Case Number: 2010-1024-F

FOIA MARKER

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Folder Title: China PNTR - Levin-Bereuter Discussions [5]				
Staff Office-Individual: National Economic Council-Lee, Malcolm				
Original OA/ID Number: CF 1177				
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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	NEC Internal Phone List. (1 page)	05/15/2000	b(2), P6/b(6)

COLLECTION:

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

FOLDER TITLE:

China PNTR - Levin - Bereuter Discussions [5]

2010-1024-F
vz1864

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)]

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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]

From the office of...

Congressman Ken Bentsen

Representing Texas' 25th District
326 Cannon House Office Building
Washington, D.C. 20515-4325
202-225-7508 (phone)
202-225-2947 (fax)

FOR IMMEDIATE RELEASE:
Thursday, May 11, 2000

CONTACT:
Audrey Duff

BENTSEN TO VOTE 'YES' ON PNTR

Announces New Commission to Address Displaced Workers

WASHINGTON -- Congressman Ken Bentsen (D-Houston) today announced that he will vote to grant permanent trading relations to China. Congressman Bentsen's support came after he secured from the President a commitment to significantly review our nation's trade adjustment programs to better help workers who are hurt by trade.

"At my request, the President has agreed to establish, by Executive Order, a commission comprised of workers, employers, unions, academics, and policy makers to review our worker adjustment programs and develop new approaches to assist workers who lose their jobs as a result of trade agreements," Congressman Bentsen said. "The Commission will report its findings to Congress and the President after a 12-month period."

Specifically, Congressman Bentsen has urged the President to use the Commission to take steps toward restructuring trade adjustment assistance programs to more efficiently help displaced workers make the transition to new jobs.

"While I believe that Americans prosper and create more jobs through trade, it is not enough for us as a nation to say there are more winners than losers and move on. If we are to ask the American people to take the risks necessary to win the benefits of expanded trade, we must also be fully committed to ensuring that those who lose due to trade are not left behind," Congressman Bentsen said. "In my discussions with the President, I have emphasized that our trade policy must include provisions to address the plight of American workers who lose their jobs due to trade."

"I believe that the World Trade Organization (WTO) accession agreement signed by the United States and China in November 1999 is a good deal that will create new opportunities for American businesses and workers," Congressman Bentsen said. "However, focusing only on the benefits of trade is simply not enough. I want to ensure that we address the fact that people in my District, across Texas and throughout America, may be hurt and need assistance in making the transition to an increasingly global economy."

Congressman Bentsen explained that past efforts to address worker concerns have been inadequate and unfocused. "We have not reached enough displaced workers, the rules for participation in adjustment programs have been restrictive and cumbersome, and these programs have not proved effective at retraining displaced workers for the higher-paying jobs created by expanded trade," Congressman Bentsen said. "We must develop new approaches to address the plight of our displaced workers who may suffer from adverse effects from what is a overall a beneficial trade policy for all Americans."

While few argue the overall economic benefits of freer trade with China, Congressman Bentsen is hopeful that the Presidential Commission he secured will provide an innovative way to deal with the inevitable consequences. "I believe that we cannot have a truly beneficial trade policy, and one that is accepted by the American people, without a strategy that focuses not only on those who benefit from free trade agreements, but also those who lose," Congressman Bentsen said. "We need a trade policy that acknowledges that some people will be hurt as we continue to open foreign markets to American products and services. We must strengthen the safety net for American workers in less competitive industries who lose their jobs due to trade."

After securing assurances that workers' concerns would be addressed, Congressman Bentsen added his voice to those in Congress calling for improved trade with China." The WTO accession agreement was signed last November only after China made a series of concessions opening its markets to U.S. goods and services, and commit China to international rules of commercial behavior and extensive monitoring of its compliance," Congressman Bentsen said. "When China concludes similar agreements with other countries, it will join the WTO. But, for the U.S. to benefit, Congress must first grant it permanent normal trading status —the same trading status the U.S. provides to all 135 other WTO members and to all but a handful of other countries."

"China will enter the World Trade organization with or without support from the U.S.," Congressman Bentsen said. " The challenge is to establish concrete mechanisms to ensure that the U.S. receives the full benefits of the agreement negotiated with China while enacting safeguards against potential problems."

For Houston and the state of Texas, the China-WTO is especially important, Congressman Bentsen said. "One in three jobs in Houston engage in some form of international trade, and the Port of Houston, the second largest port in the country, serves as an important entry-way for goods and services from China into Texas and the U.S. marketplace," Congressman Bentsen said. "More than 300 Houston companies currently engage in trade with China, and 56 Houston companies, including Compaq, Enron and the Coastal Corporation operates subsidiaries in China."

"Freer trade will allow our petrochemical industries,which are predominant in the 25th District, to gain a market share which we currently don't have in China,"Congressman Bentsen said. "Our Texas agricultural markets and oil field services market will also benefit."

Congressman Bentsen added that world governments and the United States can use their improved relations with China to promote democracy, free markets and human rights. "Stronger business ties with China will give us leverage to pressure the government in Bejing to improve its record on labor and human rights, the environment, and freedom of religion and political expression," Congressman Bentsen said.

Engaging the Chinese is also in the best interest of national security, Congressman Bentsen added. "Failure to engage the Chinese will only isolate the Chinese government at greater risk to peace and stability in the region," Congressman Bentsen said.

While Congressman Bentsen hailed the Presidential Commission to address the needs of displaced workers as a crucial first step, he urged the Administration to also support legislation sponsored by Rep. Sander Levin (D-MI) and Rep. Doug Bereuter (R-Neb) that would establish a congressional-executive commission to investigate Chinese human rights abuses, analyze U.S. security concerns and issue recommendations back to Congress.

"These recommendations could include enforcement measures consistent with WTO rules, such as a cessation of U.S. Export-Import Bank and U.S. Overseas Private Investment Corporation support to China," Congressman Bentsen explained. "Under this proposal, Congress could also direct the Clinton administration to oppose new loans to China from the World Bank and the International Monetary Fund. In addition, the Levin-Bereuter proposal would include strengthened safeguards against import surges and call for the WTO to review China's compliance with the pact on an annual basis. It would also urge the WTO to admit Taiwan immediately after China."

"I believe that the thoughtful approach of the bi-partisan Levin-Bereuter proposal sends the right message to the Chinese government that WTO accession would not be a blank check to violate international human rights and labor standards," Congressman Bentsen said. "While I strongly believe in engaging the Chinese, we should include enforcement legislation, such as the Levin-Bereuter proposal, to ensure that U.S. workers are not the unwitting victims of China's enhanced trade status."

UNITED STATES DEPARTMENT OF COMMERCE
Office of the Secretary
Washington, D.C. 20230

OFFICE OF
POLICY AND STRATEGIC PLANNING

Fax Transmittal Sheet

(202) 482-4127 - Telephone *(202) 482-4636 - Fax*

Date: 5/18/00

To: Daniel Rosen / Tim Punke

From:
~~DAVID FESTA~~
✓ BERNARD CARREAU
SANDRA HAWKINS

Fax Number: ~~456-2223~~ 456-5334 *Phone Number:*

Number of Pages (including cover sheet): 27

Message: See p 13, bottom, for compromise Presidential discretion language

If all pages are not received, please call (202) 482-4127

United States Department of State

Washington, D.C. 20520

May 17, 2000

BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS (EAP)

OFFICE OF CHINESE AND MONGOLIAN AFFAIRS (CM)

MONGOLIAN DESK OFFICER

CHINA ECONOMIC DESK OFFICER

FAX COVER SHEET

ATTENTION: Mr. Malcolm Lee, Senior Director

FAX: 456 - 9290

TO: Chairman Martin Baily, COUNCIL OF ECONOMIC ADVISORS
Mr. David Beier, OFFICE OF THE VICE PRESIDENT
✓ Mr. Malcolm Lee, NATIONAL ECONOMIC COUNCIL
Assistant Secretary David Wilcox, DEPARTMENT OF TREASURY
Mr. William Corbett, UNITED STATES TRADE REPRESENTATIVE
Mr. Andrew Pincus, DEPARTMENT OF COMMERCE
Ms. Linda Wells, DEPARTMENT OF COMMERCE
Mr. John Foarde, U.S. – CHINA BUSINESS COUNCIL

FROM: ANN B. McCONNELL

FAX: (202) 647-6820 TEL: (202) 647-6782

NUMBER OF PAGES INCLUDING COVER SHEET: Seven
MESSAGE:

The Department of State Office of Chinese and Mongolian Affairs is arranging a USG-program for China's Vice Minister Shao Bingren. Mr. Shao is the Vice Minister of China's State Council Office for Restructuring the Economic System (SCORES) – a council that reports to Zhu Rongji. VM Shao, with a five-member delegation, will visit Washington on Tuesday, June 6, and has expressed interest in discussing how information flows in a market system between all economic actors: from consumers to retailers, to distributors and wholesalers, to producers. The delegation is also interested in E-commerce issues. If you would be available to meet with VM Shao sometime on June 6, please have your office assistant contact me. Thank you very much.

中华人民共和国国务院经济体制改革办公室

State Council Office For Restructuring Economic System
People's Republic of China

The Embassy of the United States of America in China
Beijing China

15/3/2000

The Foreign Affairs Department of the State Council Office for Restructuring the Economic System(Scores) of the People's Republic of China presents its compliments to the Embassy of the United States of America in Beijing and has the honor to inform the latter that the Scores intends to send a mission to Canada and the Unites States in late May and early June this year to study two countries' modern circulation modes and government commerce regime and policies in the regard. The delegation will be headed by Mr. Shao Bingren, vice minister of the Scores and composed of six people. Among his various responsibilities Mr. Shao is in charge of commerce and circulation system reform at ministerial level in China. And the circulation system reform is conducted as important component in this year's structural reform programs in China.

The Foreign Affairs Department of the State Council Office for Restructuring the Economic System kindly requests that the Embassy of the United States inform relevant Department(s) of US Federal Government of the above-mentioned visit and provide assistance and other arrangements

The Foreign Affairs Department of the State Council Office for Restructuring the Economic System would appreciate highly any assistance towards that forthcoming visit and renews its compliments to the Embassy of the United States of America in China.

北京西安门大街22号
邮政编码:100017

No.22 Xi An Men Street
Zip:100017,Beijing P.R.C.

电话(Tel):(008610)63096363,63099526
传真(Fax):(008610)66014562

The Delegation of the State Council Office for Restructuring the Economic System (Scores), People's Republic of China

Leader:

Mr SHAO Bingren	Vice Minister of Scores

Members:

Mr. KONG Jingyuan	Deputy Director-General, Department of Industrial and Market System, Scores
Mr. WANG Shuilin	Deputy Director-General Department of International Comparative Studies, Scores
Mr. FAN Wenming	Chairman China Commerce Group
Mr. JI Xiaoan	Chairman Hualian Commercial Building Group
Mr. ZHANG Chunsheng	Director Department of Industrial and Market System, Scores

Study outline on circulation system

I. Purpose

To study and learn major characteristics of modern modes of circulation system and government relevant policies.

II. Content

i. Wholesales business: Development trends, new types of organizational forms, main features and operating models; trends on agent business, sales on commission, supply logistics; relevant government policy and regulations;

ii. Retail sales: new trends; market structure and operation features of supermarket chains, department stores and shopping centers: relevant government policy and regulations;

iii. E-commerce. status quo and trends of e-commerce and Internet trading; relevant government policy and regulation;

iv. Commodity futures: status quo and development trends,

v. Multinational trading companies: newly developed business features of multinational trade; assets management and operation in multinationals;

vi. Relevant government policies related to

- Social commodity circulation;
- market access. taxation and finance;
- means and ways in managing commodities vital to the national economy; and its relative management framework;
- Import-export management regime and policies.

