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Folder Title:

China WTO (June 1998) [1]

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Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	For the Acting Secretary from Alan P. Larson. Subject: NEC Meeting (4 pages)	06/04/1998	P1/b(1)
002a. memo	For Madeline Albright from Charles Kartman. Subject: Phone Call from USTR Barshefsky. (3 pages)	06/03/1998	P1/b(1)
002b. email	White House Situation Room to Jeffery Bader, Sherman Boone, James Gagnon et al. Subject: China / WTO (5 pages)	06/03/1998	P1/b(1)
002c. memo	For Stuart Eizenstat from Alan Larson. Subject: Status of China WTO Accessions (5 pages)	04/15/1998	P1/b(1)
003. draft	Suggested Points for China Meeting. (3 pages)	c. 06/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Economic Council
Malcolm Lee
OA/Box Number: CF 1176

FOLDER TITLE:

China WTO (June 1998) [1]

2010-1024-F

vz1867

RESTRICTION CODES

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

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

P1 National Security Classified Information [(a)(1) of the PRA]

P2 Relating to the appointment to Federal office [(a)(2) of the PRA]

P3 Release would violate a Federal statute [(a)(3) of the PRA]

P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]

P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]

P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

b(1) National security classified information [(b)(1) of the FOIA]

b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

b(3) Release would violate a Federal statute [(b)(3) of the FOIA]

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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]

b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]

b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

PRIORITY

DEPARTMENT OF STATE

DEVELOPING COUNTRIES TRADE DIVISION

Room 3829
Washington, DC
(202) 647-3251
Fax: (202) 647-1537
FAX TRANSMISSION

Date: 6/4/98

To: MALCOLM Lee Fax: 456-9290 Phone: 456-9299
Nec

Pages including cover sheet: 5

From: RFreeman

Subject: CHINA WTO

Comments: FYT

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CHINA WTO

The meeting of State Council early June

inclined not to do it

Big holes

tariffs ✓

noticeable gaps autos 50%
way apart on chem harmonization.

have some of it

paper + wood still high

NTMs ✓

still need to fix base levels

autos not happy w/ quotas

2005 max length

where 2005 textiles

Dist services

big holes - carve out alcohol
pharmaceuticals
pesticides ✓

over 5 years

technical issues s.to 'certification
criteria

Trade services

went accountability to invest

legal services ok

THE WHITE HOUSE

WASHINGTON

June 3, 1998

MEMORANDUM

TO: Gene Sperling

FROM: Malcolm Lee 

RE: China WTO Negotiations

Issue for Decision

- Is there a politically tenable market access package achievable by the Summit.
- How do we position ourselves, both domestically and in negotiations, to produce that result?

Approach

Suggest you ask Barshefsky to summarize our objective for the summit and where negotiations stand. Where have we made progress, where are we far apart? What is necessary for a politically tenable package? Where are we most vulnerable?

NSC can then discuss the results of Sandy's talks in Beijing. What political decisions were made by the Chinese leadership? Where will the Chinese show firmness or flexibility?

Ultimately, the decision will be whether we harvest the progress made, or hold out for more. Need to discuss the costs of both.

Background

WTO accession talks are the focus of U.S. efforts to remove China's trade barriers. We are seeking Chinese commitments to eliminate WTO-inconsistent policies within acceptable timeframes and to provide significant market access for U.S. industrial and agricultural goods, and services. Over the past two years we have made some progress. China has agreed to: implement WTO intellectual property rights provisions upon accession; allow Chinese and foreign companies to import and export from China within three years of accession (a right currently severely restricted); provide non-discriminatory treatment to imports; and refrain from implementing new WTO-inconsistent measures while negotiations are ongoing. However, we remain well short of a deal that would generate support within the business community and Congress.

At the Vancouver APEC meeting, then Trade Minister Wu Yi made certain significant general commitments on market access for goods. We have since held a series of negotiations on both goods and services market access and have made some progress, but far less than we had hoped prior to the Summit. USTR is seeking clear signals from the new Chinese leadership regarding their intentions on moving the negotiations forward. Sandy Berger's trip may have provided signals in that regard. The recently announced government restructuring and China's ambitious domestic economic reform plans and concerns about unemployment may be causing the Chinese to reconsider how fast they want to move on WTO accession.

Our objective for the Summit had been to complete a strong market access package in all areas: services, industrial goods and agriculture. That does not appear likely.

- In industrial goods, we remain far apart in very politically sensitive areas: China's tariff offer in chemicals is as high as 40%, on motor vehicles 50%, auto parts 25%. In non-tariff measures, disagreement remains over the time frame for elimination in certain areas as well as the need for elimination of quotas on key export products such as fertilizers, fiber optic cables and chemicals upon accession.
- We have made little progress on agriculture, where U.S. exports including wheat, citrus and plums face restrictions in China based on non-scientific based concerns over the possible importation of plant diseases.
- In services, while some progress has been made on professional services and distribution, differences remain on telecommunications, insurance, and banking and securities where negotiations have not really begun.

The tension between State and NSC on the one hand and USTR and Commerce on the other will be whether there is a smaller package that can be highlighted at the Summit that includes industrial tariffs, non-tariff measures, as well as professional services, distribution and customs valuation? USTR is very concerned about concluding such a package where key sectors (autos, agriculture, financial services, telecom) may be very unhappy.

Negotiations on China's Accession to the WTO

Issue: Ambassador Barshefsky held extensive discussions with China's Trade Minister Shi and State Councillor Wu Yi on WTO accession. Although some progress was achieved, significant differences continue on tariffs, non-tariff measures and on distribution and professional services. Nevertheless, negotiators have agreed to revisit the outstanding issues shortly as well as to begin negotiations on the next phase of issues, including agriculture, financial services (such as banking, securities and insurance), and telecommunications services.

Background

Negotiators held discussions in Geneva (April 6-9) and in Beijing (April 17-25) on the five areas that China and the United States agreed in February should be the initial focus of discussions: industrial tariffs, non-tariff measures, customs valuation, distribution services, and professional services. This strategy aimed at dividing the WTO market access issues into smaller components in order to focus discussion and allow for serial progress in restoring momentum in the WTO talks.

In her meeting with press, Ambassador Barshefsky emphasized the following:

- Negotiators held constructive meetings on a wide range of market access issues.
- As a result of those discussions, we have restored momentum to WTO accession negotiations.
- Negotiators will continue discussions on a broad range of market access issues covering tariffs, non-tariff measures, services (distribution, professional, telecommunications, financial and other services) and agriculture.

Tariffs: Prior to meetings last week in Beijing, China had provided a new and comprehensive tariff offer in Geneva. That offer, while deficient in a number of areas and still far less than what former Trade Minister and now State Councillor Wu Yi proposed in Vancouver, provided enough of a basis for further negotiations. Progress was achieved last week in some of the less sensitive industrial areas. However, significant gaps remain in a number of critical areas. In particular, China's tariff offer in the chemical area ranges as high as 40%. The tariff for motor vehicles is 50% with auto parts as high as 25%. Similarly high tariffs are slated for other sectors as well. In addition, China has refused to participate in all but a few zero sector arrangements of the Uruguay Round.

Non-tariff Measures: Progress has been made with respect to the phase-out of a number of non-tariff measures. However, disagreement remains over the time frame for elimination in certain areas as well as the need for elimination of quotas on key export products such as fertilizers, fiber optic cable and chemicals upon accession.

Services: Some progress was made on professional services although accounting services is remains unresolved with strict divestiture rules. With regard to distribution services, China continues to insist on the exclusion of key sectors such as fertilizers, pharmaceuticals, refined

petroleum products, pesticides, and alcoholic beverages. The time frame for elimination of other distribution roadblocks is also problematic.

Customs Valuation: China agreed to implement the customs valuation agreement by January 1, 2000. The only issue that remains outstanding is valuation of motion pictures and videos

Next Steps: Chinese and U.S. negotiators agreed to continue discussions on the above issues and to proceed with negotiations on remaining issues such as agriculture, including the establishment of tariff rate quotas, quota administration and tariff levels; financial services including banking, securities and insurance; telecommunications, both basic and value added; ancillary services such as courier services, transportation, maintenance and repair; and additional areas such as tourism and advertising. [Note: China is fully familiar with all the areas to be discussed since each of the areas has already been the subject of detailed talks.]

