Case Number: 2010-1024-F

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Folder Title: China PNTR - Levin-Bereuter Discussions [7]
Staff Office-Individual: National Economic Council-Lee, Malcolm
Original OA/ID Number: CF 1177

Row:	Section:	Shelf:	Position:	Stack:
23	5	6	1	V

Mark up

- Overarching themes/questions

  – Administration's template for positions at mark-up

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

- Administration's bill

  – Standard graduation from Jackson-Vanik

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

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

- Levin bill

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

  – Explanation of each of titles

    - Commission – comparison to Helsinki; statement of support
    - Surge – how does it work; how does it implement protocol; how does it compare to 201/406
      - Amendments to it – perishable products?
    - Compliance $ – what used for?
      - Specific questions by agency
    - Technical assistance
      - deviation from current law – Admin. support?
      - what will each agency do?
    - Task force

- Trade law provisions

  – English – application of CVD law to nmes – HR3198

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

- Other issues

- Cox JV II → Commerce
- Cuba policy → NSC / State
- ~~Article 21~~ – Taiwan
- Annual NTR waiver → Chuck

Levin – support
others – point

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.

Michael M. Daum
05/16/2000 07:21:10 PM

Record Type: Record

To: Malcolm R. Lee/OPD/EOP@EOP, Timothy E. Punke/OPD/EOP@EOP, Daniel H. Rosen/OPD/EOP@EOP

cc:

Subject: Re: Line by Line on Levin Authorizing Language

Malcolm,

The line-by-line follows below. There are numerous references to authorizations in the 5/12 document. Do you have any idea if Levin's has all of this worked the details of moving his bill as is and without referrals with the rules committee? I don't know.

Reference:
Page 23, line 12
page 24, line 17
page 24, line 22
page 25, line 19
page 26, line 19
page 27, line 22
page 50, line 22
page 52, line 8-14
page 53, line 1
page 54, line 7
page 54, line15
page 55, line 7
page 55, line 13
page 55, line 18

I asked several people on whether using "It is a sense of Congress that funds should be provided to --- for --" would avoid the potential for referrals. There are different views. The most reasonable position I have is from Elizabeth Gore in Chuck Kieffer's shop at OMB who works with the House. She doesn't believe a Sense of the Congress would trigger any referrals, but she said it comes down to the parliamentarian. Levin's leg counsel is the person who would know what is going on with the parliamentarian.

I have taken my best effort in writing in potential changes to the existing language. As I have kept on telling you, I have no experience writing legislative language. I am sure that Levin's staff can fix whatever needs to be fixed

Page 23, line 12

If we use a sense of Congress, the purpose of Title II, Subtitle B needs to be changed

possibly: **Subtitle B - Sense of Congress on Promoting Compliance With Trade Agreements**

page 24, line 17

would also have to be changed from "authorization additional resources"

Sec. 212. Purpose

The purpose of this subtitle is to provide a Sense of Congress that funds should be appropriated for the agencies and departments engaged in monitoring and enforcement of United States trade agreements and trade laws for the following activities

page 24, line 22

Levin's staff can fill in the exact language

Sec. 213. Sense of Congress With Regards to Each Agency

(a) Department of Commerce. -- It is the Sense of Congress that funds should be appropriated to the Department of Commerce,

page 25, line 19

(b) Overseas Compliance Program. --

(1) It is the Sense of Congress that funds should be appropriated to the Department of Commerce and the Department of State

page 26, line 19

(c) USTR. -- It is the Sense of Congress that funds should be appropriated to the United States Trade Representative

page 27, line 22

(d) Department of Agriculture. -- It is the Sense of Congress that funds should be appropriated to the
U.S. Department of Agriculture

page 50, line 22

Sec. 304. Sense of Congress

It is the Sense of Congress that funds should be appropriated for fiscal year

page 52, line 8-14

We have determined that both DOC and DOL have authority to conduct their respective programs, so all references in the text have to change.

Sec. 311. Technical Assistance and Rule of Law Programs

beginning line 14: International Development shall use its existing authorities to conduct a program of law training

page 53, line 1

(1) In General. -- The Secretary of labor shall use its existing authorities to conduct

page 54, line 7

(c) Conduct of Programs. -- The programs described in this section

page 54, line15

Sec. 312. Administrative Authorities

In carry out the programs described by section 311

page 55, line 7

Sec. 314. Sense of Congress Regarding Appropriations

(a) Commercial Law Program. -- It is the sense of Congress that funds be appropriated to the Secretary of Commerce

page 55, line 13

Labor Law Program. -- It is the Sense of Congress that funds should be appropriated to the Secretary of Labor

page 55, line 18
This is what you sent to Tim and Dan

(c) Construction With Other Laws. -- Except as provided in this Act, funds may be made available to carry out the purposes of this subtitle notwithstanding any other provision of law.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President
600 17TH STREET, NW
WASHINGTON, D.C. 20508

Office of Congressional Affairs

Date: 5/17

Number of Pages Excluding Cover 1

NAME	AGENCY	PHONE#	FAX#
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FROM: Dario J. Gomez
Congressional Affairs Specialist

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

SUBJECT: Possible amendment from Rep. Stark in Markup today - similar to

COMMENTS: Berman - we need to know how to respond

Ian A. Bowles
05/17/2000 10:06:16 AM

Record Type: Record

To: James R. Keith/NSC/EOP@EOP

cc: See the distribution list at the bottom of this message
Subject: Re: Environmental points from yesterday

Thx. One last point on this. The TPs give the context for these individual ideas, point out some of the complexities & suggest that the best way to meet the goals of what Stark proposes is to work cooperatively with the Chinese to build their enviro regulatory capacity. The one subtle point is that I don't think the Administration shd be in a position of aggressively stating opposition to the ideas/goals behind Stark's proposals because we don't want to be characterized as opposed to making progress with the Chinese on environmental issues. While these individual proposals are poorly framed and probably unworkable, we don't want to provoke unnecessary criticism from enviro groups or enviro minded Members by criticizing the goals of the ideas Stark puts forward. Let me know if you think we need to amend the TPs to reflect this overall point.

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TPs for possible Stark Amendments

1. **Requires U.S. companies in China to abide by U.S. "right to know" requirements on toxic emissions or risk tariff increases.**

   Background: EPA's toxic release inventory statute requires companies to disclose/publish certain data with the intention of providing local communities and the public with additional information about local environmental conditions. This law does not have extraterratorial disclosure requirements.

- Application of US toxic release requirements to U.S. companies operating in China would raise a thicket of complex issues related to (a) how to monitor compliance, (b) competitiveness with foreign firms, and (c) legal questions related to enforcement.
- The most practical way to achieve the goals of this proposal is to help China build up its domestic regulatory system.
- We have an extensive and active program of working with China on the environment, centered around the U.S./China Forum on Environment and Development which was launched in 1997 by Vice President Gore and China's Premier.
- For example, EPA is working with the Chinese government on its air pollution regulations;
- Threatening to raise tariffs against exports from China of products made by U.S. companies would raise serious questions of equity vis-a-vis other products made by other companies in China and would raise serious questions in terms of WTO obligations.

3. **Prohibits China from importing black market endangered species.**

- This Administration attaches great importance to protecting endangered species including through our active participation in the Convention on International Trade in Endangered Species (CITES). We have a robust set of tools at our disposal to address illegal trade in endangered species.
- China is compliant with its commitments under CITES, including through a number of laws related to wildlife protection with severe penalties for violators.
- We can no more prohibit a country from importing certain products than other countries could dictate what the United States can import.
- However, for over a decade the U.S. Fish and Wildlife Service has had cooperative programs with China addressing the protection of endangered species.

4. **Prohibits China from challenging existing U.S. invasive species protections or future U.S. strengthened controls.**

- Our laws addressing invasive species are fully consistent with our WTO obligations. WTO rules recognize the right of countries to establish and achieve those levels of protection of their environment that they deem appropriate -- even when those levels of protection exceed what would be afforded by international standards.
- It is misleading to suggest that Chinese membership in the WTO would put U.S. phytosanitary standards in jeopardy.

- With regard to the Stark proposal, no country has the power under the WTO to prohibit another country from challenging a measure that it believes to be WTO inconsistent.

If asked if our actions against the Asian longhorn beetle might be challenged:

- There is absolutely no question that the measures that we have taken are fully consistent with our WTO obligations.

Didn't Hong Kong already question our measure in the WTO?

- No. We notified our measure to the WTO and Hong Kong expressed interest in it but did not question its compatibility with WTO rules.

If asked for an Administration position on the Stark proposals:

- Share the goal of working together with the Chinese to enhance their regulatory capacity;
- Believe we have a strong bilateral dialogue with the Chinese on environment issues;
- We don't seek to politicize our bilateral dialogue on the environment;
- EPA, Fish and Wildlife Service and other environmental agencies have joint programs with the Chinese on these important issues;
- Believe the objectives behind the Stark proposals have merit, but think the proposals as currently cast are not workable.

Malcolm R. Lee
05/02/2000 11:30:54 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: See the distribution list at the bottom of this message
Subject: Levin Reply to Our Edits

LevinMay2 - 1115pmLevinRepl

PASS IMMEDIATELY TO GENE:

As we discussed, can accept Levin's latest edits to our own (redlined above), but need to clean up a few items if we want to remove our qualifying footnotes on safeguard and enforcement budget intitiative, and to reach closure on prison labor task force language.

Safeguard Language

Novick willing to try to finalize china safeguard language in Levin framework document, but feels that presence of our qualifying footnote [i.e., need to review legislative language, timeframes, etc] should not prevent Levin from circulating the document to other members or from gaining their support. Members decisions on support will not turn on whether, for example, it is 7 or 21 days for a potus decision following an affirmative ITC recommendation. Bob is willing to try to scrub the language however, and it should not take long. Will involve review of actual draft legislation.

Gene: Please advise early Wednesday how you want to proceed.

Prison Labor Task Force

Levin has put all the detail we took out back in. Lundsager will try to come up with alternative language with customs by later in morning Wednesday.

New Resources for Enforcement/Compliance

We should be able to remove our footnote by mid morning.

Sending redlined version with these items still outstanding. ML

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May 2 - 11:00 pm

Proposed China Framework

I. Congressional-Executive Commission on China

Proposal: As part of the framework for bringing China into the WTO, the proposal will establish a Congressional-Executive Commission on China. The Commission will consist of nine Members of each House, plus five Presidential appointees.

The Commission will have three pillars within its scope. The first pillar will be monitoring human rights in China (including religious freedoms). The second pillar will be monitoring labor market issues in China. The third pillar will be monitoring and encouraging the development of rule-of-law and democracy building in China.

The Commission will submit to Congress and to the President an annual report of its findings including, as appropriate, WTO-consistent recommendations for legislative and/or executive action. It will also maintain lists of victims of human rights abuses in China. Finally, the Commission will respond to information requests from individual Members of Congress.

The model for this Commission is the Commission on Security and Cooperation in Europe, a Congressional-Executive entity established in 1976 to monitor compliance by other countries with the provisions of the Helsinki Final Act.

The CSCE experience indicates that a China Commission will be an effective mechanism for maintaining pressure on China with respect to labor market issues, rule of law issues, and human rights.

From its creation in 1976 to the end of the cold War, the CSCE was one of several important instruments for championing human rights, democracy and rule of law in the countries of the former Soviet bloc. Since the Cold War, the CSCE has monitored elections in former Soviet bloc countries.

The strengths that the CSCE has exhibited include the following:

- It has pulled together large amounts of information related to human rights, regional security, and other issues, analyze that information, and communicate it to the Administration, Congress, and the public in a manner that generally is considered impartial and authoritative. Its credibility with the Administration and Congress has given the CSCE a good deal of influence in shaping policy on issues within its areas of expertise.

- The CSCE has become a reliable liaison between the U.S. Government and dissidents, human rights leaders, intellectuals and other citizens of the countries that it monitors.

