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MARKET ACCESS AND PROTOCOL COMMITMENTS

I. PROCESS OF CHINA'S WTO ACCESSION

China's WTO accession represents an opportunity to address a broad range of unfair trade practices, trade barriers, discriminatory regulatory processes, lack of transparency, and other policies which limit American participation in the Chinese market or unfairly affect American trade. The broad set of commitments China has made today, and the substantial negotiations which remain to be held, will advance American interests in a fundamental way, and complement broader policies intended to move China toward internationally accepted standards of conduct.

China's accession process includes bilateral negotiations including market access (with the United States and other trade partners); bilateral negotiations toward a "Protocol" (i.e., rules) addressing U.S. concerns on issues including dumping, safeguards, and others; and multilateral negotiations on those and the remaining Protocol issues. WTO accession is thus a complex and multi-faceted process. This fact sheet covers the market access; a second (attached) covers the Protocol commitments.

Broadly speaking, the market access commitments China has made will bring China at or above existing WTO standards on issues and sectors of major concern to the U.S.. They address each layer of Chinese trade barriers to American exports. For example, at present, an American good faces not only high tariffs and at times quotas, but a web of other barriers which, if unaddressed, could make tariff reductions meaningless. These include application of unscientific sanitary and phytosanitary standards in agriculture, non-tariff barriers to industrial goods, restrictions on distribution and trading rights, and discrimination against imports and foreign-invested companies.

In each case, the U.S. has achieved commitments that address the principal barriers to American products; are highly specific and fully enforceable; are phased-in over a relatively short period of time, with increased market access in every area as of day one of China's ultimate accession; do not offer China special treatment; and meet or exceed commitments made by many present WTO members. The commitments include:

- Significant market access benefits effective immediately on China's accession.
- Full market access for U.S. firms to distribute their products throughout China.
- Tariff reductions immediately upon accession, with further phase-ins over reasonable periods of time to levels below those of most U.S. trade partners.
- Bindings for all tariffs -- i.e., China will be unable to raise tariffs again after accession.

- Elimination of quantitative restrictions.

- Resolution of outstanding problems with sanitary and phytosanitary standards for key agricultural products, effective immediately.

- Participation in the three major multilateral agreements negotiated since the Uruguay Round: the Information Technology Agreement; the Agreement on Basic Telecommunications; and the Financial Services Agreement.

- Commitments to more open service sectors which cover the broad range of sectors, including distribution, value-added telecommunications, insurance, computer and business services, environmental services, franchising and direct sales, legal and accounting, sound recordings, and entertainment software.

China's specific commitments in the three strategic areas of agriculture, industrial goods, and services are discussed below.

I. AGRICULTURE MARKET ACCESS

The agricultural market access commitments include measures to address the following problems: trading rights, distribution, high tariffs; quotas; application of unscientific SPS standards; the reliance on state trading companies; and export subsidies.

Taken as a whole, these commitments move China toward a system based almost entirely on tariffs, with extremely low tariff rates (1-3%) in most bulk commodities. More specifically, it reduces tariffs to levels below those of most American trade partners, with the greatest reductions in the areas of top priority to U.S. producers; binds tariff concessions; eliminates quantitative restrictions on imports; requires use of science-based SPS standards; reduces the role of state trading enterprises for key commodities; and eliminates export subsidies.

A. TARIFF REDUCTIONS

China will reduce tariffs immediately on accession, and when fully phased in will result in tariff levels comparable with or better than those of many of our other major trading partners (including developed country trading partners).

Average Rates – Overall, China will reduce its overall average tariff for agricultural products to 17%. The tariff reduction will be greater for U.S. priority products. In these sectors the average tariff will drop to 14.5%.

Phase-in Periods -- All tariff cuts will be implemented by 2004, the date when all other WTO members will have implemented their Uruguay Round tariff cuts.

All agricultural tariffs will be bound (cannot be increased). Specific examples include:

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Meats -- Tariff reductions include:

	Present	2004
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Dairy – Tariff reductions in dairy include:

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B. TARIFF RATE QUOTA SYSTEM FOR BULK COMMODITIES

China's commitments follow WTO standards in eliminating all quantitative restrictions. In particularly sensitive sectors, China will adopt tariff-rate quotas (i.e. a system in which imports up to the quota level are charged a minimal tariff -- usually 1-3% -- and imports above that level a high tariff). This system provides a very strong incentive for state enterprises to purchase bulk commodities at world market rates.

The total levels of these TRQs are substantially above present import levels on accession, and provide for future growth. In all cases, we sought to maximize likelihood that the full quota would be used and ensure opportunity for private traders to participate, both by allocating an initial share of the quota to private traders and providing for reallocation of quota from state enterprises to private traders if state enterprises do not buy the full TRQ amount.

Results in U.S. priority sectors are as follows:

Soybean Oil – TRQ eliminated by 2006. The TRQ will start at 1.7 million metric tons, rising to 3.3 million tons by 2005. Private sector trade will begin at 50% and rise to 90%.

Wheat – Quota on accession is 7.3 million metric tons, rising to 9.3 million metric tons. (Compares to present Chinese import level of less than 2 million metric tons.) Private sector will initially receive 10% of this quota, with reallocation of any unused state enterprise portion available later in the calendar year.

Corn – Quota on accession is 4.5 million metric tons, rising to 7.2 million metric tons. (Compares to present import level of 250,000 metric tons.) Private sector will initially receive 25% of this TRQ, rising to 40% by 2004, with reallocation of any unused state enterprise portion available later in the calendar year.

Rice – Quota on accession is 2.6 million metric tons, rising to 5.3 million metric tons. Half of this will cover short and medium grain rice, where the U.S. is most competitive.

50% of this TRQ will go to the private sector. (Compares to present import level of 250,000 metric tons.)

Cotton – Quota on accession is 743,000 metric tons, rising to 894,000 tons by 2004. (Compares to present import levels of 200,000 metric tons.) Private sector will have 67% of this TRQ.

Barley – No TRQ, and reduction of tariffs to 9%.

Other products in which TRQs will be applied are products in which the U.S. has little or no trade interest. These include wool, sugar, palm oil and rapeseed oil.

B. SANITARY AND PHYTOSANITARY (SPS) RESTRICTIONS:

China agrees that sanitary and phytosanitary disputes should be settled scientifically.

BILATERAL AGREEMENTS ON WHEAT, CITRUS AND MEAT

China has also agreed to lift immediately, with the signature of three bilateral agreements, (concluded in parallel with the market access agreement but effective immediately on signature) unjustified SPS bans on wheat, citrus fruits and meat. These bilateral agreements resolve longstanding disputes between the U.S. and China and can lead to rapid export growth. Furthermore, they provide a strong indication that China is willing to implement the obligations of the WTO SPS agreement.

Meat – China will open its market to U.S. pork, beef and poultry by agreeing to accept USDA certification for meat safety for U.S. exports.

Citrus – China will open its market to U.S. oranges, grapefruit and other citrus fruits, eliminating a current ban and establishing a science-based phytosanitary system. Industry estimates that trade will reach $1.2 billion in a year, an increase of $700 million over current imports through informal channels.

Wheat – China will eliminate restrictions on imports of wheat from the Pacific Northwest imposed because of unjustified concerns about TCK smut.

D. EXPORT SUBSIDIES

China has committed not to provide any export subsidies for agricultural products. This is particularly important for corn, cotton and rice. It also provides a strong foundation for the next WTO Round, in which total elimination of agricultural export subsidies worldwide is a major U.S. goal, already articulated by the Vice President.