Ambassador Peter Scher visited Beijing last week to discuss agricultural issues including sanitary and phytosanitary issues. USTR negotiators also began negotiations on insurance and other services during the first week of May. Treasury and USTR officials visited Beijing in mid-May to engage in negotiations on other financial services. USTR officials discussed in late May telecommunication services. Deputy USTR Richard Fisher will visit Beijing in early June to evaluate with Chinese officials the status and prognosis for making significant progress by the time of the summit.

Negotiations on China's Accession to the WTO Talking Points

- The President asked me to deliver the message that we have an historic opportunity to achieve China's accession to the WTO this year and permanent MFN next year. But, this opportunity is short-lived and will be governed by a number of factors including the fact that the price of entry will increase once negotiations begin on the WTO built-in agenda.
- While our negotiators have made some significant progress, much more needs to be done to reach agreement on a strong, commercially meaningful market access package. We would then aim at concluding the protocol and working party report by the November (APEC) leaders' meeting and seek permanent MFN from Congress in early 1999.
- Given our own domestic constituencies and the rising trade deficit, I must underscore the necessity of a commercially meaningful agreement, in all areas of the WTO, including agriculture and services.
- Deputy USTR Fisher is planning to visit Beijing on June 10 so that we can move these negotiations forward. Our negotiators report that our efforts have stalled and that no progress has been made in the key areas of agriculture, telecommunications, financial services and some other services sectors. In addition, we continue to have serious disagreements on industrial tariffs, distribution and accountancy.

Regarding Reform vs Liberalization

- We understand the importance your government attaches to its domestic reform program but reform and trade liberalization are not mutually exclusive. The experiences of other Asian markets seem to bear this out. Korea's protected market has been one of the major reasons why the economic crisis has been so dramatic. In fact, those markets that are most open, e.g., Singapore and Hong Kong have performed better than more closed economies.
- We have found in our own economy that deregulating and opening the services sector has created more job opportunities than in any other sector. Finally, I might add that reducing barriers to imports can help lower prices aiding China in remaining competitive in the face of currency realignments in Asia.

Trade Deficit

- I cannot emphasize enough the importance of addressing the structural imbalance in our trading relationship. Even China's statistics show that its surplus with the United States increased 40% during the first quarter of this year.
- Unless we reach a comprehensive WTO market access agreement, I am concerned that we will return to the confrontational trade relationship of the past.

Bilateral Agricultural Trade Issues: Citrus, Wheat and Meat

Objective: To impress upon your Chinese counterparts that they must address these longstanding SPS issues to build support for the WTO market access package and all that flows from that, i.e., the accession package and permanent MFN.

Points to Raise

- Our agricultural businesses and the Congress have become increasingly frustrated with China's lack of progress on bilateral agricultural trade issues.
- We have advanced proposals that we think should result in swift resolution of Sanitary and Phytosanitary (SPS) issues that restrict imports of products such as **citrus, wheat and meat**.
- Our technical officials came to Beijing in May and presented extensive scientific information to address China's objections to importing citrus from California and Florida and wheat from the Pacific Northwest (because of concern over TCK smut). China has a unique opportunity to clear up these longstanding trade irritants.
- For meat -- beef, pork and poultry -- I understand that the experimental import program just ended on June 1, 1998. The safety of U.S. meat processing plants is widely recognized. I request that China announce that it will adopt a system that results in full system-wide certification of our meat exporting plants at this time. This is the system that other countries have adopted.
- Without resolution of these bilateral issues, there will be little if any support by U.S. agriculture and our Congress for China's WTO accession.

Background

Resolution of longstanding SPS issues is critically important. The reorganization of the China Animal and Plant Quarantine Administration (CAPQ) which will now be part of China Customs may mark an opportunity to resolve these contentious issues.

On citrus, our technical experts have been stymied for several years over China's refusal to entertain any scientifically-based solution to deal with China's concerns about the Mediterranean fruit fly. The Chinese insist that there is no medfly in China. They also do not deny that on any street corner in any city in China, one can find smuggled U.S. citrus. Nevertheless, Chinese technical officials persist in raising concerns over possible medfly infestations from U.S. fruit. Some progress has been made on the margins between China and our top quarantine officials. USDA and USTR are presently drafting our response to a "private offer" by the lead CAPQ official and will return to China the week of June 8 to present our counter offer.

On wheat, we have just completed our study using outside experts, including one from China, which substantiate our claim that U.S. exports of wheat, including those from the Pacific Northwest, do not present any kind of threat to wheat production in China. The conditions are simply not present for TCK smut from U.S. exports to take hold and cause identifiable damage in China. When presented with an executive summary of the findings by Ambassador Scher in May, senior Chinese officials reacted positively to the new information. We want a confirmation from the Chinese leadership that China will accept wheat from all states, based on this scientific information.

On meat, China's one year experiment of limited opening of the market to U.S. and other meat producing countries (Australia and Canada) is coming to an end on June 1. The experiment was not successful, i.e., imports did not occur, due to high tariffs and the inefficient monopsony of the Chinese importers. Chinese authorities granted specific companies in each country the right to export a certain quota of meat to China. Most product, however, continued to move through the established grey channels from Hong Kong.

We want the Chinese to begin implementing a system-based approach to authorizing imports rather than a company-by-company approach to opening the market. We have proposed a system-wide certification process based on the U.S. inspection system. It will take some time to work through this issue with China (high tariffs on meat products will be addressed in our negotiations with China for WTO accession), but resolution of the meat certification issue will be critical if we are to gain support for China's accession to the WTO and permanent MFN.

The SPS and the WTO market access issues are linked. Progress on one front without comparable progress on the other will mean no market access and no support for China's accession. One only needs to review the progress on imports of grapes to demonstrate this linkage. In May 1997, China reached agreement on SPS issues for grapes. Since that time only one legitimate shipment of grapes has been made, for press and public relations purposes, and that was only one container. The bountiful selection of U.S. grapes last fall in Chinese cities were all smuggled into China. Those imports do not pay the 40 percent tariff and VAT, both of which significantly increase the cost of legitimate imports.

Sbsps.may

DIRECT SELLING

Objective: Press for a Chinese commitment to reach an interim solution to the problem by the summit that legitimizes U.S. company business proposals on this issue.

Points to Make:

- Madame Wu Yi told Ambassador Barshefsky on April 24 that she would work with U.S. firms to find a way to allow them to resume operations following the recent government ban on direct selling.
- We still do not have a solution that allows our companies to operate in a commercially acceptable way. These companies are important U.S. economic interests that are losing millions because of the ban.

(FYI: Collectively, Amway, Avon, and Mary Kay estimate losses at \$35,000 per day/\$1 million per month).

- We need to resolve this issue by the summit; continuing losses for these important U.S. economic interests will cause political difficulties for the President.
- Every Congressman and Senator has Avon ladies, Mary Kay consultants or Amway distributors in their district or state. The Hill is watching very closely how this issue is handled by China.
- In discussions with your government officials, our companies have agreed to adjust their business format to accommodate Chinese concerns.
- We need to reach an agreement by the time of the summit that legitimizes our companies' business proposals.
- This would be an interim solution to the issue. Our longer-term objective remains a Chinese commitment to allow direct selling in the future with appropriate regulations.

Background: U.S. companies such as Avon, Amway, and Mary Kay are losing an estimated \$1 million a month because of an April 22 Chinese ban on direct selling - the method of distribution used by these companies for their products. This ban on direct selling has become a politically charged issue. We have received numerous Congressional letters on the issue, including but not limited to a letter from the Speaker of the House, letters signed by the entire Texas delegation and from Senators and Congress people in California. Given the daily losses being suffered by these firms and political attention the issue has attracted, the President can ill-afford to have this issue unresolved by the time of the summit. An exchange of letters between the U.S. and China is needed by the time of the summit that legitimizes the business proposals U.S. firms are willing to put forward, enabling them to resume operations immediately.

U.S. direct selling firms entered China in 1990 and were issued licenses to distribute their products through direct selling. They have invested approximately \$120 million, generated \$US 2 billion annually in sales, and employed over 2 million Chinese sales people. Their representatives, up until the ban on direct selling, operated in as many as 22 provinces.

