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**PERMANENT NORMALIZED TRADE RELATIONS
WITH THE PEOPLE'S REPUBLIC OF CHINA**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

APRIL 11, 2000

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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PERMANENT NORMALIZED TRADE RELATIONS WITH THE PEOPLE'S REPUBLIC OF CHINA

TUESDAY, APRIL 11, 2000

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room SR-253, Russell Senate Office Building, Hon. John McCain, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN McCAIN,
U.S. SENATOR FROM ARIZONA**

The CHAIRMAN. Good morning. I understand Senator Hollings is on his way, and I would make an opening statement and then we will wait a minute for him, because he wants to make some opening comments, then we will move to our witnesses.

There is no question that China represents one of this country's central foreign policy challenges in the 21st Century. An important trade partner with aspirations of increasing influence throughout the Asia-Pacific region, China will remain at the forefront of U.S. foreign policy discussions for the foreseeable future.

The subject of this morning's hearing, China's entry into the World Trade Organization (WTO); and the question of granting permanent normal trade relations to that country, is rarely discussed in a vacuum. With China's entry into the WTO and implementation of the terms of the November 1999 trade agreement, the United States stands to benefit substantially, benefits that will be felt by industry and American labor alike.

As a member of the WTO, China will be required to take steps it has been historically reluctant to adopt, and at the risk of a level of social turbulence completely anathema to the ruling Communist Party regime. These steps include major reductions in industrial tariffs from an average of 24 percent to an average of 9.4 percent, reductions in tariffs on agricultural goods from an average of 31 percent to 14 percent, as well as elimination of nontariff barriers on agricultural imports, major openings in industry where China has been extremely reluctant to permit foreign investment, including telecommunications and financial services, and unprecedented levels of protections for intellectual property rights.

As a result of WTO membership, the pillars of one-party domination, especially the corruption endemic to the current system, could begin to crumble under the weight of transparency and reforms

that are the price of China's entry into the global trading system. One need look no further than recent reports of rioting this past February by more than 20,000 miners and their families, stemming from the pervasive inefficiency and corruption in the state-owned enterprises that are at risk of extinction under the economic reforms China will be required to carry out.

How China will deal with this social turbulence is one of the most important questions facing not just Beijing but all people who care about economic advancement and human rights. There is no question that increased and better-regulated trade with China will benefit the United States. What many following the debate are concerned about, however, is whether and how increased trade between the two countries will benefit the population of China beyond the ruling elite.

One of the witnesses testifying here this morning is Mr. Harry Wu, whose story imbues him with a level of moral authority that all Americans should respect. Mr. Wu's personal experience with the forced labor system in China, as well as his continuing efforts to shine a light on those abhorrent practices, weigh heavily in the consideration of all who believe human rights should be a priority of U.S. foreign policy.

There is also an argument that the quality of life of hundreds of millions of Chinese citizens is immeasurably improved as a result of the economic reforms implemented by the late Deng Xiaoping and continued under his successors, most prominently Premier Zhu Rongji.

Since the introduction of economic reforms in 1979, China's economy has emerged as one of the fastest-growing in the world. World Bank figures show that as many as 200 million Chinese have been lifted out of poverty as a result of the government's decision to liberalize the economy. While it is estimated as many as 30 percent of the population continue to subsist below the poverty level, the size of the middle class has expanded dramatically.

A recent Congressional Research Service study noted that by the year 2005, China will have more than 230 million middle income consumers. Clearly, economic reform, fueled in large part by trade, is benefiting the average Chinese citizen. It has not, however, liberated them from the dictatorial powers of the state. Moreover, Zhu's threatening statements toward Taiwan prior to the latter's recent election, as well as his admonition that a failure by the United States to pass permanent normal trade relations will be regretted by us for 1,000 years, is heavily illustrative of the Communist Party's adherence to obsolete and discredited policies.

That said, membership in the WTO carries with it responsibilities that are at variance with Communist Party practice. That is why Martin Lee, chairman of the Democratic Party of Hong Kong, noted that China's participation in the WTO would bolster those in China who understand that the country must embrace the rule of law.

Similarly, Wang Shan, a liberal political scientist, state that, "Undoubtedly the China WTO agreement will push political reform." And the former editor of the democratic journal, *Fangfa*, has written that, "if economic monopolies can be broken, controls in other areas can have break-throughs as well. . . . In the minds of

ordinary people, it will show that break-throughs that were impossible in the past are, indeed, possible.”

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA

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As a result of WTO membership, the pillars of one-party domination, especially the corruption endemic to the current system, could begin to crumble under the weight of transparency and reforms that are the price of China's entry into the global trading system.

One need look no further than recent reports of rioting this past February by more than 20,000 miners and their families stemming from the pervasive inefficiency and corruption in the state-owned enterprises that are at risk of extinction under the economic reforms China will be required to carry out. How China will deal with this social turbulence is one of the most important questions facing not just Beijing, but all people who care about economic advancement and human rights.

There is no question that increased and better regulated trade with China will benefit the United States. What many following the debate are concerned about, however, is whether and how increased trade between the two countries will benefit the population of China beyond the ruling elite. One of the witnesses testifying here this morning is Mr. Harry Wu, whose story imbues him with a level of moral authority that all Americans should respect. Mr. Wu's personal experience with the forced labor system in China, as well as his continuing efforts to shine a light on those abhorrent practices, weigh heavily in the considerations of all those who believe human rights should be a priority of U.S. foreign policy.

There is also an argument that the quality of life of hundreds of millions of Chinese citizens is immeasurably improved as a result of the economic reforms implemented by the late Deng Xiaoping and continued under his successors, most prominently Premier Zhu Rongji. Since the introduction of economic reforms in 1979, China's economy has emerged as one of the fastest growing in the world. World Bank figures show that as many as 200 million Chinese have been lifted out of poverty as a result of the government's decision to liberalize the economy. While it is estimated that as many as 30 percent of the population continue to subsist below the poverty level, the size of the middle class has expanded dramatically. A recent Congressional Research Service study noted that, by the year 2005, China will have more than 230 million middle-income consumers. Clearly, economic reform, fueled in large part by trade, is benefitting the average Chinese citizen. It has not, however, liberated them from the dictatorial powers of the state.

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law." Similarly, Wang Shan, a liberal political scientist, stated that "Undoubtedly [the China WTO agreement] will push political reform." And the former editor of the democratic journal *Fangfa* has written that "if economic monopolies can be broken, controls in other areas can have breakthroughs as well . . . In the minds of ordinary people, it will show that breakthroughs that were impossible in the past are indeed possible."