II. MARKET ACCESS FOR INDUSTRIAL PRODUCTS

With respect to market access for industrial goods, China has agreed to allow freedom for U.S. firms to import, export and distribute their goods within China; significant tariff reductions to bring tariff levels to levels comparable with major trading partners and below those of most developing countries; binding of all tariff concessions; and phase-out of all quantitative restrictions on imports.

Some areas of particular interest to the U.S. include Chinese participation in a number of existing international zero-tariff agreements (including the Information Technology Agreement) as well as individual sectors including, but not limited, to autos, wood and wood products, chemicals, fishery products and others. As in agriculture, most results in industrial goods compare favorably to those of other major trading partners, particularly those in developing countries.

A. TRADING RIGHTS AND DISTRIBUTION

Trading rights and distribution are the major priority of the manufacturing sector. At present, China severely restricts trading rights (the right to import and export) and distribution (wholesaling, retailing, maintenance and repair, transportation, etc.) As in agriculture, such restrictions give China a layer of protection against imports which if unaddressed would make tariff concessions of little value.

The U.S. thus has sought and won agreement for elimination of these restrictions. China will provide, for the first time, full trading rights and distribution rights to U.S. firms. These will be progressively phased in over three years. Even for its most sensitive and protected industries, such as chemical fertilizers, crude oil and processed petroleum, China will provide for trading rights and distribution. Distribution services are discussed in more detail in the following section on services trade.

B. OVERALL INDUSTRIAL TARIFF REDUCTIONS

China also agreed to provide significant tariff reductions which would be bound.

Rates – China will reduce average tariffs from the 24.6% average in 1997 to 9.44%. The average tariff for our priority products will be even lower, reaching 7.1%. This is a 56% cut from applied rates in 1998 and a 71% cut since the beginning of market access negotiations in 1994.

All Tariffs Bound -- China will bind its entire tariff schedule, meaning it will accept a legal commitment not to raise tariffs in the future above the bound level. Very few countries have done this; many retain rights to raise tariffs significantly above the rates they now apply.

Phase-in -- Two thirds of tariff cuts will be implemented by 2003. The balance will be phased in by 2005, with a limited number of exceptions.

C. TARIFF REDUCTIONS IN US PRIORITY AREAS

As noted above, China's tariff cuts are larger in U.S. priority areas. Some provisions in areas of special interest to the U.S. include:

High Technology – China will implement the Information Technology Agreement (ITA). This will reduce tariffs from present levels averaging 13.3% to zero for semiconductors, computers, computer equipment, telecommunications equipment and other information technology products. Most of these tariff eliminations will be phased in by 2003 with some exceptions until 2005. All other ITA participants will have implemented tariff cuts by 2005.

Autos: In the auto sector, China will reduce tariffs from the current 80-100% levels to 25% in 2005, with the cuts phased in equally each year. Auto parts tariffs will fall to an average of 10%.

*** Note – in this sector, tariff restrictions are augmented by quotas under China's industrial policy for autos. These quotas will be progressively eliminated, with the point of departure China's level of imports before creation of the auto industrial policy. See below under "Quotas and Non-Tariff Measures". In addition, auto retail rights will be provided for the first time (see services section.)

APEC Sectors -- China has agreed to implementing the early voluntary sectoral liberalization initiative of APEC now under consideration in the WTO, when the WTO accepts these sectors for implementation. This would eliminate tariffs on forest products (wood and paper), environmental goods and services, energy and energy equipment, chemical harmonization, fish, toys, gems and jewelry, and medical equipment and scientific instruments.

Wood & Paper: China will reduce tariffs from present levels of 12-18% for wood and 15-25% for paper generally to levels between 5% and 7.5%. This is a sector in which tariff concessions, along with distribution and trading rights, can expand sales rapidly.

Chemicals: China has committed to the lion's share of chemical harmonization -- reducing its tariffs to the levels of other WTO members -- for 70% of chemicals, generally at 5.5% and 6.5%. (At present China's tariffs range up to 35%.) A key reduction is in soda ash, to 5.5%. Tariffs on cosmetics, pharmaceuticals, film, and certain plastics will also be cut substantially below current levels.

Fish – China will reduce tariffs from over 20% to 10% on products of importance to the United States.

Distilled spirits – China will reduce tariffs from 61% to 10%.

D. QUOTAS AND OTHER NON-TARIFF MEASURES

WTO rules bar quotas and other quantitative restrictions. China has agreed to eliminate these restrictions immediately on accession for top U.S. priorities and with phase-ins limited to five years for others.

Quotas: China will eliminate existing quotas upon accession for the top U.S. priorities (e.g. some fertilizers and optic fiber cable). It will phase-out remaining quotas, generally by 2002, but no later than 2005.

Quotas will grow from current trade level at a 15% annual rate in order to ensure that market access increases progressively, and reduces the effect of quantitative restrictions.

Auto quotas will be phased out by 2005, in the interim, the base level quota will be $6 billion (the level prior to China's industrial auto policy), and this will grow by 15% annually until elimination.

III. SERVICES

China today is among the markets most closed to services exports anywhere in the world. Our goals in services thus included negotiation of commitments in a broad array of services sectors; ensuring Chinese accession to the two major existing multilateral services agreements on Basic Telecommunications and Financial Services; and creating a base from which to negotiate future improvements for access to the Chinese services market in the next WTO Round.

China's commitments on services, while we have some further work to do, are comparable to those of most WTO members. They include commitments in all major service categories (with further talks planned on banking, securities and audiovisual), reasonable transitions to eliminate most foreign equity restrictions (especially in sectors where the U.S. has a strong commercial interest), agreed to accede to the Basic Telecommunications and Financial Services Agreements, and full "grandfathering" of current market access for U.S. service providers. Specific commitments are as follows:

A. GRANDFATHERING

China will grandfather all existing current market access and activities in all services sectors. Many companies enjoy benefits given by provincial and central authorities. All these will be protected, even if China's commitments in its services schedule provide for approval by Central Government authority. This will protect existing American distribution services, financial services, professional and other service providers in China, including those operating under contractual or shareholder agreements or a license, from restrictions as Chinese commitments phase in.

B. DISTRIBUTION

In China today, foreign firms have no right to distribute products other than those they make in China, or to own or manage distribution networks, wholesaling outlets or warehouses. China also now frequently issues businesses licenses which limit the ability of American firms to conduct marketing, after-sales service, maintenance and repair and customer support. As the section on industrial goods noted, this is a severe barrier to goods exports as well as to services exports.

China's commitments address all these issues. They reflect a comprehensive commitment on distribution, including wholesaling, direct sales, retailing, maintenance and repair, and transportation. Thus Americans will be able to distribute imported products as well as those made in China, offering significant opportunity to expand U.S. exports of goods. As noted above, China will phase out all restrictions on distribution services within three years.

Even in its most sensitive and protected sectors, China has agreed to provide distribution rights in five years for chemical fertilizer, crude oil, and processed petroleum products.

Services Auxiliary to Distribution

Chinese commitments in services auxiliary to distribution include express delivery services, rental and leasing, air courier, freight forwarding, storage and warehousing, advertising, technical testing and analysis, and packing services. All restrictions will be phased-out in 3 to 4 years, at which time U.S. service suppliers will be able to set up 100% wholly-owned subsidiaries.

