

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the Clinton Presidential Library Staff.

Folder Title:

China PNTR - Levin-Bereuter Discussions [8]

Staff Office-Individual:

National Economic Council-Lee, Malcolm

Original OA/ID Number:

CF 1177

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

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 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. 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 an annual report of its findings 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 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 and practices. 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.
- 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 effectively.

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. 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 determination 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 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. 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 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 commitments made in connection with its accession to the World Trade Organization, including both multilateral commitments and any bilateral commitments made to the United States.

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, Caribbean 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 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.]

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 countervailing 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 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 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 endorsement 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. 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.

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 on 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 Environment 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.

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 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. 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 an annual report of its findings 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 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 and practices. 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.
- 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 effectively.

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 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 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. 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 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 commitments made in connection with its accession to the World Trade Organization, including both multilateral commitments and any bilateral commitments made to the United States.

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, Caribbean 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 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.]

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 countervailing 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 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 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 endorsement 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. 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.

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 on 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 Environment 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.

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 pillars within its scope. The first pillar will be monitoring human rights in China (including religious freedoms). The second pillar will be monitoring broad economic developments including labor market issues but excluding issues related to our trade relationship with China.. The third pillar ~~The second pillar will be monitoring overall aspects of U.S.-China economic relations, including labor market issues. 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 an annual report of its findings, ~~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 and practices. 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 be well 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. 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 effectively.

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 in jury 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 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 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. 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 China'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 commitments made in connection with its accession to the World Trade Organization, including both multilateral commitments and any bilateral commitments made to the United States;
- 2) ~~the status of internationally recognized worker rights within the People's Republic of China, focusing in particular on the relationship between the treatment 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, Caribbean 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. 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 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 countervailing 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 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 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 enforcement

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.

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 on 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 Environment 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.~~

Q&As -- PNTR Legislation And Parallel Legislation

Q: Will you accept anything other than clean PNTR legislation?

- We negotiated a strong bilateral WTO accession agreement with China last November. We believe that it stands on its own merits, and provides a solid basis for enacting PNTR.
- We are consulting closely with Congress, making clear the strong merits of the agreement we reached, and listening to Members' concerns.
- There is interest on both sides of the aisle -- and within the Administration -- in full implementation of China's commitments, strong and effective enforcement, and continuing to assess China's human rights practices and to voice our very real concerns.
- A number of ideas have been proposed, some focused on monitoring and reporting. We are committed to working with Congress to address these concerns, and will consider ideas that make sense from a policy perspective and that garner broad bipartisan support.
- We could not, of course, accept anything that would condition PNTR because WTO rules would not allow it.

Q: Are you in negotiations with Levin and others on parallel proposals on PNTR such as a Helsinki-type commission?

- A commission is a [promising][constructive][interesting] idea, and we are looking at it as part of our consultations with Congress.
- The Administration understands and shares Members' strong interest in continuing to assess China's human rights practices and to voice our very real concerns. We will look closely at mechanisms, such as a commission, that could be constructive from a policy perspective and that could garner broad support for PNTR. And we encourage broad consultations between Members.
- [We are not yet prepared to express a final Administration position on this issue, but we do see the consultations among Members as positive.]

(Background: USA Today reported on April 26 that the White House has tentatively agreed to a Commission.)

Q: How will we keep pressure on China on issues such as human rights without an annual review?

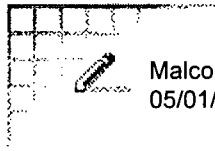
- We will continue to speak out on human rights abuses in China through our annual country reports on Human Rights and Religious Freedom and other venues (including the UN) as appropriate. As we have clearly stated in the past, our relationship with China will never reach its full potential until there is significant progress toward respect for international standards of human rights.

Q: Will you accept separate legislation that provides for review of China's compliance of its WTO obligations?

- The President is firmly committed to vigorous monitoring and enforcement of China's commitments, and will work closely with Congress on the important issue of enforcement and compliance. We will have to evaluate proposals that the United States could implement independently, such as reports and monitoring, on their merits.
- We are planning the most vigorous monitoring and enforcement program of any trade agreement ever. We will maximize use of the full range of the WTO's existing review mechanisms, strengthen U.S. monitoring and enforcement capabilities, ensure regular reporting to Congress on China's compliance, and enforce the strong China-specific import surge protections we negotiated. The President has requested \$22 million in new funding for China trade compliance.
- (If necessary) The Administration would also oppose any amendment that would require the United States to renegotiate the bilateral agreement we reached last November.

Q: USA Today reported on April 26 that the Administration is still looking for votes. Is this true? What is the Administration position?