III. The Mission wishes to meet federal government macro-department in charge of commerce and circulation issues such as US Commerce Department, and plans to visit 2 – 3 companies for deepened exchange of views and discussions in wholesales, retail sales, E-commerce sectors, etc.

The Mission plans to visit USA in late May or early June for approximately 10 days.

Resume for Mr. SHAO Bingren

Mr. Shao Bingren is currently vice minister of the State Council Office for Restructuring the Economic System, People's Republic of China. He was born in 1945. After he graduated from university, he worked for about 20 years in Jinzhou City in various leading positions. He came to work in the State Commission for Restructuring the Economic System (Scres) since 1994 as secretary-general, and as vive minister.

Mr. Shao is among important decision-makers on economic reform policies at ministerial level and has been heavily involved a wide range of economic reform policy process.

United States

June 4 Sunday

14:15 Departure from Toronto by AC817
14:53 Arrival at Chicago
16:00 City Tour
19:30 Dinner

June 5 Monday
Breakfast with Mcdonald's Food CO. LTD.
Visits to Havi Group, and Chicago Futures Exchange
Lunch hosted by the First Bank
14:50 Departure from Chicago by AA1570
17:42 Arrival in Washington DC

June 6 Tuesday Visits to relevant government departments
Lunch hosted by
Dinner hosted by the Chinese Embassy

June 7 Wednesday
09:15 Departure from Washington DC by UA 805
11:50 Arrival in San Francisco
Lunch with CISCO
Meeting and Field Study
Dinner

June 8 Thursday
10:43 Departure from San Francisco by AA2883
12:05 Arrival at Los Angeles
Lunch
14:00-18:00
Visits to Walmart, the Walt Disney company(retail),Universal Studios(retail)etc.

June 9 Friday
17:05 Departure from Los Angeles by AA2706
18:06 Arrival at Las Vegas

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20502

THE CHAIRMAN

April 6, 2000

Dear Mr. Minister:

I am writing to invite you to lead a delegation to the United States in June, 2000. The Council of Economic Advisers has enjoyed previous exchanges of information with many of your Chinese Government counterparts, and we look forward to working more closely with you and your department. Your visit could provide an opportunity to study issues such as the flow of information between producer, wholesale, retail and consumer sectors of a market economy. You would also have an opportunity to visit with private sector and government officials involved with e-commerce and commodity futures. I understand that you would be accompanied by the five officials whose names have been provided to the U. S. Embassy in Beijing.

I hope you will be able to accept this invitation, and I look forward to meeting with you in Washington in June.

Sincerely yours,

Martin N. Baily

Martin N. Baily

Shao Bingren
Vice Minister
State Council Office for Restructuring
The Economic System
No. 22 Xi An Men Street
Beijing, Peoples Republic of China

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Cardin - yes

Kleczka → No - safeguard

Coyne → oppose

Thurman + ... order

Foley → yes

Tanner -

Johnson (R CT)

Becerra - Yes

Lewis → Kentucky - ... tobacco (

· Rogett → oppose tobacco ... (Texas) ... signed on ... R's
→ will get more meaningful ... trade agreements ...

Amendments -

- CARDIN - yes (NTR), but need to be package ... Levin Amendments

Collins - request colloquy
- annual review study effect ...

Armey → H. Con. Res 262 - Vote on ... of ... of the Chair.

Stark →

Rangel (yes)

Stark (No)

Lewis (Ky) (Y)

Levin Y

Cardin (Y)

McDermott (Y)

Kleczka (N)

Lewis (Ga.) No

Neal - (Y)

Jefferson - (Y)

~~Becerra~~

Doggett (Y)

McCrery (Y) R

Weller Y (R)

Thurman Y

Becerra (Y) R

Coyne (N)

Tanner (Y)

Watkins (Y)

Houghton (Y)

[BACK 001]

Not agreed

Amendment to the Amendment in the Nature of a Substitute to H.R. 4444 Offered by Mr. Stark

Page 2, line 9, strike "The" and insert "(1), subject to paragraph (2), the".

Page 2, insert the following after line 12:

The extension of nondiscriminatory treatment pursuant to section 1(a)(1) shall not become effective until the United States and the People's Republic of China have signed an agreement that provides for the exemption of President Clinton's order banning the import of munitions, principally guns and ammunition, from China from Article III-4 of the GATT which requires that the products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 4444 OFFERED BY MR. STARK

Page 2, line 9, strike "The" and insert "(1), subject to paragraph (2), the".

Page 2, insert the following after line 12:

(2) The extension of nondiscriminatory treatment pursuant to section 1(a)(1) shall not become effective unless Taiwan accedes to the World Trade Organization on the same day as, or before, the effective date of the accession of the People's Republic of China to the World Trade Organization.

AMENDMENT OFFERED BY MR. CARDIN TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

Redesignate sections 1 through 4 as sections 101 through 104, respectively.

Insert immediately preceding section 101 (as redesignated) the following:

TITLE I—TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO THE PEOPLE'S REPUBLIC OF CHINA

In section 102(a) (as redesignated), strike "section 1(a)(1)" and insert "section 101(a)(1)".

Add at the end the following:

TITLE II—SAFEGUARD AMENDMENTS TO ADDRESS THE IMPORT CRISIS

SEC. 201. CAUSATION STANDARD.

(a) CHANGE IN CAUSATION STANDARD.—(1) Section 201(a) of the Trade Act of 1974 (19 U.S.C. 2251(a)) is amended by striking "substantial" and inserting "significant".

(2) Section 202 of the Trade Act of 1974 (19 U.S.C. 2252) is amended—

(A) in subsection (b)(1)(A), by striking "substantial" and inserting "significant";

(B) by amending subsection (b)(1)(B) to read as follows:

"(B) For purposes this section, the term 'significant cause' refers to a cause which contributes significantly to the serious injury of the domestic industry, but need not be equal to or greater than any other cause.";

(C) in subsection (c)(1)(C), by striking "substantial cause" and inserting "significant cause";

(D) in subsection (c)(3), by striking "substantial" and inserting "significant"; and

(E) in subsection (d)(2)(A)(i), by striking "substantial" and inserting "significant".

(b) CONFORMING AMENDMENT.—Section 264(c) of the Trade Act of 1974 (19 U.S.C. 2354(c)) is amended by striking "substantial" and inserting "significant".

SEC. 202. CAPTIVE PRODUCTION.

(a) AMENDMENT TO TRADE ACT OF 1974.—Section 202(c)(4) of the Trade Act of 1974 (19 U.S.C. 2252(c)(4)) is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(3) by adding after subparagraph (C) the following:

"(D) shall, in cases in which domestic producers transfer internally, including to related parties, significant production of the like or directly competitive article for the production of a downstream article and sell significant production of the like or directly competitive article in the merchant market, focus on the merchant market when determining the domestic industry's market share and other relevant factors.

For purposes of this section, a party is related to another party if the first party controls, is controlled by, or is under common control with, that other party.".

(b) AMENDMENT TO TARIFF ACT OF 1930.—Section 771(7)(C)(iv) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(C)(iv)) is amended to read as follows:

"(iv) CAPTIVE PRODUCTION.—If domestic producers transfer internally, including to affiliated persons as defined in section 771(33), significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus on the merchant market.".

SEC. 203. CAUSAL RELATIONSHIP BETWEEN IMPORTS AND INJURY.

Section 771(7)(C) of the Tariff act of 1930 (19 U.S.C. 1677(7)(C)) is amended by adding at the end the following new clause:

"(v) IMPORTS, BASIS FOR AFFIRMATIVE DETERMINATION.—The Commission shall not weigh against other factors the injury caused by imports found by the administering authority to be dumped or provided a countervailable subsidy. Rather, if the imports are a contributing cause of injury to the domestic industry, the Commission shall make an affirmative determination, unless the injury caused by the imports is inconsequential, immaterial, or unimportant.".

AMENDMENT OFFERED BY MR. CARDIN TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

Redesignate sections 1 through 4 as sections 101 through 104, respectively.

Insert immediately preceding section 101 (as redesignated) the following:

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In section 102(a) (as redesignated), strike "section 1(a)(1)" and insert "section 101(a)(1)".

Add at the end the following:

TITLE II—SAFEGUARD AMENDMENTS TO ADDRESS THE IMPORT CRISIS

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(B) by amending subsection (b)(1)(B) to read as follows:

"(B) For purposes this section, the term 'significant cause' refers to a cause which contributes significantly to the serious injury of the domestic industry, but need not be equal to or greater than any other cause.";

(C) in subsection (c)(1)(C), by striking "substantial cause" and inserting "significant cause";

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(3) by adding after subparagraph (C) the following:

"(D) shall, in cases in which domestic producers transfer internally, including to related parties, significant production of the like or directly competitive article for the production of a downstream article and sell significant production of the like or directly competitive article in the merchant market, focus on the merchant market when determining the domestic industry's market share and other relevant factors.

For purposes of this section, a party is related to another party if the first party controls, is controlled by, or is under common control with, that other party.".

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5-12-00

THE WHITE HOUSE

WASHINGTON

copied
Sperling
Podesta

May 5, 2000

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING

SUBJECT: NEC WEEKLY REPORT

Beginning of Appropriations Season in the Congress: The House and Senate Appropriations Committees came out with their 302(b) allocations for how much money each of the 13 subcommittees can spend. As in the budget resolution, the Congress is $24 billion below our request for non-defense discretionary. The biggest gap is in the Labor/HHS/education allocation, which is $7.2 billion below our request in the House and $5.7 billion below our request in the Senate. House and Senate subcommittees are scheduled to mark-up this bill on Wednesday May 10th. The Senate will face a procedural problem in passing appropriations bills: the $600 billion appropriations total is $59 billion above the caps established by the 1997 budget agreement. This means that the Senate will either need to raise the cap or get 60 votes to overcome the point of order on the appropriations bills. This could give Democrats more leverage over the appropriations process. NEC has been working with OMB, Communications and others on a strategy to lay the foundation for the debate over budget priorities. We are identifying key programs that will be cut by the House and the Senate and getting Cabinet members to work these with beat reporters, regional press, and constituency groups. We also are planning to respond rapidly to establish the contrasts between Congressional appropriations actions and our priorities.

China PNTR: Levin Proposal on Enforcement and Other Issues: As you know, this week we closed our differences with Levin on his framework proposals for China PNTR. On the Congressional-Executive Commission, we agreed with Levin this week that the Commission would monitor and report on human rights, religious rights, and labor market issues, and that it would monitor and encourage rule-of-law and democracy-building in China. The Commission would also issue an annual report to Congress and to the President, which could include WTO-consistent recommendations for legislative and/or executive action. We still need to finalize legislative language, and our next policy group meeting will focus on potential problems in the proposed legislation -- particularly on the Commission and on the China product-specific safeguard proposal.

5-12-00

H-1B Visas: Legislation increasing the cap on the number of high-skilled temporary workers brought into the country is likely to pass this year. A Hatch/Abraham bill is expected to go to the floor of the Senate next week. In the House, two bills will be marked up on Wednesday – the House Judiciary Committee will mark up a bill by Lamar Smith and the Education and Workforce Committee will mark up a Goodling proposal. None of the bills under consideration addresses all of the Administration's priorities for H-1B legislation, which are: 1) target additional visas to workers with the highest skills; 2) increase the fee in order to expand job training and enhance INS and DoL administration and enforcement; and 3) include the Administration's proposals to provide parity to Central Americans and Haitians under NACARA and legalize long-term migrants. Nonetheless, I feel we are developing a good consensus proposal that would give industry the visas it wants, gives labor the training, higher fees and focus on higher skilled workers it wants while also calling for the two key immigration positions. I don't know if our position will catch on, but it could position us quite well.