C. TELECOMMUNICATIONS

China now severely restricts sales of telecommunications services and bars foreign investment. China's commitments mark its first agreement ever to open its telecommunications sector, both to the scope of services and to direct investment in telecommunications businesses. Through these commitments, China will become a member of the Basic Telecommunications Agreement. Specific commitments include:

Regulatory Principles -- China now allows its telecommunications bureaucracies very wide discretion to apply arbitrary and discriminatory standards. China will now agree to implement the pro-competitive regulatory principles embodied in the Basic Telecommunications Agreement (including cost-based pricing, interconnection rights and independent regulatory authority), and agreed to technology-neutral scheduling, which means foreign suppliers can use any technology they choose to provide telecommunications services.

Scope of Services -- China will phase out all geographic restrictions for:

paging and value added: 4 years
mobile/cellular: 5 years
domestic wireline services and closed user groups: 6 years.

China's key telecommunications services corridor in Beijing, Shanghai and Guangzhou, which represents approximately 75% of all domestic traffic, will begin opening on accession and by 2003 will be open for all telecommunications services.

Investment -- Under present circumstances, China allows no foreign investment in telecommunications services. With this agreement, China will allow 49% foreign investment in all services, and will allow 51% foreign ownership for value added and paging services in 4 years.

D. INSURANCE

In insurance, China now restricts foreign companies to Shanghai and Guangzhou. Only two U.S. firms are permitted to participate even in these markets. Thus we sought to eliminate geographic and numerical limitations -- that is, to ensure that foreign insurance companies can operate in each part of China and without artificial limitations on their activities or number of companies -- and end restrictions on foreign investment. The results include:

Prudential Criteria – China agrees to award licenses solely on the basis of prudential criteria, with no economic needs test or quantitative limits on the number of licenses issued.

Geographic Limitations -- China will permit foreign property and casualty firms to insure large-scale risks nationwide immediately upon accession, and will eliminate all geographic limitations for future licenses over five years, allowing access to the key cities of priority U.S. interest in two to three years.

Scope – China will expand the scope of activities for foreign insurers to include group, health and pension lines of insurance, which represent about 85% of total premiums, phased in over five years.

New Licenses -- China has recently issued four licenses, including two to American companies.

Investment -- China agreed to allow majority ownership, remove onerous joint venture requirements on foreign life insurers, and phase out internal branching restrictions. Life insurers may now choose their own joint venture partners (as opposed to the present policy, under which partners are chosen for insurers by Chinese authorities), will allow 50% ownership on accession, and will phase in the right to 51% share in a joint venture in one year. For non-life, China will allow 51% ownership on accession and form wholly owned subsidiaries in 2 years.

E. BANKING

In the banking sector, China imposes severe geographic restrictions -- for example, only nine foreign banks can conduct business in local currency, and these only in the Shanghai Pudong area. Our negotiations sought full rights for foreign banks to handle both local and foreign currency business transactions (the latter obviously a major factor in opening markets to U.S. goods exports as well as services); the rights to serve Chinese as well as foreign customers;

and liberalize investment. This sector remains under discussion.

F. SECURITIES

This sector remains under discussion.

G. PROFESSIONAL SERVICES

In the professional services, China currently tightly restricts operation of foreign law firms and accounting firms. With respect to these areas, we sought commitments in all significant areas, including both the right to offer services and the right to invest, and binding commitments on the already liberal policies respecting architecture and engineering.

China offers broad coverage for legal, accountancy, taxation, management consultancy, architecture, engineering, urban planning, medical and dental, computer-related services. It will permit foreign majority control except for practicing Chinese law (an exception common to many WTO members.) For accountancy, China has agreed to eliminate a mandatory localization requirement and will now allow unrestricted access to its market to professionals licensed as CPAs in China. China has agreed to apply national treatment in issuing CPA licenses and follow transparent procedures.

H. AUDIOVISUAL

Presently, China severely restricts distribution of sound recordings, videos, movies, books and magazines, and does not allow foreign ownership, construction or operation of cinemas. While this area remains under discussion, China's commitments cover the right to distribute video and sound recordings; and cinema ownership and operation. They include:

Video and Sound Recordings -- China will allow 49% foreign participation for the distribution of video and sound recordings.

Cinemas -- China will allow majority ownership in 3 years for construction, renovation, ownership and operation of cinemas.

I. TRAVEL AND TOURISM

Finally, China until now has imposed a number of restrictions on travel and other touristrelated services. Notably, foreign firms are limited to 11 areas in China, and cannot establish full-service travel agencies. Our goal here was a set of commitments comparable to or better than the relatively high level of commitments made by WTO members. Results include:

Hotels -- China will allow unrestricted access to the Chinese market for hotel operators with the ability to set up 100% foreign owned hotels in 3 years, with majority ownership allowed upon accession.

Travel Services -- Foreign travel operators can provide the full range of travel agency services. For travel agency services, China will allow access to government resorts as well as Beijing, Shanghai, Guangzhou, and Xian.

IV. PROTOCOL AND WORKING PARTY REPORT COMMITMENTS

Commitments in China's WTO Protocol and Working Party Report establish rights and obligations enforceable through WTO dispute settlement procedures. We have agreed on key provisions relating to antidumping and subsidies, protection against import surges, technology transfer requirements and offsets as well as practices of state-owned and state-invested enterprises. While we must still address the duration of some of these provisions and resolve other issues, agreement on the substance of these rules is of special importance to U.S. workers and business. We will also continue work on textile issues and a mechanism to ensure full implementation of commitments.

China will be presenting agreed provisions to the WTO Working Party for incorporation into the accession Protocol and Working Party Report. We will also be addressing the many other rules-related issues, such as specific provisions on China's standards, customs valuation, and national treatment in this multilateral process.

SPECIFIC PROVISIONS

During the negotiations, China has agreed that it will, upon accession, make the following commitments:

A. INVESTMENT AND TECHNOLOGY TRANSFER

First, it will take a set of specific measures to ensure fair treatment for businesses operating in China. This will include eliminating policies to block foreign firms doing business in China from importing inputs for production (i.e., auto firms operating in China would be able to import American-made parts). Measures here include:

- comply with the TRIMs Agreement upon accession, without any developing country transition period;
- eliminate and cease enforcing trade and foreign exchange balancing requirements;
- eliminate and cease enforcing local content requirements;
- refuse to enforce contracts imposing these requirements; and
- only impose or enforce laws or other provisions relating to the transfer of technology or other know-how, if they are in accordance with the WTO agreements on protection of intellectual property rights and trade-related investment measures.

These provisions will also help protect American firms against forced technology transfers, as China has also agreed that, upon accession, it **will not** condition investment approvals, import licenses, or any other import approval process on performance requirements of any kind, including:

- local content requirements,
- offsets,
- transfer of technology, or
- requirements to conduct research and development in China.

These are significant commitments that go a long way in addressing concerns about the terms and conditions of investment in China, and the government's role in what should be commercial decisions.

B. ANTIDUMPING AND SUBSIDIES METHODOLOGY

Second, the Protocol ensures guarantees that American firms and workers will have strong protection against unfair trade practices including dumping and subsidies.

Here, the U.S. and China have agreed that we will be able to maintain our current antidumping methodology (treating China as a non-market economy) in future anti-dumping cases. Moreover, when we apply our countervailing duty law to China we will be able to take the special characteristics of China's economy into account when we identify and measure any subsidy benefit that may exist. While the duration of this provision remains under discussion, reaching agreement on the substance provides necessary assurance to U.S. industries that they can have effective protection against unfairly traded imports.