Direct selling firms, principally from Hong Kong, Taiwan and Japan, engaged in illegal or fraudulent activities which attracted the attention of Chinese government officials. In an effort to crack-down on corruption and fraud, Vice Premier Li Lanqing personally got engaged in the issue and insisted on a complete ban on direct selling. China issued the ban on April 22.

In an April 24 meeting in Beijing, Ambassador Barshefsky urged State Counselor Wu Yi to find a way that would allow legitimate U.S. firms to resume operations despite the ban. Wu Yi met with U.S. companies on May 8 and appointed a three-person government team to discuss possible solutions that would allow the companies to resume operations under a modified business format. To date, there is no resolution of the issue.

INSURANCE

Objective : Seek commitment from China to issue more insurance licenses to U.S. firms at the summit.

Points to Make:

- China's current system of issuing insurance licensees on a nationality-basis has a disproportionately negative effect on the U.S. since we have the most companies of any country operating internationally.
- We currently have ten companies waiting for an insurance license in China that have met the criteria specified in your law.
 - These companies are: Chubb, Cigna, ITT Hartford, John Hancock, Lincoln, Metropolitan Life, New York Life, Principal, Transamerica, and Travellers.
 - (FYI only: Allstate and Prudential have just entered or are about to enter the market through representatives offices and will not have met the criteria to apply for a license for another 1-2 years.)
- Just as with the last summit, we need more insurance licenses to be issued.
 - All ten of our companies should be issued licenses since each is qualified under your law and each could provide important new services and sources or revenues, jobs and investment to your market.

Background: U.S. companies are fiercely battling for insurance licenses in China. To date, only two U.S. companies have been issued licenses (AIG and Aetna). It is politically critical that the President ask for the issuance of more licenses to U.S. insurers. We have ten companies that have met the requirements under Chinese law for a license. Issuance of licenses to all eligible U.S. companies at the summit would be desirable but highly unlikely. As a fall-back, however, we should press for issuance of at least one additional license to a U.S. firm.

The Chinese insurance market was valued at \$2 billion in 1997 and is conservatively estimated to be worth over \$64 billion by 2005 (putting it in the top 10 markets, by size, in the world). Between 1993 and 1997, the insurance market grew at an annual average rate of 33%. U.S. industry projects the market's future growth potential at 30-40% annually - making it one of the fastest growing insurance markets in the world.

There are a total of 99 foreign insurance companies with representatives offices in China; of these, 23 are U.S. insurers. To date, only 9 foreign insurers (and only two U.S. insurers) have been awarded licenses to operate in the market. The Chinese have issued the licenses on a nationality-basis and often only after senior level/presidential visits by a given country. The following companies currently hold licenses: AIG (U.S.), Aetna (U.S.), Tokio Fire and Marine

(Japan), Manulife (Canada), Winterthur (Switzerland), Allianz (Germany), AXA (France), and Colonial Mutual (Australia) and Royal & Sun Alliance (U.K.) which were just awarded last month. An insurer from the Netherlands and Japan are rumored to be the next likely recipients of insurance licenses.

Of the U.S. insurers, AIG was the first foreign company to re-enter the Chinese insurance market in 1992. AIG has both a life and property/casualty license and is one of only two foreign firms to have been allowed to establish as a branch in the Chinese market. The Chinese government is rumored to be considering granting AIG approval to expand its business operations to Beijing (making it the first foreign company to be allowed to enter Beijing). Aetna - which received its license after last year's summit - has a life license but has only been allowed to establish as a joint venture with maximum 50% equity holding. The U.S. share of China's insurance market is less than one percent since both AIG and Aetna (as well as all other foreign insurers) are currently only allowed to operate in Shanghai and Guangzhou.

The remaining 23 U.S. insurers with representative offices in the market are not allowed to engage in profit making activities or to underwrite insurance. At least 10 of these firms have met the Chinese legal criteria for a license but have still not received the nod from Beijing. The ten U.S. companies awaiting license approvals include: Chubb, Cigna, ITT Hartford, John Hancock, Lincoln, Metropolitan Life, New York Life, Principal, Transamerica, and Travellers. Allstate and Prudential have just entered or are about to enter the market through representative offices and will not have met the criteria to apply for a license for another 1-2 years.

Intellectual Property Rights

Objective: Persuade Chinese authorities to issue at the time of the Summit a State Council directive addressing enduser piracy of computer software in government ministries. Moreover, China generally needs to make improved offers on market access on these products in the WTO accession negotiations.

Talking Points

- IPR protection and market access in China are a priority in our bilateral relationship as well as in China's WTO accession negotiations. While China has made progress on addressing illegal production of CDS and CD-ROMs, enduser piracy of computer software remains a serious problem that needs to be addressed now.
- **End User Piracy:** An important step that your government can take immediately is the issuance of a State Council directive instructing ministries to use only legitimate software and stop making unauthorized copies of software. Our experts are available to discuss the details of this proposal and explain steps taken in the United States to address this problem.
- Other governments have taken similar steps. The United States is about to issue its own executive order. China has a growing domestic software industry. Issuing a directive and enforcing it would demonstrate China's commitment to provide strong copyright protection for software.

Background

End User Piracy The Business Software Alliance (BSA) has joined with a Chinese counter part (CSA) promoting antipiracy and use of legitimate software, e.g. through awards for use of legitimate software and educational efforts. The industry has requested USTR raise the issue of end-user piracy, i.e., unauthorized copying of a purchased copy, in government ministries. Assistant USTR Papovich has raised the end-user piracy issue on several occasions with the Chinese. BSA is looking for a State Council-issued directive, known as a Red Top Directive, to supplement a National Copyright Administration-AIC joint decree calling for cooperation in the area of illegal production and distribution of infringing software copies. However, we need to avoid any declarations on joint efforts on this score. Instead, we can emphasize what other governments have done, e.g., the Philippines and Indonesia, in prohibiting government agencies from using pirated products. Currently, the Administration has a draft executive order under consideration that encompasses the type of actions and requirements that we want to see China undertake.

Other Intellectual Property Issues

Enforcement: Based on the 1995 and 1996 Bilateral IPR agreements and extensive follow up work with Chinese officials, China now has a functioning system to protect intellectual property rights (IPR). Enforcement of IPR has become part of China's nationwide anti-crime campaign; the Chinese police and court system have become actively involved in combating IPR piracy. In 1996 and 1997, the Chinese closed down 64 CD/CD-ROM lines, 54 lines from underground factories and 10 lines which had been improperly registered, discovered by central authorities and then shut. The result has been a

significant reduction of pirated sound recording production in South China.

Sale of pirated product at the retail level, however, is a growing problem. As authorities have closed down illegal production in China, it has moved to Hong Kong and Macau. Recent newspaper reports have focused on the retail sale of pirate video CDs (VCDs). Copies of "Titanic" appeared in Shanghai almost immediately upon release of the film in the United States. Police involvement in the enforcement effort is key to driving the pirated product off the store shelves. The 1995 agreement includes procedures and requirements to address this problem. These procedures need to be implemented. Better coordination among customs officials at the borders with Hong Kong and Macau is essential as is wider availability of legitimate product.

Market Access remains a key concern for all copyright industries. While companies can license reproduction of their videos and sound recordings, restrictions on investment continue. New regulations prohibit foreign investment in theaters, although an exception for theaters associated with a joint-venture hotel may provide a loophole that could be exploited. The limited number of enterprises authorized to import motion pictures essentially perpetuates an informal quota on motion pictures. The recording industry continues to want to expand activities in China beyond joint ventures for manufacturing CDs. MPA chief Jack Valenti was in China in early May to press for more market access for motion pictures. He recently sent letters to Secretary of State Albright, USTR Barshefsky and paid a call on the President to press his request.

Government Reorganization. Responsibility for IPR issues appears to be moving, although the details are not clear. Several offices may be put under the authority of a new "State Intellectual Property Office" (SIPO). The fate of the State Council IP Conference Office is yet to be determined, although we have heard several reports that the Office may be given more authority over coordinating all IPR-related enforcement and legislative efforts.

sbipr.may

Telecommunications -- Endorsement of CDMA Technology

Issue

As a lead-up to the Beijing summit, the U.S. information technology industry has requested USTR and Commerce staff to press the Chinese to endorse licensing for CDMA, a wireless telecommunications technology originated and favored by U.S. industry, for commercial deployment in China. Currently, CDMA has been deployed on an experimental basis for over a year in Beijing, Shanghai, Guangzhou and Xian.