- The CSCE has drawn attention to particular cases of human rights violations. During the worst days of Soviet bloc repression, the Commission brought cases to the attention of governments in the Soviet bloc and worked to resolve them.

Based on the CSCE experience, there are several reasons to expect that a China Commission will be an effective means of maintaining scrutiny and pressure on China in the areas of human rights including religious freedom, worker rights, and rule of law:

- First, a bipartisan standing Commission will institutionalize Congressional examination of measures by the Government of China that affect U.S. interests. Commitment to this task will be permanent and concentrated, as opposed to sporadic and diffuse, as has been the case under current law (i.e., annual reviews).

- Second, the Commission will become an effective base from which to mobilize support for particular improvements in China's policies andpractices. For instance, if the Commission spotlights particularly egregious conduct by the Government of China, it ~~may~~ will be able to rally a bipartisan consensus for pressing China to change its conduct more easily than an individual Member of Congress would otherwise be able to do.

- Third, as Chinese citizens gain greater access to the outside world through the Internet and other modes of communication, the Commission will become an important conduit between Chinese citizens, on the one hand, and the U.S. Goverrunent and public, on the other. For instance, victims of human rights abuses in China and their advocates in the NGO community will be able to communicate directly with the Commission.

- Fourth, the Commission will be a strong, effective, and unique point of contact on China issues between Congress and the Administration. Thus, as in the case of the CSCE, the Commission will be used to highlight for the Administration issues of particular concern to Congress. This will assist the Administration in deploying its diplomatic and other foreign policy tools most cffectively.

II. Lesislating tho China Product-Specific, Anti-Surge Safeguard**

Background: The November 1999 Agreement between the United States and China contains a product-specific safeguard, which will be included in China's protocol of accession to the WTO. The safeguard permits the United States and other WTO Members to provide relief to domestic industries and workers, "where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to **cause or threaten to cause market disruption** to the domestic producers of like or directly competitive products." This special anti-surge safeguard will apply to China for a period of **12 years** following China's accession to the WTO.

The China safeguard contains lower causation and injury standards than ordinarily would apply between WTO Members. According to the U.S.-China Agreement, market disruption occurs when subject imports "are increasing rapidly, either absolutely or relatively, so as to be a **significant cause of material injury**, or threat of material injury to the domestic industry." By contrast, under the U.S. law that applies to other WTO Members (section 201 of the Trade Act of 1974), the relevant inquiry is whether goods are being imported into the United States "in such increased quantities as to be a **substantial cause of serious injury.**"

Issue: There is a need to spell out how the anti-surge safeguard in the U.S.-China Agreement will be implemented as a matter of U.S law. Therefore, Congress should develop and write into law a procedure for U.S. industries and workers to seek and obtain relief under the China product-specific safeguard.

Proposal: Under the proposed legislation, U.S. industries or workers claiming injury due to import surges from China would file a petition with the U.S. International Trade Commission.

Within 30 days, the ITC would make a preliminary determination as to whether the subject imports are causing or threatening market disruption. If that determination is affirmative, the President will be required to request consultations with the Government of China. This will start a consultation period of up to 60 days, as required by the U.S.-China Agreement.

Within 60 days after rendering its preliminary determination, the ITC will be required to render a final determination. If that detcanination is affirmative, and if the United States and China are unable to reach agreement within the consultation period, then the President will be required to decide whether and how to provide relief, making a proposal within 7 days of the final ITC determination.

There will then be an opportunity for public comment on the President's proposed remedy, as required by the Agreement. Following a 30-day comment period, the President will proclaim relief as appropriate.

The proposal will make clear the standards for application of Presidential discretion in providing relief to injured industries and workers. If the ITC makes an affirmative final injury determination, there will be a presumption in favor of providing relief. That presumption can be overcome only if the President finds that providing relief would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action, or that such action would cause serious harm to the national security of the United States.

The proposal also will authorize the President to provide a provisional safeguard in cases where "delay would cause damage which it would be difficult to repair," as permitted under the U.S.-China Agreement. If such circumstances exist, provisional relief will be available immediately upon an affirmative preliminary finding by the ITC, as described above.

Finally, the proposal will implement a provision in the U.S.-China Agreement concerning trade diversion. That provisioin addresses circumstances in which a safeguard applied by a third country with respect to Chinese goods "causes or threatens to cause significant diversions of trade" into the United States. In those circumstances, U.S. companies or workers affected by the diversions or threatened diversions will be able to petition for relief, invoking a procedure similar to the basic safeguard procedure described above.

** Need review of actual legislative language. Note: some of timeframes (e.g., 7 days for POTUS to propose relief following ITC decision) other details (e.g., hearing required as well as opportunity for public comment) need modification.

III. Continuing Oversight of China's Compliance With WTO Obligations

A. Annual Report on China's Compliance With WTO Obligations

Proposal: This provision will require USTR to issue an annual report on China's compliance with WTO obligations. The report will cover compliance by the People's Republic of China with cornmitments made in connection with its accession to the World Trade Organization, including both multilateral commitments and any bilateral commitments made to the United States.

~~The purpose of the report will be to examine all aspects of China's accession to the WTO, and to examine the status of internationally recognized worker rights in China.~~ Its contents will be more comprehensive than the China section in USTR's National Trade Estimate Report on Foreign Trade Barriers. The report will be a complete analysis of Chinese compliance with the implementation of obligations. By highlighting where China is meeting obligations and where it is falling short, the report will be a guide to where and how to commit enforcement resources.

B. Annual WTO Review of China's Compliance With WTO Obligations

Proposal: In negotiating China's Protocol of Accession, the Administration will press for a mechanism for reviewing China's compliance with WTO obligations on an annual basis.

Given the early stages of development of a free market and rule of law in China, it is necessary that China be given special scrutiny within the WTO. Paired-with the annual report by the ~~President~~ USTR (described in the immediately preceding section), there will be two mechanisms to ensure strong oversight of China's trade record.

IV. USTR Office for Trade and Labor

Proposal: The proposal will provide that the United States Trade Representative (USTR) establish an Assistant United States Trade Representative (AUSTR) for Trade and Labor. This office and other appropriate executive branch agencies will coordinate issues related to labor and trade. The AUSTR will have responsibility for matters concerning the relationship between Chinese and other foreign government labor market policies and practices on the one hand, and trade with the United States on the other. Among other functions, this office will oversee all preferential trade agreements that include labor initiatives (e.g., Generalized System of Preferences, Carribean Basin Initiative).

Establishment of the new AUSTR for Trade and Labor will mark the first time that labor issues have a dedicated office within USTR. The framework will also call for appropriations for the new office, and will require the hiring of a staff that is highly trained in issues concerning linkages between labor markets and trade. The office will work closely with the trade sections of the Labor and Commerce Departments, as well as the AUSTR for Trade and Development. ~~The office will take the lead on such issues as establishing a working group on trade and labor in the WTO, and insuring that labor issues are integrated into the trade agenda, much in the same way that the Office of Trade and the Environment has worked to address issues of trade and the environment.~~

V. Task Force on Prohibition of Importation of Products of Forced or Prison Labor

Proposal: The import of goods made by forced or prison labor into the United States is prohibited by U.S. law (section 307 of the Tariff Act of 1930), consistent with the GATT 1994. Article XX of the GATT allows countries to take action without retaliation to prohibit import of goods made by prison labor. The proposed prov ision will instruct the President to establish an interagency task force to monitor and promote effective enforcement of this prohibition, including compliance by foreign exporters. The task force would include officers and employees from the Departments of Treasury, Commerce, Labor and other agencies.

[Treasury working on language.]

VI. Monitoring and Enforcement of Foreign Government Compliance With Trade Agreements**

Proposal: This provision calls for additional resources to be allocated to the Departments of Commerce, Agriculture, and State, and to the Office of the U.S. Trade Representative to strengthen the ability of the United States to monitor and enforce Chinese and other foreign government compliance with trade agreements. The provision will include resources to promote the following activities, among others:

1) staffing to monitor China's compliance with the WTO Agreements;
2) defend U.S. safeguard, antidumping, and countervailing duty measures and U.S. policy to maintain strong trade remedies;
3) enforce U.S. trade laws, including import monitoring, subsidy enforcement, and prompt antidumping and countervaiffing duty investigations under Title VII of the Tariff Act of 1930;
4) create a Trade Law Technical Assistance Center to assist small and medium sized businesses, workers, and unions with preparation of petitions seeking remedies for alleged violations of trade laws;
5) create an overseas Compliance ~~Council~~Program, that will monitor compliance with international trade obligations by foreign governments;
6) authorize funds to investigate, prosecute and defend cases before the WTO and NAFTA tribunals;
7) authorize funds and resources to analyze the impact of trade on the economy of the United States;
8) increase legal and technical expertise in areas covered by trade agreements and U.S. trade law, including food safety and biotechnology.

The wide ranging provisions will substantially increase the ability of the U.S. Government to monitor and enforce Chinese and other foreign government obligations in international trade agreements. In addition to calling for funds for enforcement, the framework calls for legal and technical
assistance for companies and workers pursuing antidumping and countervailing remedies. ~~There will be an office devoted to examining China's compliance with WTO agreements.~~

** Should conform to President's 2001 budget request on monitoring and compliance.

VII. Promotion of Adherence to Core Labor Standards in Foreign Countries

Proposal: This proposal calls for the allocation of resources to the Department of Labor to provide assistance to foreign countries in complying with internationally recognized worker rights. Such assistance will be provided on a multilateral or bilateral basis and will support working with international organizations that promote core labor standards, such as the International Labor Organization. Specific provisions will include resources for multilateral and bilateral technical assistance programs on issues such as:

1) development of laws, regulations, and other measures to implement internationally recognized worker rights, including elimination of the worst forms of child labor;
2) establishing national mechanisms for the edorsement of national labor laws and regulations;
3) training government officials concerned with the implementation and enforcement of national labor laws and regulations;
4) developing an infrastructure to educate workers about their legal rights and protections under national labor laws and regulations.

The Administration, including the Secretary of Labor, will continue to pursue efforts to promote and advance core labor standards in China, including through a bilateral dialogue and programs with China.

In FY 2000, the Congress appropriated $30,000,000 to the Department of Labor for bilateral and multilateral technical assistance programs to promote core labor standards and social safety nets. This provision will expand upon that appropriation to carry out this mission, including with respect to China.

VIII. Accession of Taiwan to WTO

Proposal: This provision will express the sense of the Congress that the WTO General Council should approve both the PRC's accession and Taiwan's accession at the same General Council session.

U.S.–CHINA BILATERAL WTO AGREEMENT

November 15, 1999

I. AGREEMENT HIGHLIGHTS

FOR BALDACCI CALL

The U.S.-China WTO agreement covers all agricultural products, all industrial goods, and all service areas.

Industrial Tariffs

✓ China's industrial tariffs will fall from an overall average of 24.6% in 1997 to an overall average of 9.4% by 2005.

✓ On U.S. priority industrial products, tariffs will fall to 7.1% with the majority of tariff cuts fully implemented by 2003. Tariffs will fall on a range of products including: wood, paper, chemicals, capital and medical equipment.

✓ In information technology, tariffs on products such as computers, semiconductors, and all internet-related equipment, will fall from an average of 13.3% to 0% by 2005.

Agriculture

✓ On U.S. priority agriculture products, tariffs will be reduced from an overall average of 31.5% to 14.5% by January 2004, at the latest.

PRIORITY PRODUCTS	TARIFFS PRE-AGREEMENT	TARIFFS POST-AGREEMENT
Beef	45%	12%
Grapes	40%	13%
Wine	65%	20%
Cheese	50%	12%
Poultry	20%	10%
Pork	20%	12%
OVERALL AVERAGE	**31.5%**	**14.5 %**

✓ China will expand access for of bulk agriculture commodities, on products including corn, cotton, wheat, rice, barely, soybean oil.

✓ China will eliminate export subsidies – this is especially critical for U. S. cotton and rice producers.

✓ China will for the first time ever permit private trade (trade between private parties) in agriculture.