These provisions recognize both the ongoing reform program in China and that special difficulties may exist in making necessary determinations under the antidumping and countervailing duty laws.

C. PRODUCT SPECIFIC SAFEGUARD

Third, the Protocol ensures that American domestic firms will have strong protection against unpredicted surges of imports.

To do this, the Product-Specific Safeguard provision sets up a special mechanism to address increased imports that cause or threaten to cause market disruption to a U.S. industry.

China is a major exporting country that enjoys open access to U.S. markets. This mechanism, which is in addition to other WTO Safeguard provisions, differs from traditional safeguards in that it permits

- China to address imports that are a significant cause of material injury through measures such as voluntary restraints.

- the United States to apply restraints unilaterally based on standards that are lower than those in the WTO Safeguards Agreement.

While the duration of this provision is still under discussion, this safeguard provides an effective and expeditious means to address injurious import surges.

D. STATE-OWNED AND STATE-INVESTED ENTERPRISES

Fourth, the Protocol will allow us to address China's unusually high degree of state involvement in the economy.

State-owned and state-invested enterprises have a greater role in China's economy than in any other major economy. As part of its WTO accession, China needs to ensure that these enterprises act on a commercial basis. Moreover, we need to ensure that we can apply WTO rules to these enterprises in a meaningful fashion.

China has agreed that it will ensure that state-owned and state-invested enterprises will:

- make purchases and sales based solely on commercial considerations, such as price, quality, availability and marketability;

- provide U.S. firms with the opportunity to compete for sales and purchases on non-discriminatory terms and conditions.

China has also agreed that it will not influence these commercial decisions (either directly or indirectly) except in a WTO consistent manner.

With respect to applying WTO rules to state-owned and state-invested enterprises, we have clarified in several ways that these firms are subject to WTO disciplines.

- Purchases of goods or services by these state-owned and state-invested enterprises are not government procurement and thus are subject to WTO rules.

- We have clarified the status of state-owned and state-invested enterprises under the WTO Agreement on Subsidies and Countervailing Measures. This will help ensure that we can effectively apply our trade law to these enterprises when it is appropriate to do so.

E. CONCLUSION

These provisions will ensure that American workers and companies can take full advantage of both U.S. law and WTO rules in their dealings with China. While much remains to be done, bilaterally and multilaterally, on reaching agreement on all of the Protocol issues, China's commitments on these important Protocol and Working Party provisions are an important step in the WTO accession process.

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	Present	2004
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B. TARIFF RATE QUOTA SYSTEM FOR BULK COMMODITIES

China's commitments follow WTO standards in eliminating all quantitative restrictions. In particularly sensitive sectors, China will adopt tariff-rate quotas (i.e. a system in which imports up to the quota level are charged a minimal tariff -- usually 1-3% -- and imports above that level a high tariff). This system provides a very strong incentive for state enterprises to purchase bulk commodities at world market rates.

The total levels of these TRQs are substantially above present import levels on accession, and provide for future growth. In all cases, we sought to maximize likelihood that the full quota would be used and ensure opportunity for private traders to participate, both by allocating an initial share of the quota to private traders and providing for reallocation of quota from state enterprises to private traders if state enterprises do not buy the full TRQ amount.

Results in U.S. priority sectors are as follows:

Soybean Oil – TRQ eliminated by 2006. The TRQ will start at 1.7 million metric tons, rising to 3.3 million tons by 2005. Private sector trade will begin at 50% and rise to 90%.

Wheat – Quota on accession is 7.3 million metric tons, rising to 9.3 million metric tons. (Compares to present Chinese import level of less than 2 million metric tons.) Private sector will initially receive 10% of this quota, with reallocation of any unused state enterprise portion available later in the calendar year.

Corn – Quota on accession is 4.5 million metric tons, rising to 7.2 million metric tons. (Compares to present import level of 250,000 metric tons.) Private sector will initially receive 25% of this TRQ, rising to 40% by 2004, with reallocation of any unused state enterprise portion available later in the calendar year.

Rice – Quota on accession is 2.6 million metric tons, rising to 5.3 million metric tons. Half of this will cover short and medium grain rice, where the U.S. is most competitive.

50% of this TRQ will go to the private sector. (Compares to present import level of 250,000 metric tons.)

Cotton – Quota on accession is 743,000 metric tons, rising to 894,000 tons by 2004. (Compares to present import levels of 200,000 metric tons.) Private sector will have 67% of this TRQ.

Barley – No TRQ, and reduction of tariffs to 9%.

Other products in which TRQs will be applied are products in which the U.S. has little or no trade interest. These include wool, sugar, palm oil and rapeseed oil.

B. SANITARY AND PHYTOSANITARY (SPS) RESTRICTIONS:

China agrees that sanitary and phytosanitary disputes should be settled scientifically.

BILATERAL AGREEMENTS ON WHEAT, CITRUS AND MEAT

China has also agreed to lift immediately, with the signature of three bilateral agreements, (concluded in parallel with the market access agreement but effective immediately on signature) unjustified SPS bans on wheat, citrus fruits and meat. These bilateral agreements resolve longstanding disputes between the U.S. and China and can lead to rapid export growth. Furthermore, they provide a strong indication that China is willing to implement the obligations of the WTO SPS agreement.

Meat – China will open its market to U.S. pork, beef and poultry by agreeing to accept USDA certification for meat safety for U.S. exports.

Citrus – China will open its market to U.S. oranges, grapefruit and other citrus fruits, eliminating a current ban and establishing a science-based phytosanitary system. Industry estimates that trade will reach $1.2 billion in a year, an increase of $700 million over current imports through informal channels.

Wheat – China will eliminate restrictions on imports of wheat from the Pacific Northwest imposed because of unjustified concerns about TCK smut.

D. EXPORT SUBSIDIES

China has committed not to provide any export subsidies for agricultural products. This is particularly important for corn, cotton and rice. It also provides a strong foundation for the next WTO Round, in which total elimination of agricultural export subsidies worldwide is a major U.S. goal, already articulated by the Vice President.

II. MARKET ACCESS FOR INDUSTRIAL PRODUCTS

With respect to market access for industrial goods, China has agreed to allow freedom for U.S. firms to import, export and distribute their goods within China; significant tariff reductions to bring tariff levels to levels comparable with major trading partners and below those of most developing countries; binding of all tariff concessions; and phase-out of all quantitative restrictions on imports.

Some areas of particular interest to the U.S. include Chinese participation in a number of existing international zero-tariff agreements (including the Information Technology Agreement) as well as individual sectors including, but not limited, to autos, wood and wood products, chemicals, fishery products and others. As in agriculture, most results in industrial goods compare favorably to those of other major trading partners, particularly those in developing countries.

A. TRADING RIGHTS AND DISTRIBUTION

Trading rights and distribution are the major priority of the manufacturing sector. At present, China severely restricts trading rights (the right to import and export) and distribution (wholesaling, retailing, maintenance and repair, transportation, etc.) As in agriculture, such restrictions give China a layer of protection against imports which if unaddressed would make tariff concessions of little value.

The U.S. thus has sought and won agreement for elimination of these restrictions. China will provide, for the first time, full trading rights and distribution rights to U.S. firms. These will be progressively phased in over three years. Even for its most sensitive and protected industries, such as chemical fertilizers, crude oil and processed petroleum, China will provide for trading rights and distribution. Distribution services are discussed in more detail in the following section on services trade.