The advantage of this "deliverable" is that it requires very little from the Chinese, but could mean about \$50 billion to the U.S. industry over five years. Second, CDMA technology is an American standard, as opposed to the European "GMS" technology standard. China currently allows GMS-- all we are seeking is the right to sell ours as well.

Background

U.S. and European manufacturers of digital wireless equipment are competing worldwide for adoption of their respective preferred digital wireless communications standards. Many governments, taking the position that their domestic markets can support only a limited number of competitors, and considering that endorsement of a single digital wireless standard will assure inter-operability from region to region and among competing providers (where allowed), have taken the path of endorsing one standard or another. The United States permits multiple standards, and encourages other countries to do the same.

The European digital wireless standard, GSM ("global system mobile"), is a TDMA (time division multiple access) technology. Engineers generally consider CDMA technically superior to GSM/TDMA for data and future broadband applications (e.g., terminals which can access the internet via wireless links). *However, Europe has been able to win much greater adoption of GSM globally.*

- by virtue of GSM's earlier time-to-market as the first digital wireless standard; and,
- by the early introduction of global "roaming" arrangements between regional and national service providers, which capitalized on GSM's first-to-market advantage by creating a virtuous cycle of inter-operating systems regionally and worldwide.

China has approved the GSM standard, which is in wide use in Beijing and other areas. U.S. manufacturers now manufacture and sell GSM equipment along with CDMA at home and abroad, as well as analogue equipment (which has a large installed base, mainly in the United States). Lucent, Motorola and Nortel all manufacture GSM equipment for sale in China.

A decision by China's new Ministry of Information Industries (MII) to license CDMA for commercial use would signal a step forward in embracing competition to MPT/China Telecom

as a means to build out China's telecom network. The primary user of CDMA at present is Great Wall, a joint China Telecom-PLA company. The PLA obtained half of this joint venture due to its control of the 800-900 Mhz spectrum used by CDMA. Unicom (the operating arm of the former MEI, now folded into MII but still separate from China Telecom) also wants to use CDMA and has lined up some investors. Heretofore, China Telecom and MPT have dragged their feet on approval of commercial CDMA operation while rolling out GSM as fast as they could.

European manufacturers and the European Commission aim to duplicate GSM's global success in the next generation of wireless communications equipment, dubbed "next generation GSM" or "UMTS" (universal mobile telephony system), by repeating the GSM formula: mandating use of the UMTS standard in the E.C. and pressing for its adoption by foreign governments. Ericsson, the only major equipment manufacturer in the world which has NOT licensed CDMA technology, is rumored to be promising China that it will transfer next generation GSM/UMTS technology, while lobbying heavily against Chinese licensing and commercial deployment of CDMA. European manufacturers have extensive manufacturing operations in China for GSM and have reportedly promised to manufacture next-generation systems in China as well.

We expect that Chinese authorities are primarily concerned with maximizing the local production, technology transfer and/or export requirements they can impose on U.S. and European manufacturers. The ostensible purpose of the CDMA trials over the past year has been to demonstrate the technology's suitability for use in China. The trials have gone smoothly, according to U.S. industry. Seeking a high-level endorsement of CDMA's suitability in China likely would dovetail with China's objective to keep U.S. and European manufacturers competing hard against one another for a piece of the Chinese market, and would put U.S. manufacturers on a more equal footing in the competition for Chinese licensing of the upcoming third-generation (GSM/UMTS versus CDMA) standards.

Talking Points

- One important summit announcement we would like to suggest China consider may be in the telecommunications sector. We request that Minister Wu announce that China will accept the licensing of CDMA, a wireless telecommunications technology, for commercial deployment in China.
- CDMA (code division multiple access) has been deployed on a trial basis for over a year in Beijing, Shanghai, Guangzhou and Xian in partnership with Motorola, Qualcomm and other technology partners.
- Motorola, for example, already is manufacturing some CDMA equipment in China and other manufacturers can be expected to follow suit, if China licenses CDMA and creates in-country demand for the equipment.
- *CDMA is state of the art technology. It provides highest-quality voice-grade digital wireless communications (on par with GSM), and it is the best technology available for data applications (better than GSM).*
- We think it would be a concrete and worthwhile achievement of the summit if, based on the satisfactory experience of the trial deployment of CDMA, your government would announce that the CDMA standard has been licensed for commercial deployment in China.
- The U.S. information industry is aware that President Jiang's announcement during the Washington summit of China's intention to join the ITA did not attract the press attention that Chinese officials had expected.
- In response, the U.S. private sector is prepared to launch a very positive publicity campaign for China if China agrees to announce acceptance of CDMA technology. Moving forward with ITA implementation could also be part of this campaign. That said, they need to know far enough in advance of the summit of China's intentions in order to plan the campaign.

INFORMATION TECHNOLOGY AGREEMENT (ITA)

ISSUE

Although China presented a detailed ITA offer at the most recent Geneva working party meeting, the offer fails to meet ITA requirements. Ministry of Information bureaucrats balked at complying with ITA rules, despite President Jiang's statement last October. **The U.S. industry is starting to say that China is once again failing to live up to its commitments, and that the Administration may face criticism as well if we don't use the next summit to secure implementation.**

POINTS

- Appreciate new offer for ITA implementation, but we and other members have serious concerns.
- China will need to conform its offer to the multilaterally determined rules of the agreement for product coverage and staging. ITA participants were unanimous in insisting on this at the meeting in Geneva this month.
- Request that China take the steps needed to be a full ITA participant by the time of the Beijing summit. This means China must revise its ITA offer, complete the required multilateral consultations and verification on its schedule, and agree to begin implementation on an autonomous basis immediately.

POINTS ON CHINA'S APRIL OFFER

Product Coverage

- Product coverage is identical for all participating countries; there are no exceptions or exclusions. China has excluded 17 products in Part A.

Staging is too long.

- Under ITA rules most tariffs are to be eliminated by 2000 with a limited number of exceptions.
- In China's new offer, all but a handful of tariffs will be eliminated after 2000 and for many products not until 2007. No staging table is provided to show how China will eliminate tariffs.
- No ITA participant was granted staging on ANY item past 2005. The "out-year" 2005 was a fundamental element in the multilateral consensus process.
- Many ASEANS had to swallow hard to accept 2005 as the maximum staging and we

assured them that we would not undermine their acceptance by granting a longer time frame to other ITA participants who may join later. I explicitly told Malaysian Minister Rafidah that the United States would not accept a final date for going to zero later than 2005 from any ITA participant.

- This united front among ITA participants was the reason India agreed to 2005 as the maximum date for achieving zero duties.
- We have no flexibility to go beyond 2005.

Too many products covered by extended staging, e.g. beyond 2000.

- China would eliminate duties by 2000 on only 13 of the 185 tariff categories of ITA products that it has identified.
- The scope of the request for extended staging is far beyond the handful of products where extended staging was granted for ASEAN. Even India which had to move from exceptionally high rates made an extensive effort to meet the 2000 date with substantial reductions and zero duties.

Base year "starting point" for tariff staging too high.

- Most participants used 1996 applied rates as a base for calculating tariff staging, particularly when we considered extended staging. China uses very high 1992 base rates, which could permit actual increases in tariff rates for some products given its applied rates.

Can't wait to implement until WTO accession

- China's offer is to begin ITA implementation only upon WTO accession. The deal in November was that China would become an ITA participant before accession. To be considered an ITA participant, China must begin implementation immediately.

Part B (products that are included no matter where they are classified in the tariff schedule)

- Our technical experts believe that China has some work to do on its "part B" list – products that are included no matter where they are classified.

BACKGROUND

President Jiang agreed in our joint statement at the Washington summit that China "indicated its intention to participate" in the ITA "as soon as possible." Although China presented its' first line-by-line offer at the April working party meeting in Geneva, the offer falls far short of the parameters established by ITA participants. The U.S. information technology industry, and the Semiconductor Industry Association in particular, are pressing the Administration to request

China to implement the ITA as a summit “deliverable.” They argue that any concessions coming out of the Beijing summit will appear meaningless in light of China’s inability to deliver on the one promise resulting from the last summit.