Services

✓ On industrial goods, China will for the first time permit the right to import and export without middle-men -- so-called trading rights – as well as full rights of distribution including wholesale and retail and aftersale service, repair, maintenance, and transport.

✓ The telecommunications, insurance, banking, securities, audio visual, and professional service sectors, to name a few, will all have expanded market access under the agreement.

II. RESOLUTION OF KEY UNRESOLVED ISSUES

The agreement contains the following provisions China had not agreed to last spring. Through rebalancing where necessary and securing new Chinese commitments, this agreement is much stronger.

- **Import Surge Mechanism.** China has agreed to a special safeguard mechanism that will remain in place for 12 years following accession and that can be used to address rapid increases in imports from China that cause or threaten market disruption.

- **Anti-Dumping.** The agreement ensures that the United States can continue to apply our current non-market economy methodology in antidumping cases involving imports from China for 15 years. China can, of course, request review under U.S. law of specific sectors or the economy as a whole to determine if it is market oriented and no longer subject to the special methodology.

- **Motion Pictures.** A previously unresolved issue had been the degree to which China restricted imports of films. Prior to the agreement, China permitted a maximum of 10 foreign films. Under the agreement, China will quadruple imports to 40 films in the first year, and 50 by the third year of which 20 will be on a revenue-sharing basis.

- **Internet Access.** Because of the enormous projected growth in internet access in China over the coming decade, a key priority of the U.S. was to ensure that China's telecom service commitment clearly included all aspects of internet service. The agreement ensures that Internet services will be liberalized at the same rate as other key telecommunications services. **Chinese authorities had indicated they may not allow Internet access in recent months.**

- **Satellites.** China has clarified that it will permit provision of telecommunications services via satellite.

- **Auto Financing.** China has now made commitments for non-bank foreign financial institutions to be able to provide auto financing upon China's accession. This in combination with commitments regarding importation, distribution, sale, financing, and maintenance and repair of automobiles will help open up this key sector for U.S. industry. **China did not make this commitment last spring.**

- **Accelerated Auto Tariff Reduction.** As part of the efforts to find "win-win" solutions to sensitive areas, China agreed to accelerated tariff reduction in exchange for a slightly longer phase-in period. This provides earlier market access with auto tariffs still being reduced from the current 100-80 percent to 25 percent by July 1, 2006, **rather than by 2005.**

- **Telecommunications.** While the United States agreed to China's request to limit foreign equity participation in value-added and paging services to 50 percent, China agreed to both accelerate significantly the percentage of equity participation in the first two years and eliminate geographic restrictions on an accelerated basis. China had indicated it would allow 35% foreign ownership for value-added and paging services two years after accession and 51% four years after accession. China will now allow 49% foreign ownership in the first year of accession and 50% foreign ownership in the second year.

- **Life Insurance.** While the United States agreed to China's request to limit foreign equity participation in life insurance to 50% **(compared to 51% last spring)**, China agreed to significantly accelerate the elimination of geographic restrictions the percentage of equity participation in the first few years.

Wined, Dined, Wooed on Trade: Just 2 Lawmakers Travel to China

The New York Times via Dow Jones

Publication Date: Tuesday May 2, 2000
Foreign Desk, Section A, Page 1, Column 1
c: 2000 New York Times Company
BY CRAIG S. SMITH

SHANGHAI, May 1 – Measured on a per-vote basis, it was probably one of the more expensive lobbying efforts ever undertaken by the Clinton administration.

Hoping to sway legislators who remain undecided on whether to grant China permanent normal trade relations in a vote set for this month, President Clinton set aside money earlier this year to fly wavering lawmakers to China where they could gauge trade and human rights conditions for themselves.

But, in the end, only two undecided congressmen showed up.

Two trips had originally been proposed, one led by Commerce Secretary William Daley and another by Agriculture Secretary Dan Glickman. But these quickly became political no-flight zones for politicians worried about coming under attack by organized labor lobbyists who argue that permanent trade status would erode human rights in China and cost American jobs.

So Secretary Daley's trip, which was to have included a dozen legislators, was "consolidated" with that of Secretary Glickman's. And when Mr. Glickman lifted off last week from Andrews Air Force Base in a C32-A, the Air Force version of the civilian Boeing 757, he had only two undecided congressmen in tow – and administration officials were refusing to identify them until the flight had left, lest they be pressured at the last minute to drop out.

And so began the education of Representative Gregory Meeks, a New York Democrat, and Representative Ruben Hinojosa, a Texas Democrat, neither of whom had been to China before. They were treated royally in Beijing, where they met with a deputy prime minister and watched the sun rise over the Great Wall.

In Shanghai, they had a private audience with China's chief negotiator with Taiwan. And in Hong Kong, they met with the chief executive of China's newly reclaimed territory and dined with its business elite at the exclusive China Club.

About a dozen administration officials accompanied them, as well as two congressmen who support making China's trade status permanent, Greg Walden, an Oregon Republican, and Norman Dicks, a Washington Democrat. And dozens more people chaperoned the men from place to place on the ground.

Congressmen Meeks and Hinojosa seemed bemused by so much attention, sometimes falling behind the throng that moved through a program meant to show them how much the United States would lose if it did not grant China the permanent trade status. China's favorable status has been subject to annual review by Congress since the suppression of pro-democracy protesters in Tiananmen Square in 1989, though it has always been approved.

Meeks

Mr. Meeks appeared particularly suspicious of the over-orchestrated show, and skipped a supermarket visit in Shanghai in order to meet with common folk. With a consular official translating at his side, Mr. Meeks trudged up the stairs of a middle-class apartment block and along the dirt paths of a migrant worker neighborhood in his gray summer suit, addressing startled Chinese along the way with his big American hello.

"Do you like China?" he asked a young migrant from Anhui province who invited him into her barren, whitewashed room.

"Of course, I do," she replied, "I'm Chinese!"

Mr. Meeks questioned everyone he met about human rights ("I've never had any trouble," one elderly man replied in a typical exchange) and what they thought about China joining the World Trade Organization ("Well, of course you should support it, we want to compete with the rest of the world," said Cui Qian, a middle-aged businesswoman).

Human Right

Between stops, he fought to reconcile what he had heard from the labor unions in Washington with what he saw in China. He detected none of the repression or exploitation so often talked about.

"The Chinese seem to think that economics are more important to them than whatever form of government they have right now," he concluded.

Mr. Meeks was uncertain what advantage labor unions could expect if Congress does not grant China permanent trade status when it votes on the measure later this month. "That's something I'll have to ask them," Mr. Meeks said, noting that the issue is muddled even in his own district, the borough of Queens.

***

United Parcel Service, which has a large operation at Kennedy International Airport, supports permanent trade status and China's membership in the World Trade Organization because the company is lobbying for a cargo route to China. The Teamsters support the company in that bid, which would create union jobs, but are nonetheless lobbying against permanent normal trade relations, or P.N.T.R.

Mr. Meeks and Mr. Hinojosa watched workers unload sacks of American soybeans from barges in Shanghai. China is the biggest buyer of American soybeans and is importing $700 million worth of them in the current season.

"There's a lot of demand for imported soybeans in China and if we don't give them P.N.T.R. that demand will go to the Argentineans or the Brazilians," said Philip Laney, who represents the American Soybean Association in China and was on hand to lobby the congressmen.

China has said it will apply to enter the World Trade Organization regardless of the Congressional vote, and the United States is unlikely to stand in its way – in part because such a move would infuriate Taiwan whose membership is being held up until China joins.

China's entry does not require the support of Congress. And although President Clinton promised China during the negotiations that the annual Congressional review of its trade status would end, a Geneva-based trade official said, "China can come in regardless of what Congress votes, provided that the U.S. representatives in the General Council and the Working Party approve the conditions, along with the other member governments."

While no one is sure exactly what would happen if Congress votes against permanent normal trade relations, China could join and then invoke Article XIII of the Marrakesh Agreement that established the trade organization, allowing Beijing to withhold from the United States commitments it makes to other organization members.

"If the United States misses this opportunity it will actually lose the tremendous market of China and will be giving away the opportunity for participating in this market to its competitors," China's trade minister, Shi Guangsheng, said last month. "In that case, the United States, especially U.S. companies, will suffer the most."

That has many American business people in China worried.

"China's government has no qualms about rewarding political cooperation with economic opportunity," said Jeffrey Bernstein, founder of Emerge Logistics, which handles distribution of foreign products on the mainland, an industry likely to open most dramatically to foreign participation if China joins the trade organization.

"Jeopardizing American companies' natural advantage in distributing products provides a wonderful opportunity for our European, Asia and Australian friends," he said.

Larry Wortzel, director of the Heritage Foundation's Asian Studies Center says more than 200,000 American jobs are directly related to China trade.

The House of Representatives will vote on China's trade status during the week of May 22. Legislators familiar with the vote say it is still 10 to 15 votes short of passage.

The White House has been working with Representative Sander Levin, a Michigan Democrat, on "parallel legislation" that would set up a watchdog Congressional commission to review Chinese trade and human rights policies and perhaps recommend sanctions against Beijing within the limits of organization rules.

Mr. Meeks and Mr. Hinojosa, for their part, remained undecided as they headed home this weekend. [redacted]

"You do get a different feel once you have been here," Mr. Meeks said. "Theory and practice are two different things."

Photo: Agriculture Secretary Dan Glickman, second from right, introduced members of his delegation to Deputy Prime Minister Wen Jiabao in Beijing last week. They are, from left, Representatives Gregory Meeks and Ruben Hinojosa, Ambassador Joseph Prueher, and Representative Norman Dicks. (Associated Press)(pg. A16)

(END)

05:16 EDT May 2, 2000

NTFviaNewsEDGE
:SUBJECT: CONG IEVT USA

Received By NewsEDGE/LAN:Tue May 02 05:47:41 2000

MEMORANDUM

May 3, 2000

TO: Gene Sperling
Lael Brainard

From: Malcolm Lee
Timothy Punke

Re: May 4 PNTR Principals Meeting

There will be a Principals Meeting on Thursday tomorrow at 11:00 AM in the Roosevelt Room. This will be an expanded meeting including Principals who do not usually attend (e.g., Labor, EPA, etc.).

Agenda

Principals will likely discuss Member-specific issues and Principals' contacts with Members. This is not supposed to be a substantive meeting.

If you have not already done so, suggest that you contact your Members. Contact list and article attached (on Meeks).

Levin

Reached agreement with Levin on framework language, resolving differences on safeguard, budget enforcement initiative, and Treasury prison labor task force. See our clean version. Brain will share with Hastert and Levin with other members. Will need to carefully review Levin's legislation. Both Archer and Crane said positive things about Levin's proposal at W&M hearing.

Safeguard provision will be 150 days from petition to POTUS decision, with ITC finding on market disruption and ITC recommendation for relief. President will have 60 days for consultations with China and have to publish proposed action. There will be a presumption in favor of relief if the ITC goes affirmative, but Levin agreed to national security exemption. We will closely review legislative language in your working group.

PNTR

Still unclear whether we want to amend our PNTR bill to include both annual renewal and PNTR. Chuck suggested one vote and one bill, but staff level believe we need to think through this more closely. In any event, POTUS will need to notify congress of his intention for annual renewal. If we want to merge the two, notification has to come before the House vote.

May 9 Event

There may also be some discussion of the May 9 event. We are attaching a current list of invitees. (Please note that only Podesta from the White House is listed -- but others will obviously attend. Discussing with War Room.) NSC will prepare remarks.

Discussions will now center on the speaking program. Carter and Ford will speak. Bush has not yet RSVP'd. We need to get a group that is both bipartisan and diverse. Other names that have been suggested:

- Colin Powell
- James Baker
- George McGovern
- Andrew Young
- Mario Cuomo
- Mike Mansfield
- Elizabeth Dole
- Geraldine Ferraro

Attachments

Congressional Calls
- Memo on Calls
- Article on Meeks

Levin
- May 3 Levin Proposal

May 9 Event
- List of Invitees

Recent Articles
- **Reuters:** ***White House Endorses China Watchdog Plan***
- **AP:** ***White House: We'll Enforce China Bill***

Calendar of Upcoming China Events

Administration Guidance on Levin Proposal
May 4

The Administration believes that the proposals being developed by Congressman Levin with others are constructive and address issues of major importance, and we welcome further dialogue on these proposals among Members on both sides of the aisle. For example:

- 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, and are receptive to ideas that make good substantive sense and can garner broad bipartisan support. We could not, of course, accept anything that would in any way condition PNTR.

