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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	For Stuart Eizenstat from Alan Larson. Subject: Status of China WTO Accession (5 pages)	04/15/1998	P1/b(1)
002. email	White House Situation Room to Malcolm Lee. Subject: China / WTO (7 pages)	04/03/1998	P1/b(1)
003a. memo	Memorandum of Meeting, DUSTR Richard Fisher/MOFTEC Minister Shi Guangsheng. (4 pages)	06/16/1998	P1/b(1)
003b. memo	Memorandum of Meeting, DUSTR Richard Fisher/MOFTEC Minister Shi Guangsheng. (2 pages)	06/17/1998	P1/b(1)
003c. memo	For Charlene Barshefsky from Richard Fisher and Peter Scher. Subject: Report of Experts (1 page)	06/17/1998	P1/b(1)

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The United States-China Business Council

1818 N Street, NW • Suite 200 • Washington, DC 20036 Telephone: 202/429-0340 Fax: 202/775-2476

DATE: April 15, 1998

TO: Malcolm Lee
Director, International Economic Affairs
National Security Council

FAX: 202-456-9290

PAGES: 28

FROM: Karen Sutter
Director, Business Advisory Services

SUBJ: China and the WTO

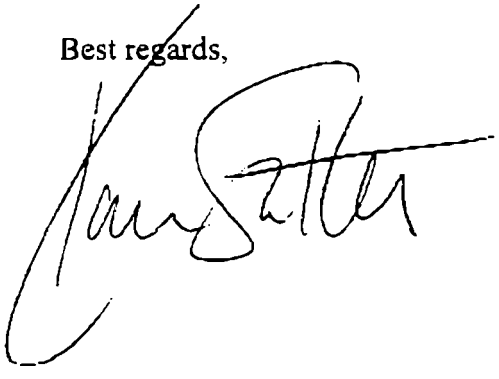
Dear Malcolm:

Thank you for your telephone call this afternoon. I am pleased to provide the following report, *China and the WTO: A Reference Guide*.

In addition, we are preparing several new WTO-related documents. The first will be an updated status report for our members and for public consumption. The second will be a major paper on distribution issues in China. Shorter papers are being prepared for PRC consumption addressing their concerns/reservations for granting foreign market access in a number of key service industries (i.e. banking, insurance, telecommunications and semiconductors). I would be pleased to forward copies to you once these reports are available.

Please let us know if you have any questions, or if you would like to discuss further.

Best regards,



China and the WTO:
A Reference Guide

Prepared by

The United States-China Business Council

November 1996

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THE US-CHINA BUSINESS COUNCIL

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Founded in 1973, the US-China Business Council is the principal organization of American corporations engaged in trade and investment with the People's Republic of China. Its membership encompasses more than 300 businesses with facilities throughout the United States. The Council is headquartered in Washington, DC, and maintains offices in Beijing and Hong Kong.

THE US-CHINA BUSINESS COUNCIL

China and the WTO: A Reference Guide

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Introduction

For nearly a decade, China has sought to join the General Agreement on Tariffs and Trade (GATT); now it is negotiating to join the World Trade Organization (WTO), the successor to the GATT. The Council's member companies would like China to accede, provided Beijing shows a true commitment to opening the Chinese economy. Accession should create conditions for rapid expansion of mutually beneficial bilateral commercial relations, and will provide a *multilateral* forum for resolving trade disputes and negotiating further liberalization. China's WTO accession would also signal both to other nations and to China's more conservative domestic bureaucracies the government's commitment to the economic reform process.

However, China's economy presents unique challenges to the WTO. By many economic indicators, China's per capita income remains among the lowest in the world, yet China's economy in aggregate is one of the world's largest and fastest growing. Over the nearly 20-year reform period launched by Deng Xiaoping in 1978, China has liberalized its economy at a breakneck pace. Chinese policies toward foreign investment and trade remain highly restrictive, nevertheless. The legal and regulatory regime is relatively undeveloped, and the PRC government's willingness to compete fairly in a free international trading regime remains in question.

Negotiators have a choice of two basic approaches to resolving the conundrum of bringing into the club of free traders an economy as big, complex, and closed as China's. They may seek to negotiate each major aspect of China's WTO accession protocol so that contracting parties feel reasonably secure that China will meet all of the WTO requirements on a detailed and comprehensive series of schedules. This approach has its drawbacks, however, as the tough scrutiny by trading partners may fuel opposition within China to joining the WTO—and slow down the accession process just when China's trading partners most urgently need China to reform. Further, it may have the unintentional effect of weakening underlying WTO principles by using them as the starting point for negotiation.

A second and perhaps more practical approach may be to ask China to commit unequivocally to the principles of the WTO, concentrate the accession negotiations on a few "key" issues, and leave the balance to be worked out inside the WTO. In this case, the focus of negotiations must center on the fundamental WTO principles of non-discrimination and national treatment, on the schedule of tariff concessions, and on major issues that influence US commercial interests in China and/or political support for PRC accession (e.g., the Executive Branch, US Congress, and American public). PRC compliance would be monitored and enforced through the WTO dispute resolution process and/or additional safeguards (e.g., conditioning China's WTO membership upon adherence to WTO principles). This approach could help speed accession while giving the contracting parties reasonable assurances that China will comply with WTO requirements.

This reference guide is organized in two parts. Part I provides background information about the WTO, its membership, and accession procedures. Part II provides an introduction to the major China-WTO issues. We have attempted to describe WTO basic principles and specific obligations, including preferential terms extended to developing countries. We have added commentary on PRC conditions that are relevant to these provisions.

PART I: THE WTO

1. The WTO:

The Marrakesh Agreement of July 1994 established the World Trade Organization on January 1, 1995, to administer the Uruguay Round Agreement of the General Agreement on Tariffs and Trade (GATT) and provide a framework for collective debate, negotiations, and adjudication of trade issues. The Marrakesh Agreement itself is a collection of agreements governing several aspects of trade in goods and services. The original GATT focused on the overall reduction in tariffs for traded goods. Subsequent agreements included in the WTO are designed to ensure further measures are not undertaken to undermine the liberalizing effect of tariff reductions and to begin to extend trade liberalization into the trade in services and foreign direct investment.

A series of multilateral trade agreements form the core of the WTO and are binding on all WTO Members. These include:

- Agreements on Trade in Goods
  - Agriculture
  - Sanitary and Phytosanitary Measures
  - Textiles and Clothing
  - Technical Barriers to Trade
  - Trade-Related Investment Measures
  - Anti-Dumping
  - Customs Valuation
  - Preshipment Inspection
  - Rules of Origin
  - Import Licensing Procedures
  - Subsidies and Countervailing Duties
  - Safeguards
- General Agreement on Trade in Services
- Agreement on Trade-Related Aspects of Intellectual Property Rights
- Dispute Settlement Understanding
- Trade Policy Review Mechanism

Four plurilateral trade agreements are also contained in the Agreement, but these are binding only on Members who voluntarily accept them. These include:

- Agreement on Trade in Civil Aircraft
- Agreement on Government Procurement
- International Dairy Agreement
- International Bovine Meat Agreement

2. Membership:

The following 124 governments are currently WTO Members:

Antigua and Barbuda, Argentina, Australia, Austria, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bolivia, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chile, Colombia, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, European Community, Fiji, Finland, France, Gabon, Germany, Ghana, Greece, Grenada, Guatemala, Guinea Bissau, Republic of Guinea, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Korea, Kuwait, Lesotho, Liechtenstein, Luxembourg, Macau, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Netherlands—for the Kingdom in Europe and for the Netherlands Antilles, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Singapore, Slovak Republic, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Zambia, Zimbabwe

The following 30 governments have requested to join the WTO and their applications are currently being considered by accession working parties:

Albania, Algeria, Armenia, Belarus, Bulgaria, Cambodia, Chinese Taipei, Croatia, Estonia, Georgia, Jordan, Kazakhstan, Kirgyz Republic, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Moldova, Nepal, Panama, People's Republic of China, Russian Federation, Saudi Arabia, Seychelles, Sudan, Sultanate of Oman, Tonga, Ukraine, Uzbekistan, Vanuatu, Vietnam

3. Accession Process:

Any State or separate customs territory exercising autonomy in the conduct of external commercial relations and other areas covered in the WTO may accede to the WTO.

In the first stage of accession, the applicant government must provide the WTO with a memorandum covering all aspects of its trade and economic policies having a bearing on WTO agreements. This memorandum becomes the basis for a working party to undertake a detailed examination of the accession request. The working party, which is a voluntary group of representatives from interested WTO

Members—generally major trading partners of the applicant country—drafts the basic terms of accession, i.e., what the applicant country must do and by when, including general policy liberalization commitments within set time periods.

In parallel to the working party, the applicant holds bilateral negotiations with interested Members to establish tariff and other concessions and commitments, which are then extended to all WTO Members, through Most Favored Nation (MFN) obligations. This bilateral process determines, among other things, the specific benefits gained by existing WTO Members in permitting the applicant to accede.

The results of these two parallel negotiating efforts are then combined in the working party's report, which is presented to the WTO General Council or the Ministerial Conference for adoption. If a two-thirds majority of WTO Members vote in favor, the applicant is free to sign its protocol of accession and join the organization, when necessary, after the protocol is ratified by its national parliament or legislature.

4. Status of China's Accession:

China was an original signatory to the GATT of 1947, but the Nationalist government on Taiwan withdrew China's membership in 1949. China formally applied to resume its status as a contracting party in 1986. The Working Party on China's accession was established in 1987 and has since met 20 times. When the WTO succeeded the GATT on January 1, 1995, China submitted a new application to accede to the WTO.

Limited progress has been made on China's terms of accession, which are contained in a formal protocol. The current working draft was tabled in the Working Party session held in December 1994, and several key sections remain incomplete and subject to negotiation.

In an attempt to guide the bilateral talks, the office of the US Trade Representative (USTR), the chief US agency responsible for negotiating WTO issues with China, provided China in December 1995 with a "road map" outlining in simple terms the full range of WTO commitments and basic issues that need to be resolved for China to accede to the WTO. The "road map" addresses fundamental WTO obligations that all Members are expected to uphold, such as national treatment, trading rights, transparency, and uniform application of laws and regulations, as well as specific market access concerns, including tariffs, non-tariff measures, industrial policies, investment policies, technical standards, and several others. At the Asia-Pacific Economic Cooperation (APEC) Ministerial meeting in Osaka in November 1995, the Chinese acknowledged that the "road map" would contribute to their accession bid, but have yet to present any public substantive response to USTR as to how Beijing either views or intends to meet these requirements.