Africa/CBI: This week, the House passed the conference report to HR 434, the Africa/CBI trade bill, by a vote of 309-110. The Senate is expected to take up the conference report next week. The bill contains a compromise on the textile and apparel issues, which have been the principal obstacle to enactment in recent years. On Africa, the deal places limits on the growth and overall level of duty-free access to our market for apparel made from African fabric. However, this limit (1.5% of US imports rising to 3.5% over 8 years) is sufficiently above current exports of these products that it would allow for very substantial growth. In addition, apparel made from yarns not available in the US (e.g., silk, cashmere) and from US fabric would not be subject to any limits. Least developed countries would also be permitted to use Asian or European fabric for the first four years of the program and still qualify for duty-free treatment.

All in all, while the deal is less than the unlimited growth potential for duty-free exports that we sought, we estimate it would still permit over 30% sustained annual growth in tariff-free shipments to the US --- a very significant incentive for investment in job-creating apparel assembly operations. Tariffs are typically 15% to 20% on imported apparel. On CBI, the main issue was the extent of garments made with CBI regional fabric that would receive the same duty-free treatment as garments made with US fabric. A quantity was agreed upon that essentially grandfathers existing levels of exports to the US made from such fabric and allows for 16% growth in each of the next three years. Unfortunately, the conference report does not include a compromise on the two HIV/AIDS-related items that we advocate: the Feinstein amendment codifying USTR's policy of flexibility on pharmaceutical intellectual property rights enforcement in AIDS-stricken countries; and your Millenium Vaccine Initiatives tax credit proposals. However, discussions are underway with Sen. Feinstein on other ways to achieve the intent of her legislation, and we will continue to press the Hill to take up the vaccine proposals.

5-12-00

Biotechnology: This week, the Administration announced a series of new initiatives you approved late last year on agricultural biotechnology. These initiatives are calibrated to respond to consumer, farmer, and industry interests without departing from the longstanding USG position that biotech food products are safe from the standpoint of human health and do not require mandatory approval and labeling. We reaffirmed our confidence in our independent, science-based regulatory approach, but suggested that, because science and industry are advancing rapidly and consumer interest is growing, it is appropriate for the federal government to take steps to reinforce the strength our regulatory framework and ensure that companies' product claims are accurate and not misleading.

The aim is to facilitate market-led efforts to provide more information to consumers without endorsing the need for such disclosure and thereby undermining public confidence in the technology or hurting Wall Street's perceptions of the industry's prospects. Specifically, USDA and FDA will support voluntary industry efforts to segregate and label non-biotech foods by launching processes to develop testing and quality assurance methods (USDA) and developing guidance for the content of consumer product labels (FDA).In addition, FDA will require companies planning to introduce a new biotech food product to notify it 120 days in advance (such notification is now voluntary but generally provided), and CEQ and OSTP will coordinate a 6-month interagency review of federal regulatory oversight of the environmental risks involved in agricultural biotechnology. Finally, agencies will intensify at home and abroad education and outreach regarding the nature and strength of our regulatory process as well as the commercial, health, and environmental promise of the technology. Industry's views have shifted over the past several months, and the initiatives were widely validated by it in press reports. The most vocal consumer and environmental groups still support mandatory approval and labeling, but some moderates acknowledged pieces of the package as a step in the right direction. Furthermore, although the EU may try to misrepresent the new policy as a shift in our position lending justification to its own mandatory labeling requirements, a very clear distinction between our approach and theirs remains (i.e., voluntary as opposed to mandatory labeling and process-based vs. content-based labeling claims --- that is, FDA's labels would simply indicate that no-GMOs were added in production whereas the EU currently requires that non-biotech products meet a 1% GMO-content threshold, a requirement that they themselves have been unable to administer for lack of a reliable and standardized testing methodology).

Bob Johnson/Jesse Jackson and Iridium: Last Thursday, the NEC hosted a briefing by representatives of Bob Johnson and Jesse Jackson on their proposal to acquire Iridium to provide telephony to sub-Saharan Africa. Attendees included senior officials from DoD, State, DOC, Treasury, FCC, Ex-Im Bank, OPIC and White House agencies (OVP, CEA, NSC and OSTP). Agency officials are extremely interested in providing appropriate support (including from DoD as a potential customer, and Ex-Im and OPIC as potential sources of financing assistance).

good!
Keep me
posted - I'm not sure
it will work but it's worth
a closer look

5-12-00

They also identified major hurdles the investors would have to overcome to make the business viable. One is getting the cooperation of the monopoly telecom providers in the 20 target African nations (the investors believe Jackson's role there is key); the key is charging retail prices that allow the Iridium service (which would be provided at rural or village "teleboutiques") to attract users. A second hurdle is market access elsewhere; Iridium spent 6 years negotiating market access agreements around the world, and it is unclear how many of those would "convey". Without worldwide access, the service would be of little value to DoD, which was Iridium's biggest customer. The Johnson/Jackson investor group is planning to submit a formal bid to Motorola, Iridium's operator, within a few days. We are staying on top of this.

Financial Privacy Legislation: We got remarkably good coverage and response to your announcement last Sunday of a new Administration legislative proposal on financial privacy. Consumer groups and Representatives Markey and Dingell had previously argued for affirmative consent (opt-in) before any financial information could be shared with an affiliate or third party; our proposal requires opt-in only for the most sensitive information -- medical and personal spending habits -- and the right to say no (opt-out) before all other information can be shared. ~~Nonetheless, consumer groups and these and~~ other members of Congress were delighted by your proposal, because it gave new momentum to the issue and went further than anyone expected us to go. In order to continue the momentum, last Thursday, Secretary Summers and I joined Minority Leader Gephardt and Representatives LaFalce, Markey, Dingell and Frank at a press conference announcing that LaFalce was introducing the bill in the House, with 21 co-sponsors. In the Senate, Senators Leahy and Sarbanes introduced the bill with eight other Senators co-sponsoring. The Democratic Senate Privacy Task Force will host hearings next week to keep up the pressure. Industry has largely avoided responding to the merits of your proposal, arguing instead that we should see how the privacy provisions in the Financial Modernization bill work before going further.

Can we get any GOP help? It's very important - to get something done on it

Thurman - reletting order

China PNTR - Committee Mark-ups
May 17, 2000

A. Overarching Administration positions for mark-up

B. Administration bill on PNTR

C. Levin bill to supplement PNTR:
   1. Definition of Government of PRC
   2. Commission
   3. Monitoring & enforcement
   4. Import surge mechanism
   5. Task force on prison labor
   6. Technical assistance ⟶ state

D. English bill (HR 3198 - application of CVD law to NMEs)

E. Cardin proposals:
   7. Amendment to 201 – Admin position (from 1505)
   8. Captive production – Admin position (from 1505)
   9. Sunset rules ad/cvd
   10. WTO Dispute Settlement Commission
   11. *Amicus* brief in cold-rolled steel case re captive production

F. Cox proposal to amend Jackson-Vanik

G. Other issues:
   12. Cuba policy
   13. Taiwan and GATT Article XXI (Berman proposal)
   14. Annual NTR waiver

H. Stark amendments

I. Collins amendment

May 16, 2000

(A)

Position on Levin- Bereuter

Issue: What is the Administration's position on Levin-Bereuter?

- The Administration believes that the proposal developed by Congressmen Levin and Bereuter with others is constructive and addresses issues of major importance. [We welcome further dialogue on these proposals among Members on both sides of the aisle.] [We are pleased that additional members on both sides of the aisle have expressed their support.]

- We agree that it is a priority for the United States to press for improvement of China's human rights, religious freedoms, labor rights and the rule of law. Finding alternatives to the annual NTR renewal process, such as a Commission, to keep a spotlight on these issues makes sense.

- We agree as well that it is important to have a vigorous program, both within the USG and within the WTO, to monitor China's implementation of its WTO commitments and to ensure China lives up to them. And we must have adequate resources to accomplish this.

- Finally, we agree that we must make clear the rules and procedures this and future Administrations will employ to implement the strong import safeguard protections we negotiated.

- We are committed to working with Congress to address these concerns. We believe that the Levin-Bereuter proposals address these concerns, make good substantive sense and can garner broad bipartisan support.

- We could not, of course, accept anything that would in any way condition PNTR.

Administration Position on Other Amendments

Issue: Would the Administration consider other amendments or parallel legislation?

- The President sent a clean bill to Congress. We believe granting PNTR stands on its own merits, and are committed to working with Congress to secure passage as quickly as possible.

- Some members have expressed concerns, and we believe Levin and Bereuter, working with others, have put together a package that addresses important issues in a way that makes sense and can garner broad bipartisan support.

- As for other amendments, we would not, of course, accept anything that would in any way condition PNTR. We do not believe this is the right vehicle to consider changes to our trade laws that do not directly relate to implementation of our WTO agreement or that would not garner broad bipartisan support.

- As for amendments in other areas, we would have to evaluate them on their merits, and they would need to broaden, not narrow, the bipartisan consensus for PNTR and make sense from a policy perspective. Again, we believe Levin-Bereuter addresses important concerns expressed by a broad range of members in a way that is constructive.

Separate Bill vs. One Bill

Issue: Does the Administration want one bill or separate bills for PNTR and Levin-Bereuter?

- We support the substance of Levin-Bereuter, and leave to discretion of Chair and Ranking Member how to proceed.

TAB 8

ADMINISTRATION'S BILL ON PNTR

ISSUE: The President transmitted a "clean" bill to Congress that contained three sections–all related to the grant of permanent normal trade relations to the People's Republic of China (China). The Administration should be prepared to explain how the provisions will work, including what China must do to complete the accession process and what the President will certify before taking action to proclaim NTR treatment for goods from China.

Talking Points

- The proposed legislation starts with the standard language that Congress has used to terminate application of the so-called "Jackson-Vanik" provisions for several countries, including Bulgaria, Romania, Mongolia, Albania and Kyrgystan (among others). Each of these laws authorized the President to provide PNTR at a later date.

- Under the legislation, the President will, as part of the exercise of this authority, send a report to Congress certifying that China's WTO accession package is at least equivalent to the commitments that China made to the United States in November 1999.

- Specifically, once WTO Members working on China's accession reach agreement and are prepared to recommend that the WTO General Council consider China's accession, the President will transmit a report to Congress that will certify that the final commitments on tariffs, non-tariff barriers, services and all rules are at least equivalent to those contained in the November 15, 1999 agreement.

- This certification will cover all goods, services and agricultural commitments. The President will also include with the report the final WTO accession package that will show the full range of commitments that China will undertake as a WTO member.

- This report and certification would be made as part of the Congressional consultation process that the President does for all countries acceding to the WTO. Under U.S. law, these consultations with Congress must take place before the WTO General Council approves the final accession package. Thus, Congress will have ample time to review the certification and the final accession package before PNTR is granted to China.

- Once the President has submitted this report, the Administration will consult closely with Congress on the report and the accession package.

- Finally, PNTR will become effective only after China becomes a WTO member, which will happen 30 days after China submits a document accepting membership in the WTO.

Question: What does "at least equivalent" mean? Will the President be looking at the overall accession package or will he certify that each industry or sector will benefit from commitments at least equivalent to those in the November Agreement?