The CHAIRMAN. We have before us today witnesses who will shed light on both sides of the debate over Chinese accession to the WTO and the granting of permanent normal trade relations. First, we will hear from the Honorable William Daley, who is the Secretary of Commerce.

In a subsequent panel, we will hear from General Brent Scowcroft, former National Security Advisor and president of the Scowcroft Group; Mr. Jack Valenti, president of the Motion Picture Association of America, who will shed light on the impact of the 1979 trade agreement on intellectual property right protection, and will also, I am sure, illuminate us with some more interesting rhetoric; Mr. H. Richard Kahler, president of Caterpillar Corporation, representing the Business Roundtable; Ms. Lori Wallach, director of Global Trade Watch; and Mr. Harry Wu, to whom I referred earlier in my remarks, who has spoken eloquently of the brutal system of forced labor that endures inside China.

Before we hear from Secretary Daley, I would like to first apologize for the length of my opening remarks, but I do believe that this is one of the most important issues that this or recent Congresses have undertaken as far as its impact on the United States, not only financially and trade-wise, but on our relations with the emerging superpower in the world.

I would also like to note that the major reason why we are having this hearing is because our Ranking Member, our respected Senator Hollings, felt that it would be very important this hearing be held before this Committee.

Senator Hollings.

**STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA**

Senator HOLLINGS. Thank you, Mr. Chairman, for holding the hearing. The town is alert and alarmed with respect to the so-called demonstrations against the International Monetary Fund and the World Bank meeting. Most of the writers have missed the point with respect to Seattle because the overwhelming majority of the demonstrators, led by the AFL-CIO, were very, very peaceful.

The truth is that the Eugene, Oregon crowd of anarchists came down and started breaking up the peaceful demonstration near Main Street but the truth is, and the main point is that the AFL-CIO demonstration in March was led by the United States of America's premium export industry, Boeing. I know this keenly, felt it keenly because the Washington Boeing crowd was always looking for my opinion on the demonstration.

When I stood up for textiles Boeing was hollering free trade, free trade all the time, drooling Government subsidies through the Pentagon Department by way of technology and research, while drooling financial support and subsidies through the Ex-Im Bank. None of that was ever provided for the textile industry, but they said

they had to do it for exports, exports, and yet the major export industry of the country and the continent was leading the march.

Now, why? Because they cannot sell that plane in downtown China unless as Bill Greider wrote in his book, "One World Ready or Not," Much of Boeing's product is now produced abroad. So what it comes down to is the reality that we have been losing jobs intentionally for 50 years. At the end of World War II we had the only industry, we instituted the Marshall Plan, we sent over the money, the technology, the expertise, and it has worked. Communism has been defeated by capitalism.

But after 50 years of giving up the shoes and the textiles, and I mention that because as a young Governor they would look at me and they would say, "Come on, Governor, what do you expect." Let them make the shoes and the textiles, we will make the airplanes and computers.

Point: they are making the shoes, the textiles, the airplanes and the computers, and we continue on this particular subject of the People's Republic with soaring trade deficits. The reality should be clearly stated, the global economy, and global competition is not one of free trade. It is one of controlled trade.

Japan has been—a member of GATT for more than 50 years and in WTO—a member since 1994. We are hearing now that, oh, WTO will open up trade relations and provide greater transparency. We cannot get Japan to open up yet, after 50 years. However, if I operated Japan, I would have the same policy because it works. They get market shares. They nearly out-produce America, 120 million Japanese workers to 270 million Americans. Mark it down and watch it happen.

So the Peoples Republic of China knows what they are doing. They know how to build up economic strength, which in turn—General Scowcroft will submit testimony in agreement—gives you political, foreign policy strength. Money talks. Nobody worries about the Sixth Fleet and the atom bomb. You are not going to use the hydrogen bomb, and the Sixth Fleet's huffing and blowing up and down the Straits out there by Macao means absolutely nothing to 1 billion 300 million people.

What we need to do is build up our economic strength, so the purpose for the hearing for this particular Senator is an opportunity to say no. Not to China. We're not saying "no" to China. We are saying "no" to the United States. You have got to sober up, and you have got to institute what Cordell Hull called reciprocal free trade, competitive free trade.

I will ask that the remainder of my statement be included in the record. Thank you.

The CHAIRMAN. Without objection

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

Thank you Mr. Chairman. First, I want to commend the Chairman for convening this hearing and to thank all of the witnesses for agreeing to testify. China MFN is perhaps the most important international trade issue since NAFTA, and it is crucial that we maintain an open dialogue on the subject. I look forward to hearing from Secretary Daley, the Administration's point person on the issue. Moreover, the

remainder of the witness list offers a rich and diverse presentation. It should be a lively discussion.

It would be foolish for the United States to extend Permanent MFN to China at this time. Currently, China profits much more from our trade relationship than we do, and granting Permanent MFN will only serve to worsen an already unfair situation.

Our trade deficit with China has reached appalling levels—some might even say unacceptable. And it continues to grow every year. The value of U.S. imports from China almost doubled between 1994 and 1998, jumping from \$38 billion to over \$71 billion. Of course, exports also rose during that time, but only from \$9 billion to \$14 billion. The result is trade deficit that has exploded by almost \$30 billion in four years!

The Administration and its supporters hold that trade with China is beneficial because it gives the U.S. a market for exports—this argument is a classic example of missing the forest through the trees. Despite highly-touted increases in exports to China in the past few years, China receives a mere 5% of total U.S. exports. This is roughly the same percentage of exports that we send to Belgium and Luxembourg! Meanwhile, China maintains a \$68 billion trade surplus with the United States while running a \$26 billion deficit with the rest of the world combined. As we listen to the Administration pat itself on the back over a paltry increase in exports, American imports continue to finance China's economic boom!

To know the whole story, we have to look at what products comprise the export increase. What we find is that many of the goods that the U.S. ships to China are in fact inputs that will be assembled by low-cost Chinese labor and re-imported by the U.S. as finished products. The numbers are clear. From 1997 to 1998, the value of American exports to China of products designated for assembly and reimportation grew by a dramatic 979%. Over the past ten years, the percentage of China's exports generated by foreign-affiliated firms has risen from 15% to almost 50%. Essentially, China, continuing in the great tradition of Mexico with NAFTA, is a gigantic export platform.