To break the apparent stalemate in the accession process, Working Party Chairman Pierre-Louis Girard asked China to prepare a detailed accounting of the items to be included in six annexes to the protocol. These annexes, presented at the last Working Party meeting earlier this month, detail PRC plans to meet various WTO obligations and/or justifications for protracted or delayed phase-in schedules. The six annexes cover:

- A schedule for the phase-out of non-tariff measures
- A list of goods subject to State trading
- A list of goods subject to trading by specific "designated" trading companies
- A list of goods subject to price controls
- A list and rationale for all government trade-related subsidies and phase-out schedule for those prohibited under the WTO Agreement on Subsidies
- A list of goods subject to statutory inspection

Over the past few months, bilateral discussions have intensified with a series of meetings in Beijing, Washington, and again in Beijing. The Working Party is expected to meet again in February 1997, while bilateral talks may be held in the interim. The sheer frequency of exchanges is an encouraging sign that WTO accession talks are resuming in earnest. The activities over the next month or so should provide a strong indication whether or not this process will bear fruit in the year ahead.

5. Developed, Developing, and Least-Developed Country Status:

One of the objectives of the WTO is to ensure that all countries share in the benefits of international trade. To this end, "developing" and "least-developed" Members may be given transition periods to adjust to the WTO obligations. This is not to say, however, that least-developed and developing countries are indefinitely exempt from meeting WTO obligations, but rather that they must commit to meeting these obligations within a specified period of time.

The GATT interpretation of what qualifies as a developing country is less than clear cut, referring to the ability of the economy to "...only support low standards of living..." Despite its booming economy and strong track record for economic growth over the past 18 years, China remains a very poor country. For this reason, China maintains that it is a developing country, and will seek many of the exemptions and phase-in periods permitted developing countries. What China is labeled is less important that the specific conditions, phase-in periods, and special provisions that may be extended to China in its protocol of accession. All of these are subject to negotiation.

In the descriptions of WTO obligations that follow, we have highlighted special provisions that *may* be extended to developing countries—and thus, in theory, could apply to China—subject to negotiation. These provisions are in italics, and marked with this symbol ☞.

PART II: WTO OBLIGATIONS

1. Transparency:

In order for companies, both foreign and domestic, to operate efficiently and effectively in a given market, they must have full access to information concerning the laws and regulations with which the host government expects them to comply. Companies also need adequate notice when these laws and regulations are subject to change. In trade terminology, this access is referred to as "transparency."

Many of the WTO agreements contain transparency provisions that require disclosure at the national level—through publication in official journals—or at the multilateral level, through formal notifications to the WTO. There is a basic understanding in the WTO that only those laws that are published and made known to other WTO Members should be enforced.

Comment: In China's case, its legal and regulatory system has become far more open and transparent in recent years, in part because of the 1992 market access agreements reached with USTR. For instance, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) now publishes new regulations in the *Gazette*. Substantial problems remain at the national and especially the sub-national level, however, and internal, or *neibu*, regulations continue to be enforced. Further, China has yet to agree to establish a system for public comment and advance notice before implementing trade-related laws, regulations, and other measures.

The State Council is now in the process of releasing a series of industrial plans for the electronics, machinery, construction, and water resources sectors, and other plans are in the pipeline, but individual ministries continue to develop and operate under guidelines that remain largely unpublished. While these guidelines may not necessarily have the force of law, they contain many provisions that govern the role of foreign investment and foreign goods in these key sectors (*see* discussion of investment policies, p.15). In this instance, industrial policies, in the form of internal guidelines, are becoming less transparent over time.

2. MFN and National Treatment:

The two foundation stones for the WTO which grant no special provisions for developing countries are *non-discrimination* and *national treatment*. All other agreements under the WTO are designed to protect these principles in the trade of goods, and certain agreements have begun to expand these rights into the areas of investment and trade in services.

According to Article I of the original GATT, the famous "Most Favored Nation" clause, Members are bound to provide to the products of other Members tariff treatment no less favorable than that accorded to the products of any other Member country. No country is to give special trading advantages to or discriminate

against another (although certain preferences for developing countries are authorized, and common markets and free trade areas are permitted exceptions).

The GATT's Article III "national treatment" provisions require that once imported goods have entered a market, they must be treated no less favorably than equivalent domestically produced goods.

Several other WTO agreements contain important provisions relating to MFN and national treatment. The Trade-Related Aspects of Intellectual Property (TRIPs) agreement contains, with some exceptions, MFN and national treatment requirements relating to the provision of intellectual property protection by WTO members. The General Agreement on Trade in Services (GATS) requires Members to offer MFN treatment to services and service suppliers of other Members. It permits, subject to notification, exemptions to the MFN obligation covering specific measures for which WTO Members are unable to offer such treatment initially. National treatment is only an obligation in the GATS where Members explicitly undertake to accord it for particular services. Other WTO agreements with non-discrimination provisions include those on rules of origin, preshipment inspection, Trade-Related Investment Measures (TRIMs), and the application of sanitary and phytosanitary measures.

Comment: Under the Jackson-Vanik provisions (Title IV) of the US Trade Act of 1974, the United States can extend MFN to China only on a conditional basis, subject to annual review. For this reason, the United States has maintained the intention to invoke Article XXXV of the GATT—the non-application clause—if and when China accedes to the WTO and seeks to negotiate a separate agreement extending most of the WTO provisions on a bilateral basis. Under this non-application clause, the United States would not apply the WTO to China until such time as permanent MFN is extended to China.

Not surprisingly, China is much less eager to join the WTO under these circumstances. Chinese negotiators have maintained that China would be:

- Less likely to grant substantive concessions in the WTO negotiations;
- Less eager to join such a watered-down WTO; and
- Unwilling to apply their WTO concessions to the United States on a bilateral basis if the US invokes the non-application clause when China does accede

Most trade analysts now feel this is a tactical negotiating issue that must be resolved before China's accession is completed. China would prefer this matter to be resolved up front, while USTR would prefer to hold this issue in reserve to press for additional trade concessions. In either case, the Administration's ability to act is constrained by practical political considerations. To grant permanent and unconditional MFN to China will more than likely require either congressional action or concurrence. Thus, while permanent MFN and WTO are not explicitly linked under US law, they are "effectively" linked, and the Administration is expected to proceed on both tracks.

a. Trading rights:

The ability to import and export goods directly is a national treatment issue. Any restrictions on trading rights are likely to discriminate against imported goods and thus violate national treatment requirements. A trading system which restricts trading rights or limits those rights to authorized trading companies is likely to impede market access because sufficient competition cannot be realized. Such a system also raises the cost of imports as foreign suppliers must work through intermediaries.

Foreign trading rights have been expanded in China over the past 18 years, yet the right to engage in foreign trade is still restricted to authorized PRC trading companies and foreign-invested enterprises (FIEs)—

but only for the FIEs' production inputs, and such rights are generally extended only for specified products. China has proposed to expand trading rights within the existing registration system, and to convert to an automatic registration system by some future date. China announced on October 1, 1996, new rules permitting joint-venture trading companies in Pudong and Shenzhen on an experimental basis. This liberalized system would still require establishing a business enterprise in China to trade.

The US-China Business Council proposed in an earlier position paper that trading rights should be granted automatically to foreign and domestic individuals and enterprises (*see* "WTO: Trading Rights," September 15, 1995). That is to say, a small manufacturer in St. Louis should have the right to sell its product directly to distributors and consumers in China, regardless of whether it has invested or set up any sort of enterprise in China.

The Council proposal contains four key recommendations:

- Trading rights should be progressively liberalized for Chinese foreign trade corporations so that by some specified date in the future, all such corporations shall be free to trade in all goods, except those specified in an annex to the protocol.
- China should phase out progressively the list of goods subject to "designated trading" (trading of certain goods which are limited to "designated" trading companies).
- Trading rights should be granted freely to any individual or enterprise and not used to restrict trade.
- Foreign companies, foreign individuals, and FIEs should be accorded treatment no less favorable than domestic enterprises.

The European Union has identified the liberalization of China's foreign trade monopoly, and extending those rights to individuals, both foreign and domestic, as one of the key remaining issues to be resolved.

The Chinese position may be strongly influenced by the parochial interests of its negotiating body, MOFTEC, which has supervisory responsibility and commercial interests in many of the leading foreign trade corporations that operate under the current managed trading system. Thus, it is likely that intervention from the State Council will be necessary to force movement in the PRC position.

b. Wholesale, distribution, and retail rights:

China has also restricted foreign firms from investing in wholesale, distribution, and retail operations in China, albeit with some recent relaxation on a limited and experimental basis. Domestic manufacturers and their products face no such restrictions, and thus enjoy a distinct competitive advantage. The GATS requires national treatment only for those service sectors included in the Member's Schedule of Commitments and does not require national treatment in the areas of wholesale, distribution, and retail business. However, the Council hopes China would continue to liberalize the allowable scope of business for foreign-invested firms as this liberalization would provide wide-ranging benefits to China's economy. China's wholesale/distribution systems and retail industry are underdeveloped, inefficient, fragmented, and wasteful; hinder Chinese firms and FIEs from developing a business beyond a regional base; and discourage foreign investment.

Liberalization of this sector would:

- Allow technology transfer and know-how to disseminate to PRC distributors, resulting in more efficient national distribution networks;

- Result in greater efficiencies, lower costs, and better service to Chinese consumers through enhanced competition;
- Benefit Chinese and FIE manufacturers who can take advantage of these services to boost their sales and expand their market; and
- Encourage foreign direct investment in the interior; at present, experimental retailing, wholesaling, and distribution license have been limited to selected coastal cities and special economic zones.