II. Legislating the China Product-Specific, Anti-Surge Safeguard

Background: The November 1999 Agreement between the United States and China contains a product-specific safeguard, which will be included in China's protocol of accession to the WTO. The safeguard permits the United States and other WTO Members to provide relief to domestic industries and workers, "where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to **cause or threaten to cause market disruption** to the domestic producers of like or directly competitive products." This special anti-surge safeguard will apply to China for a period of **12 years** following China's accession to the WTO.

The China safeguard contains lower causation and injury standards than ordinarily would apply between WTO Members. According to the U.S.-China Agreement, market disruption occurs when subject imports "are increasing rapidly, either absolutely or relatively, so as to be a **significant cause** of **material injury**, or threat of material injury to the domestic industry." By contrast, under the U.S. law that applies to other WTO Members (section 201 of the Trade Act of 1974), the relevant inquiry is whether goods are being imported into the United States "in such increased quantities as to be a **substantial cause** of **serious injury**."

Issue: There is a need to spell out how the anti-surge safeguard in the U.S.-China Agreement will be implemented as a matter of U.S. law. Therefore, Congress should develop and write into law a procedure for U.S. industries and workers to seek and obtain relief under the China product-specific safeguard.

Proposal: Under the proposed legislation, U.S. industries or workers claiming injury due to import surges from China would file a petition with the U.S. International Trade Commission (" ITC"), or the ITC would initiate an investigation at the request of the President or on motion of the House Ways & Means Committee or Senate Finance Committee. Within ~~{65}~~ **[60]** days after receipt of the petition or request/motion, the ITC would make a determination as to whether the subject imports are causing or threatening market disruption. ~~{At that time,}~~ If the ITC determination is affirmative, the President would be required to request consultations with the Government of China. This would start a 60-day consultation period, as required by the U.S.-China Agreement.

~~{Fifteen}~~ **[Twenty]** days after the ITC made an affirmative determination with respect to market disruption (i.e., 80 days after receipt of the petition or request/motion), the ITC would make a recommendation of actions necessary to prevent or remedy the market disruption. Twenty days later, the U.S. Trade Representative would publish a notice of proposed action, seeking comments on the appropriateness of the proposed action and whether it would be in the public interest. An opportunity for hearing on that action would also be provided.

If the United States and China are unable to reach agreement within the consultation period, then the President will be required to decide what action **[,if any,]** to take within 25 days after the end of consultations. Any relief proclaimed would become effective in 15 days.

The entire period from petition (or request/motion) to proclamation of relief would be 150 days.

The proposal will make clear the standards for application of Presidential discretion in providing relief to injured industries and workers. If the ITC makes an affirmative determination on market disruption, there will be a presumption in favor of providing relief. That presumption can be overcome only if the President finds that providing relief would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action, or that such action would cause serious harm to the national security of the United States.

The proposal also will authorize the President to provide a provisional safeguard in cases where " delay would cause damage which it would be difficult to repair," as permitted under the U.S.-China Agreement. If such circumstances are alleged, the ITC would be required to make a preliminary determination on market disruption and critical circumstances on an abbreviated schedule. After receiving an affirmative preliminary ITC determination, the President would be required to determine whether to provide such relief on a similarly abbreviated schedule.

Finally, the proposal will implement a provision in the U.S.-China Agreement concerning trade diversion. That provision addresses circumstances in which a safeguard applied by a third country with respect to Chinese goods "causes or threatens to cause significant diversions of trade" into the United States.

Under the proposal, if another WTO Member requests consultations with China under the product-specific safeguard, the U.S. Customs Service would begin monitoring imports of subject products into the United States. If, on the basis of this monitoring or other credible evidence, it is determined that an action by another WTO Member threatens or causes significant trade diversion, the USTR will ~~{be required to}~~ request consultations with China and/or the Member imposing the safeguard. If, as provided in the Agreement, consultations fail to lead to an agreement to address the trade diversion within 60 days, the USTR will publish notice of proposed action and provide an opportunity for the public to provide evidence and views on the proposed action. After receiving such views, the President shall determine, within 20 days, what action**[, if any,]** to take to prevent or remedy the trade diversion.

Time Lines For Anti-Surge Safeguard

Day	Event
0	Petition filed with the International Trade Commission (ITC) and transmitted to President, USTR, Senate Finance and House Ways and Means Committees.
60	ITC makes determination on Market Disruption; USTR requests consultations
65	Request consultations with China.
80	ITC makes recommendation on proposed remedy
100	USTR publishes proposed action in the *Federal Register* and notice of opportunity to provide view and evidence on proposed action; hearing provided if requested.
115	TPSC hearing on proposed action
125	Consultations with China End
135	USTR/interagency recommendation on relief transmitted to the President
150	Presidential Decision: Any relief proclaimed becomes effective in 15 days

Time Lines For Anti-Surge Safeguard

Day	Event
0	Petition filed with the International Trade Commission (ITC) and transmitted to President, USTR, Senate Finance and House Ways and Means Committees.
60	ITC makes determination on Market Disruption; USTR requests consultations
65	Request consultations with China.
80	ITC makes recommendation on proposed remedy
100	USTR publishes proposed action in the *Federal Register* and notice of opportunity to provide view and evidence on proposed action; hearing provided if requested.
115	TPSC hearing on proposed action
125	Consultations with China End
135	USTR/interagency recommendation on relief transmitted to the President
150	Presidential Decision: Any relief proclaimed becomes effective in 15 days

Rebecca Hunter

05/04/2000 09:44:18 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: REMINDER: China Agency Meeting at 3:00 pm today

Message Sent To:

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Timothy E. Punke
05/03/2000 08:43:29 PM

Record Type: Record

To: Melissa G. Green/OPD/EOP@EOP, Jamie H. Ginott/OPD/EOP@EOP, Elliott H. Baer/OPD/EOP@EOP, Sharon H. Yuan/OPD/EOP@EOP

cc: Malcolm R. Lee/OPD/EOP@EOP
Subject: additional update on China

Please pass to Gene/Lael:

- **Upcoming POTUS Events.**
  - May 8 -- Farm Broadcasters (Live radio with 31 broadcasters. TBD)
  - May 9 -- Distinguished Americans for PNTR
  - May 11 -- Meeting with Members
  - May 12 -- Ag. travel. Currently considering Texas.
  - May 22 -- Meeting with Members

- **Daily Talking Points/Message of the Day.** War Room will begin to put out message of the day and talking points. There will be a conference call every to discuss and finalize TPs for the next day. WH Press concerned about "message disclipline."

- **Members Announcements of Support.** Likely that 1/2 dozen or so Members will come out in support of PNTR tomorrow. This will not be an Administration event -- some outside group will do press.

- **Martin Lee Op-Ed.** WSJ is apparently trying to get Martin Lee op-ed published soon along with a "counter op-ed" to balance it out (same day).

- **Articles Following Testimony**. Press reports are suggesting that White House is "endorsing" Levin proposals and reporting on the new environment. I have forwarded these articles to you, and they are included in your materials for the China Principals meeting tomorrow.

- **Upcoming Speeches**. You are scheduled to give a keynote lunch speech to the Board of Directors of the Committee for Economic Development on May 18. This group has released a position paper in support of PNTR -- so this will be a close-to-the-vote pep rally. You have also received an invite to speak at SAIS. I am discussing best times with the War Room. Finally, you have received an invite to speak at the Dallas Ambassadors Forum on May 12. This is the same day as the President's travel to Texas for an ag-related event. Melissa is working on this.]

- **May 9 Distinguished Americans for PNTR Event.** FYI, Bush unlikely to attend. Do you want to set up any side meetings with the people who are coming? There will be a reception following the event -- so there will also be opportunities to speak with people at the reception.

- **National Conference of Black Mayors Supports PNTR**. FYI, the NCBM sent a letter to Hastert expressing support for PNTR. I have a copy of the letter if you would like to see it. (includes Webb from Denver, Kirk from Dallas, Mayor of New Orleans)

Lisa M. Kountoupes
05/03/2000 08:32:50 PM

Record Type: Record

To:

cc:
Subject:

we are going to begin sending daily china talking points i will get them around as soon as i see them, preferably the night before.

TALKING POINTS FOR THURSDAY MAY 4, 2000
CHINA TRADE WORKING GROUP

On Levin's proposal:

The Administration believes that the proposals being developed by Congressman Levin with others are constructive and address important issues. We welcome further dialogue on these proposals among Members on both sides of the aisle.

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

We also agree 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 that 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, and are receptive to ideas that make good substantive sense and can garner broad bipartisan support. We could not, of course, accept anything that would in any way condition PNTR.

On delaying the vote until next year:

We must give China permanent NTR this year. First, if we don't, we will lose the full market access benefits of the agreement. The GATT requires all WTO members to provide immediate and unconditional NTR/MFN. Annual renewal is not unconditional. China will most likely enter the WTO this year -- but without PNTR, our companies will not have full access to China's market right from the start. Our global competitors will be gaining a foothold in China while we stand on the sidelines.

Second, exports contributed to one third of economic growth in the 1990s. Our failure to pass PNTR would hurt our companies and potentially slow our exports and impact our country's economic growth. PNTR is important to continue a policy that has contributed significantly to the longest period of economic expansion in this country's history.

Third, failure to pass PNTR will weaken the reformers who are trying to expand the role of free market in China. China's reformist leaders have staked their credibility -- not just on China's accession to the WTO -- but on normalizing trade relations with the U.S. If Congress votes against PNTR, we will miss a critical opportunity to influence China's development in the right direction.

On Cuba: " Why don't our arguments about China-WTO apply to Cuba?"
The fundamental difference is that one can do business with China without doing business with the Chinese State. China has a real and growing private sector. It has a real labor market: foreign companies and joint ventures can hire and pay workers directly; employees can negotiate directly for their employment. It has a real, if constrained, civil society -- with over a million non-profit and social organizations and an explosion of print and broadcast media.

In Cuba, conditions are very different. Cuba has not reformed its economy as China has. Cuba's private sector is virtually non-existent -- limited to a few small family restaurants, craft shops, and small garden plots. Most foreign investors are in joint ventures with the Cuban state. Even in cases where a business is mostly foreign-owned (as many hotels are), workers are hired not by the foreign company but by the Cuban government. The company pays its employees' salaries to the government, which pockets the hard currency and pays the workers in Cuban money.

Therefore, it is not possible to do business with Cuba without empowering and enriching the Cuban government--there is no private sector to benefit from participation in the global economy.

On the US Commission on International Religious Freedom Annual Report:
We profoundly disagree with the Commission's recommendation that the Congress impose human rights conditionality on permanent normal trading relations (PNTR) for China.

Conditionality will not advance the cause of religious freedom in China, and will not improve the environment for any of the religious groups we are concerned about.

What it would do is deprive the United States of the full economic benefits of China's market-opening commitments, and severely restrict our ability to positively influence the course of events in China – including our ability to promote religious freedom. It would reduce the role of American companies in bringing higher labor standards to China and in improving the lives of Chinese workers.

Unconditional Congressional approval of PNTR will mean that China will enter the WTO bound by the full range of economic commitments contained in the U.S.-China bilateral trade agreement.

Despite our fundamental disagreement with the Commission on the issue of conditionality, we share the Commission's deep concern about abuses of religious freedom in China, and we remain committed to sustained U.S. Government efforts to promote religious freedom.

On the vote count:

We have always expected this to be a tough fight.

We are not there yet and still have a lot of work to do.