Answer:

- The market access concessions that we negotiated in November can only improve. We believe that the final terms of China's accession to the WTO will clearly reflect the full level of market access that we negotiated in November.

- We will not be trading off one industry or sector in making the certification called for in the proposed legislation.

- With respect to the protocol and working party report, China knows the importance of the commitments that it accepted in November and that the President must certify that the final provision must reflect our agreement. We have been consulting with other WTO members on the language in the November agreement and have not heard any opposition to the commitments contained in that language.

Question: Will China have to provide its revised laws before it accedes to the WTO? Must it notify the working party, or the General Council? How do we know China has complied with its obligations– before or after it becomes a WTO member?

Answer:

- China is now engaged in a comprehensive review of its laws and regulations to determine the new laws and changes that will need to be made to comply with its WTO obligations. (State Councilor Wu Yi is heading the committee in charge of that process.)

- At the last working party meeting in Geneva, China presented updated information on its trade regime and current laws and regulations. It presented over 177 laws and regulations in this single notification.

- We and other working party members requested that China provide additional detailed information on a wide range of issues that will be used in drafting the working party report and assessing the changes that will be needed.

- With respect to compliance, we have several ways to obtain information on China's compliance efforts. China's accession commitments include detailed provisions on transparency that build on the basic WTO requirements, including notifications to WTO members, prior publication and notice requirements and opportunities for WTO members to discuss all aspects of implementation at WTO meetings.

- In addition to these transparency and notice requirements, we are seeking a special multilateral monitoring mechanism to meet on a periodic basis to review China's implementation and compliance efforts.

- As you have seen from the various statements, the Administration will be focusing considerable time and resources to ensuring that China complies with its obligations.

(If pressed about whether China must provide amended laws before accession}

- We and other WTO members must be satisfied that China will comply with its commitments. We will be reviewing China's compliance efforts before they become a WTO member.

- In any event, we understand that under China's system once the National People's Congress ratifies an international agreement, the provisions of that agreement supercede any inconsistent provision of their domestic law. This is the case in some other WTO members as well.

Question: What are the next steps in the accession process and how long will it take to complete them?

Answer:

- China must complete its bilateral negotiations with a few other WTO members and the multilateral negotiations on its protocol and working party report.

- As you know, China's negotiators are meeting this week with the EU. Only a few other WTO Members, including Mexico, Switzerland, Guatemala and Costa Rica, must reach bilateral agreements.

- China must also complete work on its protocol and working party report.

    -- Much of the work on the protocol has already been done during previous sessions of the Working Party. In addition, the United States and China reached bilateral agreement in November on issues to critical to the United States.

    – While we and other Working Party Members need to address a few remaining issues, most of them are common to every accession. The primary task remaining is to ensure that the text clearly reflects China's commitments.

- The timing for completion of these negotiations depends on a number of factors, including China's willingness to make the final commitments necessary to pull this package together and the constructive participation of other Working Party Members

- For our part, we are prepared to work intensively and constructively to resolve the few remaining issues and then engage in the necessary drafting.

C1

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

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

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

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

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

The reasons are as follows:

- Under U.S. law, companies owned by governments are not viewed as being the government (separate juridical entities).

- Many state-owned enterprises are presently being transferred away from traditional Government of China management and ownership.

- The definition above would inadvertently include many Chinese firms that are private sector managed but have nominal relationship to some Chinese government entity, and moreover, would include Chinese foreign joint ventures where the foreign party has a 49% stake or less.

- Non-transparent accounting practices make it untenable to determine whether the Chinese government receives the "majority of profits" in any given case. Further, this definition might create an incentive to avoid improving transparency, and disincline Chinese firms to avail themselves of newly available US accounting services exported to the Chinese market.

- Many of the provisions in the bill that this language implicates are not related to actions by a company but only actions of "governmental" bodies, e.g., only the government can promulgate laws and regulations.

- Under section 102 of the draft bill, however, the Commission would be responsible for monitoring the "acts of the People's Republic of China" which reflect compliance with or violation of human rights, in particular those contained in the International Covenant on Civil and Political Rights.

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

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

c2

Levin Proposal – Congressional/Executive Commission

Membership and Voting

Background

The current version of the Levin Congressional/Executive Commission would have 23 members, 9 drawn from the House of Representatives, 9 from the Senate, and 5 from the Executive branch. Five of the 9 from each of the House and Senate would be selected from the majority party and four would be from the minority party. Executive Branch members would include one from the State Department, one from the Department of Labor, one from the Department of Commerce, and two at-large representatives; all would be appointed by the President. Commission decisions would be made by majority vote of the members present voting, with two thirds of the members constituting a quorum for the purpose of voting.

Talking Points

-- Under the best of circumstances, the President should have full discretion in making the Executive's appointments of five members to the Commission.

-- That said, however, the Helsinki Commission has worked well, with Executive Branch participation. We are committed to making the Congressional/Executive Commission work.

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

WTO Recommendations

Background

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

Talking Points

-- The Administration welcomes the opportunity to review a Commission report on its findings.

-- Any Commission recommendation that the Administration implements must be consistent with America's WTO obligations.

Subpoena Power

Background

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

Talking Points

-- The Administration thinks subpoena power is unnecessary.

-- The Commission could request that Congress subpoena documents on its behalf.

-- Believe the Commission's strength will be that it operates by consensus, both in terms of its own deliberations as well as in its interactions with the Administration and the public.

-- However, if there is subpoena power, we will work to be responsive to Commission requests.

Levin Bill - Title II (Monitoring and Enforcement)
Subtitle B: Resources

Issue

Section 213 of the bill supports additional resources for four agencies and departments engaged in monitoring and enforcement of trade agreements and trade laws: Commerce, USTR, State, and USDA. At the Administration's request, the current version of the bill refers only to resources to be devoted to compliance by China, even though the $ 22 million Trade Compliance Initiative in the President's FY 2001 Budget requested resources to ensure compliance by all U.S. trading partners.

Points

- The Administration welcomes the support of Congress for additional resources for the agencies engaged in monitoring and enforcing China's compliance with its trade agreement obligations. The President's FY 2001 Budget requests resources for the largest monitoring and enforcement effort for any agreement ever, covering China's obligations in the WTO and strong enforcement of our trade laws; we are pleased that this legislation affirms the importance of our compliance initiatives.

- However, we do not think this legislation should authorize appropriations where such authorization is not needed. So we would prefer that these sections reflect the sense of the Congress rather than being framed as authorizing language.

Q&A

Q: How much of the $22 million for the Trade Compliance Initiative will be devoted exclusively to China compliance?

A: The Initiative would increase the resources of four agencies (USTR, Commerce, State, and USDA) engaged in monitoring and enforcement of trade agreements and trade laws with respect to *all* our trading partners, but it includes increased staffing specifically devoted to China.

-- It would triple the resources at Commerce dedicated to China's compliance, including enforcement of the antidumping law with respect to China; and

-- USTR's FY 2001 budget request, which includes $1.3 million from the Compliance Initiative, would increase USTR's China staff by 75 %.

And the new positions created in legal, economic, and sectoral offices would all be available to assist in monitoring and enforcement activities with respect to China.

Background

The President's FY 2001 budget included a proposal to increase by $22 million the resources of agencies that monitor and ensure compliance with trade agreements. This trade compliance initiative grew out of an NEC-led interagency task force last year, to ensure that manufacturing remains a strong and vital component of the U.S. economy.

In the February 7, 2000, transmittal of the FY 2001 President's Budget, $21.2 million of this initiative was contained in the Department of Commerce portion of the Budget, and $0.8 million was in the Department of Agriculture budget. However, the Administration thereafter proposed a technical change in the Budget to ensure that the amounts below were reflected in the "Salaries and Expenses" portion of the President's Budget, with offsetting decreases in the Department of Commerce budget request. Therefore, the $22 million is to be distributed among the four agencies as follows:

Agency	Amount
Department of Commerce	$16.2 million
United States Trade Representative	1.3 million
Department of State	3.0 million
Department of Agriculture	1.5 million
Total	$22.0 million

The Department of Commerce intends to use its additional funds ($16.2 million) as follows:

Overseas Compliance Program	$ 3.0 million (16 FTE)
China compliance	$ 3.5 million (17 FTE)
Japan compliance	$ 1.3 million (11 FTE)
EU and others compliance	$ 1.5 million (13 FTE)
Import surge monitoring	$ 1.7 million (8 FTE)
Expedited dumping & subsidy investigations	$ 1.8 million (11 FTE)
Trade Law Technical Assistance Center	$ 1.7 million (5 FTE)
WTO enforcement	$ 1.8 million (12 FTE)

Additional Commerce staff would be devoted to the work that takes place in the various WTO committees that oversee implementation of the WTO agreements, especially those rules that come into force in 2000 in the areas of intellectual property, investment measures, subsidies, and customs valuation. Additional staff also would assist in negotiating the built-in WTO agenda in such areas as subsidies and services. The increase would also enhance the Import Administration's ability to assist USTR in litigating dispute settlement cases involving statutes administered by Commerce, such as those related to dumping and subsidies. Under this initiative the Department would double the number of trade analysts devoted to monitoring import surges and increase by 25 percent the number of analysts working on expedited antidumping and countervailing duty cases. It would triple resources dedicated to China's compliance, including enforcement of the antidumping law with respect to China.

The initiative also includes a proposal to create a new capacity in the Commerce Department to assist those who lack the resources or expertise to understand and exercise their rights under U.S. trade laws. The initiative would establish a formal pre-petition counseling office in Washington and triple the number of analysts currently devoted to assisting with the preparation of petitions under the laws administered by Commerce and providing guidance on other available trade remedies. The office would provide guidance on the collection of data necessary to develop cases under these trade laws and refer potential petitioners to the appropriate administering agencies. They would pay particular attention to helping small and medium firms and unions.

USTR intends to use its additional funds to create 13 new compliance positions that would be distributed among the following organizational units: General Counsel/Monitoring & Enforcement unit (3 FTE), Economic Affairs (2 FTE), China (2 FTE), WTO and Multilateral Affairs (1 FTE), Asia & the Pacific (1 FTE), Industry (1 FTE), Agriculture (1 FTE), Services, Investment & IPR (1 FTE) and USTR-Geneva for a litigation position (1 FTE). A major component of the work for all of these positions will be assisting in representing the United States in dispute settlement proceedings to which the United States is a party in the WTO.

The Departments of State and Commerce intend to jointly establish an Overseas Compliance Program to add trade experts in certain U.S. embassies abroad to be devoted to monitoring compliance with international trade obligations and supporting enforcement of U.S trade laws, such as those involving market access issues, subsidies, dumping, and other unfair trade practices. The State Department intends to expand and improve the training of Economic Section embassy staff dedicated to monitoring compliance with trade agreements, and the Commerce Department intends to place trade law and trade agreement compliance specialists in certain embassies as well as dispatch from Washington teams of trade law to countries where particular problems arise.

The Department of Agriculture intends to use its additional resources to bolster its legal and technical expertise in areas covered by trade agreements and US trade law, including food safety and biotechnology. USDA's Foreign Agriculture Service monitors implementation of the WTO agreement's agricultural trade liberalization provisions and works with USTR to ensure compliance when problems are identified, providing legal support for litigating disputes in the WTO. It also participates in negotiations with countries seeking to accede to the WTO and helps to develop harmonized rules of origin for customs purposes.