China, and in particular Vice-Minister Long, expressed his disappointment that China failed to receive proper publicity after Jiang committed to the ITA. He has been largely disengaged on the issue since then. The U.S. industry has offered to initiate a favorable publicity campaign for China around the Beijing summit if China agrees to implement the ITA, consistent with the rules regarding coverage and staging in the ITA.

The former Ministry of Electronics (MEI), now part of the Information Ministry, is responsible for negotiating the details of the ITA. Vice-Minister Long told us in April that he had no success in convincing the MEI officials that they had to follow ITA rules, and requested that we organize an ITA meeting in Geneva to collectively criticize China’s current approach. Though we are not certain whether the MEI officials were at all influenced, ITA members in Geneva, including ASEAN and India, pointed out the shortcomings in China’s current offer. MEI officials then complained that China has made a considerable investment in the ITA sectors; it has not yet produced a return on that investment, and thus required a longer period of tariff protection. They also mentioned that some WTO members (the United States) has prevented exports to China of high technology. Therefore China’s ITA offer would reflect the reality that industry was in an “infant” stage of development.



United States Department of State

Washington, D.C. 20520

FAX COVER SHEET**OFFICE OF CHINESE AND MONGOLIAN AFFAIRS****BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS**

Date: June 3, 1998

To: Malcolm Lee

From: Michael Honnold
Economic Officer

Tel: (202) 6476798

Fax: (202) 6476820

Number of pages including cover sheet: 5

Remarks:

Malcolm,

Per request on WTO status. Hope attached might be of some use. First is brief backgrounder on trade, including WTO. Second is memo, entirely on process, that we did today for planned Albright-Barshefsky telcon, which did not happen in the end. Very briefly, on the major issues:

Tariffs: have had intensive negotiations. Still a good distance apart on U.S. priority sectors.

NTMs: same as above.

Distribution: have had intensive negotiations. good progress, but still a few issues which must be resolved at Cabinet level.

Professional services: have had intensive negotiations. Close to agreement.

Agriculture: have had a number of discussions, but still far apart. Chinese offers to our requests have not really been enough to say that we have begun negotiating seriously.

Insurance: preliminary discussions. Have given Chinese request. They are considering. No real negotiations yet.

Telecommunications: same as immediately above.

Banking and securities: same as immediately above.

Besides above market access issues, we still have two key areas in the Protocol of accession (document which spells out how China will meet fundamental WTO principles on national treatment, transparency, etc.). Those are safeguards, that is, what can WTO members do if special problems develop with China for whatever reason after accession, and anti-dumping measures.

BACKGROUND PAPERChina: Trade, Including WTO Accession Negotiations

Our trade ties with China bring great economic benefits to both countries; indirectly, they also support other important U.S. objectives in China, such as encouraging openness and development of the rule of law. At the same time, our large trade deficit (\$50 billion last year) creates serious political problems, particularly when U.S. exports face numerous, overlapping trade barriers in China. The deficit results from the strength of the U.S. economy, the shift of production of labor intensive goods from other Asian economies to the PRC, and the barriers faced by U.S. goods.

The focus of U.S. efforts to remove China's trade barriers is the WTO accession process. We are seeking Chinese commitments to eliminate WTO-inconsistent policies within acceptable timeframes and provide significant market access for U.S. industrial and agricultural goods, and services. Over the past two years, we have made some progress. China has agreed to: implement WTO intellectual property rights provisions upon accession; allow Chinese and foreign companies to import and export from China within three years of accession (a right currently severely restricted); provide non-discriminatory treatment to imports; and refrain from implementing new WTO-inconsistent measures while negotiations are ongoing. However, we still have a good distance to go to reach a deal that would generate support within the business community and Congress.

At the Vancouver APEC meeting, then-Trade Minister Wu Yi made certain significant, albeit general commitments on market access for goods. We have since held a series of negotiations on both goods and services access and have made some progress, but not as much as we had hoped we might make by the summit. China's detailed offers have not met Wu's general commitments. We also have not received clear signals from the new Chinese senior leadership regarding their intentions on moving the negotiations forward. The just-announced government restructuring and China's ambitious domestic economic reform plans and concerns about unemployment may be causing the Chinese to reconsider how fast they want to move on WTO accession. Nevertheless, intensive negotiations will continue up to the summit.

On bilateral trade issues, we are pressing China hard to modify recently-implemented regulations that severely restrict the large China operations of U.S. direct selling companies. China has improved its IPR enforcement in recent years but we continue to have concerns about retail piracy and market access for intellectual property products. U.S. agricultural exports, including wheat, citrus, and plums, also face restrictions in China based on non-scientific concerns over the possible importation of plant diseases.

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002a. memo	For Madeline Albright from Charles Kartman. Subject: Phone Call from USTR Barshefsky. (3 pages)	06/03/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Economic Council
Malcolm Lee
OA/Box Number: CF 1176

FOLDER TITLE:

China WTO (June 1998) [1]

2010-1024-F
vz1867

RESTRICTION CODES

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

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

C. Closed in accordance with restrictions contained in donor's deed
of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C.
2201(3).

RR. Document will be reviewed upon request.

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

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

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002b. email	White House Situation Room to Jeffery Bader, Sherman Boone, James Gagnon et al. Subject: China / WTO (5 pages)	06/03/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Economic Council
Malcolm Lee
OA/Box Number: CF 1176

FOLDER TITLE:

China WTO (June 1998) [1]

2010-1024-F
vz1867

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RR. Document will be reviewed upon request.

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United States Department of State

Washington, D.C. 20520

FAX COVER SHEET

OFFICE OF CHINESE AND MONGOLIAN AFFAIRS

BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS

Date: April 16, 1998

To: Malcolm Lee

From: Michael Honnold
Economic Officer

Tel: (202) 6476798

Fax: (202) 6476820

Number of pages including cover sheet: 10

Remarks:

Hank said you wanted background materials about general U.S. goals in China accession talks. We haven't done anything recently on this, but attached is the roadmap we gave China about a year a half ago. It does a good job of setting out what we want in general terms in each of the key areas.

Non-Paper on China's Accession to the World Trade Organization

Introduction

The United States supports China's accession to the WTO and believes China's membership will benefit both our countries. President Clinton emphasized this point at the October 24, 1995, meeting with President Jiang Zemin at which our leaders agreed that we should work together constructively to move the negotiations forward. To this end, and in order to advance the process, the United States has identified critical outstanding issues which must be resolved to achieve a commercially viable protocol package for China's WTO accession. This paper is an effort to take a positive step forward in reaching our common objective of WTO membership for China.

WTO membership requires adherence to fundamental obligations by countries regardless of their level of development. Last March as part of their Eight Point Agreement, our respective trade ministers agreed to pursue China's WTO accession talks on a flexible and pragmatic basis and to address realistically the issue of China's developing country status on the basis of the Uruguay Round Agreement. In this context, we are prepared to consider, where appropriate, transition periods and phase-ins of obligations. Drawing upon precedents of other accession protocols for countries with mixed economies, China's protocol also needs to include provisions such as special safeguards and import commitments.

We start from the proposition that for a commercially viable protocol to be achieved, China must address a number of serious problems. First, achieving greater balance in the overall trade relationship is necessary to assure domestic support. This will entail tangible steps by China to redress limitations on market access for goods and services. Second, the United States requires the full and effective implementation of previous agreements (e.g., IPR, Market Access) and the successful conclusion of pending bilateral services negotiations. We cannot win support from the American people for *new* agreements if they cannot enjoy the benefits of *existing* agreements. U.S. negotiators have been working with their Chinese counterparts to advance our bilateral agenda, and stand ready for intensified discussions.

This paper is based on the economic and trade situation in China as it has been described to us and as set forth in the laws and regulations made available in the accession process and in our bilateral consultations. It recognizes the progress that has already been made in bilateral and multilateral negotiations. However, other measures may need to be addressed when they become known.