- We have always expected that this could be a very tough vote in the House. The outcome remains uncertain, and depends on a number of Members who have not decided either way. But we are still confident that in the end, the merits of this agreement will bring together the necessary votes and that we will prevail.



Malcolm R. Lee
05/01/2000 08:13:42 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Sharon H. Yuan/OPD/EOP@EOP, David Tseng/OPD/EOP@EOP, Timothy E. Punke/OPD/EOP@EOP, Jamie H. Ginott/OPD/EOP@EOP
Subject: Assessment of New Levin Draft based on Sunday 4/30 Interagency Conference Call

I believe this reflects the consensus from yesterday's conference call.

Revised Section by Section Comments

I. Commission:

- still have differences on the scope (overall aspects of U.S.-China economic relations) and recommendations on WTO-consistent action.
- want to make clear we can appoint non-Administration officials to the Commission as Presidential appointees.
- can accept adding rule of law to scope of Commission

Administration Position: delete the language on "monitoring overall aspects of U.S.-China economic relations" and delete the reference to WTO-consistent sanctions.

Fallback: Change "overall aspects of economic relations" to "studying China's broad economic development." We should be explicit, however, that the Commission will not review issues related to our trade relationship with China.

II. China Safeguard Legislation:

- Need to see the legislative language on safeguard, trade diversion and provisional relief, but general approach outlined appears ok.
- Proposal's language on narrowing POTUS discretion appears to be consistent with our prior conversations with Levin and his staff. Need to see actual legislative language.

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

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

- Proposal would now have the President, not USTR, issue the annual report.
- Report would now include a review of the status of internationally recognized worker rights within the PRC.

Position: (1) The report should be done by USTR, not the President; (2) the report should not include a review of worker rights. This is redundant of current reports.

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

- now legislative language, previously non-legislative. Can accept this provision as legislated language.

IV. USTR Office of Trade and Labor:

- Should delete reference to "integrating and implementing worker rights concerns into trade agreements." Otherwise, generally OK. Can accept 2 offices (AUSTL for Labor and AUSTL for Trade and Development) so long as funds are available.

V. Prison Labor Task Force

- [Treasury working on revised language.] Detailed responsibilities give task force operational responsibilities that currently lie with Customs and should remain there.
- Language also states that task force will "be given the appropriations and legal authority to work exclusively on this issue". While the task force will have exclusive responsibilities, its members will not.

VI. New Resources for Trade Agreement Monitoring and Enforcement:

- New detail added. Appears generally consistent with President's budget initiative, but needs review. For example, China WTO compliance office would also examine prison labor import enforcement.

VII. Promotion of Adherence to Core Labor Standards Abroad:

- Should be ok except for second to last paragraph. (DOL/ Samans need to review new detail).
- Penultimate paragraph requires "a specific bilateral labor program with China to implement and enforce internationally recognized worker rights. This will be accomplished through joint seminars, workshops and exchange programs between DOL and its Chinese Ministry of Labor."
- Replace above paragraph on bilateral labor program with the following language: "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 the China."
- Change the last paragraph by adding the ALL CAPS language included below:

"In FY 2000, the Congress appropriated \$30,000,000 to the DOL 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's Working Group on Trade and Labor

- Proposal now includes this as legislation. Previously non-legislated,. Should not be legislated.

IX. WTO Committee on the Environment

- Proposal now includes this as legislation. Previously non-legislated,. Should not be legislated.

X. WTO Transparency Reform

- Proposal now includes this as legislation. Previously non-legislated,. Should not be legislated.

XI. Accession of Taiwan to the WTO:

- The wording of the sense of Congress in first paragraph conforms with our agreement, but Levin's staff has added in second paragraph what appears to be whereas language (e.g., Taiwan has been eligible for two years to enter the WTO, Taiwan has been asked to wait until China accedes) that is inaccurate and objectionable.
- Delete second paragraph.

Message Sent To:

Gene B. Sperling/OPD/EOP@EOP
 Charles M. Brain/WHO/EOP@EOP
 Lael Brainard/OPD/EOP@EOP
 novick_robert@ustr.gov @ inet
 ebtp@cais.com @ inet
 meg.lundsager@do.treas.gov @ inet
 bcarreau@doc.gov @ inet
 David J. Lane/WHO/EOP@EOP
 eric_biel@ita.doc.gov @ inet
 field_catherine@ustr.gov @ inet
 bradley_Jane@ustr.gov @ inet
 James R. Keith/NSC/EOP@EOP
 Daniel B. Shapiro/NSC/EOP@EOP
 Mara E. Rudman/NSC/EOP@EOP
 Richard M. Samans/OPD/EOP@EOP
 Matthew T. Schneider/WHO/EOP@EOP