We remain confident nonetheless that our case will prevail.

The important number is 218. We need to do our part to get enough members to pass this bill.

On the EU-China talks:

We understand the talks will resume on May 15th. We are encouraged that talks will resume but want to emphasize that this should not have an impact on the scheduled May PNTR vote in Congress

An Agreement between the EU and China can only improve the strong, comprehensive, and enforceable bilateral accession agreement that the United States negotiated with China.

The WTO accession process takes the best deals negotiated from each country and combines them to make the overall agreement. In other words, no one can weaken any market-opening provision we negotiated, but if they get something better, we get that benefit as well.

Moreover, the legislation that the President has sent to Congress requires him to certify that the terms and conditions of China's accession to the WTO *are at least equivalent* to those we accepted in November. The bottom line is this: If we want to enjoy the full benefits of this agreement, Congress must grant PNTR.

On the fertilizer deal:

We have reached an agreement with China that will effectively provide market access for U.S. fertilizer. This agreement is an addendum to our November 1999 bilateral agreement on China's accession.

Because we do not want to interfere with China's negotiations with other WTO Members, -- particularly the EU, who will resume negotiations the week of May 15 -- we will wait to release details to the public until May 19.

However, we have already begun to fully brief Members of Congress, and will make the agreement available to them.

Recent quotes:

"We have come to support [PNTR] principally for the reason of human rights and the rule of law for China. I see hope in China's accession to the WTO because that would mean, I hope, the beginning of the rule of law in China." Honk Kong Democratic Party leader Martin Lee.

"This confluence of our national economic and security interests when coupled with the ineffectiveness of our annual votes has convinced me that PNTR is in the best interests of our nation, global stability, and the nascent democracy, labor and human rights movements in China" Rep. Steny Hoyer

"Granting China PNTR status will enable American businesses, farmers and workers to sell more American-made products in China?and will help institute the rule of law, promote democratic values and build a Chinese middle class." Rep. Lois Capps.

May 3–9:00Am

Proposed China Framework

I. Congressional-Executive Commission on China

Proposal: As part of the framework for bringing China into the WTO, the proposal will establish a Congressional-Executive Commission on China. The Commission will consist of nine Members of each House, plus five Presidential appointees.

The Commission will have three pillars within its scope. The first pillar will be monitoring human rights in China (including religious freedoms). The second pillar will be monitoring labor market issues in China. The third pillar will be monitoring and encouraging the development of rule-of-law and democracy building in China.

The Commission will submit to Congress and to the President an annual report of its findings including, as appropriate, WTO-consistent recommendations for legislative and/or executive action. It will also maintain lists of victims of human rights abuses in China. Finally, the Commission will respond to information requests from individual Members of Congress.

The model for this Commission is the Commission on Security and Cooperation in Europe, a Congressional-Executive entity established in 1976 to monitor compliance by other countries with the provisions of the Helsinki Final Act.

The CSCE experience indicates that a China Commission will be an effective mechanism for maintaining pressure on China with respect to labor market issues, rule of law issues, and human rights.

From its creation in 1976 to the end of the cold War, the CSCE was one of several important instruments for championing human rights, democracy and rule of law in the countries of the former Soviet bloc. Since the Cold War, the CSCE has monitored elections in former Soviet bloc countries.

The strengths that the CSCE has exhibited include the following:

- It has pulled together large amounts of information related to human rights, regional security, and other issues, analyze that information, and communicate it to the Administration, Congress, and the public in a manner that generally is considered impartial and authoritative. Its credibility with the Administration and Congress has given the CSCE a good deal of influence in shaping policy on issues within its areas of expertise.

- The CSCE has become a reliable liaison between the U.S. Government and dissidents, human rights leaders, intellectuals and other citizens of the countries that it monitors.

- The CSCE has drawn attention to particular cases of human rights violations. During the worst days of Soviet bloc repression, the Commission brought cases to the attention of governrnents in the Soviet bloc and worked to resolve them.

Based on the CSCE experience, there are several reasons to expect that a China Commission will be an effective means of maintaining scrutiny and pressure on China in the areas of human rights including religious freedom, worker rights, and rule of law:

- First, a bipartisan standing Commission will institutionalize Congressional examination of measures by the Government of China that affect U.S. interests. Commitment to this task will be permanent and concentrated, as opposed to sporadic and diffuse, as has been the case under current law (i.e., annual reviews).

- Second, the Commission will become an effective base from which to mobilize support for particular improvements in China's policies andpractices. For instance, if the Commission spotlights particularly egregious conduct by the Government of China, it ~~may~~ will be able to rally a bipartisan consensus for pressing China to change its conduct more easily than an individual Member of Congress would otherwise be able to do.

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II. Lesislating tho China Product-Specific, Anti-Surge Safeguard**

Background: The November 1999 Agreement between the United States and China contains a product-specific safeguard, which will be included in China's protocol of accession to the WTO. The safeguard permits the United States and other WTO Members to provide relief to domestic industries and workers, "where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to **cause or threaten to cause market disruption** to the domestic producers of like or directly competitive products." This special anti-surge safeguard will apply to China for a period of **12 years** following China's accession to the WTO.

The China safeguard contains lower causation and injury standards than ordinarily would apply between WTO Members. According to the U.S.-China Agreement, market disruption occurs when subject imports "are increasing rapidly, either absolutely or relatively, so as to be a **significant cause of material injury**, or threat of material injury to the domestic industry." By contrast, under the U.S. law that applies to other WTO Members (section 201 of the Trade Act of 1974), the relevant inquiry is whether goods are being imported into the United States "in such increased quantities as to be a **substantial cause of serious injury.**"

Issue: There is a need to spell out how the anti-surge safeguard in the U.S.-China Agreement will be implemented as a matter of U.S law. Therefore, Congress should develop and write into law a procedure for U.S. industries and workers to seek and obtain relief under the China product-specific safeguard.

Proposal: Under the proposed legislation, U.S. industries or workers claiming injury due to import surges from China would file a petition with the U.S. International Trade Commission. Within 30 days, the ITC would make a preliminary determination as to whether the subject imports are causing or threatening market disruption. If that determination is affirmative, the President will be required to request consultations with the Government of China. This will start a consultation period of up to 60 days, as required by the U.S.-China Agreement.

Within 60 days after rendering its preliminary determination, the ITC will be required to render a final determination. If that detcanination is affirmative, and if the United States and China are unable to reach agreement within the consultation period, then the President will be required to decide whether and how to provide relief, making a proposal within 7 days of the final ITC determination.

There will then be an opportunity for public comment on the President's proposed remedy, as required by the Agreement. Following a 30-day comment period, the President will proclaim relief as appropriate.

The proposal will make clear the standards for application of Presidential discretion in providing relief to injured industries and workers. If the ITC makes an affirmative final injury determination, there will be a presumption in favor of providing relief. That presumption can be overcome only if the President finds that providing relief would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action, or that such action would cause serious harm to the national security of the United States.

The proposal also will authorize the President to provide a provisional safeguard in cases where " delay would cause damage which it would be difficult to repair," as permitted under the U.S.-China Agreement. If such circumstances exist, provisional relief will be available immediately upon an affirmative preliminary finding by the ITC, as described above.

Finally, the proposal will implement a provision in the U.S.-China Agreement concerning trade diversion. That provisioin addresses circumstances in which a safeguard applied by a third country with respect to Chinese goods "causes or threatens to cause significant diversions of trade" into the United States. In those circumstances, U.S. companies or workers affected by the diversions or threatened diversions will be able to petition for relief, invoking a procedure similar to the basic safeguard procedure described above.

** Need review of actual legislative language. Note: some of timeframes (e.g., 7 days for POTUS to propose relief following ITC decision) other details (e.g., hearing required as well as opportunity for public comment) need modification.

III. Continuing Oversight of China's Compliance With WTO Obligations

A. Annual Report on China's Compliance With WTO Obligations

Proposal: This provision will require USTR to issue an annual report on China's compliance with WTO obligations. The report will cover compliance by the People's Republic of China with cormmitments made in connection with its accession to the World Trade Organization, including both multilateral commitments and any bilateral commitments made to the United States.

~~The purpose of the report will be to examine all aspects of China's accession to the WTO, and to examine the status of internationally recognized worker rights in China.~~ Its contents will be more comprehensive than the China section in USTR's National Trade Estimate Report on Foreign Trade Barriers. The report will be a complete analysis of Chinese compliance with the implementation of obligations. By highlighting where China is meeting obligations and where it is falling short, the report will be a guide to where and how to commit enforcement resources.

B. Annual WTO Review of China's Compliance With WTO Obligations

Proposal: In negotiating China's Protocol of Accession, the Administration will press for a mechanism for reviewing China's compliance with WTO obligations on an annual basis.

Given the early stages of development of a free market and rule of law in China, it is necessary that China be given special scrutiny within the WTO. Paired-with the annual report by the ~~President~~ USTR (described in the immediately preceding section), there will be two mechanisms to ensure strong oversight of China's trade record.

IV. USTR Office for Trade and Labor

Proposal: The proposal will provide that the United States Trade Representative (USTR) establish an Assistant United States Trade Representative (AUSTR) for Trade and Labor. This office and other appropriate executive branch agencies will coordinate issues related to labor and trade. The AUSTR will have responsibility for matters concerning the relationship between Chinese and other
foreign government labor market policies and practices on the one hand, and trade with the United States on the other. Among other functions, this office will oversee all preferential trade agreements that include labor initiatives (e.g., Generalized System of Preferences, Carribean Basin Initiative).

Establishment of the new AUSTR for Trade and Labor will mark the first time that labor issues have a dedicated office within USTR. The framework will also call for appropriations for the new office, and will require the hiring of a staff that is highly trained in issues concerning linkages between labor markets and trade. The office will work closely with the trade sections of the Labor and Commerce Departments, as well as the AUSTR for Trade and Development. ~~The office will take the lead on such issues as establishing a working group on trade and labor in the WTO, and insuring that labor issues are integrated into the trade agenda, much in the same way that the Office of Trade and the Environment has worked to address issues of trade and the environment.~~

V. Task Force on Prohibition of Importation of Products of Forced or Prison Labor

Proposal: The import of goods made by forced or prison labor into the United States is prohibited by U.S. law (section 307 of the Tariff Act of 1930), consistent with the GATT 1994. Article XX of the GATT allows countries to take action without retaliation to prohibit import of goods made by prison labor. The proposed prov ision will instruct the President to establish an interagency task force to monitor and promote effective enforcement of this prohibition, including compliance by foreign exporters. The task force would include officers and employees from the Departments of Treasury, Commerce, Labor and other agencies.

[Treasury working on additional language.]

VI. Monitoring and Enforcement of Foreign Government Compliance With Trade Agreements**

Proposal: This provision calls for additional resources to be allocated to the Departments of Commerce, Agriculture, and State, and to the Office of the U.S. Trade Representative to strengthen the ability of the United States to monitor and enforce Chinese and other foreign government compliance with trade agreements. The provision will include resources to promote the following activities, among others:

1) staffing to monitor China's compliance with the WTO Agreements;
2) defend U.S. safeguard, antidumping, and countervailing duty measures and U.S. policy to maintain strong trade remedies;
3) enforce U.S. trade laws, including import monitoring, subsidy enforcement, and prompt antidumping and countervaiffing duty investigations under Title VII of the Tariff Act of 1930;
4) create a Trade Law Technical Assistance Center to assist small and medium sized businesses, workers, and unions with preparation of petitions seeking remedies for alleged violations of trade laws;
5) create an overseas Compliance ~~Council~~Program, that will monitor compliance with international trade obligations by foreign governments;
6) authorize funds to investigate, prosecute and defend cases before the WTO and

NAFTA tribunals;

7)authorize funds and resources to analyze the impact of trade on the economy of the United States;

8)increase legal and technical expertise in areas covered by trade agreements and U.S. trade law, including food safety and biotechnology.