To facilitate progress in the negotiations, China should undertake a standstill commitment for the duration of the accession negotiations under which it will neither promulgate nor implement WTO-incompatible policies or take other measures that undermine or diminish its protocol commitments. This will assure that the introduction of new policies by China would neither change the parameters of the negotiation nor complicate and delay it further.

The WTO protocol package (hereinafter "protocol") requires completion of: a protocol text, a Working Party report, and schedules of concessions for market access, agriculture, services and other commitments. To reach a mutually satisfactory protocol, the United States is prepared to intensify bilateral work while maintaining the multilateral character of the accession negotiations. This paper does not describe each element in the protocol or reiterate areas of agreement in the multilateral negotiations. It is intended instead to focus attention on those critical issues that require the special attention of senior Chinese policy makers. The areas listed in this paper should, nonetheless, be considered as a cohesive and interrelated package, just as the WTO Agreement is a single undertaking consisting of several different parts.

FOUNDATION PRINCIPLES:

In respect of the principles set forth below, China shall take the following actions:

National Treatment for Goods:

- comply fully with the requirements of national treatment in the goods sector, which means providing to imported goods treatment "no less favorable" than that accorded to domestically produced goods in respect of all laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of such goods.

Trading Rights:

- grant, in accordance with the requirements of national treatment, the right to all individuals and entities to engage in foreign trade for goods (both import and export). Trading rights shall be granted, *inter alia*, without the requirement to invest in China or produce locally and shall be granted to foreign and domestic individuals and enterprises.

[Comment: Bilateral discussions on this issue to date have been helpful. Precedents established in GATT 1947 dispute settlement panel reports clearly demonstrate the relationship between trading rights and national treatment for goods. The concept of limiting the right to trade in goods is inherently contrary to the basic principles of the WTO.]

Transparency:

- comply with the transparency requirements of the WTO Agreement and the protocol and provide an opportunity for public comment and advance notice before implementation of laws, regulations, rules, decrees, directives, administrative guidance, policies or other measures (hereinafter laws, regulations and other measures).
- publish initial quota amounts and any provision for growth of any product subject to a quota prior to the opening date of the quota.

[Comment: The Working Party has made progress in narrowing differences in this area, but further efforts are needed.]

Uniform Application:

- ensure that all laws, regulations and other measures, directly or indirectly affecting trade, are applied uniformly throughout China;
- ensure that laws, regulations or other measures adopted or enforced by provincial or local authorities are consistent with the WTO;

- ensure that all goods entering the rest of China from Special Economic Zones and other special economic zones are subject to the same import tariffs, charges and measures as are imported goods; and
- treat nationals and the goods and services of separate customs territories (e.g., Hong Kong, Macao) in the same manner as those of other WTO Members.

[Comment: The Working Party has made progress in narrowing differences in this area, but further efforts are needed.]

Judicial Review:

- provide for an independent review mechanism for all disputes that assures any decisions made by agencies are reviewed by tribunals independent of the original agency; and
- provide a right of appeal to a judicial body, if the initial right of appeal is to an administrative body.

[Comment: Discussions in the Working Party have not yet resulted in a satisfactory resolution of this problem, although differences have narrowed.]

Foreign Exchange:

- implement fully a unified foreign exchange regime and achieve current account convertibility consistent with IMF Article VIII.

[Comment: The protocol text is agreed, with the exception of dates for the above actions.]

PROVISIONS GOVERNING CONDITIONS OF MARKET ACCESS

In respect of the elements of the protocol set forth below, China shall take the following actions:

Tariffs:

- submit a schedule that binds all industrial and agricultural tariffs; and
- make staged reductions in and bind its tariffs at levels that provide comparable access to U.S. exports to that which China enjoys in the U.S. market, taking into account sectors of major export interest to the United States.

[Comment: Detailed discussions between negotiators have not been held since December 1994.]

Non-Tariff Measures (NTMs):

- submit a schedule that discloses and phases-out all remaining WTO-inconsistent NTMs, including, but not limited to, licensing, tendering, quotas and other import controls and confirms that China shall not reintroduce such measures. This requires, for example, China to address measures in the

automotive, electronics products and chemical sectors, where import bans, government involvement in tendering and other barriers have been introduced.

[Comment: Substantial progress has resulted from our bilateral efforts. However, further clarification and information on China's intentions will be necessary to reach agreement on a comprehensive schedule commitments. The 1992 Market Access MOU already contains a commitment to eliminate all import substitution policies.]

Customs Valuation:

- implement the Customs Valuation Agreement fully without recourse to the delayed implementation provisions of the Agreement.

[Comment: Adherence to this Agreement is mandatory pursuant to the Uruguay Round. Our bilateral discussions revealed differences in this area which will require further efforts, including in the Working Party.]

Industrial Policy:

- eliminate laws, regulations and other measures implementing industrial targeting policies that are WTO-illegal or which, when combined with other practices, have a trade distortive effect. Examples of proposed measures that have a trade distortive effect include: technology transfer requirements; access to preferential loan rates that is tied to modes of production; offsets; and the requirement to establish "Research & Development Institutes".

[Comment: The United States first raised its concerns about China's intentions regarding implementation of the industrial policy after publication of the auto policy last year. We understand that similar policies, based on the auto policy, are awaiting approval. Concerns about the industrial policies have been raised by many Working Party members.]

Investment:

- cease implementing regulations and guidelines that support the targeting practices outlined, by way of example, in the industrial policies and the WTO-incompatible measures noted above;
- notify and provide for the full elimination of measures inconsistent with the WTO Agreements, particularly local content and foreign exchange balancing requirements; and
- cease conditioning receipt of any benefit on export performance.

[Comment: A number of these issues are covered by WTO Agreements. Concern in this area has increased however, since MOFTEC's publication of the "Interim Provisions on Guidance for Foreign Investment" in June of this year. Members of the Working Party have requested further information from China on these provisions in order to determine how to best address the conflicts they raise with China's WTO commitments.]

Standards:

- notify the list of all products subject to statutory inspection and provide necessary justification to demonstrate that such measures are consistent with the WTO and not disguised barriers to trade;
- eliminate the current two-tiered practice of using two different systems to enforce the same standards on imported and domestic goods, and apply the same measures in the same way for approving domestic and foreign goods;
- cease inspecting imported products for compliance with commercial contracts, and
- comply with the TBT Agreement without recourse to delayed implementation provisions of the Agreement.

[Comment: The Working Party has made progress in narrowing differences in this area, further efforts are needed.]

State Trading:

- require state trading enterprises to engage in import and export in accordance with commercial considerations, including price, quality, availability, marketability and transportation;
- permit foreign individuals and enterprises to compete for all such purchases and sales; and
- report annually to the WTO on developments with respect to the activities of all such enterprises and their role in domestic and international commerce.

[Comment: The Working Party has made progress in narrowing differences in this area, further efforts are needed.]

State-Traded Agricultural Commodities:

- grant foreign individuals and enterprises rights to conduct trade through the development and implementation of a tariff-rate quota (TRQ) system (both within and above the TRQ amounts) for grains and bulk commodities that will continue to be subject to state trading;
- grant trading rights to foreign and domestic individuals and enterprises to engage in import and export of these commodities.
- conclude an agreement on the obligations to be observed in administering the TRQ system and which will be reflected in the protocol commitments; and
- eliminate state trading for all products in the oilseeds sector.

[Comment: This is among the areas where our bilateral efforts have moved the negotiations forward multilaterally in Geneva. The United States and China have conducted extensive work on the principles that

would govern such a mechanism. Once the mechanism is agreed, agreement must be reached on commodity-specific quantities for individual TRQ's.]

Sanitary and Phytosanitary Measures:

- comply fully with provisions of the Agreement on Sanitary and Phytosanitary measures without recourse to the delayed implementation provisions of that Agreement.

[Comment: Adherence to the principles of this Agreement feature prominently in the bilateral discussions regarding implementation of the 1992 Market Access MOU.]

Agricultural Export Subsidies:

- submit a schedule of export subsidy commitments, including a commitment not to reintroduce export subsidies where China has already eliminated such subsidies.

[Comment: We have made progress, as a result of technical assistance provided by the United States, in narrowing differences in this area, but further efforts are needed.]