B. OVERALL INDUSTRIAL TARIFF REDUCTIONS

China also agreed to provide significant tariff reductions which would be bound.

Rates – China will reduce average tariffs from the 24.6% average in 1997 to 9.44%. The average tariff for our priority products will be even lower, reaching 7.1%. This is a 56% cut from applied rates in 1998 and a 71% cut since the beginning of market access negotiations in 1994.

All Tariffs Bound -- China will bind its entire tariff schedule, meaning it will accept a legal commitment not to raise tariffs in the future above the bound level. Very few countries have done this; many retain rights to raise tariffs significantly above the rates they now apply.

Phase-in -- Two thirds of tariff cuts will be implemented by 2003. The balance will be phased in by 2005, with a limited number of exceptions.

C. TARIFF REDUCTIONS IN US PRIORITY AREAS

As noted above, China's tariff cuts are larger in U.S. priority areas. Some provisions in areas of special interest to the U.S. include:

High Technology – China will implement the Information Technology Agreement (ITA). This will reduce tariffs from present levels averaging 13.3% to zero for semiconductors, computers, computer equipment, telecommunications equipment and other information technology products. Most of these tariff eliminations will be phased in by 2003 with some exceptions until 2005. All other ITA participants will have implemented tariff cuts by 2005.

Autos: In the auto sector, China will reduce tariffs from the current 80-100% levels to 25% in 2005, with the cuts phased in equally each year. Auto parts tariffs will fall to an average of 10%.

*** Note – in this sector, tariff restrictions are augmented by quotas under China's industrial policy for autos. These quotas will be progressively eliminated, with the point of departure China's level of imports before creation of the auto industrial policy. See below under "Quotas and Non-Tariff Measures". In addition, auto retail rights will be provided for the first time (see services section.)

APEC Sectors -- China has agreed to implementing the early voluntary sectoral liberalization initiative of APEC now under consideration in the WTO, when the WTO accepts these sectors for implementation. This would eliminate tariffs on forest products (wood and paper), environmental goods and services, energy and energy equipment, chemical harmonization, fish, toys, gems and jewelry, and medical equipment and scientific instruments.

Wood & Paper: China will reduce tariffs from present levels of 12-18% for wood and 15-25% for paper generally to levels between 5% and 7.5%. This is a sector in which tariff concessions, along with distribution and trading rights, can expand sales rapidly.

Chemicals: China has committed to the lion's share of chemical harmonization -- reducing its tariffs to the levels of other WTO members -- for 70% of chemicals, generally at 5.5% and 6.5%. (At present China's tariffs range up to 35%.) A key reduction is in soda ash, to 5.5%. Tariffs on cosmetics, pharmaceuticals, film, and certain plastics will also be cut substantially below current levels.

Fish – China will reduce tariffs from over 20% to 10% on products of importance to the United States.

Distilled spirits – China will reduce tariffs from 61% to 10%.

D. QUOTAS AND OTHER NON-TARIFF MEASURES

WTO rules bar quotas and other quantitative restrictions. China has agreed to eliminate these restrictions immediately on accession for top U.S. priorities and with phase-ins limited to five years for others.

Quotas: China will eliminate existing quotas upon accession for the top U.S. priorities (e.g. some fertilizers and optic fiber cable). It will phase-out remaining quotas, generally by 2002, but no later than 2005.

Quotas will grow from current trade level at a 15% annual rate in order to ensure that market access increases progressively, and reduces the effect of quantitative restrictions.

Auto quotas will be phased out by 2005, in the interim, the base level quota will be $6 billion (the level prior to China's industrial auto policy), and this will grow by 15% annually until elimination.

III. SERVICES

China today is among the markets most closed to services exports anywhere in the world. Our goals in services thus included negotiation of commitments in a broad array of services sectors; ensuring Chinese accession to the two major existing multilateral services agreements on Basic Telecommunications and Financial Services; and creating a base from which to negotiate future improvements for access to the Chinese services market in the next WTO Round.

China's commitments on services, while we have some further work to do, are comparable to those of most WTO members. They include commitments in all major service categories (with further talks planned on banking, securities and audiovisual), reasonable transitions to eliminate most foreign equity restrictions (especially in sectors where the U.S. has a strong commercial interest), agreed to accede to the Basic Telecommunications and Financial Services Agreements, and full "grandfathering" of current market access for U.S. service providers. Specific commitments are as follows:

A. GRANDFATHERING

China will grandfather all existing current market access and activities in all services sectors. Many companies enjoy benefits given by provincial and central authorities. All these will be protected, even if China's commitments in its services schedule provide for approval by Central Government authority. This will protect existing American distribution services, financial services, professional and other service providers in China, including those operating under contractual or shareholder agreements or a license, from restrictions as Chinese commitments phase in.

B. DISTRIBUTION

In China today, foreign firms have no right to distribute products other than those they make in China, or to own or manage distribution networks, wholesaling outlets or warehouses. China also now frequently issues businesses licenses which limit the ability of American firms to conduct marketing, after-sales service, maintenance and repair and customer support. As the section on industrial goods noted, this is a severe barrier to goods exports as well as to services exports.

China's commitments address all these issues. They reflect a comprehensive commitment on distribution, including wholesaling, direct sales, retailing, maintenance and repair, and transportation. Thus Americans will be able to distribute imported products as well as those made in China, offering significant opportunity to expand U.S. exports of goods. As noted above, China will phase out all restrictions on distribution services within three years.

Even in its most sensitive and protected sectors, China has agreed to provide distribution rights in five years for chemical fertilizer, crude oil, and processed petroleum products.

Services Auxiliary to Distribution

Chinese commitments in services auxiliary to distribution include express delivery services, rental and leasing, air courier, freight forwarding, storage and warehousing, advertising, technical testing and analysis, and packing services. All restrictions will be phased-out in 3 to 4 years, at which time U.S. service suppliers will be able to set up 100% wholly-owned subsidiaries.

C. TELECOMMUNICATIONS

China now severely restricts sales of telecommunications services and bars foreign investment. China's commitments mark its first agreement ever to open its telecommunications sector, both to the scope of services and to direct investment in telecommunications businesses. Through these commitments, China will become a member of the Basic Telecommunications Agreement. Specific commitments include:

Regulatory Principles -- China now allows its telecommunications bureaucracies very wide discretion to apply arbitrary and discriminatory standards. China will now agree to implement the pro-competitive regulatory principles embodied in the Basic Telecommunications Agreement (including cost-based pricing, interconnection rights and independent regulatory authority), and agreed to technology-neutral scheduling, which means foreign suppliers can use any technology they choose to provide telecommunications services.

Scope of Services -- China will phase out all geographic restrictions for:

paging and value added: 4 years
mobile/cellular: 5 years
domestic wireline services and closed user groups: 6 years.

China's key telecommunications services corridor in Beijing, Shanghai and Guangzhou, which represents approximately 75% of all domestic traffic, will begin opening on accession and by 2003 will be open for all telecommunications services.

Investment -- Under present circumstances, China allows no foreign investment in telecommunications services. With this agreement, China will allow 49% foreign investment in all services, and will allow 51% foreign ownership for value added and paging services in 4 years.

D. INSURANCE

In insurance, China now restricts foreign companies to Shanghai and Guangzhou. Only two U.S. firms are permitted to participate even in these markets. Thus we sought to eliminate geographic and numerical limitations -- that is, to ensure that foreign insurance companies can operate in each part of China and without artificial limitations on their activities or number of companies -- and end restrictions on foreign investment. The results include:

Prudential Criteria – China agrees to award licenses solely on the basis of prudential criteria, with no economic needs test or quantitative limits on the number of licenses issued.