To this end, in a series of recommendations to the US Department of Commerce in preparation for the US-China Joint Commission on Commerce and Trade discussions held in Washington, DC, September 26-27, 1996, the Council proposed that China:

- Allow foreigners to establish joint-venture or wholly foreign-owned distribution networks and retail trade entities;
- Allow foreign companies to establish branches or offices in China for the purpose of promoting, selling, and distributing the goods the company manufactures, regardless of whether the products are made domestically or outside China;
- Remove restrictions on the number of joint-venture retailing operations and locations permitted and allow wholly foreign-owned enterprises (WFOEs) to engage in retailing; and
- Remove restrictions on the proportion of imported goods that may be sold in foreign-invested retail establishments.

c. Open tendering system for imports:

In January 1994, China introduced a tendering system for the import of 171 industrial and electronic products, including goods produced by US firms (cellular phones, pagers, trunked radios, telecom infrastructure systems, and others). Chinese importers must bid for import certificates under this system. Similar goods produced by domestic manufacturers are not subject to tendering, thereby violating WTO national treatment obligations.

3. Tariffs:

Under the Uruguay Round Agreement, developed country tariffs are to be reduced by an average of 40%, lowering the trade-weighted average tariff to 3.7% by 1999. Additional agreements were made on various categories of products. For instance, many of the major industrialized countries have agreed to "zero-for-zero" tariff commitments covering specified products in pharmaceuticals, construction equipment, steel, distilled spirits, furniture, medical equipment, farm machinery, beer, toys, and paper. They have further agreed to tariff harmonization for selected chemicals.

☞ *Tariff rates on industrial products in developing countries are to be cut 30% to a 6.3% weighted tariff rate by 1999, unless otherwise specified in the country's schedule.*

The Uruguay Round further attempted to reduce the amount of uncertainty surrounding future tariff levels by increasing the number of products subject to "bound" tariff rates, or rates that cannot be adjusted above the designated level without compensating affected parties. For developed countries, nearly all

imports (99%) enter under bound rates, while for developing countries, 61% of imports by import value (73% of tariff lines) enter at bound rates.

Comment: On April 1, 1996, China reduced tariffs on almost 5,000 commodities in accordance with President Jiang Zemin's APEC promise last November to reduce China's average tariff by 33%. With this latest round of reductions, China's simple average tariff rate now stands at roughly 23%—down from 36% in 1995, though still above the 15% average rate for other developing countries. PRC Customs officials report that the trade-weighted average tariff is now about 17%. China has committed to reduce further the simple average tariff rate to 17% and to bind rates at 35% upon accession. However, China would like to create an exception list of products that would not be bound at 35%. This list would be composed of sensitive goods (i.e., autos and auto parts) that account for 10% of China's tariff lines currently subject to non-tariff barriers.

China's proposed tariff cuts are approaching the WTO targets set for developing countries, but the exception list may present substantial problems for American exporters in the "sensitive" categories. The magnitude of the tariff reductions is diminished when one factors in the 17% value-added tax (VAT) that theoretically is applied to most imports. The VAT was extended to capital equipment imported as a contribution to a direct investment project beginning April 1, 1996.

As a developing country, China has resisted efforts to comply with the zero-for-zero tariff commitments and tariff harmonization for selected textile and chemical products. The European Union has proposed that China adopt a tariff regime that, on average, does not exceed twice the OECD average tariff of about 5-6%.

China's relatively high tariffs, combined with its 17% VAT (which is calculated on top of the value of the good [F.O.B.] times the legal duty rate), promote smuggling and gray market imports. These practices deny Beijing rightful tax revenues and deter investment and technology transfers in high-tech, high value-added production in China. Tariff reductions will reduce the incentive to smuggle and will promote the competitiveness of domestic production in China.

4. Non-Tariff Measures:

A fundamental element of the WTO is the elimination of quotas and other non-tariff measures (NTMs), as these measures have a greater trade-distorting effect than tariffs. The WTO requires members to identify and schedule phase-outs for all WTO-inconsistent NTMs, including import licensing, tendering, quotas, and other measures used to control or limit imports. Temporary exemptions are permitted (i.e., safeguards and balance-of-payments measures), but additional WTO agreements specifically apply to trade barriers in the guise of technical standards and preshipment inspection policies.

The WTO Agreement on Technical Barriers to Trade establishes transparency and consultation requirements when developing technical standards to ensure that industrial standardization, safety, and environmental regulations are not used as a non-tariff barrier to trade.

☞ *Producers in developing countries may be granted a reasonable interval to come into compliance with the new standards (Article 12.8). No special conditions allow developing countries to impose new non-compliant technical barriers to trade.*

The WTO Agreement on Preshipment Inspection provides a framework of rights and obligations to ensure inspection requirements are not used as trade barriers. The Agreement includes provisions on national treatment, non-discrimination, and transparency (including procedures and criteria for inspection). Further,

all information collected in the course of preshipment inspection should be treated as confidential, and procedures must be established to protect confidentiality and avoid conflicts of interest.

The Agreement on Import Licensing Procedures simplifies the process for obtaining an import license so that the procedures do not present an unfair barrier to trade. The Agreement includes provisions on neutral application and equitable administration of licensing procedures, transparency, time period for submitting applications, the allocation of foreign exchange for licensed imports, and the protection of confidential information. Two basic types of import licensing are outlined in the Agreement:

- Automatic import licensing—Approval is granted in all cases and there are no restrictive effects on imports. Such systems may be maintained as long as underlying administrative purposes cannot be achieved in a more appropriate way.

☞ *A developing country may delay application of automatic import licensing provisions by no more than two years (Article 2.2).*

- Non-automatic import licensing—To ensure transparency, the country should publicize information concerning administration of restrictions, licenses granted over the most recent period and, where practicable, import statistics of products concerned.

☞ *A developing country is not expected to undertake additional administrative or financial burdens to fulfill the statistical reporting requirement.*

Comment: In the 1992 bilateral market access memorandum of understanding negotiated with USTR, China committed to phase out over a five-year period a broad range of NTMs. Since then, China has reduced the number of goods subject to NTMs from 1,247 to 399, according to MOFTEC Assistant Minister Long Yongtu. However, new import bans and restrictions have been introduced in the automotive, electronics, machinery, chemical, and other industries:

- China has instituted an "automatic" registration system for certain designated products that were formerly covered by NTMs. For instance, China eliminated import quotas for steel products in 1994, but now requires import registration for these same products. Beijing maintains that this system is merely for statistical reporting, even though the process duplicates routine Customs procedures. This redundancy generates data *prior* to the shipment of the goods. The only reason to collect this information in advance is to maintain the capacity to restrict targeted imports.

- The Ministry of Machine-Building Industry is preparing regulations to impose new quantitative restrictions on the import of digital and heavy-duty machine tools "to protect the relevant mainland industry" (August 17, *Zhongguo Xinwen She* [China News Service], translation from FBIS-CHI-96-161). These restrictions appear to be part of a broader initiative to promote the development of China's machinery sector. The August 19, 1996, "Business Weekly" supplement to *China Daily* reported on "Three Major Campaigns" to be conducted through the Ninth Five-Year Plan (1996-2000) by the Ministry of Machine-Building Industry. Few details were revealed in the article, which called for the development of 1,000 famous brand products and 500 "star" enterprises, of which 100 would be internationally competitive large enterprises. Further, domestically made products would account for 80% of the domestic market.

- The Ministry of Internal Trade and the Ministry of Health are each working on regulations designed to "manage" foreign brand-name products and limit the number of consumer products and pharmaceuticals permitted to register brand names.

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New safety and environmental registration requirements are also being applied to imports in a discriminatory manner. These were applied without advanced consultation and the entire system is relatively non-transparent.

- In May 1994, China announced new environmental control regulations for the import of chemical products. The inspection and registration requirements apply only to imports and not to domestic products—apparently in violation of WTO national treatment principles. In addition, registration fees are collected for products already previously imported and the registration may expire within a certain time period, regardless of the fact that the ingredients and structure of the chemical product remain unchanged. Such provisions impose an unnecessary barrier to trade.

New preshipment safety inspection and certification requirements are now being applied to a growing array of imported machinery and electronic products.

- In October 1995, China introduced quality and safety certification requirements for certain mechanical and electronics imports, and expanded the items subject to these requirements in October 1996. As the same inspection and certification requirements do not apply to domestic goods, the certification system thus discriminates against imports and is a violation of national treatment. The United States has asked China to provide a list of all products subject to statutory inspection and to demonstrate the requirements are not being used as a barrier to market access. Recent articles published in the PRC press prompt suspicion about the intent or purpose of the safety certification process. For instance, in "Analysis and Thoughts on China's 1995 Machinery and Electronic Imports," published in the May 30, 1996, *Jidian Ribao* (Machinery & Electronics Daily), Zheng Guowei calls for increased measures to tighten "macroeconomic control" of the import of machinery and electronic imports that are available from domestic sources. "...acting in line with international practice to use means such as tariffs, quotas, licenses, and technical quality standards *to prevent unchecked importing*" [emphasis added]. The article further calls for additional controls on the use of technology imports as a form of investment for FIEs.

These trade-deflecting practices draw suspicion toward China's legitimate efforts to promote product quality and safety.

5. Sanitary and Phytosanitary Measures:

The purpose of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures is to ensure that when Members exercise their sovereign right to protect food safety, plant, and animal health, they do so based on objective scientific data, while ensuring these rights are not used for protectionist purposes.

☞ *Developing countries may, upon request, extend the specified phase-in period for exceptions, taking into account their financial, development, and trade needs (Article 10.2). Except in urgent circumstances, producers in developing countries should be allowed a reasonable interval to come into compliance with new standards in importing countries.*

Comment: Chinese officials recently rejected several shipments of US wheat, claiming that the wheat was infected with tilletia controversa kuhn fungus (TCK smut). At least two shipments since June 1 have been rejected, despite the fact that TCK smut has never been found to endanger human health, and China has in the past accepted and treated such wheat after its arrival in China. In what appears to be a change in policy, Chinese officials have further announced they will no longer accept US wheat shipments unless

they are guaranteed to be TCK-free. By enacting such a policy, Chinese officials threaten the sale of several million additional metric tons of US wheat over the next marketing year.

US poultry, fruit, and tobacco exports have also suffered as a result of China's sanitary and phytosanitary policies. However, expanded shipments of US-grown apples and cherries were permitted in late 1995.

The WTO does not allow developing countries to impose non-complying sanitary and phytosanitary standards that do not meet the objective scientific standard of the Agreement. The United States is pushing China to implement the Agreement fully without delay.

6. Agriculture:

A major outcome of the WTO Agreement on Agriculture was to convert non-tariff measures into tariffs ("tariffication") and bind commitments in the areas of market access, domestic support measures, and export subsidies over a six-year implementation period from 1995-2000.