China not only exports billions of dollars worth of merchandise to the U.S., it also exports its unemployment. More and more U.S. companies are relocating their production facilities to China to take advantage of the cheap labor and minimal labor and environmental standards. Meanwhile, American workers continue to lose their jobs at an alarming rate. It is estimated that 600,000 Americans were laid off in 1996 alone due to trade with China—a year when our trade deficit with China was a mere \$40 billion. For the sake of our workers, the U.S. cannot afford to continue to let the trade deficit with China spiral out of control, yet that is exactly what will happen if Congress votes for MFN.

Though the exploding trade deficit is reason enough not to grant China MFN, there are other compelling reasons as well. Most importantly, despite continued admonishment by the U.S., China's government has not made a good faith effort to improve its human rights record. On the contrary, repression has increased in China throughout the 1990's, and particularly since the Clinton Administration ended the link between trade status and human rights record. Currently, every known political dissident in China has been either exiled or jailed. In addition, the Chinese government continues to maintain forced labor camps, and even to export goods produced in these camps to the United States, despite a specific promise to end this practice. Withholding preferential trade status is perhaps the most effective leverage our government has over the Chinese, and it would be foolhardy to terminate it by granting MFN.

Extending permanent trade status to China does not make economic or political sense. The last thing the United States needs is a higher trade deficit with China and the resulting job losses. Encouraging trade is important, but not when it is accomplished at the expense of American workers. Also, considering China's unwillingness to improve its human rights practices, now is not the time to end our major source of leverage in this area.

Again, I thank the witnesses for coming, and I look forward to hearing their testimony.

The CHAIRMAN.Senator Hutchison.

**STATEMENT OF HON. KAY BAILEY HUTCHISON,
U.S. SENATOR FROM TEXAS**

Senator HUTCHISON. Thank you, Mr. Chairman. I will be brief and just say that I do favor permanent trade relations with China because I do think it is good for the United States to have China inside the tent, to have China accountable, just as every other nation should be in a free and fair trade situation.

I think we have not had true free trade, as the Senator from South Carolina has said. It has not been a level playing field. I have heard Mr. Valenti talk about copyrights and I think that we must have a way to bring them into the tent so that there can be free and fair trade.

But what I am going to be most interested in hearing from you and the second panel today is, how do we link our support for Taiwan and our support for a free and fair trade relationship with China, if we do, and should we in any way link the Taiwan Security Act with permanent free trade with China?

So with that, Mr. Chairman, I thank you for calling the hearing. [The prepared statement of Senator Hutchison follows:]

PREPARED STATEMENT OF HON. KAY BAILEY HUTCHISON,
U.S. SENATOR FROM TEXAS

Thank you Mr. Chairman. And thank you for calling this hearing on perhaps the most significant trade issue facing the United States today.

I will come right to the point. I support trade with China and I support the establishment of permanent normal trade relations with the most populous nation on earth. I do not do so because I believe it will make China more democratic, although I hope and expect that will be the case. I am for permanent normal trade relations with China because it is good for the United States. It will make us more competitive, keep prices lower for American consumers, and keep our job-creation engine running at high speed.

It is true that our current relationship with China is flawed, and it is also true that PNTR is not a panacea for this relationship. China, the U.S., and the international community have years of work ahead before we can achieve real trust and cooperation among these nations. I cannot, and will not try, to defend China's domestic human rights record.

However, that does not mean we should give up now. Surrendering at this time would sever any hope of engaging China in a real dialogue. How are human rights and U.S. security issues served by restricting trade with China? Such a move may allow us to feel morally superior in the short run, but I believe it would also galvanize the Chinese nation as an adversary of the U.S.

For those who see trade as a weapon in the battle for freedom: Democracy tends to follow capitalism, and there is no question that capitalism is on the rise. An authoritarian government cannot stand forever in the face of people yearning for freedom. This has been true on both ends of the political spectrum: East Germany and the rest of the Soviet bloc on the left, South Korea, Taiwan, Chile, and the Philippines on the right. Free enterprise and investment tends to erode the strength of one party dictatorships such as we have in China today.

Finally, the question of Taiwan. The extension of permanent normal trade relations with China has almost nothing to do with our commitment to Taiwan. Taiwan will not be any more secure were we to deny trade with China. Taiwan itself is rapidly becoming one of China's largest trading partners and foreign investors.

We remain committed to defending Taiwan, and I fault the administration for so neglecting our relations with both China and Taiwan that this false dichotomy of trade with China versus security of Taiwan has emerged. When it comes to Taiwan, this administration has allowed doubt to develop about our commitment because it has wavered between ignoring Chinese belligerence and sending in aircraft carriers.

What is needed is a firm, regular commitment to providing the island the defensive support it needs. This can be done without sticking our thumb in China's eye, but it must be done, and our leadership in Asia depends upon it.

Thank you again, Mr. Chairman for calling this hearing, and for your willingness to discuss this critical trade issue. If we fail to take on the Chinese problem, we cannot possibly hope to solve it.

The CHAIRMAN. Senator Ashcroft.

**STATEMENT OF HON. JOHN ASHCROFT,
U.S. SENATOR FROM MISSOURI**

Senator ASHCROFT. Thank you, Mr. Chairman. I am delighted to have the opportunity to comment on this very important responsibility we have to try and expand the opportunity for American workers.

Mr. Secretary, just let me thank you in advance for coming. You have a tremendous record of working for export opportunities and I am grateful for that. You came to Missouri last year, and I hope to work together with you on several trade issues that are important to my home state.

My goal for a balanced U.S.-China trade relationship is to ensure that Missourians, Missouri farmers, ranchers, and workers, and businesses will benefit. I have talked with a lot of Missourians about China's bid to join the WTO and, frankly, they are very quick to praise the administration for its negotiation of the November 1999 bilateral agreement in virtually every area, everything from manufactured parts to automobiles and agriculture. Missourians want to embrace the opportunities that the agreement could afford.

This last Saturday, I went to a plant in Ava, Missouri. It is a Copeland plant. Copeland makes high tech compressors, and technology of compressors has changed. This is one of the compressors here. It is called a scroll compressor. It used to be that compressors were all piston-type, and compressed in by pistons, but this scroll squeezes the air by turning these scrolls together.

The industrial tariff, they said, for manufactured products such as this—and obviously Copeland is the world's leader in compressors by a long shot—would be reduced from 25 percent to 10 percent. Trading and distribution rights would be phased in over 3 years so that the company could distribute its scroll sets and compressors broadly, not just to its own plant in China, and the company would be given the opportunity to service their products and to establish service networks.

This is an expanding industry. Because of the superior capacity of Copeland's superior American technology, this is a product in very high demand for air conditioning and refrigeration.

