized to establish a program to conduct rule of law training and technical assistance related to commercial activities in the People's Republic of China.

(2) ROLE OF THE SECRETARY OF STATE.—The Secretary of State shall provide foreign policy guidance to the Secretary of Commerce to ensure that the program established under paragraph (1) is effectively integrated into the foreign policy of the United States.

(b) LABOR RULE OF LAW PROGRAM.—

(1) IN GENERAL.—The Secretary of Labor is authorized to establish, conduct, and support a technical assistance program to assist the People's Republic of China in implementing and enforcing compliance with internationally recognized worker rights.

(2) USE OF AMOUNTS.—In carrying out paragraph (1), the Secretary of Labor shall focus on—

(A) developing, laws, regulations, and other measures to implement internationally recognized worker rights;

(B) establishing national mechanisms for the enforcement of national labor laws and regulations;

(C) training government officials concerned with implementation and enforcement of national labor laws and regulations; and

(D) developing an educational infrastructure to educate workers about their legal rights and protections under national labor laws and regulations.

(3) LIMITATION.—The Secretary of Labor may not provide assistance under the program established under this subsection to the All-China Federation of Trade Unions.

(4) ROLE OF THE SECRETARY OF STATE.—The Secretary of State shall provide foreign policy guidance to the Secretary of Labor to ensure that the program established under this subsection is effectively integrated into the foreign policy of the United States.

(c) CONDUCT OF PROGRAMS.—The programs authorized by this section may be used to conduct activities such as seminars and workshops, drafting of commercial and labor codes, legal training, publications, financing the operating costs for nongovernmental organizations working in this area, and funding the travel of individuals to the United States and to the People's Republic of China to provide and receive training.

SEC. 312. ADMINISTRATIVE AUTHORITIES.

In carrying out the programs authorized by section 311, the Secretary of Commerce and the Secretary of Labor (in consultation with the Secretary of State) may utilize any of the authorities contained in the Foreign Assistance Act of 1961 and the Foreign Service Act of 1980.

SEC. 313. PROHIBITION RELATING TO HUMAN RIGHTS ABUSES.

Amounts made available to carry out this subtitle may not be provided to a component of a ministry or other administrative unit of the national, provincial, or other local governments of the People's Republic of China, to a nongovernmental organization, or to an official of such governments or organizations, if the President has credible evidence that such component, administrative unit, organization or official has been materially responsible for the commission of human rights violations.

SEC. 314. [AUTHORIZATION OF APPROPRIATIONS.]

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(a) COMMERCIAL LAW PROGRAM.— Funds should be~~There are authorized to~~ be appropriated to the Secretary of Commerce to carry out the program described in section 311(a) such sums as may be necessary for fiscal year 2001 and each fiscal year thereafter.

(b) LABOR LAW PROGRAM.— Funds should be~~There are authorized to~~ be appropriated to the Secretary of Labor to carry out the program described in section 311(b) such sums as may be necessary for fiscal year 2001 and each fiscal year thereafter.

[(c) CONSTRUCTION WITH OTHER LAWS.—Except as provided in this Act, funds appropriated pursuant to the authorization of appropriations in this section may be obligated or expended notwithstanding any other provision of law.]

TITLE IV—ACCESSION OF TAIWAN TO THE WTO

SEC. 401. ACCESSION OF TAIWAN TO THE WTO.

It is the sense of Congress that—

(1) immediately upon approval by the WTO General Council of the terms and conditions of the accession of the People's Republic of China to the WTO, the United States representative to the WTO should request that the General Council of the WTO consider Taiwan's accession to the WTO as the next order of business of the Council during the same session~~ on the same calendar day~~; and

(2) the United States should be prepared to aggressively counter any effort by any WTO member, upon the approval of the WTO General Council of the terms and conditions of the accession of the People's Republic of China to the WTO, to block the accession of Taiwan to the WTO.