Q & As on Commerce's China Compliance Monitoring Plan

Q. Are you taking resources away from other areas under your plan?

A. The nucleus of the China team comes from our China office and our Trade Compliance Center. We have also drawn from our Import Administration, Commercial Service staff in Washington, Trade Development, and our General Counsel's office. I can assure you that this will not affect any of the other important functions and programs in the Department, including ITA. As we learned during last year's steel crisis, we must always be prepared to address important trade priorities with existing resources. However, there is no question that we will be better able in the future to meet these challenges if we receive additional resources, as requested in the President's FY 2001 budget.

Q. How does this square with 2001 budget request?

A. This plan is the first step in developing a robust monitoring and compliance program for China and other key countries. In the President's FY 2001 budget request for the Department, we have asked for a number of increases which will greatly enhance our ability to ensure that China meets its trade agreement obligations. I have prepared a short summary of the Department's FY 2001 budget request for your perusal. The Trade Compliance Initiative will triple the number of staff we have dedicated to working on monitoring and enforcing China's trade law and trade compliance. The FY 2001 budget request will allow us to expand these initiatives.

Q. How does your compliance plan relate to USTR's plan?

A. Compliance is an interagency effort. The President's budget request includes resources for Commerce, USTR, State, and USDA. Not all commercial issues will constitute WTO violations. The goal of Commerce's rapid response team is to deal with issues before there is a need for formal dispute settlement. Where issues of WTO compliance arise, we will coordinate closely with USTR's interagency task force. As another example, information from our statistical monitoring program will feed into USTR's interagency task force on implementing the China-specific safeguard mechanism.

Q. If you're putting the plan into place now, why do you need more money next year?

A. The plan we are putting into place will give us a good start on ensuring Chinese compliance. However, the real workload will not develop until China joins the WTO. The resource increase we are requesting for FY 2001 will provide for the needed expansion of these programs. As business opportunities increase and China transitions to an open treading system , much new business will be generated for American companies and we anticipate an increased demand for Commerce services.

Q: What is the "accelerated investigation and enforcement procedure" you mention in your fact sheet? Is this the same as a 301 investigation? Will it automatically lead to 301 investigation? Will there be an interagency process?

A: We have assembled a team of compliance and trade specialists to focus solely on China problems. When a complaint is received at Commerce this group will do a rapid initial analysis of the complaint, and if appropriate, approach Chinese government officials seeking to address the problem.

If the facts warrant, the team will attempt to resolve the concerns raised in the complaint by working with the Chinese and will recommend an appropriate resolution within 90 days. The team will draw on the expertise of Department officials and those in other agencies, as appropriate, in trying to resolve the matter.

We do not need to use Section 301 provisions at this stage of the analysis but will not hesitate to refer a problem to USTR for further action under Section 301, WTO dispute settlement or other trade law if we are unable to resolve the problem, and it is actionable.

Q: We understand that China has, at times in the past, insisted that investors transfer technology and businesses agree to offsets as conditions for selling in or investing in China. How will you monitor this?

A: China will eliminate technology transfer requirements and offsets as a condition for investment approval and importation. The terms and conditions of any transfer of technology will be agreed between the parties to the contract and not imposed by the government. In addition, China has agreed to eliminate local content requirements, export performance requirements and foreign exchange and trade balancing requirements.

Exports from the United States will no longer face this barrier and companies that want to invest in China can negotiate these terms without the Government interfering. Similarly, importation and investment will not be conditioned on conducting research and development in China.

What we have to do is ensure that our businesses and investors know about these Chinese commitments so that they can resist any attempts by Chinese government organizations to force technology transfer. Education and training of our Embassy officials and U.S. businesses is crucial, and we use are using every means possible to do that, including use of the Internet and teaming with U.S. business multiplier organizations like the Chamber of Commerce and the U.S. China Business Council.

ANTI-IMPORT SURGE PROVISION

ISSUE: Although the Administration believes that it has the authority to implement the product-specific safeguard in our November agreement through regulations, we have worked with Congressman Levin to craft new legislation to implement this provision. We will need to be able to explain the particular approach embodied in Levin's draft, while addressing legitimate concerns that the Republican-side may have.

TALKING POINTS

- We negotiated a provision in the November Bilateral Agreement that permits us to take fast, effective action against increasing imports from China. This provision is in addition to action under the WTO Safeguard Agreement and the textiles safeguard in our November Agreement.

- While we believe that we have the authority to implement this anti-surge mechanism through regulations, we have been willing to take a legislative approach if Congress prefers that approach.

- In evaluating any legislative proposal implementing this safeguard, we look to see if it is faithful to the requirements of our November Agreement and whether the process will be accessible and effective for the industries and workers that want to use it.

- We believe that the current proposal provides a fast, fair and effective means of implementing the Agreement's anti-surge (Safeguard) provision.

QUESTIONS AND ANSWERS

Q. Didn't Ambassador Barshefsky say that the Administration did not need legislation to implement this provision of the protocol? Why are you now supporting a legislative approach?

Answer:

- We believe that the President has the authority to implement this safeguard through regulations issued under Section 125 of the Trade Act of 1974 and Section 332 of the Trade Act.

- However, a number of members of Congress expressed a preference for implementing this provision through legislation. If Congress prefers to implement the product-specific safeguard through legislation, we are willing to take that route.

- Our objective is to implement this provision in a way that provides an effective means for

U.S. industries and workers to seek action against imports from China that cause market disruption in a way that conforms to the requirements of our November Agreement.

Q. Why don't we just amend section 406?

Answer:

- We examined various approaches to implementing the safeguard through legislation and concluded that a new provision would be the best way of combining the several elements contained in the product-specific safeguard into a workable process.

- The Agreement provision is a combination of the standards and swift action of section 406, with the negotiating process of section 301, and some of the procedural requirements of section 201.

- The resulting implementing provision needs to incorporate all of these elements into a single process. The clearest way to do this is to draft a provision that is specifically designed to implement the Agreement provision rather than modifying a law that is not designed for that purpose.

Q. Is trade diversion a new concept or is it in other U.S. trade laws?

Answer:

- The concept of trade diversion is found in other U.S. trade laws. For example, it is an element that the President considers in determining whether to provide relief under section 201.

- Anti-circumvention is also a concern in the context of antidumping investigations.

- This provision is the first to implement a means to address diversion directly by setting standards to prevent increased imports.

- It is an anticipatory action--the possible first step in available relief, i.e., the trade diversion provision permits action when a safeguard action by China or another WTO Member causes or threatens to cause increased imports from China into the United States. It does not require a demonstration of injury to the domestic industry. An industry must show material injury in the case of market disruption or threat of market disruption.

- Relief would be limited, however, to steps necessary to address the diversion and would not restrict imports below the level of the 12 months preceding China or the other WTO Member's safeguard action.

Q. Is Trade Adjustment Assistance provided under the proposed legislation? Why not?

Answer:

- Trade Adjustment assistance is not provided under this proposal. The intent of this provision is to implement the Agreement provision which permits us to take action based on a very low threshold of injury and causation.

- In the case of trade diversion, the proposal permits action without a finding of injury to the domestic industry.

- The context of this China-specific safeguard differs from that in section 201–which relates to global imports. It is less likely that import surges reflect permanent changes in the terms of competition in an industry. In any event, an action under section 201, including the possibility of trade adjustment assistance, is still available to an industry.

Q. Does the Administration support this proposal's limits on the President's discretion to determine whether or not provide a remedy for market disruption?

Answer:

- We believe that a presumption in favor of relief is appropriate when there has been a positive finding on market disruption.

- The proposed limitation on the President's discretion to deny a remedy, does not, in our view, prevent him from taking such action in appropriate cases.

[Levin Proposal

- Permitting denial of relief when it is not in the national economic interest or where providing relief would cause serious harm to the national security provides the President with sufficient flexibility to take into account all appropriate issues when making his decision.

- Many of the factors that are listed in the section 201 provisions on remedy are implicit in the President's consideration of whether to invoke the exceptions to the presumption of relief.]

- For these reasons, we can support the proposal.

PERISHABLE PRODUCTS

Question: Does the China anti-surge safeguard include a provision granting expedited consideration for investigations involving perishable products? If not, why not?

Answer:

- The proposed legislation implementing the China anti-surge safeguard provides a rapid process for obtaining relief from market disruption. In cases involving critical circumstances, a provisional remedy may be granted within 65 days from the filing of a petition.

- This complies with the requirements of our November bilateral agreement, because a determination is based on a preliminary determination of market disruption or threat of market disruption and provides a prompt remedy.

- Even in a standard investigation of market disruption, the President must act within 150 days after a petition is filed–a much shorter time frame than under a normal section 201 investigation (240 days).

- In addition, we could reach a negotiated solution in less than 150 days.

- In light of this, we did not believe that a perishable product provision was necessary.

Fact Sheet on Title III, Subtitle A: Task Force on Prison Labor

Issue: Establishes task force on prohibition of importation of products of forced or prison labor.

Points:

- The Task Force is composed of: Secretary of the Treasury, Secretary of Commerce, Secretary of Labor, Secretary of State, and Commissioner of Customs or their designees at or above the level of Deputy Assistant Secretary (or Assistant Commissioner for Customs). The Treasury designee chairs the Task Force.

- The Task Force "shall monitor and promote the effective enforcement of and compliance with section 307 of the Tariff Act of 1930" by performing the following specified tasks:

- Coordinate closely with Customs to promote maximum effectiveness in the enforcement by Customs of Section 307 of the Tariff Act of 1930, including having Customs keep the Task Force informed on a regular basis of the progress of its investigations of allegations that goods mined, produced, or manufactured in any foreign country by convict labor, forced labor, or indentured labor under penal sanctions are being entered or entry is attempted into the U.S.;

- Make recommendations to Customs on seeking agreements with foreign governments to allow Customs officials to visit sites where goods may be mined, produced, or manufactured in any foreign country by convict labor, forced labor, or indentured labor under penal sanctions;

- Work with Customs to assist foreign governments in monitoring the sale of goods mined, produced, or manufactured in any foreign country by convict labor, forced labor, or indentured labor under penal sanctions to ensure such goods are not imported into the U.S.;

- Coordinate closely with Customs to promote maximum effectiveness in the enforcement by Customs of Section 307 of the Tariff Act of 1930, including having Customs keep the Task Force informed on a regular basis of progress of its monitoring of U.S. ports to ensure that goods mined, produced, or manufactured in any foreign country by convict labor, forced labor, or indentured labor under penal sanctions are not imported into the U.S.; and

- Advise Customs in performing other functions, consistent with existing authority, to ensure the effective enforcement of section 307 of the Tariff Act of 1930.

- The Task Force must submit a report to Congress on its work within one year of enactment of the legislation and every year thereafter.

- The legislation includes a provision authorizing funds necessary for the Task Force's functions to be appropriated for fiscal year 2001 and each fiscal year thereafter.

Question and Answer
Prison Labor Task Force – Benefits

Q. What benefits would flow from the creation of a Prison Labor Task Force?

- The Task Force would provide another avenue for interagency cooperation on forced labor issues. Although cooperation among the various agencies is already good, a task force would provide a more formal mechanism for this cooperation.

- Such mechanism would help ensure that cooperation on this important matter continues and increases, and encourage the agencies represented to provide Customs any and all information which they may obtain that concerns or is related to goods produced by a prohibited form of labor and which may be imported into the U.S.

- It would also help ensure that all relevant agencies remain focused on combating the problem of goods being imported into the U.S. that have been mined, produced, or manufactured in a foreign country by convict labor, forced labor, or indentured labor under penal sanctions.

- For example, the Task Force could help coordinate efforts by U.S. delegations traveling to countries where prison/forced/indentured labor is a problem so that they may raise the issue with foreign counterparts.