Right now that plant down in Ava, Missouri is sending 40 percent of its manufactured equipment to Asia, and the manager is expecting to expand the production substantially. As a matter of fact, I visited the new facility and they expect to double the 350 workers to over 700 shortly and then close to 800 workers in the next couple of years. Right now, 40 percent of all these items go to Asia. Production is expected to expand greatly, with almost all of the new production scheduled to go to Asia. It would be about 85 percent of all production in the year 2003 that would go to Asia to be installed in air conditioning and refrigeration equipment there. This is just one example that I have talked to Missourians about, of how open markets to a quarter of the world's population can create jobs and impact substantially local communities.

The Missouri economy as a whole, would benefit from the Chinese market opening, because agriculture is also on the list and is the largest employer in my home state. For instance, Missouri ranks close to the top in beef and pork, and is a major producer of corn and soybeans. We rely on free trade. We do want China's tariffs in beef to drop from 45 percent to 12 percent. That is a far better number. We do want Chinese to accept USDA-approved meat, and we do want Missouri ranchers to have direct access to grocery stores and Chinese customers and not be limited to selling to restaurants and commercial establishments.

So this agreement, I think, that has been negotiated by the administration is an agreement that has terms and conditions which are very attractive, not only industrially in terms of manufacturing, but in terms of the agricultural industry as well.

I think the key questions that Missourians have is, will they really get results? Will there be more than promises? Will these be enforceable things? Right now, Missouri's agricultural community is pretty upset about Europe, a WTO member which simply refuses to accept the rule of the WTO regarding American beef. They have been in noncompliance in a rather contumacious sense and is expected to stay in noncompliance and pay the penalties which are rather meager.

So what I am going to be interested in is primarily a couple of things. The first is that China in my opinion has a rather dismal record in complying with its bilateral agreements with the United States. Under the 1992 bilateral Market Access Agreement, the Chinese took licensing requirements off about 177 products, and within a couple of years they had reimposed licensing agreements on about 400 different additional products.

If they give you something with one hand and take it away with the other, what assurance do we have of compliance? And if China joins the WTO without our being able to address the issue of enforcement in any significant way, I want to be assured that we will not be left with a lot of litigation, a lot of resolutions that come down in our favor at the WTO without compliance. I want to ensure that when it comes to our ability to get compliance, we simply do not have anything but an empty piece of paper, much like what we have with the Europeans over beef, which basically is authority for the Europeans to continue in conduct which is very, very prejudicial against American ranchers.

So let me sum it up. Mr. Secretary, I am very pleased that you are here. The broad outlines of this agreement at least specify terms and conditions which, if they can be enforced, are very beneficial. But as a result of our experience with the WTO in Europe and as a result of our prior history of agreements with the Chinese, I want to be looking for and developing ways to make sure we get solid compliance and do not give up in the process an ability to enforce agreements that are very important to the United States.

Thank you, Mr. Chairman.

[Letter sent to the Honorable William M. Daley by Senator John Ashcroft for the record follows:]

February 24, 2000

The Honorable William M. Daley
 Secretary of Commerce
 U.S. Department of Commerce
 14th Street and Constitution Avenue, N.W.
 Washington, DC 20230

Dear Mr. Secretary:

This year as Congress begins to consider China's permanent normal trade relations status, I am listening carefully to what my constituents are telling me about the current and potential benefits of the U.S.-China trade relationship. In Missouri, there are many workers, farmers, and businesses that have been promised expanded markets for their exports as well as sufficient protection from imports that flood U.S. markets unfairly.

Clearly, we all want to know that the recently made promises between the U.S. and Chinese governments will be enforceable and enforced. More immediate, however, is my concern that current laws designed to protect U.S. entities are being faithfully executed. Specifically, a Missouri company recently brought a case involving the enforcement of anti-dumping laws against China.

Rhodia Inc., which operates in St. Louis and is the only remaining U.S. producer of bulk aspirin, brought an action May 28, 1999, to contest dumping of Chinese aspirin in the U.S. market. While the preliminary determination by the Department of Commerce on January 3, 2000, was favorable to Rhodia, the Department's methodology resulted in a finding of no dumping by at least one significant Chinese producer. I have been advised that most of the discretionary issues that the Department had to decide were all resolved in favor of the Chinese companies, as opposed to the U.S. company. This has been of substantial concern to Rhodia, its employees, and the International Chemical Workers Union (UFCW).

Mr. Secretary, this concerns me. It is my understanding that the Department is now in the process of investigating and then establishing a final dumping margin in this case. The Department is expected to announce its final margin sometime in May 2000.

It is my desire that companies in Missouri receive the protection and benefits of U.S. agreements and trade laws. The Administration must demonstrate now that it is a strong advocate on behalf of U.S. workers and that it will execute faithfully these laws. Such decisive action now will help dispel concern among Missourians that their jobs will be threatened by dumping if Congress approves PNTR for China.

I am watching this matter with keen interest. While I am particularly interested in the effect of this decision on the St. Louis manufacturing facility because it provides good jobs for Missourians, I am also tracking this matter for its broader implications on American policy in regarding expansion of trade with the Chinese. I would appreciate your keeping me informed of the Department's activities on this important matter.

Sincerely,

John Ashcroft

The CHAIRMAN. Senator Bryan.

**STATEMENT OF HON. RICHARD H. BRYAN,
 U.S. SENATOR FROM NEVADA**

Senator BRYAN. Mr. Chairman, I thank you very much for convening this hearing and thank our distinguished witnesses for joining us here today.

You know, it strikes me that the United States of America constitutes about four percent of the world's population, about 20 percent of the wealth in the world. If we are going to expand our economy, if we all hope to do so, it seems to me we cannot ignore a potential market of 1.250 billion.

We can disagree, as I do, certainly, with the politics, the human rights abuses and some of the other difficulties that we encounter, but it strikes me that to ignore a country of this size, this mag-

nitude, with the potential that it has to expand America's economy and generate new jobs, would be a tragic mistake.

The CHAIRMAN. Thank you very much, Secretary Daley, for your Herculean efforts in this very difficult challenge that we face, and I thank you for your great work.

**STATEMENT OF HON. WILLIAM M. DALEY,
SECRETARY OF COMMERCE**

Secretary DALEY. Thank you, Mr. Chairman, Senator Hollings, members of the Committee. Thank you for inviting me back up to the Committee. It has been a while, and I appreciate the opportunity to speak on what is one of the most important economic and political issues that I think the Nation will face in not only this year but over the next couple of years.

Let me first, Mr. Chairman, put a caveat on this testimony. I am not a trade lawyer. I did not negotiate the agreement. I have to praise first of all Ambassador Barshefsky for the tremendous work which she did on behalf of our Government in bringing to conclusion an agreement that I firmly believe is a win, a strong win for the United States, and will present tremendous opportunities for American businesses and American working men and women over the next number of years.