Geographic Limitations -- China will permit foreign property and casualty firms to insure large-scale risks nationwide immediately upon accession, and will eliminate all geographic limitations for future licenses over five years, allowing access to the key cities of priority U.S. interest in two to three years.

Scope – China will expand the scope of activities for foreign insurers to include group, health and pension lines of insurance, which represent about 85% of total premiums, phased in over five years.

New Licenses -- China has recently issued four licenses, including two to American companies.

Investment -- China agreed to allow majority ownership, remove onerous joint venture requirements on foreign life insurers, and phase out internal branching restrictions. Life insurers may now choose their own joint venture partners (as opposed to the present policy, under which partners are chosen for insurers by Chinese authorities), will allow 50% ownership on accession, and will phase in the right to 51% share in a joint venture in one year. For non-life, China will allow 51% ownership on accession and form wholly owned subsidiaries in 2 years.

E. BANKING

In the banking sector, China imposes severe geographic restrictions -- for example, only nine foreign banks can conduct business in local currency, and these only in the Shanghai Pudong area. Our negotiations sought full rights for foreign banks to handle both local and foreign currency business transactions (the latter obviously a major factor in opening markets to U.S. goods exports as well as services); the rights to serve Chinese as well as foreign customers;

and liberalize investment. This sector remains under discussion.

F. SECURITIES

This sector remains under discussion.

G. PROFESSIONAL SERVICES

In the professional services, China currently tightly restricts operation of foreign law firms and accounting firms. With respect to these areas, we sought commitments in all significant areas, including both the right to offer services and the right to invest, and binding commitments on the already liberal policies respecting architecture and engineering.

China offers broad coverage for legal, accountancy, taxation, management consultancy, architecture, engineering, urban planning, medical and dental, computer-related services. It will permit foreign majority control except for practicing Chinese law (an exception common to many WTO members.) For accountancy, China has agreed to eliminate a mandatory localization requirement and will now allow unrestricted access to its market to professionals licensed as CPAs in China. China has agreed to apply national treatment in issuing CPA licenses and follow transparent procedures.

H. AUDIOVISUAL

Presently, China severely restricts distribution of sound recordings, videos, movies, books and magazines, and does not allow foreign ownership, construction or operation of cinemas. While this area remains under discussion, China's commitments cover the right to distribute video and sound recordings; and cinema ownership and operation. They include:

Video and Sound Recordings -- China will allow 49% foreign participation for the distribution of video and sound recordings.

Cinemas -- China will allow majority ownership in 3 years for construction, renovation, ownership and operation of cinemas.

I. TRAVEL AND TOURISM

Finally, China until now has imposed a number of restrictions on travel and other touristrelated services. Notably, foreign firms are limited to 11 areas in China, and cannot establish full-service travel agencies. Our goal here was a set of commitments comparable to or better than the relatively high level of commitments made by WTO members. Results include:

> **Hotels --** China will allow unrestricted access to the Chinese market for hotel operators with the ability to set up 100% foreign owned hotels in 3 years, with majority ownership allowed upon accession.
>
> **Travel Services --** Foreign travel operators can provide the full range of travel agency services. For travel agency services, China will allow access to government resorts as well as Beijing, Shanghai, Guangzhou, and Xian.

IV. PROTOCOL AND WORKING PARTY REPORT COMMITMENTS

Commitments in China's WTO Protocol and Working Party Report establish rights and obligations enforceable through WTO dispute settlement procedures. We have agreed on key provisions relating to antidumping and subsidies, protection against import surges, technology transfer requirements and offsets as well as practices of state-owned and state-invested enterprises. While we must still address the duration of some of these provisions and resolve other issues, agreement on the substance of these rules is of special importance to U.S. workers and business. We will also continue work on textile issues and a mechanism to ensure full implementation of commitments.

China will be presenting agreed provisions to the WTO Working Party for incorporation into the accession Protocol and Working Party Report. We will also be addressing the many other rules-related issues, such as specific provisions on China's standards, customs valuation, and national treatment in this multilateral process.

SPECIFIC PROVISIONS

During the negotiations, China has agreed that it will, upon accession, make the following commitments:

A. INVESTMENT AND TECHNOLOGY TRANSFER

First, it will take a set of specific measures to ensure fair treatment for businesses operating in China. This will include eliminating policies to block foreign firms doing business in China from importing inputs for production (i.e., auto firms operating in China would be able to import American-made parts). Measures here include:

- comply with the TRIMs Agreement upon accession, without any developing country transition period;
- eliminate and cease enforcing trade and foreign exchange balancing requirements;
- eliminate and cease enforcing local content requirements;
- refuse to enforce contracts imposing these requirements; and
- only impose or enforce laws or other provisions relating to the transfer of technology or other know-how, if they are in accordance with the WTO agreements on protection of intellectual property rights and trade-related investment measures.

These provisions will also help protect American firms against forced technology transfers, as China has also agreed that, upon accession, it **will not** condition investment approvals, import licenses, or any other import approval process on performance requirements of any kind, including:

- local content requirements,
- offsets,
- transfer of technology, or
- requirements to conduct research and development in China.

These are significant commitments that go a long way in addressing concerns about the terms and conditions of investment in China, and the government's role in what should be commercial decisions.

B. ANTIDUMPING AND SUBSIDIES METHODOLOGY

Second, the Protocol ensures guarantees that American firms and workers will have strong protection against unfair trade practices including dumping and subsidies.

Here, the U.S. and China have agreed that we will be able to maintain our current antidumping methodology (treating China as a non-market economy) in future anti-dumping cases. Moreover, when we apply our countervailing duty law to China we will be able to take the special characteristics of China's economy into account when we identify and measure any subsidy benefit that may exist. While the duration of this provision remains under discussion, reaching agreement on the substance provides necessary assurance to U.S. industries that they can have effective protection against unfairly traded imports.

These provisions recognize both the ongoing reform program in China and that special difficulties may exist in making necessary determinations under the antidumping and countervailing duty laws.

C. PRODUCT SPECIFIC SAFEGUARD

Third, the Protocol ensures that American domestic firms will have strong protection against unpredicted surges of imports.

To do this, the Product-Specific Safeguard provision sets up a special mechanism to address increased imports that cause or threaten to cause market disruption to a U.S. industry.

China is a major exporting country that enjoys open access to U.S. markets. This mechanism, which is in addition to other WTO Safeguard provisions, differs from traditional safeguards in that it permits

- China to address imports that are a significant cause of material injury through measures such as voluntary restraints.

- the United States to apply restraints unilaterally based on standards that are lower than those in the WTO Safeguards Agreement.

While the duration of this provision is still under discussion, this safeguard provides an effective and expeditious means to address injurious import surges.

D. STATE-OWNED AND STATE-INVESTED ENTERPRISES

Fourth, the Protocol will allow us to address China's unusually high degree of state involvement in the economy.

State-owned and state-invested enterprises have a greater role in China's economy than in any other major economy. As part of its WTO accession, China needs to ensure that these enterprises act on a commercial basis. Moreover, we need to ensure that we can apply WTO rules to these enterprises in a meaningful fashion.

China has agreed that it will ensure that state-owned and state-invested enterprises will:

- make purchases and sales based solely on commercial considerations, such as price, quality, availability and marketability;

- provide U.S. firms with the opportunity to compete for sales and purchases on non-discriminatory terms and conditions.