- Similarly when foreign delegations from relevant countries are visiting the U.S., the Task Force could coordinate diplomatic pressure on the delegations with regard to outstanding prison/forced/indentured labor issues.

- Additionally, the Task Force agencies could assist Customs by providing access to valuable contacts overseas that could assist with Customs' enforcement efforts.

Background:

United States trade laws ban prison labor imports. Section 1307 of the Tariff Act of 1930 prohibits the importation into the United States of merchandise produced in a foreign country with prison labor, or forced or indentured labor. In the early 1990's, in response to allegations that political prisoners in China were being used to produce goods for export to the United States, U.S. Customs and the State Department began investigating allegations of importation of prison labor-produced goods. Forced labor is an intrinsic part of the Chinese penal system, although, since 1990, export of goods produced in prisons is illegal under Chinese law.

* In 1992, the United States negotiated and signed a Memorandum of Understanding (MOU) with China to facilitate investigation of prison labor-produced imports. The MOU allows for inspections of Chinese prison facilities by a U.S. Embassy officer, upon request, to establish the origin of alleged prison-produced products imported into the U.S. The U.S. Customs Attaché in Beijing usually conducts such visits with a Chinese escort and possibly other U.S. diplomatic personnel present.

* Differing interpretations of the MOU, and dissatisfaction by the U.S. with its implementation, led us in 1994 to conclude a Statement of Cooperation (SOC) which tightened procedures for investigations and plant visits under the terms of the MOU. China is the only nation with which we have such formal arrangements regarding the import of goods manufactured by prison labor.

Chinese cooperation with the two agreements has not been fully satisfactory; however U.S. enforcement efforts remain vigorous and effective. Under the MOU, U.S. Customs refers cases of alleged prison labor imports to the Chinese Ministry of Justice (MOJ) for investigation. U.S. Customs has made approximately 60 referrals since the signing of the MOU. The MOJ has responded with information on a majority of these cases. When more information is needed, U.S. Customs can ask to visit the facility in question. U.S. Customs has formally requested to visit 15 facilities suspected of exporting prison labor products, and has been allowed to make nine visits to seven different sites. The most recent visit took place in November 1997. On that visit, the U.S. Customs Attaché found no evidence that prison labor was being used to manufacture exports and the withhold release order was lifted.

At this time eight visit requests remain outstanding. The United States Government continues to communicate to Chinese officials our insistence that compliance under the MOU and the SOC be timely, consistent, and independent of other issues in our bilateral relationship. The U.S. Customs Attaché in Beijing regularly renews the U.S. requests for visits to suspected prison labor facilities with his Chinese counterparts. Treasury and U.S. Customs officials have raised the issue in Joint Economic Committee meetings and other law enforcement bilateral consultations in 1997, 1998, and 1999.

U.S. and Chinese law enforcement agencies cooperate in a variety of areas of mutual interest including intellectual property rights, financial crimes, counterfeiting, and customs enforcement generally. Treasury and U.S. Customs are working on strengthening their relationship with Chinese law enforcement agencies, including Chinese Customs. Among other auspicious steps, the United States and China signed a Customs Mutual Assistance Agreement in 1999.

U.S. Customs executes its authority vigorously to prevent the importation of prison labor-produced goods from China. If U.S. Customs has reasonable suspicion that a shipment has been produced using prison labor, it can prevent the shipment from entering the U.S. market pending further investigation. Since 1991, U.S. Customs has issued over 26 such "detention orders" on imports from certain named facilities in China (20 of these remain in effect.) In such cases, the suspect goods cannot enter the commerce of the United States, are usually re-exported, and impose a financial loss on the exporter. If investigation indicates probable cause that a type of merchandise from given facility is produced with prison labor, U.S. Customs will issue a formal "finding" to that effect which is published in the *Federal Register* with the approval of Treasury. There are four formal U.S. Customs findings regarding prison labor apply to China.

Actions taken against Chinese merchandise during this Administration have barred a wide variety of goods – electric fans, hoists, surgical gloves, raincoats, artificial flowers, tea, sheepskin and leather, and iron pipe fittings – from entering the U.S. market. Investigations by

U.S. Customs have led to one prison-labor related criminal conviction and one finding sustained by the Court of International Trade.

Rule of Law/Technical Assistance - Department of Commerce

Issue

How will the Commerce Department implement the "Rule of Law Program" provided for in the Levin/Bereuter bill?

Talking Points

- The Department of Commerce, working closely with the Department of State and U.S. AID, as well as USTR, will establish a program to conduct rule of law training and technical assistance related to commercial activities in China.

- Commerce has significant expertise in this area, and for years has been providing rule of law assistance in the context of WTO accessions through its Commercial Law Development Division.

- We are committed to following up on China's WTO commitments and ensuring that China has a legal system that will allow it to implement its obligations. We intend to send a team of experts to Beijing in July to begin to provide technical training on WTO obligations. The team would provide technical training targeted at mid-level managers of the Chinese Government, U.S. businesses and Embassy personnel.

- Moreover, we intend to dedicate resources to a program to ensure that Chinese laws are amended to bring China into conformity with its WTO obligations. The Chinese have already agreed to this Comparative Law Dialogue.

Questions and Answers

Q: How will this "Rule of Law Program" be coordinated across the government?

A: We will work closely with the Department of State, USAID, and USTR to develop a program that will meaningfully contribute to the development of rule of law in China. We will focus on issues related to transparency, judicial review, and due process. Commerce already has significant expertise in promoting rule of law through its Commercial Law Development Division, which has organized programs devoted to rule of law in many countries throughout the world, and which has focused much of its efforts on assisting these countries in joining the WTO. In addition, the State Department's Rule of Law program has been working to assess the needs of the Chinese government and business community.

Q: Aren't there restrictions on the use of AID funds for use in rule of law programs for China?

A: The Levin/Bereuter proposal would allow the use of AID funds for rule of law training in china. There is a tremendous need in China for technical assistance as China works to conform its laws to the WTO. We believe that a rigorous program of training and technical assistance, coupled with an intensive dialogue to help China conform its laws to the WTO, is one of the strongest actions we can take to ensure that China complies with its WTO obligations. The more we help China adapt to the WTO, the more we help American businesses, workers and farmers take advantage of the new opportunities created by China's accession to the WTO.

Background

Under current law, USAID funds may not be used for technical assistance programs in China. Under Levin/Bereuter, AID funds would be available for use in China. Also under the Levin/Bereuter proposal, a new Commerce program would be established and funded (along with a Department of Labor program) to conduct rule of law training and technical assistance related to commercial activities in China. Commerce, using USAID money, acting through its Commercial Law Development Division, currently provides rule of law technical assistance to a number of developing countries, often in the context of their joining the WTO. Working with State, USAID, and USTR, Commerce would administer this program to foster rule of law in China, which would include encouraging compliance with China's WTO obligations.

Ways and Means Markup May 17, 2000
Application of CVD Law to China

Issue

Rep. Phil English (R-Penn.) has introduced a bill that would require Commerce to apply the countervailing duty law to nonmarket economies (NMEs), which, under the unfair trade laws, includes China. Commerce does not now apply the countervailing duty law to nonmarket economy countries. There is an appellate court decision upholding this long-standing practice.

Our policy is based on the theory that it is impossible to measure market distortions where there is extensive government control over an economy, and that the NME methodology under the dumping law calculates the value of the product absent government distortions, including subsidies.

Talking Points

ÿ As you know, it is our longstanding practice not to apply the countervailing duty law to nonmarket economy countries.

ÿ Instead, we apply a special NME methodology pursuant to the dumping statute. It uses the costs of inputs in market countries to determine what those costs would be in a similarly situated surrogate economy that operates on market principles.

ÿ We apply this NME surrogate-economy methodology in dumping cases to determine what the fair value of a product is absent the government distortions of a command economy. Subsidies are one kind of government distortions. Our NME methodology calculates the value of the product absent those distortions.

ÿ We believe that the NME methodology continues to provide greater protection from unfairly traded imports and provides a better benchmark from which to measure fair value for products.

ÿ Under the dumping law, we have the ability to determine whether a country or an industry works on market principles. This is a factual matter. Where we determine that a country or an industry is market-oriented, we will apply the countervailing duty law.

ÿ We do not support this amendment because it might upset the delicate balance we struck in our November agreement with China, where China agreed that we could continue to apply our nonmarket economy methodology in dumping cases for 15 years.

Q and A

Q: Under the likely terms of China's accession to the WTO, it appears that China will be able to maintain its vast network of State-owned enterprises and that China will

continue to be able to pour massive subsidies into these enterprises. How will you address these issues if the countervailing duty law does not apply to China?

A:
- As you know, pursuant to a decision of the U.S. Court of Appeals for the Federal Circuit upholding the Department's interpretation of U.S. countervailing duty law, the Department currently does not apply the remedies of the countervailing duty law to China or any other countries with non-market economies.

- The Department nevertheless has been able to address the distortions caused by unfair trade from non-market economies through vigorous application of the antidumping law, where we use a special, non-market economy methodology. That methodology provides a strong remedy for counteracting unfair trade.

- In a very significant development in November's bilateral agreement with China, we obtained China's consent to the continued use of the non-market economy methodology for 15 more years.

- If for any reason before the end of that 15-year period China were able to prove that a particular industry had become market-oriented, we have made clear that we would immediately begin to apply the countervailing duty law to that industry.

- Similarly, if for any reason China were ever able to prove that its economy as a whole had become market-oriented, we would immediately begin to apply the countervailing duty law to China in full.

- Keep in mind that, although we do not apply the countervailing duty law to China, we will still have the ability to challenge Chinese subsidies in the WTO.

- We have already obtained certain concessions from China that will discipline its use of subsidies independent of countervailing duty law remedies, and we are seeking additional concessions.

  - China will be obligated to eliminate all import substitution subsidies immediately upon accession.

  - We also expect China to commit to the immediate elimination of export subsidies.

  - We have also obtained more technical concessions that are quite significant in terms of our ability to challenge Chinese subsidies, both under the immediately available enforcement proceedings before the WTO and in the context of our countervailing duty law, whenever we begin to apply it to China.

Background

The 1986 decision of the U.S. Court of Appeals in the *Georgetown Steel* case upheld the Department's interpretation of the countervailing duty law as not applicable to non-market economies.

In the November 1999 U.S.-China agreement regarding China's accession to the WTO, China agreed that Members could continue to use a special, non-market economy methodology in antidumping cases for 15 years, after which time the GATT-validity of that methodology would be subject to dispute settlement. This aspect of the U.S.-China agreement must still be endorsed multilaterally and included in China's Protocol of Accession.

Similarly, the concessions that the United States has obtained from China in the subsidies and countervailing duty areas must still be endorsed multilaterally and included in China's Protocol of Accession.

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Changes to Section 201

Issue: Rep. Cardin has proposed amending Section 201 in the context of consideration of PNTR.

Q: Would you support a change to the U.S. import "safeguard" law, section 201, or to our antidumping laws?

- This is not the appropriate vehicle for considering amendments to our trade laws that go beyond implementing our WTO agreement with China.
- We negotiated a strong China specific import safeguard provision in the Bilateral WTO Accession Agreement, and support the Levin-Bereuter proposal to implement it. The China import safeguard we negotiated provides stronger protection from surges of Chinese imports than Section 201.
- The Administration's focus has been on strong enforcement of our existing laws. We are, however, prepared to discuss ideas relating to strengthening our trade laws, provided they are consistent with our international obligations and make sense from an overall policy perspective. Changing our trade laws must be approached with great care.