I would like to highlight some of the terms of the agreement, which in my opinion is a one-way deal in favor of the United States. Attached to my testimony is a much more detailed summary of the terms. In addition, there are 45 industry-specific fact sheets, 50 State reports, and other detailed information available on our Web site, which is www.ChinaPNTR.gov.

This week, President Clinton will be releasing much more detailed information on opportunities that this agreement will provide for workers in all 50 States. For industrial goods, China agreed to cut tariffs from an average of 25 to 9 percent overall, and 7 percent in those priority products of ours. China will make substantial cuts immediately, with further cuts phased in, most within 5 years. These will benefit our automobiles, chemicals, wood products, and many other industries. China will eliminate tariffs and quotas on semiconductors, telecom equipment, computers, and computer equipment by 2003 in most cases.

Last week, nearly 200 high tech CEO's wrote to Members urging their support. They indicated this is "the most critical vote you will make in support of our high tech industries this year." The agreement does more than lower tariffs. It lets firms engage in wholesale and retailing, repairing and transporting their products in China.

In services, China has made significant commitments to phase-out most restrictions in banking, insurance, and telecom, and they will open up to professional services such as accounting, legal, consulting, business and computer-related services, motion picture, video and sound recording services.

In agriculture, the agreement provides increased access for a broad range of commodities and eliminates nontariff barriers that have kept U.S. farmers out of this enormously large market.

On our priority products, tariffs will drop from an average of 31 to 14 percent by 2004, with even sharper drops for beef, poultry,

pork, and cheese. China also will create tariff rate quotas that will expand opportunities for wheat, corn, and rice.

Right now, the average man, woman, and child in China consumes less than one dollar's worth of American agricultural goods a year, but in the future Secretary Glickman tells us that China will account for nearly 40 percent of the growth of our agricultural exports. We also negotiated terms to ensure China lives up to its commitments.

China has agreed to a number of provisions that address issues raised by the high degree of government involvement in their economy. They agreed to guard against import surges. This is in the form of a 12-year product-specific safeguard provision that lets us take action when exports from China cause market disruptions. The deal protects American firms and workers from unfair trade practices, including dumping. China agreed to guarantee our right to continue using our current methodology in antidumping cases for 15 years.

The agreement makes it easier to export to China from home rather than forcing companies to set up in China to sell their products there, and forced technology transfers will be eliminated, better enabling U.S. firms to protect their R&D investments.

The agreement contains effective enforcement tools to ensure China meets its obligations. For the first time, China's trade commitments will be enforceable through binding WTO dispute settlements, subjecting its actions to impartial review and sanctions if necessary.

Our agreement is very specific, with clear timetables for implementation and firm end dates for full compliance. When copies of this agreement were handed out to Members, some thought that the text looked more like a detailed spreadsheet. It does, and this was intentional. It reflects past experiences with trying to enforce trade agreements with China.

As I said, we would be kidding ourselves if we think everybody in China is all for this, and will not find clever ways to try to get around this agreement, so we will vigorously monitor and enforce the terms of this deal.

The President has requested a \$22 million increase in new compliance and enforcement resources for Commerce, USTR, USDA, and the State Department. This would triple resources dedicated to China trade compliance at our Department alone. For the first time, Commerce and State will have compliance officers on the ground in China, and last week we agreed to provide the Chinese with legal and technical assistance in their efforts at making their laws compliant with WTO obligations.

Let me say a few things beyond the economic, because this debate will obviously go well beyond the economic and commercial aspects of this agreement. The President has made it very clear supporting this does not mean an endorsement of China's human rights policies. We will continue to denounce China's persecution of citizens for their political or religious beliefs.

A few weeks ago, Secretary of State Albright personally presented a resolution to the U.N. in Geneva condemning China's human rights record. It is also clear to me that entering the WTO has not been an easy choice for China's leaders to make. They un-

derstand opening their borders to foreign goods also opens the door wide to new ideas that are uncontrollable. They made the decision to take this risk, and in my opinion we should encourage it.

The possibility of positive change is illustrated by the great potential of the high tech market in China. China will become the world's second largest personal computer market by the end of this year, and by then, 20 million Chinese will be connected to the Internet. Not only will this technology explosion benefit our companies, but it will give the Chinese people unfettered access to outside influences and ideas. Based on what I heard last week as I was in China from academics, the entrepreneurs, and the NGO's, I feel that this has to help promote a greater political reform process.

Finally, when the President asked me to lead the administration's effort, to be frank with you I saw some misunderstanding of what this vote may actually mean. Normal trade relations is the same trading status we extend to the rest of the world, with very, very few exceptions.

This legislation would make it permanent, and would remove China from the annual process which we have had since 1980. Permanent status is required to meet our obligations to treat all WTO members the same. Not surprisingly, China seeks identical treatment, and WTO rules require that it be provided.

This will not be a vote on whether China joins the WTO. Once China completes its negotiations with other countries, its application will move forward with or without us. This vote will determine whether we enjoy the economic benefits created by China's WTO membership. The vote will not affect whether the Chinese will have access to our market. They already do. A yes vote gives us access to their market and the opportunity to attempt to level the playing field after so many years of having an unlevel playing field.

Some say vote no on permanent status but then turn around and vote yes on the annual review. They believe we should not give up the leverage of annual review. I do not believe there is much leverage in that annual review. For 20 years, we have never voted it down and to me the cost of keeping this leverage is losing the opportunity to open China's market for U.S. companies, U.S. products, even as our European and Asian competitors will take advantage of that opportunity.

I was most encouraged by Speaker Hastert's announcement that the vote in the House will be the week of May 22 and, as you know, Majority Leader Lott has promised a vote in the Senate immediately after the Memorial Day recess. These are very positive developments.

And with that, Mr. Chairman, I conclude my statement and I ask that it be included in the record. I would be happy to answer any of your questions and, again, I thank you for the privilege of being back before the Committee.

[The prepared statement of Secretary Daley follows:]

PREPARED STATEMENT OF WILLIAM M. DALEY, SECRETARY OF COMMERCE

Mr. Chairman, Senator Hollings, members of the Committee, thank you for the opportunity to testify today on the benefits to America of China's accession to the World Trade Organization (WTO). On Saturday, I returned from a trip to Beijing

where I co-chaired the 13th Session of the U.S.-China Joint Commission on Commerce and Trade (JCCT). The JCCT is a government-to-government forum developed to promote U.S.-China commercial cooperation. Last week we met to discuss China's ongoing reform efforts and ways to enhance China's transition to a rules-based global trading system. Obviously a lot of the discussion centered on China's pending application to join the WTO and on our process for deciding whether to grant Permanent Normal Trade Relations (PNTR).