The wide ranging provisions will substantially increase the ability of the U.S. Government to monitor and enforce Chinese and other foreign government obligations in international trade agreements. In addition to calling for funds for enforcement, the framework calls for legal and technical
assistance for companies and workers pursuing antidumping and countervailing remedies. ~~There will be an office devoted to examining China's compliance with WTO agreements.~~

** Should conform to President's 2001 budget request on monitoring and compliance.

VII. Promotion of Adherence to Core Labor Standards in Foreign Countries

Proposal: This proposal calls for the allocation of resources to the Department of Labor to provide assistance to foreign countries in complying with internationally recognized worker rights. Such assistance will be provided on a multilateral or bilateral basis and will support working with international organizations that promote core labor standards, such as the International Labor Organization. Specific provisions will include resources for multilateral and bilateral technical assistance programs on issues such as:

1)development of laws, regulations, and other measures to implement internationally recognized worker rights, including elimination of the worst forms of child labor;

2)establishing national mechanisms for the edorsement of national labor laws and regulations;

3)training government officials concerned with the implementation and enforcement of national labor laws and regulations;

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

The Administration, including the Secretary of Labor, will continue to pursue efforts to promote and advance core labor standards in China, including through a bilateral dialogue and programs with China.

In FY 2000, the Congress appropriated $30,000,000 to the Department of Labor for bilateral and multilateral technical assistance programs to promote core labor standards and social safety nets. This provision will expand upon that appropriation to carry out this mission, including with respect to China.

VIII. Accession of Taiwan to WTO

Proposal: This provision will express the sense of the Congress that the WTO General Council should approve both the PRC's accession and Taiwan's accession at the same General Council session.

Michael M. Daum
05/03/2000 09:02:53 AM

Record Type: Record

To: Malcolm R. Lee/OPD/EOP@EOP, Timothy E. Punke/OPD/EOP@EOP, Richard M. Samans/OPD/EOP@EOP

cc:

Subject: Re: PLEASE COMMENT ON THE FOLLOWING LEVIN PROPOSAL BY WEDNESDAY MORNING, 9:30 AM

Malcolm , Tim, and Rick

From what I recall from December and January:

Number 7 was not part of the trade compliance initiative as conceived

Number 6 was not part of the FY 2001 trade compliance initiative. Under the initiative, USTR will be adding people to its enforcement office as well as to its industry, country, and one other office. The additional staff will work on other things in addition to enforcement (such as negotiations). I'm assuming, though, as it is part of the USTR's base budget to investigate, prosecute, and defend cases before the WTO and NAFTA tribunals - it would be okay to leave it there. You would know better than I about this.

I believe number eight is okay. The funds for USDA were intended for the more technically oriented parts of the Department to provide technical assistance to the part of the Department involved in international negotiations (and other related actions). I would think sanitary, phytosanitary and biotecech would be within the technical support can USDA provides (or have the another agency help them with).

Michael

Timothy E. Punke
05/03/2000 10:39:35 AM

Record Type: Record

To: ted.posner@mail.house.gov @ inet

cc: See the distribution list at the bottom of this message
Subject: Additional Edits to Levin Proposal

Ted:

Per your discussion with Chuck, attached is our redlined edits to your proposal (and a clean version). We will follow up as soon as possible later today with language on the prison labor task force. Our concern is that the task force should not perform operational duties that appropriately lie with Customs.

Malcolm Lee 456-9299
Timothy Punke 456-5363

Levin -- 000503 8 am. Levin -- 000503 10 am clea

Message Copied To:

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May 3 - 9 am

Proposed China Framework

I. Congressional-Executive Commission on China

Proposal: As part of the framework for bringing China into the WTO, the proposal will establish a Congressional-Executive Commission on China. The Commission will consist of nine Members of each House, plus five Presidential appointees.

The Commission will have three pillars within its scope. The first pillar will be monitoring human rights in China (including religious freedoms). The second pillar will be monitoring labor market issues in China. The third pillar will be monitoring and encouraging the development of rule-of-law and democracy building in China.

The Commission will submit to Congress and to the President an annual report of its findings including, as appropriate, WTO-consistent recommendations for legislative and/or executive action. It will also maintain lists of victims of human rights abuses in China. Finally, the Commission will respond to information requests from individual Members of Congress.

The model for this Commission is the Commission on Security and Cooperation in Europe, a Congressional-Executive entity established in 1976 to monitor compliance by other countries with the provisions of the Helsinki Final Act.

The CSCE experience indicates that a China Commission will be an effective mechanism for maintaining pressure on China with respect to labor market issues, rule of law issues, and human rights.

From its creation in 1976 to the end of the cold War, the CSCE was one of several important instruments for championing human rights, democracy and rule of law in the countries of the former Soviet bloc. Since the Cold War, the CSCE has monitored elections in former Soviet bloc countries.

The strengths that the CSCE has exhibited include the following:

- It has pulled together large amounts of information related to human rights, regional security, and other issues, analyze that information, and communicate it to the Administration, Congress, and the public in a manner that generally is considered impartial and authoritative. Its credibility with the Administration and Congress has given the CSCE a good deal of influence in shaping policy on issues within its areas of expertise.

- The CSCE has become a reliable liaison between the U.S. Government and dissidents, human rights leaders, intellectuals and other citizens of the countries that it monitors.

- The CSCE has drawn attention to particular cases of human rights violations. During the worst days of Soviet bloc repression, the Commission brought cases to the attention of governments in the Soviet bloc and worked to resolve them.

Based on the CSCE experience, there are several reasons to expect that a China Commission will be an effective means of maintaining scrutiny and pressure on China in the areas of human rights including religious freedom, worker rights, and rule of law:

- First, a bipartisan standing Commission will institutionalize Congressional examination of measures by the Government of China that affect U.S. interests. Commitment to this task will be permanent and concentrated, as opposed to sporadic and diffuse, as has been the case under current law (i.e., annual reviews).

- Second, the Commission will become an effective base from which to mobilize support for particular improvements in China's policies andpractices. For instance, if the Commission spotlights particularly egregious conduct by the Government of China, it ~~may~~ will be able to rally a bipartisan consensus for pressing China to change its conduct more easily than an individual Member of Congress would otherwise be able to do.

- Third, as Chinese citizens gain greater access to the outside world through the Internet and other modes of communication, the Commission will become an important conduit between Chinese citizens, on the one hand, and the U.S. Government and public, on the other. For instance, victims of human rights abuses in China and their advocates in the NGO community will be able to communicate directly with the Commission.

- Fourth, the Commission will be a strong, effective, and unique point of contact on China issues between Congress and the Administration. Thus, as in the case of the CSCE, the Commission will be used to highlight for the Administration issues of particular concern to Congress. This will assist the Administration in deploying its diplomatic and other foreign policy tools most cffectively.

II. Legislating the China Product-Specific, Anti-Surge Safeguard**

Background: The November 1999 Agreement between the United States and China contains a product-specific safeguard, which will be included in China's protocol of accession to the WTO. The safeguard permits the United States and other WTO Members to provide relief to domestic industries and workers, "where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to **cause or threaten to cause market disruption** to the domestic producers of like or directly competitive products." This special anti-surge safeguard will apply to China for a period of **12 years** following China's accession to the WTO.

The China safeguard contains lower causation and injury standards than ordinarily would apply between WTO Members. According to the U.S.-China Agreement, market disruption occurs when subject imports "of an article like or directly competitive with an article produced by a domestic industry are increasing rapidly, either absolutely or relatively, so as to be a **significant cause of material injury**, or threat of material injury to the domestic industry." By contrast, under the U.S. law that applies to other WTO Members (section 201 of the Trade Act of 1974), the relevant inquiry is whether goods are being imported into the United States "in such increased quantities as to be a **substantial cause of serious injury.**"

Issue: There is a need to spell out how the anti-surge safeguard in the U.S.-China Agreement will be implemented as a matter of U.S. law. Therefore, Congress should develop and write into law a procedure for U.S. industries and workers to seek and obtain relief under the China product-specific safeguard.

Proposal: Under the proposed legislation, U.S. industries or workers claiming injury due to import surges from China would file a petition with the U.S. International Trade Commission

* All words in [illegible]
X = delete

White House Provision

May 2 - 4:30 pm

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X china

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USTR

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7

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— missing — 9

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6) authorize funds to investigate, prosecute and defend cases before the WTO and NAFTA tribunals;
7) authorize funds and resources to analyze the impact of trade an the economy of the United States;
8) increase legal and technical expertise in areas covered by trade agreements and U.S. trade law, including food safety and biotechnology.

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The wide ranging provisions will substantially increase the ability of the U.S. Government to monitor and enforce foreign government obligations in international trade agreements. In addition to calling for funds for enforcement, the framework calls for legal and technical assistance for companies and workers pursuing antidumping and countervailing remedies. ~~There will be an office devoted to examining China's compliance with WTO agreements.~~

?

** Should conform with President's 2001 budget request on monitoring and compliance.

VII. Promotion of Adherence to Core Labor Standards in Foreign Countries

Proposal: This proposal calls for the allocation of resources to the Department of Labor to provide assistance to foreign countries in complying with internationally recognized worker rights. Such assistance will be provided on a multilateral or bilateral basis and will support working with international organizations that promote core labor standards, such as the International Labor Organization. Specific provisions will include resources for multilateral and bilateral technical assistance programs on issues such as:

1) development of laws, regulations, and other measures to implement internationally recognized worker rights, including elimination of the worst forms of child labor;
2) establishing national mechanisms for the edorsement of national labor laws and regulations;
3) training government officials concerned with the implementation and enforcement of national labor laws and regulations;
4) developing an infrastructure to educate workers about their legal rights and protections under national labor laws and regulations.

The Administration, including the Secretary of Labor, will continue to pursue efforts to promote and advance core labor standards in China, including through a bilateral dialogue and programs with China.

In FY 2000, the Congress appropriated $30,000,000 to the Department of Labor for bilateral and multilateral technical assistance programs to promote core labor standards and social safety nets. This provision will expand upon that appropriation to carry out this mission, including with respect to China.

VIII. Accession of Taiwan to WTO

Proposal: This provision will express the sense of the Congress that the WTO General Council should approve both the PRC's accession and Taiwan's accession at the same General Council session.

DRAFT—5/02/00

V. Task Force on Prohibition of Importation of Products of Forced or Prison Labor

Proposal: The import of goods made by forced or prison labor into the United States is prohibited by U.S. law (section 307 of the Tariff Act of 1930), consistent with the GATT 1994. Article XX of the GATT allows countries to take action without retaliation to prohibit import of goods made by prison labor. The proposed provision will instruct the President to establish an interagency task force to monitor and promote effective enforcement of this prohibition, including compliance by Chinese and other foreign exporters. The task force will assist the U.S. Customs Service in:

1) investigating allegations of forced or prison labor imports;
2) working with the Chinese government and other foreign governments to visit sites where goods are produced;
3) providing technical assistance to China and other foreign governments to ensure that forced or prison labor goods are not imported into the U.S.;
4) monitoring U.S. ports for forced or prison labor goods; and
5) engaging in any other activities necessary to carry out section 307 of the Tariff Act of 1930.

The task force will strengthen the ability of the U.S. Government to stop imports of goods made by forced or prison labor. The members of the task force will work with the Chinese Government and other foreign governments to ensure that this prohibition is strictly enforced. Moreover, the task force will monitor imports from other countries to ensure that goods are not made with forced or prison labor. The provision directs the President to create a 20-person inter-agency task force that will be given the appropriations and legal authority to work exclusively on this issue.

POST - BERGER

WHY PNTR IS BEST HOPE FOR GREATER OPENNESS IN CHINA
By Gene Sperling and Samuel Berger

Many opponents of Permanent Normal Trade Relations (PNTR) for China argue we should not embrace China's membership in the WTO because of its abysmal record on human and labor rights. Their diagnosis is right. But their prescription is not. The question before the Congress is not whether China's record on human rights is good or whether PNTR by itself will provide a cure. The question is, in addition to the overwhelming economic benefits to America, will passage of PNTR increase the chance of positive change in China?