☞ *Developing countries may be accorded additional flexibility to implement reduction commitments over a 10-year liberalization period (Article 15.2).*

a. Market access:

All existing non-tariff measures must be converted into tariffs and combined with existing tariffs. Combined tariffs must be reduced, in six annual installments, by 36% overall from their 1986-88 base levels; each tariff line must be reduced by at least 15%.

☞ *Developing countries must average 24% reductions in combined tariffs, with 10% minimum/year over 10 years (WTO's Modalities for the Establishment of Specific Binding Commitments under the Reform Programme).*

b. Domestic support:

The agreement requires commitments on all subsidies that favor domestic producers unless these supports have little or no trade-distorting effects. Direct payments provided under production-limiting programs must conform to certain criteria.

☞ *Developing countries are allowed an additional exception for specified policies that encourage agriculture or rural development as an integral part of a development program. These goods are not included in computing the total Aggregate Measurement of Support (AMS)—the sum of all domestic support provided in favor of producers (Article 6.2).*

Other supports for domestic producers must be reduced under the total AMS, except those policies that do not exceed 5% of the total value of production of a product or product sector.

☞ *For developing countries, the ceiling is raised to 10% (Article 6.4).*

c. Export subsidies:

The value of export subsidies must be reduced by 36% over six years, in equal installments from 1986-90 levels. The volume of subsidized exports must be cut 21%, again over six years, in equal installments from the same base period.

☞ *Developing countries must reduce their export subsidies 24% and 14% by value and volume, respectively, over 10 years (Article 9.2). During the implementation period, the costs associated with marketing and transporting agricultural exports are exempt from this Agreement (Article 9.4).*

d. Export prohibitions and restrictions:

New export prohibitions or restrictions on foodstuffs, along with their effects on Member importers, must be reported to the WTO.

☞ *For developing countries, this requirement does not apply unless the country is a net exporter of the specific food-stuff concerned (Article 12.2).*

e. Special and differential treatment (Article 15):

Members may apply a "special treatment" clause to maintain import restrictions for up to six years under strictly defined conditions.

☞ *The time period is stretched to 10 years for developing countries.*

Comment: There are several contentious issues surrounding China's trade in agriculture, involving market access and State trading, tariff reductions, export subsidies, internal supports, and sanitary and phytosanitary measures:

- China has offered selective changes to its trading rights regime for seven agricultural commodities—wheat, corn, rice, vegetable oil, sugar, tobacco, and cotton—for which trading rights are currently restricted to monopoly State trading companies. State trading operations make it easy to implement quantitative restrictions. In the past, when countries with State trading monopolies joined the GATT, they were obliged to accept schedules mandating a specified annual increase in imports of each traded commodity. China is presently revising its system for trade in these agricultural commodities; non-State trading companies will be permitted to trade a portion of these goods under a tariff-rate quota (TRQ) system in which goods will be imported at low (yet unspecified) duty rates up to a given quota amount (also yet unspecified). The over-quota product would be subject to higher tariffs.

- Further tariff reductions for agricultural commodities are being sought by the United States and other major agricultural-product exporting countries such as Australia.

- China is proposing high bases for calculating the export subsidies that must be reduced and would like to maintain export subsidies for a long list of products.

- China has insisted that input and investment subsidies for specific commodities like cotton and wheat be exempt when calculating the AMS, thus making the calculation of AMS meaningless.

- The United States continues to face sanitary and phytosanitary barriers to poultry, wheat, fruit, tobacco, and livestock genetics exports to China.

7. Investment Policies:

The Agreement on Trade-Related Investment Measures (TRIMs) requires investment measures to be consistent with WTO provisions on national treatment (Article III, GATT 1994) and calls for the elimination of quantitative restrictions (Article XI, GATT 1994), unless there is a justifiable exception.

TRIMs explicitly listed in the Agreement as inconsistent with national treatment include:

- Local content requirements
- Import restrictions by volume or value of exports

TRIMs explicitly listed in the Agreement as imposing quantitative restrictions include:

- Restrictions on imported inputs based on amount of final product exported
- Import restrictions by restricting access to foreign exchange based on forex earnings
- Export restrictions either by volume or value

All TRIMs inconsistent with the Agreement must be identified and eliminated within a transition period of no more than two years.

☞ *Developing countries are allowed non-conforming TRIMs in accordance with GATT provisions on infant industry (Article XVIII:C) and balance-of-payment safeguard standards (Article XVIII:B) for up to five years. A further extension can be granted by the Council for Trade in Goods upon analysis of the Member's development, financial, and trade needs (Article 4).*

No TRIMs introduced less than 180 days prior to the entry into force of the WTO Agreement shall benefit from any transition period (Article 5.4).

Comment: Since 1949, China has been making industrial plans. During the reform period, these plans have increasingly been designed to direct the flow of foreign investment. In an effort to improve the transparency of the planning process, the State Council began publishing the industrial policies in spring 1994, starting with its industrial policy for the auto industry. In violation of TRIMs (and other WTO provisions), this policy contains discriminatory tax, subsidy, and resource and credit-allocation provisions; government approval stipulations and explicit limits on the number of joint-venture assembly projects; localization requirements; import restrictions, including bans on imports of SKD and CKD kits; export requirements; limits on foreign equity in vehicle projects; and a general prohibition on WFOEs in this sector.

Following the issue of the auto plan, the State Planning Commission (SPC), with two other ministries, issued the "Catalogue Guiding Foreign Investment in Industries" and related "Interim Provisions on Guiding the Direction of Foreign Investment," which establish a list of sectors in which foreign investment will be "encouraged," "restricted," or "prohibited." The Catalogue, which essentially makes public the planning policies that have long been in effect, does not contradict, at least directly, WTO principles.

The industrial plans are drafted by ministries in charge of specific industries, following consultation with local bureaus and companies subsumed under the ministry. The first draft is submitted to the SPC, which revises it and sends it back to the ministry. The SPC then organizes expert groups from other concerned ministries to review the second draft from the industrial ministry. After this stage of revision, the plan goes to the State Council for final authorization. Ministries develop more detailed guidelines to complement the plans but seldom make the guidelines public.

Following negative reaction from abroad to the auto plan, the SPC pledged that future industrial plans will not contain export requirements, localization requirements, or limits on foreign equity. But investors negotiating projects in several sectors frequently encounter the internal guidelines, whose regulatory power is unclear. As a result, some foreign investors see the industrial plans as Trojan horses built to look like a gift to WTO negotiators, but containing hidden, non-compatible restrictions on investment. While provi-

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sions of laws and regulations that are incompatible with TRIMs are being deleted, the PRC approval process forces some of these same provisions into foreign investment contracts.

Currently, four new industrial policies—for machinery, electronics, construction, and water resources—are awaiting final approval from the State Council. Currently under consideration at the working level are new industrial policies on individual housing, including the mortgage market; and telecommunications. In general, the plans emphasize the need for R&D, supported by government subsidies and tax incentives, and they enumerate industrial priorities. More detailed, internal guidance plans within industrial ministries tend to have the following characteristics:

- **Equity limits:** Industrial ministries select business sectors or companies that must be reserved for Chinese majority holdings. Examples include 77 "key" enterprises under the Ministry of Machine-Building Industry, electric power plants of 300 MW or more, steel mills, telecommunications projects, automobile tire plants, refrigeration equipment manufacturers, and photosensitive materials producers.

- **Export requirements:** In general, approving ministries require foreign investors to export in direct proportion to their equity stake, unless there are mitigating factors. Thus, if a foreign company takes a 30% equity stake, the joint venture must export 30% of its product. If the technology transferred is of a particularly advanced nature, the company works in an industry urgently needed by China, or if the foreign investors bring other sweeteners to the deal, the rule-of-thumb export requirement can be altered. The export requirements may be enforced through the permit system—import permits and permits to repatriate dividends, among others. Any of these permits can be denied based on a failure to meet the export or localization requirements in the venture's contract.

- **Localization requirements:** A timetable for localizing the components base may not be required, but foreign partners are frequently asked to commit to a localization schedule as a condition of project approval.

- **Industrial combination:** The industrial policies generally attempt to foster the formation of industrial groups by the strongest companies in a given industry. To achieve the formation of groups, the central government pledges "support" to companies with high production volumes, although what this support entails is not always clear.

In order to make the planning and approval process more transparent and create a guide to future dispute resolution, WTO negotiators are asking China to provide written information on its industrial policies, both internal and public.

China has indicated the intent to seek an infant industry exemption for TRIMs violations in the auto policy. Likewise, China has broadly hinted it intends to seek exemptions for any industrial policies introduced prior to the PRC's WTO accession. It is unlikely that China's planning authorities and trade negotiators consider the industrial ministries' internal guidance statements as formal industrial policies—and in violation of TRIMs—as these guidance plans do not necessarily have the force of law.

Infant industry exemptions have been granted only 13 times since the GATT's inception in 1947, and not once in the past 20 years. Without offering any specifics, the European Union has bluntly stated that China's industrial policies must be WTO compatible. Japan has raised specific concerns about China's auto industry policy. Any effort by Beijing to gain a derogation for any of China's priority sectors would require thorough justification and clear timetables, and would likely be subject to intense review and negotiation in the Working Party.

8. Intellectual Property Rights:

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPs) requires WTO Members to provide MFN, national treatment, and high levels of intellectual property rights (IPR) protection and enforcement. The protection extends to copyrights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and trade secrets.

The minimum standards of protection build upon existing international conventions negotiated under the World Intellectual Property Organization, including the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, and the Washington Treaty on Intellectual Property in Respect of Integrated Circuits.

Members must implement TRIPs within one year.

☞ *Developing countries must provide national treatment and MFN within one year, but have an additional four years to implement the remaining obligations of the agreement (Article 65.2).*

☞ *Developing countries may delay patent protection of product patents for an additional five years (for a total of nine years) for technologies not currently protected.*

Comment: China's IPR legal regime is relatively well advanced and meets most TRIPs requirements, in part due to three negotiated agreements with USTR in 1992, 1995, and 1996 with these notable exceptions:

a. Deterrence:

One of the fundamental principles of TRIPs is that Member states must provide remedies and penalties that have a deterrent effect vis-à-vis third parties. Because of low fines, protectionism, and the paucity of criminal enforcement actions, China's current system—while adequate in many ways—falls short of the mark regarding deterrent capability.