Agricultural Internal Support:

- submit a schedule binding the levels of all domestic agricultural subsidies, including commitments on input subsidies that are available only to certain products, e.g., cotton, corn, and wheat.

[Comment: We have made progress, as a result of technical assistance provided by the United States, in narrowing differences in this area, but further efforts are needed.]

Services:

In respect of specific commitments.

- include in its GATS schedule of initial commitments national treatment and market access and ensure that such commitments are applied throughout China and are not limited to specific geographic areas. Sectors of greatest priority are: financial services including insurance, telecommunications, distribution (including wholesale and retail), audiovisual, maintenance and repair (including after sales service), and travel and tourism.
- confirm, in the protocol, China's commitment to transparency in the services sector and that approval and licensing procedures are based solely on non-discriminatory prudential requirements.

Specifically, in financial services in addition to the general principles noted above, and the commitments already made:

- schedule commitments that permit foreign financial services enterprises to engage in local currency business with foreign-invested and Chinese clients in areas such as deposit taking, payment and money transmission services, lending guarantees, and trade for own and customer accounts;

- schedule commitments that permit foreign financial services enterprises to engage freely in an expanding range of foreign and local currency business, including with Chinese clients;
- schedule commitments that permit foreign financial services enterprises to engage freely in securities business, including underwriting, asset management and trading for own and customers' accounts in A and B shares; and
- schedule commitments that permit foreign financial services enterprises to engage freely in providing a range of insurance and reinsurance activities, including establishing a commercial presence as wholly-owned foreign companies, branches, subsidiaries, mutual companies or joint ventures.

[Comment: The last comprehensive offer tabled by China was in December 1994. Subsequently, the United States provided China with a paper outlining the remaining issues requiring resolution. It should also be noted that with respect to financial services, some of the issues were the subject of bilateral discussions in the JEC some 21 months ago, at which time China suggested that it would respond to U.S. interests.]

TRIPS:

- implement the Agreement on Trade-Related Intellectual Property fully without recourse to the delayed implementation provisions of the Agreement.

[Comment: This recognizes the status of China's laws and actions that China has committed to undertake on enforcement in our bilateral agreement.]

Government Procurement:

- commence negotiations for membership in the Agreement on Government Procurement;
- complete negotiations within an agreed time frame after accession to the WTO; and
- apply transparency and uniform application provisions to its government procurement purchases until such negotiations are completed.

[Comment: This has been a longstanding request of a number of WTO members.]

Agreement on Trade in Civil Aircraft:

- join the 1979 Agreement on Trade in Civil Aircraft.

[Comment: This has been a longstanding request of a number of WTO members.]

TRADE REMEDIES, EXCEPTIONS AND SAFEGUARD MECHANISMS

In respect of trade remedies, China shall:

Subsidies:

Notifications: Comply fully with the terms of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the provisions of the Protocol.

- Prohibited Subsidies: Comply fully with the Agreement and eliminate all benefits, including those granted at the provincial or local level, made contingent, either in law or in practice, on export performance or import substitution, without recourse to the delayed implementation provisions of the Agreement for prohibited subsidies.
- Actionable Subsidies: Accept fully the application of the provisions of the SCM Agreement without recourse to the limitations applying to serious prejudice provisions.
- Application of Remedies: Define subsidy to take into account the distinctive nature of both China's economy and the government's role in industrial development.

[Comment: After bilateral consultations in July, a U.S. technical team was dispatched to Beijing in September to facilitate resolution of remaining differences. Such technical work will have to be continued.]

Surrogate Pricing in AD Investigations:

- continue the long-standing practice of using surrogate countries to develop price data in Anti dumping investigations.

[Comment: There is GATT precedent for such a provision and WTO Members currently apply such a provision to Chinese products.]

In respect of exceptions from GATT 1994 disciplines, China shall:

Balance of Payments:

- agree that recourse to such provisions shall only be to address a critical balance of payments situation, and in such instances, the measures to be applied shall be temporary, degressive, price-based, and not used to protect a particular sector or industry.

[Comment: As noted in Working Party discussions, China will be able to have recourse to appropriate balance of payments provisions like all other WTO Members, however further clarification of how such measures would be applied is necessary given China's economic transformation.]

Infant Industry:

- agree that upon accession, no industry will be treated as an "infant industry"; but

- recourse to the "infant industry" provisions following accession would be undertaken, if at all, only in rare and exceptional cases, consistent with previous GATT practice. The protocol will establish and clarify the procedures to be used, including the current requirement for WTO Members' prior approval of specific actions.

[Comment: Additional clarification of these provisions is warranted given the WTO's lack of experience with the operation of such provisions and the distinctive nature of China's economy.]

In respect of safeguard mechanisms:

Product-specific safeguard:

- China's protocol shall contain a provision that includes a mechanism to regulate import levels when market disruption or the threat of market disruption occurs. The continuation of this mechanism would be subject to review, as part of the transitional review.

[Comment: A similar provision was included in Poland's protocol of accession.]

General safeguard:

- China's protocol shall contain a provision that allows for the suspension of some or all WTO benefits (e.g., increased tariffs) if China is not implementing its commitments under the protocol package, or negative developments arise in its economic reform program. The continuation of this mechanism would be subject to review, as part of the transitional review mechanism.

[Comment: Similar provisions are included in Eastern European protocols of accession.]

Transitional Review Mechanism:

- China's protocol shall provide for periodic review by WTO Members of the implementation of the commitments undertaken and also the transitional mechanisms, including the operation of the safeguard provisions.

[Comment: Similar provisions are included in Eastern European protocols of accession.]

~~CONFIDENTIAL~~

FRP: , , 3,4, , , ,

ACTION: NONE INFO: FILE, CIC/AG, CIC/EA, CIC/EACO, CIRAS, CP/ARAB, CP/EAB, CP/ISI, CP/TECH, CTCARCHIVE, CTC/COPS, CTC/ELB, CTC/IFC, CTC/OFP, CTC/RTB, C/CP, C/NHTC, DCEA/CO, DC/EA, DONOVA, EA/COEO, EA/CORU, EA/CTIO, EA/CTTIGER, EA/PRORR, EA/RR, EA/SACR, EA/TIB, EUR/SGRR, FSS/AB1, F/ARMS, F/CHINA, F/CNTRINT, F/ENVIRON, F/INTECDEV, F/TAIWAN, IRA, MDSX, MSP/MRB, MSP/SPB, MSP/TIB, NE/ESP, NHTC/EA, NHTC/EUR, NIO/SP, NPCEDC, NPC/IFC, NPC/OSG, OAP/CSG, ODPD, ODPS, ODPW, OPCTR/EAP, ORMS/CAG, ORMS/NHTC, OWTPSTABIT, STATDICT, ZZA (58/W)

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~~CONFIDENTIAL~~ BEIJING 005376

EXDIS

NSC FOR AMBASSADOR KRISTOFF AND JEFF BADER

E.O. 12958: DECL: (1.6X6)
TAGS: PREL, PGOV, PARM, PHUM, PINR, ETRD, SENV, CH, TW

SUBJECT: CHINESE DISSIDENT RELEASES SAID POSSIBLE,
- JIANG ZEMIN HOPES FOR TAIWAN, WTO PROGRESS

(U) CLASSIFIED BY WILLIAM A. STANTON, POLMINCOUNS.
REASON: 1.5(D). (EXEMPTION: 1.6X6)

SUMMARY

~~CONFIDENTIAL~~

DECLASSIFIED
E.O. 13526
Department of State Guidelines, September 11, 2006
VZ NARA Date 2/6/2013
2010-6024-7

FAX

U.S. DEPARTMENT OF STATE

Date 04/15/98Number of pages including cover sheet 6

To:

Lael Brainard

Phone _____

Fax Phone 395-6853

CC: _____

From:

EB/TPP: Anthony J. InterlandiPhone 202-647-2324Fax Phone 202-647-1537**REMARKS:**☒ Urgent☒ For your review☐ Reply ASAP☐ Please commentMalcolm Lee asked us to fax you this additional package of information regarding China WTO.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002c. memo	For Stuart Eizenstat from Alan Larson. Subject: Status of China WTO Accessions (5 pages)	04/15/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Economic Council
Malcolm Lee
OA/Box Number: CF 1176

FOLDER TITLE:

China WTO (June 1998) [1]

2010-1024-F
vz1867

RESTRICTION CODES

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

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

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

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



FROM: Hank Levine

*Deputy Director for Economic Affairs
Office of Chinese and Mongolian Affairs
U.S. Department of State, Washington, DC*

TEL: 202-647-6796

FAX: 202-647-6820

TO:

Malcolm Lee

URGENT

☒ **PER DISCUSSION**

☐ **FOR CLEARANCE**

☐ **FYI**

See Comments.