We believe it will. We base that belief not on faith that trade always brings freedom. We base it on the conviction that the specific concessions China is making to enter the WTO will strengthen reformers trying to move it in the right direction.

The divisions within China are clear. Those advocating WTO membership and closer ties with America are the same leaders pushing a more daring transition from command-and-control to the market. They realize that if they open China to global competition, they risk unleashing forces beyond their control -- temporary unemployment, social unrest, and greater demands for freedom. But they have concluded that without competition, China will not be able to build a modern, successful economy.

The opposition? The entrenched state-owned manufacturing sector and those Communist officials clinging desperately to one-party control over how people work and live. They know that if China slashes protective tariffs to get into the WTO, more of its state enterprises will go. The government's ability to control workers and their loyalty will diminish. There will be more pressure from within for political change.

Last year alone there more than 120,000 labor disputes across China. In some places, the government has cracked down. In others, it has responded by giving people a greater say, by holding local elections and allowing workers to take grievances to court. That is how real change can begin and we need to encourage it. How would we do that by handing a humiliating defeat to market-oriented reformers seeking normalized trade with the United States and a huge victory to the stalwarts of a state-dominated economy?

If China enters the WTO and we approve PNTR, the resulting greater participation of U.S. telecommunications companies will also make telephone and internet access more affordable and accessible for Chinese citizens. Right now only 12 percent of Chinese have phones; less than 1 percent have internet access. No matter how hard Chinese officials try to stuff the information genie back into the bottle, an explosion of telephone and internet access will lead to an explosion of idea sharing within China. But if we reject PNTR, our cutting edge information industries will be denied preferential access. How would that help Chinese citizens seeking new ideas – or new tools for political activism?

Finally, as Martin Lee, the courageous leader of Hong Kong's Democratic Party has said, participation in the WTO would "bolster those in China who understand that the country must embrace the rule of law…." Economic activity in China is usually based on vague, unwritten, unpublished rules that maximize the arbitrary power of Party officials. To join the WTO, China must publish key rules, making it easier for Chinese citizens to advance on the strength of their ideas, not their connections.

Two caveats: First, membership in the WTO does not guarantee China's leaders will choose political reform. But by accelerating the process of economic change, it will force them to confront that choice sooner, and it will make the imperative for the right choice stronger. By the same token, if we reject PNTR, and undercut the reform-minded leaders who have put their reputations on the line for a policy of greater openness, we will increase the likelihood of the wrong choice.

Second, PNTR is not by itself an American human rights policy toward China. Change will come through a combination of internal pressure and external validation of China's human rights struggle. We have to maintain our leadership in the latter, even as the WTO contributes to the former. That's why we sanctioned China under the International Relgious Freedom Act last year, and why last month we again sponsored a resolution in the UN Human Rights Commission condemning China's human rights violations.

Those who oppose PNTR have little vision of how a "No" vote would further reform in China other than maintaining our annual vote to threaten the close of our market to Chinese goods (at considerable cost to millions of American families). Yet, after twenty years, this annual ritual has become just that – a ritual. Even when our relationship was at its lowest point – after the Tiananmen massacre -- this vote has affirmed our trading relationship with China

As the President has said, we do not know what path China will take. All we can do is make the decisions most likely to push China in the direction of economic and political reform. It is hard to see how freezing the status quo, empowering hard-liners, slowing economic transition, and keeping American companies out of China will increase respect for human rights or lead to a more open society. It is possible, however, to see a better future for China if it is opening its economy and reaching out to the world. The choice for us could not be more clear.

PRE- BERGER

Patrick M. Dorton
05/01/2000 07:39:50 PM

Record Type: Record

To: Melissa G. Green/OPD/EOP@EOP
cc:
Subject: Op-Ed We sent to Sandy for Gene

---------------------- Forwarded by Patrick M. Dorton/OPD/EOP on 05/01/2000 07:37 PM ---------------------------

Patrick M. Dorton
04/26/2000 01:22:57 PM

Record Type: Record

To: Timothy E. Punke/OPD/EOP@EOP
cc:
Subject:

WHY PNTR IS BEST HOPE FOR GREATER OPENNESS & FREEDOM IN CHINA

By Gene Sperling
National Economic Adviser to President Clinton

House Democratic Leader Richard Gephardt diagnosed China's human rights and labor rights record as abysmal and as a consequence, announced his opposition to China PNTR. The diagnosis is right, but the prescription is off the mark. The fundamental question is not whether China's record on human rights is good – it's not – or whether PNTR will provide a cure. The question is, in addition to the overwhelming economic benefits of this agreement for the U.S., is passage of PNTR more likely to push the process of economic reform forward? We believe the answer is clearly yes.

Passing PNTR will Strengthen the Hand of Economic Reformers in China:

The divisions within China on this issue are clear. Those advocating China's entry into the WTO are the same leaders trying to push a more daring transition from a command-and-control economy to a more market-oriented economy. The opposition? The People's Liberation Army, the entrenched state-owned manufacturing sector, and those Communist Party officials trying to cling desperately to one-party control over daily economic transactions. How would we be possible moving the ball forward on economic freedom by handing a humiliating defeat to market-oriented reformers seeking normalized trade with the United States and a huge victory to the stalwarts of a state-dominated economy?

Spreading the Tools of Communication will Advance Free Discussion of Ideas & Freedom

China's entry into the WTO and the resulting greater participation of U.S. telecommunications companies makes China's leaders nervous because telephone and internet access will become more affordable and accessible for Chinese citizens. That is exactly why those who want to push individual expression in China should support PNTR. Right now only 12 percent of Chinese have phones and less than 1 percent have internet access. No matter how hard some Chinese bureaucrats try to stuff the information genie back into the bottle, the explosion of telephone and internet access for ordinary Chinese citizens will correlate with an explosion of idea sharing and expression within China. Woudn't denying preferential access to China for our cutting edge industries be unilateral economic disarmament, and a recipe for slowing this explosion in free expression?

Support for PNTR Will Promote The Rule Of Law In China:

Economic activity within China is usually based on vague, unwritten, unpublished rules that maximize the arbitrary discretion of local and national party officials. The WTO requirement of transparency supports the rule of law and brings forth clearly published rules that would strengthen the ability of average Chinese businesspeople to obtain access to capital and business advice on the economic viability of their ideas. As Martin Lee, Chairman of the Democratic Party of Hong Kong, has stated, "The participation of China in the WTO would not only have economic and political benefits, but would serve to bolster those in China who understand that the country must embrace the rule of law...."

Those who oppose PNTR have little vision of how a "No" vote would further reform in China other than maintaining our annual vote to threaten the close of our market to Chinese goods (at considerable cost to millions of American families). Yet, after twenty years, this annual ritual has become just that – a ritual. Members of Congress like Democratic Rep. Levin and Republican Rep. Bereuter have been exploring more positive avenues for pressuring China on human rights issues if PNTR were to pass.

As the President has said, there are no guarantees as to the path of China. All we can do is make the decisions that we feel would most likely push China in the direction of economic and political reform. While there will be no instant cures and even positive change is likely to occur in stops and starts, it is hard to see how freezing the status quo, strengthening the hand of the hard-liners, slowing economic transition, and keeping American companies out of China will increase respect for human rights and labor rights or lead to a more open and democratic society.

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Can you finalize by cob

1) Redline 2 pager
2) clean 2 pager incorporating our changes

3) Redline 13 pager + repaginate
4) clean 13 pager repaginated

Also need to be on noon call (news to me) on testimony.

China/WTO Principals Meeting
May 2, 2000

I. Presidential Mission Report (Glickman)

II. Levin Update (Brain/Sperling)

III. Ways and Means Testimony (Brain)

IV. Annual NTR Process (Barshefsky)

IV. Other Issues Update
-- Taiwan
-- human rights/religious freedom
-- upcoming events

Proposed China Framework

I. Congressional-Executive Commission on China

Proposal: As part of the framework for bringing China into the WTO, the proposal will establish a Congressional-Executive Commission on China. The Commission will consist of nine Members of each House, plus five Presidential appointees. Presidential appointees can be Administration officials or non-Administration individuals.

The Commission will have ~~three~~ two pillars within its scope. The first pillar will be monitoring human rights in China (including religious freedoms). ~~The second pillar will be monitoring overall aspects of U.S.-China economic relations, including labor market issues.~~ The second ~~third~~ pillar will be monitoring and encouraging the development of rule-of-law and democracy-building in China.

The Commission will submit to Congress an annual report of its findings and recommendations. ~~, including WTO-consistent recommendations for legislative and/or executive action.~~ It will also maintain lists of victims of human rights abuses in China. Finally, the Commission will respond to information requests from individual Members of Congress.

The model for this Commission is the Commission on Security and Cooperation in Europe, a Congressional-Executive entity established in 1976 to monitor compliance by other countries with the provisions of the Helsinki Final Act.

The CSCE experience indicates that a China Commission will be an effective mechanism for maintaining pressure on China with respect to ~~economic issues, including~~ labor market issues, rule of law issues, and human rights.

From its creation in 1976 to the end of the cold War, the CSCE was one of several important instruments for championing human rights, democracy and rule of law in the countries of the former Soviet bloc. Since the Cold War, the CSCE has monitored elections in former Soviet bloc countries.

The strengths that the CSCE has exhibited include the following:

- It has pulled together large amounts of information related to human rights, regional security, and other issues, analyze that information, and communicate it to the Administration, Congress, and the public in a manner that generally is considered impartial and authoritative. Its credibility with the Administration and Congress has given the CSCE a good deal of influence in shaping policy on issues within its areas of expertise.

- The CSCE has become a reliable liaison between the U.S. Government and dissidents, human rights leaders, intellectuals and other citizens of the countries that it monitors.

- The CSCE has drawn attention to particular cases of human rights violations. During the worst days of Soviet bloc repression, the Commission brought cases to the attention of governments in the Soviet bloc and worked to resolve them.

Based on the CSCE experience, there are several reasons to expect that a China Commission will be an effective means of maintaining scrutiny and pressure on China in the areas of human rights (including religious freedom~~), overall aspects of U.S.-China economic relations (including~~ worker rights~~)~~, and rule of law:

- First, a bipartisan standing Commission will institutionalize Congressional examination of measures by the Government of China that affect U.S. interests. Commitment to this task will be permanent and concentrated, as opposed to sporadic and diffuse, as has been the case under current law (i.e., annual reviews).

- Second, the Commission will become an effective base from which to mobilize support for particular improvements in China's policies andpractices. For instance, if the Commission spotlights particularly egregious conduct by the Government of China, it may be able to rally a bipartisan consensus for pressing China to change its conduct more easily than an individual Member of Congress would otherwise be able to do.~~Given its expertise and its resources, the Commission should bewell positioned to recommend to Congress targeted, WTO-consistent action with respect to China, as appropriate~~.

- Third, as Chinese citizens gain greater access to the outside world through the Internet and other modes of communication, the Commission will become an important conduit between Chinese citizens, on the one hand, and the U.S. Goverrunent and public, on the other. For instance, victims of human rights abuses in China and their advocates in the NGO community will be able to communicate directly with the Commission.

- Fourth, the Commission will be a strong, effective, and unique point of contact on China issues between Congress and the Administration. Thus, as in the case of the CSCE, the Commission will be used to highlight for the Administration issues of particular concern to Congress. This will assist the Administration in deploying its diplomatic and other foreign policy tools most cffectively.

II. Lesislating tho China Product-Specific, Anti-Surge Safeguard**

Background: The November 1999 Agreement between the United States and China contains a product-specific safeguard, which will be included in China's protocol of accession to the WTO. The safeguard permits the United States and other WTO Members to provide relief to domestic industries and workers, "where products of Chinese arigin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to **cause or threaten to cause market disruption** to the domestic producers of like or directly competitive products." This special anti-surge safeguard will apply to China for a period of **12 years** following China's accession to the WTO.