Drafting of an amendment to the Trademark Law is under way, and a recent draft indicated that maximum fines might be increased tenfold, that is, from the current 50% of "illegal revenues" to 500%. This is a step in the right direction, though stronger deterrents are needed.

Specific measures proposed by American companies and industry groups such as the International Trademark Association in the past include:

- The issuance of new regulations that would impose much higher fines against complete counterfeits (as opposed to imitations) of products. This is necessary because most counterfeiters do not retain records indicating the complete scope of their prior production and sales, thereby making it impossible to calculate accurately "illegal revenues."

- The establishment of minimum fines and more precise standards for the calculation of fines in future legislation. The Chinese government is aware of the gravity of the problems caused by protectionism and local corruption, and the establishment of fixed standards for setting fines would help to eliminate the discretionary power of local officials that leads to such protectionism.

- The allocation of greater resources to criminal enforcement by Chinese prosecutors and criminal courts. TRIPs ostensibly requires the criminal handling of all counterfeiting cases, even

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where only one unit of infringing items is found. Under internal regulations, Chinese prosecutors are only required to investigate cases where infringing goods valued over $12,500 are found, and prosecutors throughout China acknowledge that only a very small portion of these cases are actually prosecuted.

- Taking steps to facilitate "private prosecutions" under the Criminal Procedure Code. In cases where local prosecutors are too busy or otherwise do not wish to prosecute infringers, private prosecutions can fill the gap. The threat of criminal convictions should, in turn, deter infringements and encourage settlements. Another proposal has called for accelerated reforms under which the public security bureaus (PSBs) would play a more active role in IPR enforcement. It is rumored that the PSBs will begin accepting complaints for criminal raids and detention of IPR infringers in 1997. The investigation and detention powers of existing administrative enforcement bodies are notoriously weak, while the strength of those of the PSBs are legendary.

b. Access to judicial relief and preliminary injunctions:

TRIPs specifically requires that Members provide adequate access to injunctive relief. The current practices in China, as well as those proposed in draft legislation, fail to meet this standard:

- China's IPR legislation and enforcement systems are unusual in that they provide for enforcement through either judicial or "administrative" channels, including bodies such as the State Administrations for Industry and Commerce (SAIC), its local subordinate bodies, and the technical supervision bureaus. These administrative bodies have the power to impose fines and conduct limited investigations and seizures of infringing products. Although they share some of the powers and qualities of judicial organs, they are significantly weaker.

- China's Trademark Law gives the Trademark Review and Adjudication Board (TRAB), an administrative body under the SAIC, the power of final adjudication over all cases involving oppositions and cancellations of trademark registrations. Thus, if a pirate succeeds in registering another party's mark, the courts have no role in determining whether the registration was proper and should be canceled. Originally this system was devised in recognition of the fact that Chinese courts had little experience and limited abilities in handling complicated trademark issues. Arguably, however, the courts have grown increasingly capable of addressing such matters.

- The retention by the SAIC and the TRAB of the power to adjudicate opposition and cancellation actions has led to great injustices in cases where an infringer has succeeded in obtaining registration of the infringing mark. Chinese courts and other administrative bodies generally are unwilling to intervene in such cases, and the TRAB and Trademark Office generally require one to three years to resolve such cases. During this period, infringers are generally free to continue using their infringing marks.

- The Chinese government reportedly has argued that its existing administrative system provides analogous and functionally adequate IPR protection and, therefore, that the introduction of judicial appeals is unnecessary. This argument is unacceptable, particularly in light of the inability of existing administrative bodies to provide simple and reliable procedures for obtaining preliminary injunctions or other injunctive relief.

9. Textiles:

The WTO Agreement on Textiles and Clothing establishes rules for liberalizing trade in textiles and clothing over a ten-year period commencing January 1, 1995, and integrating the Multi Fiber Arrangement (MFA) into the rules of the WTO. Members may impose a "transitional safeguard" against import surges (of a specific product) that may cause serious damage or threat of serious damage to domestic producers.

Comment: If China joins the WTO in the near future, it should be included in the liberalizations now being implemented under the MFA. For this reason, the US textile industry is likely to seek to block China's accession and hold it to more restrictive bilateral textile agreements or to seek to include in any new bilateral textile agreement a provision postponing China's participation in the liberalization process and placing China on a delayed liberalization schedule. The current bilateral textile agreement expires December 31, 1996.

10. Rules of Origin:

The Agreement on Rules of Origins attempts to unify rules covering MFN, anti-dumping and countervailing duty actions, safeguard measures, and discriminatory restrictions to ensure they are not used to restrict or distort trade flows.

Comment: Effective July 1, 1996, the United States unilaterally revised its criteria for determining the country of origin of textile and apparel products. The origin of apparel goods is now based on where the goods are "assembled" rather than where the material is "cut" or where the "last substantial transformation" occurred. The origin of fabrics, home furnishings, and accessories is now where the fabric is knit or woven, regardless of any additional processing, such as printing, dyeing, finishing, cutting, or sewing. China ships a substantial quantity of raw fabrics to many countries around the world, and the fabric is then subject to these additional operations. Unless China's quotas for these products are adjusted upwards, the new rules of origin will drastically reduce China's textile and apparel exports, both globally and to the United States. US officials hope the new rules will reduce the amount of illegally transshipped goods, but a more likely result is that textile and apparel manufacturers will readjust their production patterns to find quota under the revised system.

11. Safeguards:

The Agreement on Safeguards establishes ground rules for imposing safeguard measures against import surges that threaten to cause "serious injury" to domestic industry.

☞ *Members cannot apply a safeguard against imports from developing countries if those imports total no more than 3% of total imports of that product, and provided developing countries with less than a 3% import share collectively account for less than 9% of total imports (Article XV.1).*

The maximum time limit for imposing safeguards is four years, with a possible four-year extension to "prevent serious injury."

☞ *For developing countries, the maximum limit for applying safeguards, including extension, is 10 years (Article 9.2).*

The same safeguard cannot be applied again for a period equal to the application period, and no less than two years, unless the application period was 180 days or less (in which case the ban on re-application is reduced to one year).

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☞ *Developing countries may reimpose safeguards on the same products for a period of up to one-half the time they were in originally in place, provided the re-imposition is after at least two years (Article 9.2).*

☞ *Flexibility is provided for opening fewer sectors, liberalizing fewer types of transactions, and extending market access in line with the level of development and national policy objectives (Articles V.3 & XIX.2).*

☞ *Developing countries may condition access and use of public telecom networks and services necessary to strengthen domestic telecom infrastructure, service capacity, and to increase participation in international trade in telecom services (Annex on Telecom, Paragraph 5.8).*

Comment: The United States and other countries have sought to include in China's protocol a transitional product-specific safeguard mechanism, which would permit Members to regulate import levels of products that threaten "market disruption" or "serious injury." A key point of contention is the injury standard to be used to implement safeguard actions. China is pushing for the tougher injury standard. Similarly, the United States is seeking to include a "general safeguard" under which some or all WTO benefits would be suspended if China is found not to be implementing its commitments in the protocol. Finally, the United States and European Union are pushing for a provision that would make China's adherence to the protocol subject to a periodic review under a special "transitional review mechanism."

The European Union views the general safeguard and transitional review mechanism as key to developing an acceptable protocol, and, as a consequence, is willing to settle for a more flexible and less-comprehensive WTO protocol, provided these fall-back protections are retained in the agreement. China is strongly opposed to any general safeguard or a transitional review mechanism as a condition for WTO membership.

12. Services:

The General Agreement on Trade in Services (GATS) extends GATT rules for applying national treatment, market access, and MFN conditions to trade in services and establishes a framework for liberalization. It contains specific annexes on air transport and financial services. The scope of GATS is limited and countries have considerable flexibility in identifying which specific services will be obligated to meet MFN requirements.

To enhance transparency, each country must establish within two years a liaison office to provide information on laws, regulations, and guidelines that affect trade covered by specific commitments.

☞ *Developing countries have some flexibility in meeting the two-year deadline (Article XV.1).*

Subsidies for service industries may have trade-distorting effects so they are subject to negotiations and possible countervailing action.

☞ *Developing countries have some flexibility for subsidies "supporting development objectives" (Article XV.1).*

Countries may identify measures exempt from MFN treatment. For instance, the United States has exempted nine specific services, including land use, financial services, air and road transport, pipeline transport, and space transport. Exemptions must be identified and reviewed by the WTO's Council for Trade in

Services after five years. The Council has no authority to deny MFN derogations, but derogations should be completed within ten years, although this is a soft target and not enforceable.

Comment: The United States is seeking from China scheduled commitments to extend national treatment and market access to a host of service sectors. The highest priorities from the US perspective include financial, telecommunications, distribution (including wholesale and retail), audiovisual, maintenance and repair (including after-sales service), travel, and tourism services. In the financial services sector, the United States is seeking scheduled commitments from China to permit foreign banks to conduct local and foreign currency business for FIEs and domestic enterprises; securities business including underwriting and asset management; and A and B share trading on their own and customers' accounts. Further, the United States is seeking scheduled commitments to permit foreign companies to participate in the insurance and reinsurance businesses, through wholly foreign-owned companies, branches, mutual companies, and joint ventures.

13. Balance of Payments:

Under the GATT and WTO, countries may restrict imports to safeguard their balance of payments (BOP). The Understanding on the Balance-of-Payments Provisions clarifies the rights and procedures for countries to use BOP safeguards. Price-based import restrictions should be favored over quantitative restrictions as these are the least trade-disruptive. The Understanding also includes provisions for consulting with and notifying the WTO BOP Committee regarding all BOP safeguard measures. Further, countries invoking BOP safeguards must specify the products covered, the trade flows affected, justification for the criteria used to determine which product(s) will be subject to the safeguard, and a timetable for eliminating the measures.

☞ *Developing countries may hold "simplified consultation procedures" if pursuing liberalization efforts previously submitted to the Committee. No more than two successive consultations may be held (Paragraph 8).*

Significant changes in import measures taken for BOP reasons must be reported to the Secretariat within 30 days of announcement, and an annual report must be filed with the Secretariat regarding all changes in laws and regulations.

Comment: China has enjoyed BOP surpluses in recent years, buoyed by a combination of merchandise trade surpluses and strong net capital in-flows. As of November 1996, China's foreign exchange reserves totaled $98 billion and are expected to surpass $100 billion by the end of the year. However, as China's trade regime is liberalized, the BOP situation may deteriorate. For this reason, China will likely seek to retain recourse to BOP safeguard provisions. USTR wants China to specify that BOP safeguards will be applied to address "critical" BOP situations, and that these measures will be price-based (tariffs), scheduled to decline over time, and will not be used to protect a particular sector or industry.