This was my third visit to China during my tenure as Secretary of Commerce. Much has changed even in the few years that I have been traveling there. The signs of a nascent transition to a market-based economy are evident everywhere in increased private ownership of businesses, more freedom for the Chinese to choose their own places of employment, and the return of privately owned farms. Over twenty years of domestic reforms have enabled China to lift more than 200 million people out of absolute poverty. Wireless communications has put cell phones in the hands of 40 million Chinese (only a fraction of the potential market) and given them access to a world of ideas and influences.

But many problems exist. High unemployment, inefficient state-run enterprises and corruption continue to plague the Chinese economy. As a result, economic growth has slowed.

The Chinese leadership has recognized the need to open its market to global competition in order to be able to build a modern, successful economy. One of the best indicators of the commitment of the Chinese leadership to a more open economy is its desire to take on the challenges and obligations of WTO membership. I am here today to discuss with you how supporting PNTR status for China can move China toward a more open economy.

Last November, after 13 years of negotiations, the United States and China reached a bilateral agreement on the terms and conditions of China's entry into the WTO. China made significant and far-reaching market access and trade concessions that will benefit American exporters and import sensitive industries across a broad range of industrial goods, services and agriculture. It contains strong enforcement mechanisms and strong protections against unfair trade. American exporters stand to benefit immediately. China has agreed to begin opening its markets in virtually every sector immediately upon accession. The phase-in of further concessions will be limited to five years in almost all cases, and in many cases only one-to-three years.

In contrast to China's historic set of commitments, we have only one obligation, and that is to maintain the market access policies we already apply to China by granting it Permanent Normal Trade Relations status.

There is no doubt that this agreement is a great opportunity for American businesses, workers and farmers. It will provide unprecedented access to a largely untapped market of over one billion consumers. The benefits for the U.S. are widespread, including significant opportunities for small and medium size businesses. SMEs are responsible for a growing share of U.S. exports to China.

Last week, 47 Governors sent a letter to Senators and Members of the House expressing how important they believe passage of China PNTR is to maintaining the economic growth and prosperity of families in their states and territories. These Governors know this is a good economic deal for America. They do not want America to be left behind.

Yet this agreement goes beyond economics. As President Clinton has said, this represents the most significant opportunity that the United States has had to create positive change in China since President Nixon's visit there in the early 1970s. As a world leader we have an obligation to foster further reform in China. Encouraging China to join the rules-based world trading system gives it a greater stake in the stability and prosperity of its regional neighbors and the rest of the world. It will create a better, more stable, safer world.

Now, let me highlight some of the terms of our bilateral agreement on China's accession to the WTO. Attached to my testimony is a more detailed summary of the terms of the agreement. In addition, over 45 industry specific fact sheets, 50 state-specific reports, and other detailed information are available on our Web site at www.chinapntr.gov.

Industrial Goods

China has agreed to cut tariffs from an average of 24.6 percent to an average of 9.4 percent overall and 7.1 percent on U.S. priority products. China will make substantial cuts immediately with further cuts phased in, most within five years. These cuts will benefit a wide range of U.S. products from automobiles, to chemicals to wood products. China will also eliminate all import quotas and non-automatic licensing requirements for industrial goods. For example, China will participate in

the Information Technology Agreement, eliminating tariffs and quotas on information technology products such as semiconductors, telecommunications equipment, computers and computer equipment and other items by 2003, in most cases, and 2005 in a few others. Last week, nearly 200 high tech industry CEOs wrote to Members of Congress urging support for PNTR for China and identifying it as “an absolute priority for high-tech companies . . .” and the “. . . most critical vote you will make in support of our high technology industries this year.”

Services

This agreement does more than lower tariffs substantially. Equally important to U.S. industry is the agreement by China to allow U.S. firms to engage in trade (importing and exporting) and the full range of distribution services including wholesale, retail, repair and transport, for their products in China. At present, China prohibits foreign firms from distributing imported products or providing after-sale services such as repair and maintenance, unless they have invested in China.

China has made significant commitments to phase out most restrictions in a broad range of service sectors in addition to distribution, including banking, insurance and telecommunications. Also liberalized are professional services such as accountancy and legal consulting, business and computer-related services, motion pictures and video and sound recording services. China will also take on the obligations contained in the Basic Telecommunications and Financial Services Agreements.

Agriculture

The WTO accession bilateral agreement provides increased access for U.S. agricultural exports across a broad range of commodities and eliminates non-tariff barriers that have kept U.S. farmers out of this huge market. On U.S. priority agricultural products, tariffs will drop from an average of 31 percent to 14 percent by January 2004, with even sharper drops for beef, poultry, pork, cheese and other commodities. China will also create new tariff rate quotas that will significantly expand export opportunities for U.S. wheat, corn, rice and other bulk commodities farmers. U.S. exporters will also gain the right to sell virtually all products freely inside China without going through state trading enterprises or other middlemen. Right now, the average man, woman, and child in China consumes less than a dollar's worth of American agricultural goods a year. Looking to the future, China will account for nearly 40 percent of the growth of U.S. agricultural exports.

In addition to the benefits of WTO accession, we will have substantial export opportunities through the 1999 U.S.-China Agreement on Agricultural Cooperation. This Agreement provides the terms for the removal of scientifically unjustified restrictions on importation of U.S. wheat and other grains, citrus, and meat. Already, we have seen China make historic purchases of all three commodities in the last few months as a result of this Cooperation Agreement. Complementing this Agreement are Chinese WTO commitments to permit trading and distribution rights.

Safeguards and Enforcement

In addition to unprecedented access to the vast Chinese market, we negotiated additional terms to ensure that we gain the full benefits of our agreement and that China lives up to its commitments. China has agreed to a number of provisions that go to the core of the closed Chinese economy and will result in real and effective market access. These special provisions address issues raised by the high degree of government involvement in the Chinese economy and by industrial policy measures, such as local content, offsets, export performance, and forced technology transfer requirements. These provisions were sought to address the legitimate concerns raised by Members of Congress, Democratic and Republican alike.

The agreed provisions include special protections to guard against import surges from China. China has agreed to a 12-year product-specific safeguard provision which ensures that the United States can take effective action in case of increased exports from China which cause market disruption in the United States. This applies to all industries, permits us to act on a lower showing of injury to domestic industry than under existing safeguard law and allows us to act specifically against imports from China. This safeguard provision is in addition to existing safeguard actions authorized under Section 201.