Background

Congressman Cardin was a co-sponsor of HR 1505, which was introduced by Congressman English last year to amend section 201 and the antidumping and countervailing duty laws. We assume that the amendments to section 201 to which he refers in his April 28, 2000 letter to Congressman Levin are those contained in HR 1505,

Causation Standard Proposal: HR 1505 would change the standard necessary to demonstrate that increased imports have injured, or threaten injury to, the domestic industry. Currently, under Section 201 the ITC can make an affirmative injury determination only if increased imports are "a substantial cause" of serious injury or threat of serious injury. The statute defines "substantial cause" as a cause that is important and at least equal in importance to other causes. Under the bill the ITC could make an affirmative injury finding if it finds that increased imports are "a cause" of serious injury or threat of injury. The bill says that imports are "a cause" of injury or threat when there is a "causal link" between imports and injury or threat of injury.

Assessment: Moving from the current "substantial cause" injury test to the proposed "causal link" standard is likely to draw a WTO challenge since the change would dramatically lower the threshold for relief.

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Cardin Proposals -- Captive Production and Amicus Brief

ISSUE:

Cardin and the industry are trying to change the "captive production" provision of the law. When a product is sold on both a "captive" (intra-company) and "merchant" market basis (to unrelated customers), and merchant sales are adversely affected by import competition, the bill directs the ITC to consider only merchant sales when determining injury or threat of injury.

TALKING POINTS:

If Raised:

- The current provision that was agreed upon in the URAA addressed the industry's concerns with the way the ITC handled this issue in the 1993 steel cases.
- I understand your assertion that Canada, the EU and Argentina apply a methodology similar to what you propose, but I still have some concern about a method that could appear to examine something less than the domestic producers as a whole.
- The current provision, when properly interpreted, carefully balances the interests of domestic industries while avoiding WTO consistency problems.

Question: **Will DOC file an amicus brief at the CIT taking the position that the ITC erred in its application of the captive production analysis in the cold-rolled cases?**

Answer: As you know, Commerce investigates dumping, and the ITC determines whether the domestic industry is injured by any dumping.

Because one of the investigations arising from the cold-rolled petition is still before the Department, it is not appropriate for me to comment on the ITC's ruling or any resulting appellate litigation.

The final determination of cold-rolled steel from China is due for signature on May 22, 2000. As per our regulations, the ITC will make its final injury determination with respect to China 45 days after the issuance of Commerce's final determination.

Commerce vigorously enforced the dumping law in these investigations. Six of the twelve cold-rolled antidumping cases were expedited, the final margins ranged from 16.65 to 80.67 percent for these six.

BACKGROUND:

Assessment

Like the parallel amendment to the 201 safeguard statute, this provision aims to exclude from the injury analysis those intermediate products (like semi-finished steel) that are further manufactured by domestic producers. Currently, the ITC may limit its consideration of injury to the merchant market only if certain market characteristics exist.

Because the U.S. steel industry internally consumes so much of its own production of cold-rolled steel (approximately 60 percent) in making other steel products, the steel industry has alleged that the size of the U.S. cold-rolled market in the ITC's analysis is inflated, making the market share of imports appear artificially small. The industry alleges that this effect was one reason for the negative injury determinations in the 1993 steel cases. In response to this concern, section 771(7)(C)(iv) was added as part of the URAA in 1995.

The domestic industry has complained, however, that the requirements of the provision are too difficult to meet. They are likely to point to the fact that the ITC ignored the provision in making its recent negative determinations on cold-rolled steel, finding that downstream production was not done by "same producer" but rather by affiliated companies and joint ventures.

GATT Consistency

This amendment would remove the restrictions in the current captive production provision, which was first adopted in the URAA. By so doing, it could arguably limit the domestic industry that the ITC examines to something less than "the domestic producers as a whole of the like products," as required by Art. 4.1 of the AD Agreement. This is because the amendment permits an examination of only a subgroup of production.

Amicus Brief:

Cardin has asked the Administration to file an *amicus* brief be filed supporting the steel producers' challenge to the ITC ruling. The steel producers' challenge focuses on the ITC's interpretation of the captive production rule, asserting that the ITC's interpretation is at odds with the intent of Congress and the Statement of Administrative Action.

Sunset Provision of the Dumping Law

Issue

Rep. Cardin, on behalf of the steel industry, proposes some kind of strengthening of the sunset rules in dumping cases. It is not clear what his proposal is, but it appears he wants a higher standard for revoking cases on products that have been subject to numerous dumping cases.

Talking Points

- The Department of Commerce is vigorously enforcing the current U.S. regulations concerning antidumping sunset procedures.
- Any proposal to change those provisions would have to be carefully considered and be WTO consistent.
- There is no provision in the WTO for a different sunset standard in the case of "endemic" dumping.

Question: **Is there anything you can do to prevent dumping orders from being sunsetted when there is "endemic dumping," i.e, where dumping has been found on the same product in numerous cases?**

Response: As you know, the injury standard in an investigation is different from that in a sunset review. In an investigation, the ITC looks at the current and recent past status of the industry. In a sunset review, even though the industry may be healthy, the ITC must ask the question whether the industry would continue to be healthy absent the dumping order. This is a stricter standard, and it is designed to allow dumping orders to remain in place if revoking the order would lead to injury.

Background

In the wake of the recent ITC negative determination in the cold-rolled steel cases, Cardin may be concerned that this does not bode well for upcoming sunset reviews of the 5 cold-rolled cases that are already on the books. Also, in the next six months, about 33 carbon steel case come up for sunset review. If the ITC applies the statutory standard correctly, its recent negative determination in the cold-rolled investigation should have no effect on the sunset reviews, or at least should not predetermine the outcome.

E 10

WTO Dispute Settlement Review Commission
("Dole Commission" proposal)

Issue

Congressman Cardin has proposed creation of a Commission to review WTO dispute settlement rulings, presumably along the lines of that which was proposed by Senator Dole in 1994 to accompany legislation to implement the Uruguay Round agreements. Although the Administration agreed at that time to support legislation creating such a commission, the bill never came to a vote. Counsel for the U.S. steel industry have long advocated such a Commission, and continue to do so.

Talking Points

- The idea of a WTO review commission arose out of fears in 1994 that the WTO dispute settlement process might infringe U.S. sovereignty.

- We have now had more than 5 years of experience with the WTO dispute settlement process and the United States has been the most active user of that process to enforce our WTO rights.

- And that experience has shown that those fears about sovereignty were without foundation.

- We have been vigorous and successful in our use of WTO dispute settlement, having prevailed on 23 out of the 25 U.S. complaints that have reached conclusion so far.

- We have lost some cases brought against us, and have been disappointed when our legal arguments have not prevailed. But in those cases, the panels did not exceed their authority and did not act in an arbitrary or capricious manner, which is what the Review Commission proposed in 1994 was designed to determine.

- When we have defended a U.S. statute or regulation and have not prevailed, we have respected our WTO obligations -- just as we expect the same of our trading partners -- and we have responded in a manner that did not diminish U.S. sovereignty.

- Therefore, we no longer see the need for such review. Indeed, we believe that such a commission might inappropriately politicize the dispute settlement process -- a process that has yielded positive results for our farmers, firms and workers.

Q&A

Q: It appears that what some predicted in 1994 has now come true: that the new binding dispute settlement mechanism of the WTO has been used to attack and diminish the effectiveness of all of the trade law tools available to us -- Section 301, Section 201, our antidumping law (in cases on *DRAMs, Korea steel* and *Japan steel*), our countervailing duty law (in case on *Leaded steel bars*), the 1916 Antidumping Act, and now Section 337. What can we do about this disturbing trend?

A: We don't see such a trend; in fact, we recently prevailed when Section 301 (our principal statute for addressing foreign trade barriers) was challenged. Other countries will continue to react to our use of our trade laws - but we will continue to act and to use the legitimate rights available to us under those laws and under the WTO Agreement.

-- We vigorously defend our trade laws and the actions we take under them. We have worked closely with the Commerce Department, the USITC and private stakeholders in these defenses [leaded bar, DRAMs] and we will continue to do so. We successfully defended Section 301. And while we did have to make a relatively minor change to our regulations after the DRAMs case, the panel sustained every judgment call that Commerce made on the facts, and rejected every one of the factual arguments made by Korea. And the antidumping order on DRAMs is still in place. So a challenge by another WTO Member does not mean a weakening of our trade laws -- indeed, we can be challenged and win.

-- The statements we made in 1994 remain true today: every country has the sovereign option to respond to a WTO dispute settlement decision by taking action to comply, by reaching a mutually acceptable settlement, or by not changing its law and accepting trade retaliation by the winning party. This is no different than if there were no trade rules and no dispute settlement mechanism.

Background

Senator Dole's bill would have established a commission of five federal judges to review the procedural fairness of WTO panel reports decided against the United States in cases where the United States is the defending party. In addition, USTR could refer to the commission for review any case in which the United States lost as the complainant. The bill was based on a written understanding reached in November 1994 between the Senator and USTR Ambassador Kantor.

Specifically, the bill provided for such a commission to consider, and report to the Congress and the Administration on, whether a WTO panel has:

(1) demonstrably exceeded its authority or terms of reference;

(2) added to U.S. obligations or diminished U.S. rights under a WTO agreement;

(3) acted in an arbitrary or capricious manner, engaged in unethical conduct, or demonstrably departed from WTO rules of procedure; or

4) failed to apply a standard of review mandated by the relevant WTO agreement,

including the standard set out in the anti-dumping agreement.

The commission was authorized to solicit public comments and testimony in the course of examining a particular report.

The bill also established fast-track legislative procedures to respond to affirmative findings by the commission. If the commission found that a panel had engaged in one of the types of misconduct listed above, a single member in either house could introduce, and bring to a vote, a resolution calling on the President to negotiate appropriate changes to WTO panel procedures. If the commission made three affirmative findings in any five-year period, any member of Congress could introduce a resolution withdrawing Congressional approval for the WTO.

When the bill was introduced, it contained a number of objectionable provisions, including a requirement for USTR to include private sector representatives on U.S. dispute settlement teams. The Administration negotiated out the last troublesome portions of the Senate bill, and was prepared to support it in 1995. However, when Senator Dole tried to move his bill to a floor vote, he failed due to a number of "holds" -- particularly those placed by Senators Roth and Byrd. Senator Roth apparently was concerned that the bill had not been subject to Finance Committee mark-up (although a hearing had been held on the bill). Sen. Byrd first questioned the constitutionality of the Dole commission. Later, Senator Byrd offered an amendment that would add two additional WTO review groups: (1) a "Monitoring Group" of nine Senators to examine and report to the Senate on the overall economic effect of the WTO; and (2) a seven-person private sector "Advisory Council" to review the economic impact of each WTO panel report decided against the United States. Senator Byrd eventually decided to drop the Senate "monitoring group" idea -- which was likely to raise jurisdictional objections in the Finance Committee -- and agreed to adopt a number of suggestions that the Administration made regarding the proposed private sector monitoring group.

In particular, Senator Byrd agreed to make changes in the monitoring group so that (1) it would examine panel reports decided both for and against the United States; (2) the Administration would have an equal hand, with the Congress, in selecting members of the group; and (3) members of the monitoring council would be drawn from our existing private sector advisory committees. Based on the changes Senator Byrd made to his amendment, the Administration indicated that it would support inclusion of the Byrd amendment in the bill. However, Senator Dole resigned from the Senate to run for the Presidency and the legislation did not move forward.