14. Anti-Dumping:

The Agreement on Implementation of Article VI of GATT '94 provides rules for calculating dumping margins and conducting investigations to protect the interests of exporters against protectionist measures.

☞ *The special provisions for developing countries are focused on developed country actions. Members are urged to provide "special regard" to the "special situation" of developing countries when applying anti-dumping measures, and to explore constructive remedies before applying anti-dumping duties which affect "essential interests" of developing countries (Article 15).*

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Comment: The chief area of dispute between the United States and China involves the methodology and procedures used in investigating anti-dumping actions against Chinese companies. China maintains it is no longer a "non-market economy" and believes each dumping case should be prosecuted on an enterprise-by-enterprise basis. Further, China insists the United States should cease using surrogate countries to estimate the costs of production.

15. Customs Valuation:

The WTO Agreement on Implementation of Article VII attempts to unify procedures for Customs valuation by laying out, in hierarchical order, the five methods for determining the Customs value of imported goods:

1. Transaction value of the good itself;
2. Transaction value of identical goods;
3. Transaction value of similar goods;
4. Deductive method; and
5. Computed method.

☞ *In a developing country, the importer may request to reverse the order of #4 and #5, but the request may be refused (Annex III.3).*

☞ *Developing countries not signatory to the Tokyo Round Agreement are granted a five-year grace period for general provisions (and may request an additional extension), and an additional three years for provisions relating to the computed value methodology (Article 20.1-2).*

Upon the request of the importer, countries reserve the right to value imports on the basis of unit price of post-import sale if goods undergo further processing in the country of import.

☞ *Developing countries may reserve the right to value imported goods on the basis of unit price of post-importation sale if goods undergo further processing in the country of importation without the request of the importer (Annex III.4).*

☞ *Developing countries may request to retain the right to value goods on the basis of officially established minimum values, if they are already using this basis (Annex III.2).*

Comment: China is pressing for the phase-in period provided to developing countries. The United States is pushing for immediate implementation of the agreement and, for now, has asked China to justify the request for a transition period. China further maintains a system of Customs value verification to combat rampant fraud and tariff duty evasion. The United States has raised concerns that the verification system could be used to control or limit imports.

16. Subsidies:

The WTO Agreement on Subsidies and Countervailing Measures strengthens GATT rules and expands the scope of prohibited subsidies. The Agreement is constructed to ensure that "specific" subsidies do not harm the interests of Members, and that countervailing measures do not unjustifiably impede trade; and to offer guidelines for providing relief to producers who are adversely affected by subsidies.

Subsidies are classified in three color categories:

- Red (prohibited): contingent on export performance, currency retention, or domestic content.
- Green (not subject to countervailing duties): not specific, or specific subsidies which are granted for basic or applied research, to disadvantaged regions, or to provide environmental assistance.
- Yellow (permitted, but may be subject to countervailing duties if there are trade effects): all other subsidies.

☞ *Developing countries have eight years to comply with the prohibition on subsidies contingent upon export performance (Article 27.2), and are exempt if designated a "least-developed country" by the United Nations or if per capita GNP is less than $1,000 per year and they are listed in Annex VII to the Agreement.*

☞ *Developing countries may continue to give agricultural subsidies for five years (Article 27.3).*

☞ *Developing countries must not increase the level of export subsidies, and must phase out these subsidies within a shorter period if the subsidy is inconsistent with development needs (Article 27.4).*

☞ *Developing countries must phase out within two years export subsidies for any product which has reached export competitiveness (Article 27.5), but have eight years if the country qualifies under the Annex VII provisions for least-developed countries.*

Comment: The Agreement recognizes that subsidies may play an important role in economic development programs for developing countries or economies in transition, and provides substantial phase-in periods for their removal. Nevertheless, subsidies are a contentious issue in general, and are likely to be particularly contentious with regard to China's protocol of accession. The Agreement defines a subsidy as a financial contribution or government income support that confers a benefit. Financial contributions may take the form of direct transfers of funds (grants, loans, equity infusions, and loan guarantees); fiscal incentives such as tax incentives; government provision of goods and services or government purchases; or private agents acting on the behalf of the government to provide any of these actions. However, the Agreement only applies to "specific subsidies": subsidies which apply to specific industries or sectors (and not geographical targets).

Beijing maintains that there are no subsidies in China, and that all financing of State-owned enterprises is now channeled through the banking system. But incomplete banking reforms have left the credit allocation system subject to substantial influence from the State and Party authorities at the local and provincial levels.

Elements contained in China's industrial policies, guidelines for foreign investment, and credit allocation programs appear to provide further subsidies in violation of this Agreement. For instance, the industrial policy for the auto industry provides targeted industries with preferential access to goods and services, further selects specific enterprises for favorable treatment, and offers debt forgiveness for loss-making enterprises. Perhaps more problematic is the entire banking and credit allocation system, which continues to be heavily influenced by the Party and State.

17. Government Procurement:

One of four non-binding plurilateral agreements in the WTO, the Agreement on Government Procurement lays out general rules and obligations to ensure non-discrimination and open competition for government

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contracts in goods and services. To date, nine Members (including the European Union as one signatory) have signed on to the Agreement. Annexes list named government entities that are subject to the Agreement, including central and local governments, public utilities, etc.

Comment: Because so much of commercial activity in China is conducted by governmental organizations, the United States, European Union, and other members of the Working Party have pressed China to join this Agreement. China has agreed to study the Agreement and consider joining at a later date.

18. Civil Aviation:

The plurilateral "Agreement on Trade in Civil Aircraft" provides internationally recognized disciplines on aircraft trade. Central to the agreement is the commitment by the signatories to bind tariffs on aircraft and aircraft components at a zero-duty rate. Among the agreement's other provisions are guidelines for government-mandated offset programs.

Comment: The United States, with the support of the US aircraft industry, has taken the position that all aircraft-producing countries that accede to the WTO must accept the obligations of this agreement. China is looking to develop an indigenous aircraft industry. It has signed a memorandum of understanding with a number of European aircraft manufacturers to co-produce a 100-passenger aircraft, and is working with virtually every US aircraft and engine manufacturer to develop civil aircraft components or parts. The European Union appears to support the US effort to press China to join this plurilateral agreement. To date, China has been reluctant to agree to this or any of the other "voluntary" plurilateral agreements.

CONCLUSION

The WTO negotiations by nature are messy, complex operations which often entail substantial give and take among major trading partners. The size and transitional nature of China's existing economy and trade regime make this an even more difficult assignment. Nevertheless, it is a task worth undertaking as important benefits will accrue to the United States, China, and the WTO itself, if acceptable terms can be worked out for China to accede to the World Trade Organization.

The purpose of this report is not to generate a detailed laundry list of what needs to be addressed in China's protocol of accession, but rather to provide the business community with a reference guide that marries an understanding of the WTO with an understanding of how business and trade are actually conducted in China today. This reference can and should be used for companies to determine their own priority concerns in the WTO negotiations. We hope it proves useful in this task.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	For Stuart Eizenstat from Alan Larson. Subject: Status of China WTO Accession (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) [3]

2010-1024-F
vz1869

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
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Lee, Malcolm R.

From:	WHSR
Sent:	Wednesday, April 15, 1998 5:05 AM
To:	Bader, Jeffrey A.; Boone, Sherman G.; Gagnon, James M.; Kristoff, Sandra J.; Kyle, Robert D.; Lee, Malcolm R.; Norris, John J.; Pritchard, Charles (Jack) L.
Subject:	CHINA: U/S AARON'S MEETING WITH SDPC CHAIR ZENG PEIYAN
CLASS:	UNCLASSIFIED
DTG:	150848Z APR 98
MSGTO:	RUCPDOC/USDOC WASHDC PRIORITY RUEHC/SECSTATE WASHDC PRIORITY 5540
ORIG:	AMEMBASSY BEIJING
PREC:	PRIORITY
SSN:	6620
TOR:	980415045543 M3243878

UNCLAS SECTION 01 OF 03 BEIJING 006620

SENSITIVE

STATE FOR EAP/CM AND EB/TPP/BTA/ODC

STATE FOR EAP/DAS SHIRK

STATE PASS USTR FOR CASSIDY/LUND/CHENG

STATE PASS FEDERAL RESERVE FOR FERNALD SAN FRANCISCO FRB CURRAN

NSC FOR KRISTOFF AND BADER

TREASURY FOR OASIA/ZELIKOW, INA/QUINN/MARCUS

USDOC FOR 4420/DFOREST

E.O. 12958: DECL: N/A
TAGS: BEXP, EINV, ETRD, CH
SUBJECT: CHINA: U/S AARON'S MEETING WITH SDPC CHAIR ZENG PEIYAN

REF: Beijing 6009

(U) CLASSIFIED BY ECONOMIC MINISTER-COUNSELOR, ROBERT LUDAN;
REASON: 1.5 (B) AND (D).

1. (SBU) Summary: Department of Commerce Undersecretary David Aaron told State Development and Planning Commission (SDPC) Chair Zeng Peiyan that market opening for U.S. goods and services was an ally of China's economic reform and that U.S. participation in the economy would increase efficiency and create jobs. Aaron said China's growing bilateral trade surplus was politically unsustainable and that a failure to achieve commercial successes would cast a shadow over the June summit meetings. Zeng delivered a litany of reasons for China's bilateral surplus but seemed to understand the need for concerted action before the summit. Zeng seemed as disappointed as U/S Aaron that SDPC staff had identified only six out of a list of 25 projects as "ripe" for approval. Aaron said this added to the "bad news" that he had heard earlier in the day on opportunities for direct sales marketing and aircraft sales (septels). A delegation of 18 business representatives accompanying Aaron drove home the point that U.S. firms stood ready to create jobs and channel investment efficiently. End Summary.

2. (U) Department of Commerce Undersecretary Aaron, accompanied by A/S Marge Searing, Commercial M/C, and a delegation of 18 business

representatives, met with State Development and Planning Commission (SDPC) Chair Zeng Peiyan on April 13. The two sides explored possible areas of commercial cooperation before the U.S.-China summit, first in a meeting open to the business delegation and then in a separate meeting of the official delegation.