Let's talk.

Hank

~~WANK / Mike~~
~~DRAFT - COMMENT SURVIVED. YOU ARE CLOSER~~
~~TO THIS THAN I AM. LAZEL OUT OF TOWN.~~

June 3, 1998

ML
 416 9299 phone
 416-9290 fax

Issue for Decision

- Is there a politically tenable market access package achievable by the Summit?
- How do we position ourselves, both domestically and in negotiations, to produce that result?

Approach

Suggest you ask Barshefsky to summarize our objective for the summit and where negotiations stand. Where have we made progress, where are we far apart? What is necessary for a politically tenable package? Where are we most vulnerable?

NSC can then discuss the results of Sandy's talks in Beijing. What political decisions were made by the Chinese leadership? Where will the Chinese show firmness or flexibility?

Ultimately, the decision will be whether we harvest the progress made, or hold out for more. Need to discuss the costs of both.

Background

WTO accession talks are the focus of U.S. efforts to remove China's trade barriers. We are seeking Chinese commitments to eliminate WTO-inconsistent policies within acceptable timeframes and to provide significant market access for U.S. industrial and agricultural goods and services. Over the past two years we have made some progress. China has agreed to: implement WTO intellectual property rights provisions upon accession; allow Chinese and foreign companies to import and export from China within three years of accession (a right currently severely restricted); provide non-discriminatory treatment to imports; and refrain from implementing new WTO-inconsistent measures while negotiations are ongoing. However, we remain well short of a deal that would generate support within the business community and Congress.

At the Vancouver APEC meeting, then Trade Minister Wu Yi made certain significant general commitments on market access for goods. We have since held a series of negotiations on both goods and services market access and have made some progress, but far less than we had hoped prior to the Summit. USTR is seeking clear signals from the Chinese leadership regarding their intentions on moving the negotiations forward. Sandy Berger's trip may have provided signals in that regard. The recently announced government restructuring and China's ambitious domestic economic reform plans and concerns about unemployment may be causing the Chinese to reconsider how fast they want to move on WTO accession.

happy for accession now. needs be met.

? question is how we package what we get. (see below)

Business Community is divided. Some would be happy for accession now. others concerned their interests.

2

Our objective for the Summit had been to complete a strong market access package in all areas: services, industrial goods and agriculture. That does not appear likely,

though we should
continue to push
the goal with the
Chinese

- In industrial goods, we remain far apart in very politically sensitive areas: China's tariff offer in chemicals is as high as 40%, on motor vehicles 50%, auto parts 25%. In non-tariff measures, disagreement remains over the time frame for elimination in certain areas as well as the need for elimination of quotas on key export products such as fertilizers, fiber optic cables and chemicals upon accession. Most recent info in China may have

difficulty going beyond existing offers.

- We have made little progress on agriculture, ~~where~~ U.S. exports including wheat, citrus and plums face restrictions in China based on non-scientific based concerns over the possible importation of plant diseases.

→ esp. agric. tariffs + TRQ system.
addition important

- In services, while some progress has been made on professional services and distribution, differences remain on telecommunications, insurance, and banking and securities, where negotiations have not really begun.

Of these areas, industry expectations are highest in insurance; the others have more modest goals

? || The tension between State and NSC on the one hand and USTR and Commerce on the other will be whether there is a smaller package that can be highlighted at the Summit that includes industrial tariffs, non-tariff measures, as well as professional services, distribution and customs valuation? USTR is very concerned about concluding such a package where key sectors (autos, agriculture, financial services, telecom) may be very unhappy. USTR wants to keep max.

flexibility to make tradeoffs among sectors

This difference may be more a question of packaging than substance. We can push for maximum between now & Summit and ~~then~~ decide how to characterize what we get just before Summit. We might have "agreements in principle", for example, in ~~the~~ "virtually all industrial tariffs", with agreements in prof. services + distrib. + customs valuation + a statement by Pres. on PMFN, + a "target for completion".

Ag

the most critical

no progress
backwards on TRQ's + tariffs
since Wu Y.

Final services

pleasantly surprised
w/ Linderger

Insurance

revised paper
rhetoric ok
no paper so far except
old offer

Telecomms

Bill Corbett last week

Direct selling

no progress
our own problem

Insurance

not Linderger

IPR

don't want to open negotiations
A/V next on
distribution

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. draft	Suggested Points for China Meeting. (3 pages)	c. 06/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Economic Council
Malcolm Lee
OA/Box Number: CF 1176

FOLDER TITLE:

China WTO (June 1998) [1]

2010-1024-F

vz1867

RESTRICTION CODES

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EU puts pressure on China over WTO

By Guy de Jonquières in London, James Kynge in Beijing and Neil Buckley in Brussels

The European Union plans to urge Zhu Rongji, China's prime minister, to dispel growing doubts about Beijing's attitude to joining the World Trade Organisation by stating that his government is firmly committed to membership.

The demand, to be made at next week's EU-China summit in London, is prompted by concern in Brussels and Washington that Beijing's previous enthusiasm for early WTO entry is starting to wane.

EU officials said China appeared to be dragging its

feet over promises to speed up the WTO talks by tabling bolder offers to lower trade barriers in services and cut industrial import tariffs.

Western governments are also disturbed by Beijing's recent suggestions that they should soften their stance towards its WTO application in exchange for its commitment not to devalue its currency.

Although EU leaders will praise Mr Zhu next week for his determination to maintain the value of the currency, the yuan, they will insist China's exchange rate policy is unrelated to WTO entry.

Western officials are worried that the preoccupation

of China's new leadership with accelerating domestic economic reforms has led it to downgrade the importance of the 11-year-old WTO talks.

Chinese officials have indicated they want to make progress in restructuring the country's banking sector before agreeing to further substantial opening of its market to foreign competition. They say financial institutions need time to recapitalise and train staff.

However, the EU will tell Mr Zhu that internal reform and trade liberalisation should run in parallel. They will also deliver what one EU official called "a fairly stern message" that China

must respect earlier liberalisation promises by making new WTO offers soon.

The EU is disappointed that Beijing has so far failed to make good on a recent agreement in principle to adopt a more forthcoming approach to liberalising its services sector, particularly financial services.

Although China is said to be working actively on improving its WTO offer, it is balking at EU demands that it commit itself to firm deadlines for opening its services market.

China has also yet to implement an agreement, reached with Sir Leon Brittan, EU trade commissioner, in October, to use a new

negotiating formula, designed to eliminate its steepest industrial tariffs.

WTO members, which are due to hold their next round of talks with China next month, are still waiting for Beijing to table a tariff offer which it promised to make by the beginning of this month.

The European Commission is expected to approve today a paper outlining the EU's strategy towards China. As well as proposing annual EU-China summits, the paper states Europe's main demands in the WTO talks.

Officials said the paper was designed to set out firm goals for China's member-

ship terms and to show that the EU was prepared to be flexible, provided Beijing accepted liberalisation timetables.

The officials said clear timetables were needed to reassure western investors in China. The paper also calls on Beijing to liberalise foreign investment laws before joining the WTO.

The paper proposes closer co-operation in a number of areas, including EU technical assistance for Chinese financial, legal and administrative reform, science, training and the environment.

It also proposes a relatively low-key approach over human rights.

To: M. Lee
Fax #: 69290
Re: WTO
Date: March 25, 1998
Pages: 3, including this cover sheet.

FACSIMILE

Per our conversation. Hope this helps. Please look for the cable from Geneva tomorrow a.m. I'll do the same. dd

From the desk of...

Dorothy Dwoskin
Assistant USTR for WTO and Multilateral Affairs
Office of the U.S. Trade Representative
600 17th Street Northwest
Washington D.C. 20508

202 395 6843
Fax: 202 395 5674