Gene/Lael:

I have read through Levin's latest proposal, which Chuck sent us Saturday. Levin has added new detail that needs careful review by relevant agencies, and all proposals now appear to be legislated. There are a number of areas of potential concern outlined in detail below, but the biggest issues include:

- resolution of scope (economic relations) and membership of commission and its recommendations for WTO consistent actions;
- careful review of Levin's new China safeguard proposal;
- Levin has changed the nature of the annual report on China's compliance with its WTO obligations. It is now a report from the President that also includes the status of internationally recognized worker rights in the PRC. Would appear to be redundant of annual human/labor rights report from State.
- The entire proposal is now legislated.

I suggest we use the interagency conference call today at 4:00 to review each section. The new proposal is salvagable, but needs work. Would be useful to have Rick Samans or Andy Samet on the call to cover the labor issues. Republicans would likely have problems with several of the new changes.

Section by Section Comments

- Everything now appears to be legislation. No clear non-legislated provisions.
- Commission: Still have differences on scope (overall aspects of U.S.-China economic relations), recommendations for WTO consistent action. *Chuck mentions Levin or his staff object to our appointing non-Administration officials to the Commission as Presidential appointees.* *rule of law*
- China Safeguard Legislation: Need USTR reaction to new Levin proposal. New detail on timetable, etc. Proposal's language on narrowing POTUS discretion appears to be consistent with our prior conversations with Levin and his staff. Levin proposal will also set forth unspecified procedures for trade diversion and for provisional relief which will need to be carefully reviewed.
- Annual Report on China's Compliance with WTO Obligations: Would now have President, not USTR, to issue annual report. Significantly, report would now include status of internationally recognized worker rights within the PRC.
- Annual WTO Review of China's Compliance with WTO Obligations. Language is consistent with our prior conversations, but is now in legislation.

Before was non-legislative proposal.

- USTR Office of Trade and Labor: New language recognizes other agencies than USTR have responsibilities, but new language needs review. This new USTR office will, among other things, "oversee all preferential trade agreements that include labor initiatives (e.g., GSP, CBI)".
- Prison Labor Task Force: Treasury will have problems with new detail and duties. Chapcau language ok and reflects our prior discussions, but detailed responsibilities give task force operational responsibilities that currently lie with Customs and should remain there. Language also states that task force will "be given the appropriations and legal authority to work exclusively on this issue". While the task force will have exclusive responsibilities, its members will not.
- New Resources for Trade Agreement Monitoring and Enforcement: Contains new detail on use of funds that is generally consistent with President's budget initiative, but needs review. For example, China WTO compliance office would also examine prison labor import enforcement.
- Resources for Adherence to Core Labor Standards Abroad: Proposal calls for "allocation", rather than "appropriation", of resources to DOL to provide assistance to foreign countries in complying with internationally recognized worker rights. DOL, Rick, need to review new detail. Notably, Levin would require a specific bilateral labor program with China that provides tech assistance to China to implement and enforce internationally recognized worker rights. Would implement this through joint seminars, workshops and exchange programs between DOL and its Chinese counterpart.
- Other Non-Legislative Provisions Made Legislation: In addition to the provision stating the Administration will press for an annual review in the WTO itself of China's compliance, Levin's new proposal's covering the WTO's Working Group on Trade and Labor, WTO Committee on the Environment, and WTO Transparency Reform now appear to be legislated.
- Accession of Taiwan to the WTO: The wording of the sense of Congress conforms with our agreement, but Levin's staff has added what appears to be whereas language (e.g., Taiwan has been eligible for two years to enter the WTO, Taiwan has been asked to wait until China accedes) that is inaccurate and objectionable.

I am faxing a copy of the new Levin proposal in which I have highlighted what I identify as the potential problem areas.

Malcolm

cc: Jim Keith - NSC Asia

DRAFT—4/28/00

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 overall aspects of U.S.-China economic relations, including labor market issues. 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 an annual report of its findings, 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.

DRAFT—4/28/00

- ▶ 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 and practices. 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 be well 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. 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 effectively.

DRAFT—4/28/00

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.

New
Detail

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 determination 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.

DRAFT—4/28/00

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 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. 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.

DRAFT—4/28/00

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 the President 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 commitments made in connection with its accession to the World Trade Organization, including both multilateral commitments and any bilateral commitments made to the United States;
- 2) the status of internationally recognized worker rights within the People's Republic of China, focusing in particular on the relationship between the treatment 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. New

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. OK

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.