THE TRADE DEFICIT AND THE SUMMIT
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3. (SBU) During the government-to-government meeting, U/S Aaron conveyed President Clinton's strong concern that the bilateral deficit was worsening, with Chinese exports to the United States increasing by nearly 25 percent per year and imports from the U.S. growing by less than ten percent per year. Aaron stressed that this situation was politically untenable and would affect the June Summit if no way was found to expand U.S. exports or project approvals. Aaron noted that the U.S. side had presented a list of 25 projects that could help correct this trend if the bids went to U.S. bidders. He suggested that the approvals be staged over the upcoming weeks before the summit and stressed that it was appropriate for only one or two such projects to coincide with the Summit meeting itself.

4. (SBU) Zeng pressed his staff to provide a preliminary response on the project list. The SDPC reported that it had divided the list into three types of projects: (1) those "ripe" for approval; (2) those that still needed time for study; and (3) those just going out for tender. Only six projects fell into the first category, including the boiler for the Dezhou power plant. Most fell in the middle category. Two projects in the third category related to natural gas. Zeng's staff emphasized that the senior leadership had yet to decide on the basic policy on whether to approve the use of natural gas (REFTEL). Zeng seemed to waver in response to Aaron's query on whether only projects in the first category would be ready in time for the Summit.

UNCLAS SECTION 02 OF 03 BEIJING 006620

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TREASURY FOR OASIA/ZELIKOW, INA/QUINN/MARCUS

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E.O. 12958: DECL: N/A
TAGS: BEXP, EINV, ETRD, CH
SUBJECT: CHINA: U/S AARON'S MEETING WITH SDPC CHAIR ZENG PEIYAN

REF: Beijing 6009

5. (SBU) Aaron said that if only six projects were feasible, this would add to two pieces of disappointing news he had to take back to Washington (septels). The first piece of bad news, which came during a meeting with the Ministry of Foreign Trade and Economic Cooperation, was that China planned to restrict direct sales marketing operations in China. He warned that this would cause a "firestorm" in the U.S. since two U.S. firms had already invested USD 125 million in the sector, providing employment for two million people. The second piece of bad news came during

discussions with civil aviation officials, who suggested that "letters of intent" to purchase Boeing aircraft might not be realized. Aaron said this had come as a "great shock."

6. (SBU) Zeng explained that the economic downturn in East Asian markets had caused problems for some of China's smaller airlines. He said he fully understood U.S. concern and said China would do its best to realize some contracts for the Boeing aircraft. Aaron pressed Zeng to work hard on this point since there were no items that could compensate for the value of such contracts. He said the United States had a profound desire to see the bilateral relationship improve and that a failure to achieve commercial successes would cast a shadow over the summit meetings. In response to Zeng's query, Aaron said that, as in President Jiang's U.S. visit, President Clinton would probably not participate in signing ceremonies during his visit to China. He stressed, however, that there would be considerable public and media pressure to show that the two sides were taking concrete steps to diminish the bilateral trade deficit.

HISTORIC OPPORTUNITY TO LIBERALIZE TRADE
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7. (U) During the open meeting, Aaron described the historic opportunity (between two Summits) to encourage more imports from the United States and further China's own plans for economic reform. While stressing that the bilateral trade imbalance was a politically unsustainable, serious and growing problem that required immediate attention, he argued that China should recognize that market openness was an ally of economic reform, not an enemy. China's far-reaching reform efforts would be enhanced through the importation of advanced equipment, technology, and know-how, as well as infrastructure planning and design, insurance, project finance, and other professional services, all of which would help attract investment and create jobs. Aaron noted that the businesses represented in his deegation possessed the ability to provide this much-needed expertise.

8. (U) Zeng replied that the SDPC was deeply engaged in China's preparations to make President Clinton's visit a success. The visit was important for both countries and was attracting interest around the world. Both sides had discussed the trade imbalance many times, but this was mostly the result of different methods of calculation. China did not want to see its bilateral surplus increase, but this should be seen in a historical context. China had bilateral deficits with the United States in the past; now the balance was in China's favor. The Asian financial crisis had resulted in a restructuring of the international economy and more processing trade for China, contributing to China's surplus. The value added form this processing was very small by comparison to the total value of the exports. Zeng added that some imports were

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subject to U.S. restrictions.

9. (U) Regarding tariffs and opening the services market, Zeng said some areas could be opened but others were more difficult. Particularly at this stage of "transformation," Zeng said China could only liberalize areas where it had the capacity to compete and that the economy could afford. Zeng said the most important concern was maintaining social stability, without which China could be thrown off its long-run reform targets. Many state-owned enterprises (SOE's) were unprofitable, and more layoffs were under consideration. China's legal framework was weak, and the Southeast Asian financial crisis had demonstrated the importance of the services industry. The crisis had not put China off of its reform path but showed that reform must be gradual. China had taken constructive measures, however, by deciding to stimulate its domstic economy and increase U.S. imports. He concluded by referring to regional incentives for foreign investors and his hope for greater private sector cooperation between the two countries.

10. (U) Aaron replied that he was encouraged that China seemed to drawing the correct conclusions from the Southeast Asian financial crisis, especially compared to the stagnant Japanese economy. He stressed that more open markets and decentralization would help China overcome the regional financial turmoil and praised China for its "stalwart, forward-looking, and responsible" program to boost domestic demand.

11. (U) Aaron then turned the floor over to the 18 business representatives present, who in turn described their participation in the Chinese economy. Representatives of the infrastructure firms, many of which were already operating in China, emphasized their technological know-how and capacity to generate employment. The large number of insurance firms effectively presented the case that they could quickly boost employment in the service sector while generating capital for investment in infrastructure.
Sasser

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002. email	White House Situation Room to Malcolm Lee. Subject: China / WTO (7 pages)	04/03/1998	P1/b(1)

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

FOLDER TITLE:
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PRESIDENT CLINTON:
BUILDING ONE AMERICA

April 14, 1998

"The story of race relations in America can be viewed through the prism of sports in our country. In many ways, sports has been ahead of the curve when it comes to recognizing that ability and talent, speed and sportsmanship count a lot more on the field than the color of a player's skin."

President Bill Clinton
April 14, 1998

Today, President Clinton travels to Houston, Texas to participate in ESPN's national conversation on race, "Race and Sports: Running in Place?" The town meeting will use sports as a microcosm for examining race related issues that affect other parts of society. Additionally, at a separate event, the First Lady announces an effort by the Anti-Defamation League and the Boys and Girls Clubs of America to create community based initiatives against hate.

The President's Initiative On Race (PIR). The President is leading the nation in an effort to become One America in the 21st Century. To achieve this goal, President Clinton is:

- **Developing policy that offers opportunity to all who work for it.** From education empowerment zones to stepping up enforcement to stop discrimination in housing, President Clinton is developing and implementing policies that help all Americans make the most of their lives;

- **Engaging Americans in a broad and constructive dialogue on race.** The President is encouraging communities across the country to engage in constructive dialogues on race. He is calling on them, not only to stand against discrimination, but to build greater understanding across racial lines;

- **Highlighting Promising Practices that work.** In communities throughout the country, people are working to bridge racial divides and to create greater opportunity for all. The President's Initiative is identifying and creating a compilation of these efforts, named "promising practices," so that others may participate in them or replicate them in their own communities;

- **Recruiting leaders.** The President is inviting leaders in all areas of American life to help him bring his One America Initiative to all communities;

- **Focusing on young Americans.** Recognizing that young Americans are the future leaders of this nation, President Clinton is making a special effort to actively engage youth in his Initiative;

- **Working with the PIR Advisory Board.** A small, diverse group of individuals,

recognized for their outstanding leadership on race related issues, is advising and assisting the President in outreach efforts and consultations with experts;

- **Preparing a report for the nation.** The President will issue a report that: 1) presents his vision of One America, including an assessment of the growing diversity of our nation; 2) reflects the work that has occurred during the Initiative; and 3) provides recommendations and solutions that enable individuals, communities, businesses, public and private organizations and government at all levels to address difficult issues and build on our best possibilities.

NATIONAL SECURITY COUNCIL/NATIONAL ECONOMIC COUNCIL

INTERNATIONAL ECONOMIC AFFAIRS

F A X C O V E R S H E E T

Date 4/27

Number of pages to follow 1

FROM: Malcolm Lee

TEL: 202-456-9299

FAX: 202-456-9290

TO	PHONE NUMBER	FAX NUMBER
Mike Honnold		6476820
Hanle Levine		

MESSAGE/SPECIAL INSTRUCTIONS:

Some useful input (crosscut) for 1 page and overall fact sheets.

Bare bones on WTO China.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

OFFICE OF PUBLIC & MEDIA AFFAIRS
600 17TH STREET, N.W.
WASHINGTON, D.C. 20508

PHONE: 202.395.3230/ FAX: 202.395.7228

FAX TRANSMISSION

cc: Sperling Brainard

Date: 4/24/98

To: WHO staff

Fax number:

From: Public + Media Affairs

Subject:

Pages (including cover page):

Comments:

News Conference by Ambassador Barshefsky
Beijing, China
April 23, 1998

I happen to be here on the nicest day of the year. Let me talk briefly about the WTO process and then I want to touch on three bilateral issues. With respect to WTO, we have held broad, in-depth and very substantive meetings with Minister Shi as well as with State Counselor Wu Ye. These meetings were designed to take stock of progress on the WTO accession negotiations as directed by President Clinton and President Jiang Zemin when the two leaders meet in Vancouver last November. At that time, the leaders told then Trade Minister Wu Ye and me that we should -- at the end of March or early April -- sit down and take stock of where we were. Our meetings here have been very constructive and I believe we have put the negotiations back on track.

The discussions covered a very broad range of WTO issues including tariffs - both industrial and agricultural; non-tariff measures such as quotas and licensing requirements; services including professional services such as accounting, legal and architectural services; distribution such as wholesaling and retailing, and ancillary distribution services, for example courier services, transportation, maintenance repair and so on; telecommunication including basic and value added services, banking, securities and insurance. These were among some of the issues discussed. As I said the discussions were quite in-depth. The purpose of these meeting were to determine how best to proceed with negotiations, and from the point of view of the United States, the purpose also was to better gage China's intentions with respect to WTO accession. As many of you may know, we felt that we had received rather mixed signals following the good November Vancouver meetings. Our experts will now be meeting -- as they have been -- to look one-by-one at the individual issues. WTO accession, for any applicant to the WTO, is a very complex, very lengthy process. But I am quite pleased with the overall tone and seriousness displayed by my Chinese colleagues and fully believed that we have reestablished momentum.