We have also ensured that American firms and workers will have strong protection against unfair trade practices, including dumping. China has agreed to guarantee our right to continue using our current methodology (treating China as a non-market economy) in antidumping cases for fifteen years after China's accession to the WTO.

The agreement will also require China to reform a number of internal policies which force foreign companies to locate operations in China and give up valuable

intellectual property rights as conditions of doing business. The agreement will eliminate unfair practices such as mandated offsets, local content and various investment performance requirements. China will take on the obligations of the WTO Agreement on Trade-Related Investment Measures. This will make it easier for U.S. companies to export to China from home rather than forcing companies to set up in China in order to sell their products there. Forced technology transfers will also be eliminated as a condition of investment, better enabling U.S. companies to protect their investment in R&D. China has agreed to stop enforcement of such practices in existing contracts immediately upon accession.

The agreement contains effective enforcement tools to ensure China meets its obligations. For the first time, China's trade commitments will be enforceable through a binding WTO dispute settlement, subjecting its actions to impartial review, and ultimately sanctions, if necessary. The multilateral nature of the WTO also strengthens our enforcement capabilities. And the significance for China is great—its economic decisions will be subject to multilateral trade review, which will provide us additional leverage in resolving future trade disagreements with China.

Our bilateral agreement with China is highly specific with clear timetables for implementation and firm end-dates for full compliance. When copies of the agreement were handed out to Members of Congress, some members commented that the text looked more like a spread sheet with its defined tariff rates, dates certain and concrete obligations. This was intentional and reflects past experience with trying to enforce trade agreements with China. The specificity of China's commitments in this bilateral agreement will strengthen our ability to monitor and demand compliance.

The Administration intends to vigorously monitor and aggressively enforce the terms of this agreement. Our commitment to do so is reflected in the President's budget request for a \$22 million increase in new compliance and enforcement resources for Commerce, USTR, USDA and the State Department. For example, the President's new initiative would triple resources dedicated to China trade compliance here at the Department of Commerce—including administration of our unfair trade laws. For the first time, Commerce and State will have compliance officers on the ground in China devoted exclusively to trade law enforcement and trade compliance.

We also have retained the right to use the full range of existing United States trade laws, including Special 301 (intellectual property rights protection), Section 301 (unfair trade practices), and, of course, our antidumping laws. It also is important to emphasize that nothing in this agreement undermines our ability to continue to block imports of goods made with prison labor, to maintain our export control policies, or to withdraw trade benefits, including NTR itself, in case of a national security emergency.

A More Open China

The President has made clear that supporting China's accession into the WTO does not mean a tacit endorsement of China's human rights policies. We will continue to denounce China's persecution of its citizens for their political or religious beliefs. Two weeks ago, Secretary of State Albright personally presented a resolution condemning China's human rights record to the United Nations' Human Rights Commission in Geneva. We will not hesitate to use our authority to sanction China under the International Religious Freedom Act as we did last year. We will also continue to pursue our foreign policy goals with China in a number of important areas such as non-proliferation and global climate change. Our stance on a peaceful resolution of issues between China and Taiwan will not change.

It is significant that many of those most supportive of a more open, democratic China support its membership in the WTO. The newly elected leader of Taiwan, Chen Shui-bian, supports normalizing trade relations between the United States and China. Martin Lee, the leader of Hong Kong's Democracy Party, recently said "The participation of China in the WTO would not only have economic and political benefits, but it would serve to bolster those in China who understand that the country must embrace the rule of law." A longtime Chinese dissident leader, Ren Wanding, declared in support of the China's WTO membership "Before the sky was black, now it is light. This can be a new beginning."

By seeking to join the WTO, China has undertaken to deepen its market reforms and open its economy to the rest of the world. It has agreed to adhere to international trade rules and subject its actions to WTO dispute settlement. It's clear that this has not been an easy choice for its leaders. They understand that opening their borders to foreign goods, services and investors opens the door wide to new ideas and ideals they can not control. They have made the decision to take this risk. We should encourage China to choose the path of reform and involvement with the rest of the world. Bringing China into the WTO will make a significant difference.

The possibility of positive change is illustrated by the great potential of the telecommunications market in China. Some analysts predict that China will become the world's second largest personal computer market by the end of this year and the third largest semiconductor market by 2001. It is already the world's fastest growing telecommunications market. In 1999 alone, the number of Chinese Internet users quadrupled, jumping from 2 million at the beginning of the year to 9 million. Growth predictions put Internet users at over 20 million by the end of 2000. Not only will this technology explosion benefit the U.S. information technology industry, which is the best and most competitive in the world, but it will also give the Chinese people unfettered access to outside influences and ideas through satellites and the Internet. This cannot help but promote greater economic and political reform in China.

Of course, the trade agreement with China will not, by itself, resolve serious human rights issues in China. At the same time, I believe that WTO membership will bring fundamental changes to China that will advance our goals in this area.

The Vote on PNTR

This Friday, I will head back to China with a group of your Congressional colleagues. Secretary Glickman will follow with another Congressional delegation during the last week in April. We will be meeting with Chinese officials and will visit new privately owned businesses and older state-run enterprises. We hope that this visit will give undecided Members the opportunity to observe the changes in China first hand and enable them to make an informed decision on PNTR.

A few months ago when the President asked me to lead the Administration's efforts to seek Congressional approval of PNTR, I discovered that there was a lot of misunderstanding about what the vote on PNTR means. Let me explain. Normal trade relations, formerly called most-favored-nation or MFN treatment, is the same trading status we extend to the rest of the world, with very few exceptions. The legislation would remove China from the annual NTR renewal process under Jackson-Vanik, under which we have extended NTR to China since 1980.

PNTR is required to meet our obligation to treat all WTO members the same. WTO members are required to grant each other "any advantage, favor, privilege or immunity" provided to other countries "immediately and unconditionally." The United States currently extends PNTR to all countries with whom we share and enjoy the benefits of the WTO, without the condition of annual review. Not surprisingly, China seeks identical treatment upon its accession—and WTO rules require it to be provided.

It is worth emphasizing that this will *not* be a vote on whether China will join the WTO. Once China completes its accession negotiations with other countries, its application to join the WTO will move forward, with or without United States participation. However, Congress' upcoming vote on PNTR will determine whether the United States will enjoy the economic benefits created by China's WTO membership. A vote against PNTR will mean ceding our share of this newly opened market to our economic competitors in Europe, Asia and elsewhere. As President Clinton has stated, "We must understand the consequences of saying no. If we don't sell our products to China, someone else will step into the breach, and we will spend the next 20 years wondering why in the wide world we handed over the benefits we negotiated to other people."