* FORMERLY NON-LEGISLATIVE

DRAFT—4/28/00

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, Caribbean 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.

DRAFT-4/28/00

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 foreign exporters. The task force will:

Chinese & other

New
Detail

- 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) 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. 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 interagency task force that will be given the appropriations and legal authority to work exclusively on this issue.

DRAFT—4/28/00

**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:

- New Data
- 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 countervailing 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 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 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.

DRAFT—4/28/00

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

[appropriation]

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 enforcement 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.

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 respect to China].

DRAFT—4/28/00

VIII. WTO Working Group on Trade and Labor *

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.

* Formerly Non-Legislative

DRAFT—4/28/00

IX. WTO Committee on Trade and Environment *

Proposal: This proposal calls on the Administration to lead efforts to strengthen the role of the WTO Committee on 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 Environment 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.

* FORMERLY NON LEGISLATIVE

DRAFT 4/28/00

X. WTO Transparency Reforms *

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.

* FORMERLY NOW LEGISLATIVE

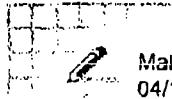
DRAFT—4/28/00

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.

stop



Malcolm R. Lee
04/17/2000 04:32:57 PM

Record Type: Record

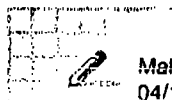
To: Timothy E. Punke/OPD/EOP@EOP

cc:

Subject: PNTR Levin Proposal

FYI

----- Forwarded by Malcolm R. Lee/OPD/EOP on 04/17/2000 04:32 PM -----



Malcolm R. Lee
04/17/2000 04:32:35 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: PNTR Levin Proposal



LevinProposalApril17redline

Laet:

Per your request, I clarified with Ted Posner of Levin's staff the same edits Gene reviewed with Levin last Tuesday, making clear that the Administration is taking no position on the overall package or its specifics at this time per last Wednesday's and Thursday's discussions. I did not and will not send him any paper. Posner said Levin's preference would still be strong, early Administration support for Levin's proposal, but Levin "respects" the view of Steve and other Democratic members who believe such support would be counterproductive at this time.

The redlines in the attached document reflect the latest Administration views on the substance of Levin's proposals. While we are expressing no position overall on Levin's proposal, there remain several substantive areas of disagreement. *Levin would like Principals to consider several counterproposals in two areas of disagreement.* I told Posner I would take the suggestions back, but did not commit to a timeframe, noting my understanding that there were now ongoing consultations among members. Levin is out this week.

Areas of Disagreement

- **Scope of Commission:** Levin (Posner) wants the Commission's scope to include "overall economic aspects of U.S.-China economic relations." Principals have not agreed to this, and Charlene and Gene specifically objected to coverage of "commercial" issues. There is a fundamental difference of

views on this issue that cannot be addressed through wordsmithing. Levin's staff wants us to consider the alternative language in the attachment.

- **Commission Recommendations Including WTO-Consistent Sanctions:** Levin (Posner) counterproposal: Alternative one - "including WTO-consistent recommendations to Congress and/or the Administration". Alternative two: "including WTO-consistent actions that may be taken by either branch."

Clarifications

- **Special China Anti-Surge Safeguard:** Levin (Posner) has proposed national security exemption language modeled on section 301, per Levin's agreement in principle last Tuesday. I indicated that our folks had not drafted language yet, but I would pass it on.
- **Task Force on Prohibition of Import of Prison Labor:** Posner seemed to have no objection to Treasury's revised language that has been cleared by Customs and the NEC (see language in attachment).
- **Authorizations for Core Labor Standards and Monitoring and Enforcement Budget Initiatives:** Posner sought clarification that authorizations are in fact not needed, and indicated preference for language stronger than "call for" to make legislation appear more robust.

ML

Message Sent To:

Lael Brainard/OPD/EOP@EOP
Sharon H. Yuan/OPD/EOP@EOP
Gene B. Sperling/OPD/EOP@EOP
Charles M. Brain/WHO/EOP@EOP
Steve Ricchetti/WHO/EOP@EOP
Mara E. Rudman/NSC/EOP@EOP

Message Copied To:

James R. Keith/NSC/EOP@EOP
David Tseng/OPD/EOP@EOP
Jamie H. Ginott/OPD/EOP@EOP
Elliott H. Baer/OPD/EOP@EOP
David J. Lane/WHO/EOP@EOP
Matthew T. Schneider/WHO/EOP@EOP
Lisa M. Kountoupes/WHO/EOP@EOP
Rebecca Hunter/WHO/EOP@EOP

Redlined Draft of April 17

Levin Proposal: April 17, 2000

Provisions to be Legislated

1) Congressional-Executive Commission on China

Scope: The Commission would monitor and report on acts of the Government of the People's Republic of China that concern human rights, religious rights, and ~~commercial rights, including labor market issues.~~

Levin (Posner) counterproposal: replace "commercial matters" with "overall aspects of U.S. -China economic relations."