China has also agreed that it will not influence these commercial decisions (either directly or indirectly) except in a WTO consistent manner.

With respect to applying WTO rules to state-owned and state-invested enterprises, we have clarified in several ways that these firms are subject to WTO disciplines.

- Purchases of goods or services by these state-owned and state-invested enterprises are not government procurement and thus are subject to WTO rules.

- We have clarified the status of state-owned and state-invested enterprises under the WTO Agreement on Subsidies and Countervailing Measures. This will help ensure that we can effectively apply our trade law to these enterprises when it is appropriate to do so.

E. CONCLUSION

These provisions will ensure that American workers and companies can take full advantage of both U.S. law and WTO rules in their dealings with China. While much remains to be done, bilaterally and multilaterally, on reaching agreement on all of the Protocol issues, China's commitments on these important Protocol and Working Party provisions are an important step in the WTO accession process.

U.S. Department of the Treasury

Office of Financial Services Negotiations
1500 Pennsylvania Avenue, NW, Rm. 1440 NY
Washington, D.C. 20220

FACSIMILE MESSAGE

DATE: ______

TO: Malcolm Lee

Phone: ______ Fax: 456-9290

FROM: **Whit Warthin**, Director
Phone: (202) 622-1733 Fax: (202) 622-0604
E-mail: whit.warthin@do.treas.gov

SUBJECT: China Papers you Requested

Pages, including this cover 3

Financial Services (non-insurance)

China currently limits foreign banks to foreign currency business in selected cities except for experiments in local currency business (but only with foreign customers) in two cities. Securities firms may only trade "B shares" (small quantity of stocks designated for foreign investors) via shared commissions and underwrite international offerings of equity and debt.

- **Licenses**

China has agreed to no non-prudential restrictions on license issuance (i.e., on scope of activities or economic needs tests), to allow internal branching and to provide national treatment for all newly permitted activities. Foreign investors in banks, depending on the type of institution being established, may be required to exceed certain asset thresholds.

- **Scope of Commitments**

Banking

-- Local currency banking will be allowed starting with foreign clients on accession, followed by Chinese enterprises in 2002 and Chinese individuals in 2005.

-- Foreign currency business will be allowed without geographic restrictions on accession.

-- Legal form of choice for banks 5 years after accession.

-- Financial leasing will be allowed for foreign-owned banks when allowed for domestic.

Auto Finance

-- Both wholesale and retail auto-financing for non-banks without geographic or client limitations, upon accession. (Regulatory framework to be developed)

Securities/Asset Management

-- Deal directly in B shares (without Chinese intermediary) upon accession.

-- Eligible for "special" membership in all exchanges upon accession.

-- Manage assets as minority foreign JV (one-third equity share cap upon accession, 49 percent by 3 years after accession).

-- Establish securities operation as minority (<33.33%) foreign JV to underwrite A, B, and H shares and corporate and government debt and trade all these securities except A shares by 3 years after accession (including new products).

-- (Cross border) Trading in B shares (without Chinese intermediary) upon accession

Other Financial Services

-- (Both cross border and via commercial presence) Provision of financial information, data processing and advisory services (such as portfolio research and corporate restructuring) on accession.

- **Equity Restrictions**

-- Foreign investors may establish in legal form of choice without equity restrictions for banking, auto finance, information and advisory services.

-- Asset management and securities operations are subject to equity limitations as listed above.

- **Geographic Restrictions**

None for auto finance, securities, asset management, information and advisory services.

Geographic restrictions for local currency banking will be lifted for four cities upon accession, for four additional cities each year thereafter, and totally removed five years after accession.

Industry Reactions

There has been little formal industry reaction to date. Privately the banks, auto finance firms and mutual funds have indicated strong support. Securities firms are more restrained (but will not criticize publicly), and emphasize the potential for further liberalization as a result of the bilateral dialogue on capital market development (under the JEC) and through China's participation in the new multilateral round.

Lee, Malcolm R. (NEC)

From:	Lieberthal, Kenneth G. (ASIA)
Sent:	Sunday, November 28, 1999 1:54 PM
To:	Bowles, Ian A. (ENV)
Cc:	@ASIA - Asian Affairs; @HAMMONDS; Lee, Malcolm R. (NEC); @INTECON - Economic Affairs
Subject:	FW: WTO/China/environment [UNCLASSIFIED]

Ian,

Thank you very much for getting a jump on this very important topic! I think the points you make are right on target. My only critical comment is that I think the target may be defined too narrowly here.

One of the most significant long term impacts on the environment of the WTO agreement with China will likely be simply the fact that the agreement will lead to a larger percentage of joint ventures and wholly owned enterprises that are invested by North American and European firms (as vs. those invested by Taiwanese and Hong Kong firms). This is true because general changes in the trading regime (more transparency, etc.) remove key advantages that Taiwanese and Hong Kong investors currently enjoy. But North American and European firms in general use far cleaner technologies in their production -- especially in China -- than do their Taiwanese and Hong Kong counterparts. Therefore, both directly and by example, the foreign invested part of the Chinese economy not only will increase as a percentage of the economy but also will become more environmentally responsible. Note that indigenous Chinese firms tend to be the most environmentally irresponsible of all.

In addition, other aspects of the service sector liberalization advances of the WTO agreement will prove to be environmentally friendly. For example, the automotive industry is obtaining the right to set up and operate its own service and maintenance facilities throughout China. This will take "cleaner" cars and keep them cleaner. The same is true in many other sectors.

Thus, your list tends to focus on market access for exports of environmental technologies and services, and this will be very important. But there are broader beneficent effects of increasing the presence and range of activities of North American and European firms that, while less direct, are likely to prove equally important.

Ken

-----Original Message-----

From:	Bowles, Ian A. (ENV)
Sent:	Saturday, November 27, 1999 6:22 PM
To:	Lieberthal, Kenneth G. (ASIA); Hammonds, D. Holly (INTECON); Lee, Malcolm R. (NEC)
Cc:	Duncan, John D. (INTECON/DOS); Schaefer, Matthew P. (INTECON)
Subject:	WTO/China/environment [UNCLASSIFIED]

Ken, Holly & Malcolm:

I asked Joe Aldy at CEA to help me put together a one pager on the potential environmental benefits of the China/US WTO agreement. My assumption is that these issues might come up either in Seattle or in the context of the Congressional debate next year & I wanted to get ahead of the curve in house before the debate starts taking shape with the environmental NGOs.

I'd like to send this up to Jim for his information, but wanted to get your feedback/comments/concurrence on it before doing so. Can you take a look by Tuesday?

For your background, I talked to Commerce and USTR/enviro about it and Joe got feedback from Robert Lawrence, John Fernald and Victoria Greenfield at CEA about it already.

Thanks, Ian

China WTO Agreement
and the En...

China WTO Agreement and the Environment

The agreement with China on WTO accession includes several provisions that have the potential to facilitate cleaner economic development by promoting the export of environmentally-friendly goods and services to China and improving the environmental performance of economic activity in China.

- **Cleaner energy generation.** China agreed to adhere to the APEC sectoral initiatives once they are adopted by the WTO. The energy sector initiative would reduce tariffs for a variety of energy generation and transmission technologies. Since western power technology is 25% more efficient than current Chinese technology, expanding the use of these more efficient energy technologies will allow China to generate more electricity with lower rates of carbon dioxide, sulfur dioxide, and nitrogen oxide emissions.