The three bilateral issues that I would like to address are first agriculture. Ambassador Scher, my agricultural negotiator, and the U.S. Department of Agriculture will be coming out here in about two weeks to discuss a range of agricultural issues which will bear not only on WTO accession but also on a series of bilateral disputes that have remained unresolved for too long. These include the removal by China of sanitary and phytosanitary restrictions on US exports of citrus, of wheat, of meat, of stone fruit, and of other agricultural products. The meetings Ambassador Scher will have were established long

before my meetings today but WTO also will be among the subjects covered.

The second bilateral issue was Intellectual Property Rights (IPR). Two years ago, China was the unquestioned global leader in the export of pirated products, particularly pirated CDS, CD- ROM and software. The situation has dramatically reversed over these last two years. In 1996, when the Intellectual Property Rights Enforcement Agreement was finalized, China had closed fifteen factories, they have since closed 64, including 54 of which were underground factories that are not licensed in any respect by the state, and 10 which were improperly registered, discovered and then shut down entirely. We are very pleased by this progress. This is very impressive. However, as I discussed with my counterparts we want to ensure that China continues to strengthen its enforcement of Intellectual Property Rights in this regard and user piracy of software is a particular concern as is the substantial increase in trademark counterfeiting. Our next round of bilateral IPR consultations will be held in early June and we will send out our chief negotiators on that.

The third bilateral issue which arose quite suddenly has to do with the recent ban on direct selling in China. This ban effects US companies such as Amway, Avon, Mary Kay and others. The ban has effectively shut down the legitimate operation of these and other US companies in China. These companies have invested over $120 million dollars in China and provide income to over 2 million Chinese. They are companies that have kept the interest of consumers in the forefront, providing money back guarantees if consumers are dissatisfied along with a cooling off period under which consumers can change their mind with respect to any purchases they may have contemplated. In addition, these companies, because of very substantial distribution networks in China, are completely accountable to the Chinese authorities. These operations, therefore, are quite readily distinguishable from pyramid sales, piracy schemes, and other chain selling operations that have caused concern on the part of the Chinese government and have created something of a consumer fraud problem in China. We've raised these issues over the last several days and State Counsel Wu Ye will be meeting with the US companies involved next week and we will be watching the progress of these meetings. Obviously, the goal here is to reestablish these companies operations as soon as possible. With that, I am happy to take
questions.

##

June 3, 1998

MEMORANDUM

TO: Jim Steinberg

THROUGH: Sandy Kristoff

FROM: Malcolm Lee

RE: China WTO Negotiations

Issue for Decision

- Is a strong market access package achievable by the Summit?

- In light of Jiang's message to Berger that a political decision has been made, and that China is prepared to take positive steps to reach agreement by the summit, how do we position ourselves, both domestically and in negotiations, to produce an acceptable result?

Approach

Suggest you ask Barshefsky to summarize our objectives for summit WTO announcement and where negotiations stand. What have we achieved? Distances to go. Where are we vulnerable? How do we proceed – Fisher and Barshefsky trips?

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?

Do we harvest the progress made, or hold out? Need to discuss 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. Business

community is divided. Some would be happy for accession now; others concerned that their specific needs be met (e.g., agriculture, insurance, autos).

At the Vancouver APEC meeting, 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. Some have speculated that ambitious economic and government reforms and rising unemployment have made the Chinese more resistant in WTO talks.

Jiang left Berger with a clear message this week that WTO accession is a top summit priority for the Chinese. Jiang, with Wu Yi at his side (unprecedented), told Berger that he had convened a meeting where a political decision was made on China's WTO accession, and that China is prepared to take positive steps to reach agreement. He did not elaborate. It remains to be seen how and where China will show more flexibility in the specific areas under negotiation.

Deputies/principals agreed at last meeting on this subject on the following.

1. Work toward market access package at summit.
2. At summit, agree on framework for concluding negotiations by the end of the year.
3. If successful, signal to Chinese we will seek permanent MFN upon in 1999 upon China's accession to the WTO.

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, but we need to press forward.

- In industrial goods, we have significant progress, but 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, especially agricultural tariffs and China's tariff rate quota system. U.S. exports, including wheat, citrus and plums face restrictions in China based on non-scientifically 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 audio-visual, telecommunications, insurance, and banking and securities, where negotiations have not really begun. Of these areas, industry expectations are highest on insurance. Others have more modest goals.

<u>The debate is whether a package can be highlighted at the Summit that includes industrial tariffs, non-tariff measures, professional services, distribution and customs valuation, along with announcement that we will target completion of negotiations by the end of 1998.</u>

- USTR is very concerned about concluding such a package where key sectors (autos, agriculture, financial services, telecom) may be very unhappy.

- State believes the difference may be more one of packaging than substance. State suggests pushing for maximum between now and summit and decide how to characterize what we get just before the summit. We might have "agreements in principle", for example, in "virtually all industrial tariffs", with agreements in professional services, distribution, customs valuation and a statement by the President on permanent MFN, with a target date for completion of talks.

- We should decided to send Fisher early (next week) to smoke out the Chinese and then send Barshefsky if the Fisher talks have made progress.

June 3, 1998

MEMORANDUM

TO: Gene Sperling
Jim Steinberg

FROM: Malcolm Lee

RE: China WTO Negotiations

Issue for Decision

- Is a strong market access package achievable by the Summit?

- In light of Jiang's message to Berger that a political decision has been made, and that China is prepared to take positive steps to reach agreement by the summit, how do we position ourselves, both domestically and in negotiations, to produce an acceptable result?

Approach

Suggest you ask Barshefsky to summarize our objectives for summit WTO announcement and where negotiations stand. What have we achieved? Distances to go. Where are we 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?

Do we harvest the progress made, or hold out? Need to discuss 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. Business community is divided. Some would be happy for accession now ( ). Others concerned that their specific needs be met (e.g., agriculture, insurance, ~~autos~~).

Chemicals, sectoral initiative?
Paper, wood action

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. Some have speculated that ambitious economic and government reforms and rising unemployment have made the Chinese more resistant in WTO talks.

Jiang left Berger with a clear message this week that WTO accession is a top summit priority for the Chinese. Jiang, with Wu Yi at his side (unprecedented), told Berger that he had convened a meeting where a political decision was made on China's WTO accession, and that China is prepared to take positive steps to reach agreement. He did not elaborate. It remains to be seen how and where China will show more flexibility in the specific areas under negotiation.

Deputies/principals agreed at last meeting on this subject on the following.

1. Work toward market access package at summit.
2. At summit, agree on framework for concluding negotiations by the end of the year.
3. If successful, signal to Chinese we will seek permanent MFN upon in 1999 upon China's accession to the WTO.

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, but we need to press forward.

- In industrial goods, we have significant progress, but 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, especially agricultural tariffs and China's tariff rate quota system. U.S. exports, including wheat, citrus and plums face restrictions in China based on non-scientifically 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 audio-visual, telecommunications, insurance, and banking and securities, where negotiations have not really begun. Of these areas, industry expectations are highest on insurance. Others have more modest goals.

The debate is whether a package can be highlighted at the Summit that includes industrial tariffs, non-tariff measures, professional services, distribution and customs valuation, along with announcement that we will target completion of negotiations by the end of 1998.

- USTR is very concerned about concluding such a package where key sectors (autos, agriculture, financial services, telecom) may be very unhappy.

- State believes the difference may be more one of packaging than substance. State suggests pushing for maximum between now and summit and decide how to characterize what we get just before the summit. We might have "agreements in principle", for example, in "virtually all industrial tariffs", with agreements in professional services, distribution, customs valuation and a statement by the President on permanent MFN, with a target date for completion of talks.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT

—> Lael - 5615

Cover +7 pages

Name	Agency	Fax
URGENT!!!!!		
Gene Sperling	NEC	456-2878
Malcolm Lee	NEC	456-9290
Sandy Berger	NSC	456-2883
Jeff Bader	NSC	456-9250

From: Laura Lane, Director for Trade in Services

Phone: 202/395-9569 **Fax:** 202/395-3891

Ambassador Richard Fisher asked that I make sure you all had received the complete package of reports thus far on the status of our negotiations with China on its WTO accession. He has given copies of these to Sandy Kristoff in Beijing as well. Regards, Laura

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003a. memo	Memorandum of Meeting, DUSTR Richard Fisher/MOFTEC Minister Shi Guangsheng. (4 pages)	06/16/1998	P1/b(1)

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

FOLDER TITLE:
China WTO (June 1998) [3]

2010-1024-F
vz1869

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]
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003b. memo	Memorandum of Meeting, DUSTR Richard Fisher/MOFTEC Minister Shi Guangsheng. (2 pages)	06/17/1998	P1/b(1)

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

FOLDER TITLE:
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003c. memo	For Charlene Barshefsky from Richard Fisher and Peter Scher. Subject: Report of Experts (1 page)	06/17/1998	P1/b(1)

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

FOLDER TITLE:
China WTO (June 1998) [3]

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PUBLIC POINTS ON CHINA WTO ACCESSION

- The Administration supports China's accession to the WTO on the basis of a strong, commercially meaningful agreement.
- Clearly, it is in our interest to see China create a rules-based trade regime, open its market and become a full member of the international economic community.
- China's accession to the WTO means opening the Chinese market and ending restrictions to access for our goods, services, and agricultural products in one of the fastest growing major economies in the world.
- The pace of WTO accession, however, is up to China and will depend on the quality of the offers it puts forward.
- Over the past year, China has expressed a renewed commitment to the negotiations.
- Yet while China has demonstrated a new seriousness about the negotiations and some progress has been made, we still have a ways to go.
- We have a team in Beijing now who are negotiating with the Chinese on the range of market issues.
- We have made clear to the Chinese in these most recent talks -- as before -- that we need improved offers that provide meaningful market access to U.S. goods, agricultural products, and services.
- It is up to the Chinese now to make the tough political decisions needed to pull together a strong market access package.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL # of pages ▸ 1

To Malcolm Lee	From Laura
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Fax # 456-9290	Fax # 395-3891

NSN 7540-01-317-7388 5099-101 GENERAL SERVICES ADMINISTRATION

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