The House generally viewed this legislation as a Senate-Administration initiative and showed little interest in moving on its own. Reps. Houghton and Levin introduced a companion bill on the House side in April, 1995. Rep. Archer expressed skepticism about the bill, and in fact seemed to be hostile to inclusion of the Byrd "Advisory Council" amendment.

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Cardin -- Amicus Brief

Question: **Will DOC file an amicus brief at the CIT taking the position that the ITC erred in its application of the captive production analysis in the cold-rolled cases?**

Answer: As you know, Commerce investigates dumping, and the ITC determines whether the domestic industry is injured by any dumping.

Because one of the investigations arising from the cold-rolled petition is still before the Department, it is not appropriate for me to comment on the ITC's ruling or any resulting appellate litigation.

The final determination of cold-rolled steel from China is due for signature on May 22, 2000. As per our regulations, the ITC will make its final injury determination with respect to China 45 days after the issuance of Commerce's final determination.

Commerce vigorously enforced the dumping law in these investigations. Six of the twelve cold-rolled antidumping cases were expedited, the final margins ranged from 16.65 to 80.67 percent for these six.

BACKGROUND:

Cardin has asked the Administration to file an *amicus* brief be filed supporting the steel producers' challenge to the ITC ruling. The steel producers' challenge focuses on the ITC's interpretation of the captive production rule, asserting that the ITC's interpretation is at odds with the intent of Congress and the Statement of Administrative Action.

Cox Proposal

Issue

Analysis of Representative Cox's "Jackson-Vanik II" Legislation

Talking Points

- We share the concerns about human rights and religious freedom that Rep. Cox is trying to address. However, we believe there are better, more effective ways to highlight concerns about human rights.

- For example, the Levin-Bereuter proposal to create a human rights commission makes a lot of sense and appears to be gaining support in both parties. The commission will be able to address many of the same concerns reflected in the Cox proposal, while having greater flexibility to determine how best to respond to a particular set of concerns.

- We have been saying all along that we would not support anything that does not garner broad bipartisan support. The Cox proposal does not appear likely to increase support on both sides of the aisle, particularly among Republicans, where key Members like Reps. Archer and Bereuter have already indicated their opposition to it.

- Cox would perpetuate, and could even increase, the current uncertainties about the U.S.-China economic relationship that have contributed to the difficulties U.S. firms have in exporting to and doing business with China.

- The concerns raised about Cox include the fact that, by denying China access to certain types of credit, it would hurt U.S. exporters and workers who depend on trade. Meanwhile, China would continue to have full access to our markets. It would be ironic to punish U.S. workers and firms for the shortcomings of China's policies and practices.

Background

Representative Cox's legislation would maintain the basic structure of the original Jackson-Vanik provision (Title IV of the Trade Act of 1974), but, with several notable differences. First, rather than being tied to freedom of emigration, it would be tied more broadly to human rights. Second, whereas in the original Jackson-Vanik there are only three factors -- all related to freedom of emigration -- that the President must consider in granting or denying NTR/MFN to covered countries, Cox's proposal contains 20 factors, including everything from freedom to emigrate to human rights, religious freedom, forced abortions, private property rights, the right to assemble, and even equal pay for equal work. Third, Cox would require the President to submit reports to Congress twice a year on the human rights records -- covering all 20 of these factors with respect to covered countries, including China.

In addition, while the twice-yearly reports are similar to requirements in the original Jackson-Vanik, the waiver provision in Cox is different. Under the original J-V, the President can waive the emigration requirements, including the reports, once a year, if he determines that such waiver would promote the goal of freedom of emigration. Under the Cox proposal, it appears that the semi-annual reports covering all 20 factors would be required in any event. Then, once the report was submitted, Congress would have the opportunity to pass a joint resolution accepting or overriding its findings.

Under Cox, the President can waive the human rights requirements under the Cox structure only if Congress fails to pass a joint resolution supporting the President's favorable report on human rights, or if Congress overrides the President's favorable report. At that point, however, Congress would be entitled to pass a second joint resolution overruling the waiver.

The consequence of non-compliance with the human rights requirements in Cox would be denial of access to U.S. credit facilities, such as Ex-Im Bank and agricultural loans, instead of loss of NTR. This requires a different analysis of WTO consistency than under current Jackson-Vanik, while at the same time it raises the specter of a loss of U.S. export opportunities without any impact on China's ability to sell in the U.S. market (unlike the reciprocal impact of a denial of NTR/MFN). (This is analyzed more fully in an analysis of Cox prepared by the Business Coalition for U.S.-China Trade.)

Finally, Cox would shift jurisdiction from the Senate Finance and House Ways and Means Committee, under current Jackson-Vanik, to the Senate Foreign Relations and House International Relations Committees, which typically have been less supportive of trade/export-related concerns.

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Ways and Means Markup -- May 17, 2000

Cuba Policy

Q: "Why don't our arguments about China-WTO apply to Cuba?"

- Both situations are very different.
- Congress passed a law in 1992 called the Cuban Democracy Act. It was passed by Democrats and Republicans and signed by President Bush. It said essentially that we would proceed in a reciprocal way with Cuba. If Cuba moved toward political or economic reform, we would move too.
- In 1996 Cuba shot down two American planes in international air space. The Helms-Burton Act was passed by a 2/3 majority in both houses of Congress and signed by the President. For the first time the embargo was legislatively mandated.
- Fidel Castro has shown no tendency toward political or meaningful economic reform. We will enforce the law until it is changes.
- Chinese leaders have made their tough decision on economic reform. That's what their decision to join the WTO represents – a fundamental decision for economic reform. We should reinforce and accelerate movement in that direction by passing PNTR.

Berman Amendment on Taiwan

Background

Article XXI of the GATT states, *inter alia*, that: "Nothing in this Agreement shall be construed...to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests...taken in time of war or other emergency in international relations." Berman's proposed amendment uses this to propose the following language:

> *(a) Policy*
>
> *If the People's Republic of China attacks, invades, or imposes a blockade on Taiwan, it shall be the policy of the United States to consider such action contrary to essential United State security interests and an emergency in international relations, consistent with the standards set forth in Article XXI of the GATT.*
>
> *(b) Revocation of normal trade relations*
>
> *The President shall, pursuant to the Article XXI of the GATT 1994 (as defined in section 2(1)(B) of Uruguay Round Agreements Act (19 U.S.C. 3501(1)(B), revoke non-discriminatory treatment from the products of the People's Republic of China if the People's Republic of China attacks, invades, or imposes a blockade on Taiwan.*

Current Status

Discussions with Berman continue, but there are no indications to date that he will be prepared to compromise on the mandatory or automatic nature of his proposal, something that will be very hard for us to accept. At present only Berman's own vote is in play. It remains unclear whether our decision at the end of the day to decline to endorse his proposal would spark more active opposition from him. It is also still unclear whether he would bring any additional votes with him if we did endorse his proposal. Principals are seeking to clarify.

Points to be Made

- We share Representative Berman's interest in promoting Taiwan's security.
- Our discussions with him continue, and we'd like to find common ground, but don't know yet when or whether that will occur. We intend to keep trying.
- Want to make clear that there is no obstacle to Congress passing legislation at any time to revoke PNTR if circumstances warrant that action.

If Pressed for specifics areas of divergence:

- The original language of this amendment would run a substantial risk that China would opt out – i.e., invoke Article XIII (the "non-application" clause). This would disrupt our trade, create tension in our bilateral relations and undermine prospects for cross-Strait dialogue.

- The amendment defines in legislation specific actions that would trigger use of Article XXI. That by implication permits China to take other actions that are not on this list without producing an Article XXI response. That would be a confusing signal that we would not want to send.

- The amendment could be seen as indicating that the U.S. response to a Chinese military move against Taiwan would primarily take the form of a trade action, rather than a military or other type of response. This could be misleading and potentially dangerous.

If pressed on amendment of PNTR language generally:

- A fundamental principle of the WTO is that we must provide the same treatment to imports from all WTO members. We cannot give special advantages to or impose special disadvantages on one countries' products.

- Specifically, GATT Article I requires that all WTO members grant each other "any advantage, favour, privilege or immunity" provided to other countries "immediately and unconditionally."

ANNUAL NTR PROCESS

Issue: Under normal circumstances, the House would be gearing up for its annual NTR battle on the House floor. While consideration of PNTR is proceeding, it is likely that legislation granting China permanent normal trade relations will not be signed into law before the President is required to submit a waiver to Congress. There may be concern among members that they will have to vote twice on trade with China this year or, conversely, that they will not have the opportunity to fight the measure through the mechanism of a floor vote on disapproving the waiver.

Question and Answer:

Question- What is the Administration's position on an annual vote on China's NTR status this year?

Answer:

- Absent enactment of a law granting China PNTR status before July 3rd, the President must make his recommendation on grant of a waiver by June 3rd to maintain NTR treatment for Chinese goods.

- The pending legislation, however, would not provide PNTR status to China until after China becomes a WTO Member, which will not take place before July 3rd.

- Thus, the President plans to transmit his annual waiver to Congress.

- [Assuming that a disapproval resolution is introduced, how that resolution is considered is a subject to House Rules Committee consideration. Such resolutions are now considered privileged, which, as I understand it, requires that they be brought to the floor for vote. If the Rules Committee decided to modify the rule applying to the disapproval resolution, the Ways and Means Committee could then decide how to deal with the matter.]

Background:

Under the Rules of the House, a disapproval resolution on the waiver is privileged in nature. This means that once a disapproval resolution has been introduced in the House, the resolution must be considered on the floor of the House for a vote in 45 days, if the sponsor of the bill requests action.

If the privileged nature of the resolution is revoked, then the disapproval resolution would be referred to the Committee on Ways and Means which could act or not at the discretion of the Chair. Under this scenario there would be no reason that the Chairman of the Committee or the House leadership would take up the disapproval resolution.

We are working with the House Rules Committee Chairman to craft a rule for consideration of the PNTR legislation that would revoke the privileged resolution status of the annual disapproval resolution. If executed as planned, when members approve the resolution granting floor consideration to the PNTR bill, they will automatically eliminate the privileged nature of the disapproval resolution which will effectively block it from ever getting to the House floor for a vote. We have not discussed this approach widely on the hill or with the outside community. Even among our opponents on this issue, there may be support for eliminating the need for two votes on China trade this year.

TAB I

Collins Amendment to H.R. 4444

Purpose: to provide for a review of (1) the effects of the extension of "permanent" normal trade relations with the People's Republic of China (PRC) on the United States textiles industry, (2) the status of improvements in the PRC's transportation infrastructure, which is critical if American products are to reach Chinese consumers, and (3) the extent and impact of surges in the importation of individual products from the PRC on U.S. industries.

Brief Explanation: This amendment requires the President to report to the Congress annually on each of the three issues detailed above. The amendment also recognizes the power of Congress to revoke the PRC's NTR status through enactment of a joint resolution. Finally, should the PRC's NTR status be revoked, the amendment provides for a return to the existing Jakson-Vanik waiver process for the PRC.

AMENDMENT OFFERED BY MR. COLLINS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

Add at the end the following:

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

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

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

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

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

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

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

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

(b) CONGRESSIONAL DISAPPROVAL OF CONTINUED EXTENSION OF NONDISCRIMINATORY TREATMENT.—If, after the transmission of a report under subsection (a), a law is enacted that withdraws nondiscriminatory treatment (normal trade relations treatment) from the products of the People's Republic of China, then—

(1) the provisions of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.) shall apply to the People's Republic of China and to the products of China; and

(2) the President may exercise the authority of section 402(d) of the Trade Act of 1974 with respect to the People's Republic of China, notwithstanding paragraph (1)(A) of such section in the case of the first such exercise of the authority.