- **Increase exports to China of environmental control technology**. By agreeing to adhere to the APEC sectoral initiatives upon WTO adoption, China has agreed to reduce tariffs on environmental control technologies. These environmental technologies will allow China to significantly reduce air pollutant emissions that currently exceed WHO recommended levels and have significant detrimental impacts on both the local population and the environment.

- **Cleaner transportation**. China agreed to accelerated tariff reduction for automobiles that would allow for greater market penetration by foreign-made vehicles. Since current domestic-made vehicles consume nearly 40% more fuel than comparable import vehicles, increasing market share by imports could significantly slow the growth in transportation carbon dioxide emissions. With per capita vehicle ownership projected to nearly triple by 2010, the transportation sector is a fast-growing market with substantial opportunities for improvements in fuel economy.

- **Increase access to Chinese market for environmental services**. China agreed to grant much greater access to its market for a variety of environmental services, including sewage, solid waste disposal, noise abatement, and nature and landscape protection services. In addition, the Chinese agreed to provide access for environmental consultation services and to allow joint ventures to provide such services.

- **Increased interest in environmental quality will stimulate demand for environmental technology**. Prior to this WTO accession agreement, China and the United States began a partnership to explore the opportunities for China to address sulfur dioxide pollution through a domestic cap and trade program. Such a program could result in cost-effective reductions of sulfur dioxide similar to that experienced by the United States. Further, it could stimulate demand for sulfur scrubbing technologies, other pollution control equipment, and more efficient coal combustion equipment. In addition, the United States and China have agreed to a $100 million clean energy facility through the Export-Import Bank to finance environmentally-friendly energy projects in China.

China WTO Agreement and the Environment

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Lee, Malcolm R. (NEC)

From: Keith, James R. (ASIA)
Sent: Tuesday, November 23, 1999 3:10 PM
To: Lee, Malcolm R. (NEC)
Cc: @ASIA - Asian Affairs
Subject: FW: Permanent NTR -- legal arguments. [UNCLASSIFIED]

ML: you should be in on this

-----Original Message-----
From: Krass, Caroline D. (LEGAL)
Sent: Tuesday, November 23, 1999 2:51 PM
To: Keith, James R. (ASIA)
Cc: DeRosa, Mary B. (LEGAL); Allen, Charles A. (LEGAL)
Subject: RE: Permanent NTR -- legal arguments. [UNCLASSIFIED]

I am checking the accuracy with State/L and USTR/GC. Thanks.

> -----Original Message-----
> **From:** Keith, James R. (ASIA)
> **Sent:** Tuesday, November 23, 1999 2:41 PM
> **To:** @LEGAL - Legal Advisor
> **Cc:** @ASIA - Asian Affairs
> **Subject:** FW: Permanent NTR -- legal arguments. [UNCLASSIFIED]
> **Importance:** High
>
> Couselors: I am prepared to respond that this is consistent with my understanding of current policy, but only if you give me the green light to do so.
>
> -----Original Message-----
> **From:** Osius, Theodore G. (VP)
> **Sent:** Tuesday, November 23, 1999 9:58 AM
> **To:** Keith, James R. (ASIA)
> **Cc:** Lieberthal, Kenneth G. (ASIA)
> **Subject:** Permanent NTR -- legal arguments. [UNCLASSIFIED]
>
> I just saw your POTUS letter to Rep. Wolf and others on Permanent NTR for China. The VP has been in touch with Gephardt on this issue; we have coordinated closely with Podesta's office. In an attempt to keep the VP well informed, I have worked with USTR on the message below and welcome your comments. Essentially, we want the VP to know the legal arguments precluding an annual review by Congress of China's NTR status. Thanks, Ted
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> Article I of the GATT agreement requires WTO members to extend NTR treatment "immediately and unconditionally" to the products of all other WTO members. U.S. trade law, under the Jackson-Vanik amendment, imposes conditions on China's receipt of NTR treatment (the President must annually waive applications of Jackson-Vanik to China). Congress has the authority to disapprove the waiver. Congress' ability to disapprove the President's waiver distinguishes the Jackson-Vanik situation from other instances in which the President is authorized to waiver WTO-inconsistent requirements. The potential for disapproval eliminates certainty and predictability on access to our market.
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> The U.S. has always considered application of Jackson-Vanik to be a condition on the grant of NTR. Since the 1960s, we have not applied the GATT and the WTO to "Jackson-Vanik countries," such as Hungary, Romania, Mongolia, Kyrgyzstan and Albania, until Congress terminated application of Jackson-Vanik to those countries. Currently, the WTO does not apply between us and Kyrgyzstan or Albania (which will become a WTO member in the next few weeks).
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> If the U.S. invoked the "non-application clause" of the WTO, it will lose many of the benefits of the agreement we negotiated with China. While China is obligated under our bilateral trade agreement to give us the benefits of tariff cuts and elimination of quotas, we would not get the services benefits we negotiated, such as the right to distribute our goods, or to invest in and establish telecommunications and insurance companies, or the right to take China to WTO dispute settlement. The new rules on technology transfer, offsets, local content and other issues would not apply to the U.S., while other WTO members would benefit from these improved terms for market access.

Maintaining an annual review process for NTR, without invoking non-application, would open us up to claims that we were in violation of our WTO obligations, which China could pursue through dispute settlement. If we lost the dispute we would be requested to amend our law under threat of retaliation and would not have the possibility of invoking non-application at that point in time. If we did not amend our law, China could increase tariffs on U.S. exports or take other trade actions to cure the violation.

China has stated that it will not complete the accession and become a WTO member if it does not obtain permanent NTR. China wants a change in the status quo, and annual review of NTR status is no change.

REMAINING STEPS IN CHINA'S WTO ACCESSION PROCESS

- China must conclude bilateral market access negotiations with each of the WTO Members participating in its accession working party. The EU, Canada, Switzerland and Brazil are among those WTO members still engaged in bilateral negotiations.

- Based on market access schedules for industrial goods, agriculture and services resulting from each bilateral agreement, the WTO Secretariat prepares consolidated schedules that include the best deal that China gave to any WTO member and circulates them to Working Party participants for final verification.

- At the same time, Working Party participants and China will be negotiating remaining provisions of the Protocol and the Working Party Report and completing legal drafting. China's commitments in the Protocol and Working Party Report are legally enforceable through WTO dispute settlement. The Working Party Report also includes provisions analogous to Congressional Committee Report language. These provisions give context to China's commitments and reflect WTO Members' understandings and commentary on those commitments.

- China's accession Working Party reviews the entire package and sends the accession package forward together with a recommendation on action to the WTO General Council. The decision to forward a recommendation on accession is by consensus of all participants in the Working Party.

- At its next meeting after receiving a recommendation from the Working Party, the WTO General Council decides whether to invite China to become a WTO member based on the terms and conditions that the Working Party participants agreed with China. (A General Council meeting can be held with as little as 2 weeks notice.) Normally, the decision on acceptance of a protocol package is by consensus, but any Member may ask for a vote. The decision must then be agreed by 2/3 of the WTO Members (at this time China would need 90 votes).

- The General Council decision is the last formal act on the part of the WTO before accession. China must then complete all necessary domestic procedures required to accept and implement those provisions of the WTO required upon the date of accession.

- After completing its necessary domestic procedures for accepting and implementing the WTO Agreement, China would file its notice of acceptance of the WTO with the Secretariat. China becomes a WTO member 30 days after filing its acceptance.