Membership: Nine Congressmen; nine Senators; five representatives ~~from executive branch~~ appointed by the President. ~~Executive branch representatives~~ Presidential appointees could abstain from voting on Commission decisions in appropriate circumstances.

Staff: Staff would be employees of the Commission (as opposed to employees of executive branch agencies detailed to the Commission).

Annual Reports: The Commission would issue an annual report to Congress, which would include recommendations to Congress and/or the Administration, ~~including WTO consistent sanctions that may be taken by either branch.~~

Levin (Posner) counterproposal: Alternative one - " WTO-consistent recommendations to Congress and/o the Administration". Alternative two: "including WTO-consistent actions that may be taken by either branch."

Other Work of the Commission: In addition to providing annual reports, the Commission would gather information concerning matters within its jurisdiction, respond to inquiries from Members of Congress, maintain lists of persons in China who have suffered human rights abuses, and provide information and recommendations on particular events of concern to the Commission as they arise.

2) Special China Anti-Surge Safeguard

This provision would implement legislatively the 12-year anti-surge safeguard provision of the U.S.-China agreement concluded last November. The provision would give relief to U.S. industries injured by import surges from China, applying a lower injury standard than is contained in section 201 of the Trade Act.

Redlined Draft of April 17

This provision would clarify standards for the exercise of Presidential discretion to provide relief where the ITC finds that imports from China are a significant cause of material injury or threat thereof to a U.S. industry. The President would be required to provide relief, unless he found that such action would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action [NOTE: Levin (Posner) proposes adding the following national security exemption language drawn from Section 301]"or that such action would cause serious harm to the national security of the United States.".

3) USTR Office of Trade and Labor

This provision would establish an Assistant USTR for Trade and Labor. The Office of the AUSTR for Trade and Labor would have responsibility for ~~all~~ matters concerning the relationship between foreign government labor market policies and practices and trade with the United States.

4) Task Force on Prohibition of Import of Prison Labor

Current law (section 307 of the Tariff Act of 1930) prohibits import into the United States of goods made by prison labor. The proposed provision would instruct the President to establish an interagency task force to monitor and promote effective enforcement of ~~enforce~~ that prohibition, including compliance by foreign exporters with section 307. The task force would include officers and employees from the Departments of Treasury, Commerce, ~~and Labor~~ and other agencies. ~~It would investigate alleged violations and assist foreign governments in monitoring exports to ensure compliance with section 307.~~

Note: Treasury has passed this language to Levin's staff.

5) Monitoring and Enforcement

This provision would ~~authorize call~~ for additional resources for Department of Commerce, ~~and USTR, USDA, and State~~ to monitor and enforce foreign government compliance with trade agreements.

6) Annual Report on China's Compliance With WTO Obligations

This provision would require USTR to issue a special annual report on China's compliance with WTO obligations.

7) Core Labor Standards

This provision would ~~authorize call~~ for appropriations for the Department of Labor to provide assistance to foreign countries in complying with internationally recognized worker rights. Such assistance could be provided on a multilateral or bilateral basis.

Redlined Draft of April 17

Objectives would include helping foreign countries to develop laws and regulations, establish enforcement mechanisms, train officials and educate workers.

8) Accession of Taiwan to the WTO

This provision would express the sense of Congress that the WTO General Council should approve both China's accession to the WTO and Taiwan's accession to the WTO at the same General Council session. Taiwan should accede to the WTO at the same General Council session at which China accedes.

Non-Legislative Provisions Requiring Action by Administration9) Annual Review of China's Compliance With WTO Obligations

In negotiating China's Protocol of Accession, the Administration will ~~insist upon~~ press for a mechanism for reviewing China's compliance with WTO obligations on an annual basis. ~~Such review would be undertaken by the individual Councils of the WTO, which would report to the General Council.~~

10) WTO Working Group on Trade and Labor

The Administration will persevere in the establishment of a working group on trade and labor in the WTO

11) Trade and Environment

The Administration will lead efforts to strengthen the role of the WTO Committee on Trade and Environment, and seek to ensure that environmental considerations are taken into account so that the Committee will participate in each and every aspect of negotiations in the WTO.

12) WTO Transparency Reform

The Administration will continue to pursue efforts at transparency-enhancing reform of the WTO. The reforms will 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.