The China safeguard contains lower causation and injury standards than ordinarily would apply between WTO Mernbers. According to the U.S.-China Agreement, market disruption occurs when subject imports "are increasing rapidly, either absolutely or relatively, so as to be a **significant cause of material injury**, or threat of material injury to the domestic industry." By contrast, under the U.S. law that applies to other WTO Members (section 201 of the Trade Act of 1974), the relevant inquiry is whether goods are being imported into the United States "in such increased quantities as to be a **substantial cause of serious injury.**"

Issue: There is a need to spell out how the anti-surge safeguard in the U.S.-China Agreement will be implemented as a matter of U.S law. Therefore, Congress should develop and write into law a procedure for U.S. industries and workers to seek and obtain relief under the China product-specific safeguard.

Proposal: Under the proposed legislation, U.S. industries or workers claiming injury due to import surges from China would file a petition with the U.S. International Trade Commission. Within 30 days, the ITC would make a preliminary determination as to whether the subject imports are causing or threatening market disruption. If that determination is affirmative, the President will be required to request consultations with the Government of China. This will start a consultation period of up to 60 days, as required by the U.S.-China Agreement.

Within 60 days after rendering its preliminary determination, the ITC will be required to reader a final determination. If that detcanination is affirmative, and if the United States and China are unable to reach agreement within the consultation period, then the President will be required to decide whether and how to provide relief, making a proposal within 7 days of the final ITC determination.

There will then be an opportunity for public comment on the President's proposed remedy, as required by the Agreement. Following a 30-day comment period, the President will proclaim relief as appropriate.

The proposal will make clear the standards for application of Presidential discretion in providing relief to injured industries and workers. If the ITC makes an affumative final injury determination, there will be a presumption in favor of providing relief. That presmption can be overcome only if the President finds that providing relief would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action, or that such action would cause serious harm to the national security of the United States.

The proposal also will authorize the President to provide a provisional safeguard in cases where "delay would cause damage which it would be difficult to repair," as permitted under the U.S.-China Agreement. If such circumstances exist, provisional relief will be available inmediately upon an affirmative preliminary finding by the ITC, as described above.

Finally, the proposal will implement a provision in the U.S.-China Agreement concerning trade diversion. That provisioin addresses circumstances in which a safeguard applied by a third country with respect to Chinese goods "causes or threatens to cause significant diversions of trade" into the United States. In those circumstances, U.S. companies or workers affected by the diversions or threatened diversions will be able to petition for relief, invoking a procedure similar to the basic safeguard procedure described above.

**Reserve pending review of actual legislative language. Note: some of timeframes (e.g., 7 days for POTUS to propose relief following ITC decision) other details (e.g., hearing required as well as opportunity for public comment) need modification.

III. Continuing Oversight of China's Compliance With WTO Obligations

A. Annual_Report on Cbina's Compliance With WTO Obligations

Proposal: This provision will require ~~the President~~ USTR to issue an annual report on China's compliance with WTO obligations. The report will cover ~~two areas~~:

1) compliance by the People's Republic of China with cornmitments made in connection with its accession to the World Trade Organization, including both multilateral commitments and any bilateral commitments made to the United States;

2) ~~the status of internationally recognized worker rights within the People's Republic of China, focusing in particular an the relationship between the trciament of core worker rights and trade relations between the United States and the People's Republic of China. This report will be prepared jointly by the U.S. Trade Representative and the Labor Department.~~

The purpose of the report will be to examine all aspects of China's accession to the WTO, and to examine the status of internationally recognized worker rights in China. Its contents will be more comprehensive than the China section in USTR's National Trade Estimate Report on Foreign Trade Barriers. The report will be a complete analysis of Chinese compliance with the implementation of obligations. By highlighting where China is meeting obligations and where it is falling short, the report will be a guide to where and how to commit enforcement resources.

B. Annual WTO Review of China's Compliance With WTO Obligations

Proposal: In negotiating China's Protocol of Accession, the Administration will press for a mechanism for reviewing China's compliance with WTO obligations on an annual basis.

Given the early stages of development of a free market and rule of law in China, it is necessary that China be given special scrutiny within the WTO. Paired-with the annual report by the President (described in the immediately preceding section), there will be two mechanisms to ensure strong oversight of China's trade record.

IV. **USTR Office for Trade and Labor**

Proposal: The proposal will provide that the United States Trade Representative (USTR) establish an Assistant United States Trade Representative (AUSTR) for Trade and Labor. This office and other appropriate executive branch agencies will coordinate issues related to labor and trade. The AUSTR will have responsibility for matters concerning the relationship between foreign government labor market policies and practices on the one hand, and trade with the United States on the other. Among other functions, this office will oversee all preferential trade agreements that include labor initiatives (e.g., Generalized System of Preferences, Carribean Basin Initiative).

Establishment of the new AUSTR for Trade and Labor will mark the first time that labor issues have a dedicated office within USTR. The framework will also call for appropriations for the new office, and will require the hiring of a staff that is highly trained in issues concerning linkages between labor markets and trade. The office will work closely with the trade sections of the Labor and Commerce Departments, as well as the AUSTR for Trade and Development~~, on integrating and implementing worker rights concerns into trade agreements~~. The office will take the lead on such issues as establishing a working group on trade and labor in the WTO, and insuring that labor issues are integrated into the trade agenda, much in the same way that the Office of Trade and the Environment has worked to address issues of trade and the environment.

V. Task Force on Prohibition of Importation of Products of Forced or Prison Labor

Proposal: The import of goods made by forced or prison labor into the United States is prohibited by U.S. law (section 307 of the Tariff Act of 1930), consistent with the GATT 1994. Article XX of the GATT allows countries to take action without retaliation to prohibit import of goods made by prison labor. The proposed provision will instruct the President to establish an interagency task force to monitor and promote effective enforcement of this prohibition, including compliance by foreign exporters. -The task force would include officers and employees from the Departments of Treasury, Commerce, Labor and other agencies. [This was language previously passed to Levin staff by Treasury and agreed interagency]~~The task force will:~~

~~1)investigate allegations of forced or prison labor imports;~~
~~2)work with foreign governments to visit sites where goods are produced;~~
~~3)provide technical assistance to foreign governments to ensure that forced or prison labor goods are not imported to The U.S.;~~
~~4)monitor U.S. ports for forced or prison labor goods; and~~
~~5)~~1) ~~engage in any other activities necessary to carry out section 307 of the Tariff Act of 1930.~~

~~The task force will strengthen the ability of the U.S. Govermnent to stop imports of goods made by forced or prison labor. The members of the task force will work with the Chinese Government and other foreign governments to ensure that this prohibition is strictly enforced. Moreover, the task force will monitor imports from other countries to ensure that goods are not made with forced or prison labor. The provision directs the President to create a 20-person interagency task force that will be given the appropriations and legal authority to work exclusively on this issue.~~

VI. Monitoring and Enforcement of Foreign Government Compliance With Trade Agreements**

Proposal: This provision calls for additional resources to be allocated to the Departments of Commerce, Agriculture, and State, and to the Office of the U.S. Trade Representative to strengthen the ability of the United States to monitor and enforce Chinese and other foreign government compliance with trade agreements. The provision will include resources to promote the following activities, among others:

1) staffing to monitor China's compliance with the WTO Agreements;
2) defend U.S. safeguard, antidumping, and countervailing duty measures and U.S. policy to maintain strong trade remedies;
3) enforce U.S. trade laws, including import monitoring, subsidy enforcement, and prompt antidumping and countervaiffing duty investigations under Title VII of the Tariff Act of 1930;
4) create a Trade Law Technical Assistance Center to assist small and medium sized businesses, workers, and unions with preparation of petitions seeking remedies for alleged violations of trade laws;
5) create an overseas Compliance Council, that will monitor compliance with international trade obligations by foreign governments;
6) authorize funds to investigate, prosecute and defend cases before the WTO and NAFTA tribunals;
7) authorize funds and resources to analyze the impact of trade an the economy of the United States;
8) increase legal and technical expertise in areas covered by trade agreements and U.S. trade law, including food safety and biotechnology.

The wide ranging provisions will substantially increase the ability of the U.S. Government to monitor and enforce foreign government obligations in international trade agreements. In addition to calling for funds for enforcement, the framework calls for legal and technical assistance for companies and workers pursuing antidumping and countervailing remedies. There will be an office devoted to examining China's compliance with WTO agreements. [~~,~~ including enforcement of previously-mentioned prohibitions on the import of forced-labor goods.]

** Should conform with President's budget request on monitoring and compliance.

VII. Promotion of Adherence to Core Labor Standards in Foreign Countries

Proposal: This proposal calls for the allocation of resources to the Department of Labor to provide assistance to foreign countries in complying with internationally recognized worker rights. Such assistance will be provided on a multilateral or bilateral basis and will support working with international organizations that promote core labor standards, such as the International Labor Organization. Specific provisions will include resources for multilateral and bilateral technical assistance programs on issues such as:

1) development of laws, regulations, and other measures to implement internationally recognized worker rights, including elimination of the worst forms of child labor;
2) establishing national mechanisms for the edorsement of national labor laws and regulations;
3) training government officials concerned with the implementation and enforcement of national labor laws and regulations;
4) developing an infrastructure to educate workers about their legal rights and protections under national labor laws and regulations.

~~Also included in this provision is a **specific bilateral labor program with China** that will establish a technical assistance program with China to implement and enforce internationally recognized worker rights. This will be accomplished through joint seminars, workshops, and exchange programs between the U.S. Department of Labor and the Chinese Ministry of Labor.~~ The Administration, including the Secretary of Labor, will continue to pursue efforts to promote and advance core labor standards in China, including through a bilateral dialogue and programs with China.

In FY 2000, the Congress appropriated $30,000,000 to the Department of Labor for bilateral and multilateral technical assistance programs to promote core labor standards and social safety nets. This provision will expand upon that appropriation to carry out this mission, including with respect to China.

VIII. WTO Working Group on Trade and Labor

** Should not be legislated.

Proposal: Section 131 of the Uruguay Round Agreements Act directed The President to seek the establishment of a working party on trade and labor issues in the WTO. The proposed provision urges the President to continue efforts in the establishment of a working group on trade and labor in the WTO. The proposal will require the U.S. Trade Representative to update Congress periodically on its efforts to fulfill this mandate. The newly created Assistant USTR for Trade and Labor will take a leading role in pursuing the establishment of this working group.

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IX. WTO Committee on Trade and Environment

** Should not be legislated.

Proposal: This proposal calls on the Administration to lead efforts to strengthen the role of the WTO Committee an Trade and Environment by seeking to ensure that environmental considerations are taken into account in each and every aspect of negotiations in the WTO.

To date, the WTO Committee on Trade and Envirownent has proven to be less effective than it could be. By urging the Administration to plan in detail how it will seek to strengthen the role of the Committee, the proposal will raise domestic and international awareness about the role of the environment in trade agreements. By raising the profile of the Committee within the WTO, the environmental effects of trade will be more fully integrated into the WTO framework of negotiations.

X. Transparency Reforms

** Should not be legislated.

Proposal: USTR will prepare and present to Congress a plan of action by a date certain on efforts to pursue transparency-enhancing reforms of the WTO. As previously proposed by USTR in Geneva, these reforms include early public release of documents relating to cases in WTO dispute settlement, public meetings of dispute settlement panels, and provision of amicus briefs in cases in dispute settlement.

Greater transparency will strengthen the WTO by elevating its legitimacy in the eyes of the citizens of its member countries. At the same time, greater transparency in the WTO will complement and support development of greater transparency, and of rule of law in general, in China and in other WTO member countries.

XI. Accession of Taiwan to WTO

Proposal: This provision will express the sense of the Congress that the WTO General Council should approve both the PRC's accession and Taiwan's accession at the same General Council session.

~~Taiwan has been eligible for two years to enter the WTO. Its accession has been stalled due to negotiations over China's accession. China has insisted that it accede to the WTO before Taiwan, and thus Taiwan has been asked to wait until China accedes. This provision urges the Administration to support Taiwan's entry into the WTO concurrently with China's accession.~~