The vote on PNTR also will not affect whether the Chinese will have access to the American market and consumers. They already do. The United States has the most open market in the world. A vote for PNTR will give us access to the previously closed Chinese market and level the playing field in a dramatic way.

I appreciate the thoughtfulness and consideration Members have brought to the debate. I am optimistic that once all the pros and cons have been weighed the Congress will vote its support for PNTR. I was very encouraged by last week's announcement by Speaker Hastert that the PNTR vote in the House of Representatives will be held the week of May 22. Senate Majority Leader Lott has promised a vote in the Senate immediately after the Memorial Day recess. These are positive developments.

When President Nixon first went to China, more people saw the pictures and heard his words than on any occasion in the history of the world. During that visit he paraphrased Abraham Lincoln, saying "what we say here would not be long remembered. What we do here can change the world." Thirty years later, we now face another history-making foreign policy choice, identified by President Clinton as his top remaining foreign policy goal. After all the speeches, after all the arguments, after all the voices on both sides of the debate, what we say is not as important as what we do. And on this occasion we should act to promote further reform and

the rule of law in China and to integrate China into the world economy. It is in our economic, strategic and national security interests to do so.

Thank you, Mr. Chairman, that concludes my statement. I will now be happy to answer any questions you may have.

China Trade Relations Working Group

SUMMARY OF U.S.-CHINA BILATERAL WTO AGREEMENT

February 2, 2000

AGRICULTURE

The Agreement would eliminate barriers and increase access for U.S. exports across a broad range of commodities. Commitments include:

- Significant cuts in tariffs that will be completed by January 2004. Overall average for agricultural products will be 17.5 percent and for U.S. priority products 14 percent (down from 31 percent).
- Establishment of a tariff-rate quota (TRQ) system for imports of bulk commodities, e.g., wheat, corn, cotton, barley, and rice, that provides a share of the TRQ for private traders. Specific rules on how the TRQ will operate and increased transparency in the process will help ensure that imports occur. Significant and growing quota quantities subject to tariffs that average between 1–3 percent.
- Immediate elimination of the tariff-rate quota system for barley, peanut oil, sunflower-seed oil, cottonseed oil, and a phase-out for soybean oil.
- The right to import and distribute products without going through a state-trading enterprise or middleman.
- Elimination of export subsidies on agricultural products.

China has also agreed to the elimination of SPS barriers that are not based on scientific evidence.

INDUSTRIAL PRODUCTS

China would lower tariffs and eliminate broad systemic barriers to U.S. exports, such as limits on who can import goods and distribute them in China, as well as barriers such as quotas and licenses on U.S. products.

TARIFFS

- Tariffs cut from an average of 24.6 percent to an average of 9.4 percent overall and 7.1 percent on U.S. priority products.
- China will participate in the Information Technology Agreement (ITA) and eliminate all tariffs on products such as computers, telecommunications equipment, semiconductors, computer equipment, and other high-technology products.
- In the auto sector, China will cut tariffs from the current 80–100% level to 25% by mid-2006, with the largest cuts in the first years after accession.
- Auto parts tariffs will be cut to an average of 10% by mid-2006.
- In the wood and paper sectors, tariffs will drop from present levels of 12–18% on wood and 15–25% on paper down to levels generally between 5% and 7.5%.
- China will also be implementing the vast majority of the chemical harmonization initiative. Under that initiative, tariffs will be at 0, 5.5 and 6.5 percent for products in each category.

ELIMINATION OF QUOTAS AND LICENSES

WTO rules bar quotas and other quantitative restrictions. China has agreed to eliminate these restrictions with phase-ins limited to five years.

- Quotas: China will eliminate existing quotas upon accession for the top U.S. priorities (e.g. optic fiber cable). It will phase out remaining quotas, generally by 2002, but no later than 2005.
- Quotas will grow from current trade levels at a 15% annual rate in order to ensure that market access increases progressively.
- Auto quotas will be phased out by 2005. In the interim, the base-level quota will be \$6 billion (the level prior to China's auto industrial policy), and this will grow by 15% annually until elimination.

RIGHT TO IMPORT AND DISTRIBUTE

Trading rights and distribution are among the top concerns for U.S. manufacturers and agricultural exporters. At present, China severely restricts trading rights (the right to import and export) and the ability to own and operate distribution networks. Under the Agreement, trading rights and distribution services will be progressively phased in over three years. China will also open up sectors related to distribution services, such as repair and maintenance, warehousing, trucking and air courier services.

SERVICES

China has made commitments to phase out most restrictions in a broad range of services sectors, including distribution, banking, insurance, telecommunications, professional services such as accountancy and legal consulting, business and computer related services, motion pictures and video and sound recording services. China will also participate in the Basic Telecommunications and Financial Services Agreements.

GRANDFATHERING

China will grandfather the existing level of market access already in effect at the time of China's accession for U.S. services companies currently operating in China. This will protect existing American businesses operating under contractual or shareholder agreements or a license from new restrictions as China phases in their commitments.

DISTRIBUTION AND RELATED SERVICES

China generally prohibits foreign firms from distributing products other than those they make in China, or from controlling their own distribution networks. Under the Agreement, China has agreed to liberalize wholesaling and retailing services for most products, including imported goods, throughout China in three years. In addition, China has agreed to open up the logistical chain of related services such as maintenance and repair, storage and warehousing, packaging, advertising, trucking and air express services, marketing, and customer support in three to four years.

TELECOMMUNICATIONS

China now prohibits foreign investment in telecommunications services. For the first time, China has agreed to permit direct investment in telecommunications businesses. China will also participate in the Basic Telecommunications Agreement. Specific commitments include:

- Regulatory Principles—China has agreed to implement the pro-competitive regulatory principles embodied in the Basic Telecommunications Agreement (including interconnection rights and independent regulatory authority) and will allow foreign suppliers to use any technology they choose to provide telecommunications services.
- China will gradually phase out all geographic restrictions for paging and value-added services in two years, mobile voice and data services in five years, and domestic and international services in six years.
- China will permit 50 percent foreign equity share for value-added and paging services two years after accession, 49 percent foreign equity share for mobile voice and data services five years after accession, and for domestic and international services six years after accession.

INSURANCE

Currently, only two U.S. insurers have access to China's market. Under the agreement:

- China agreed to award licenses solely on the basis of prudential criteria, with no economic-needs test or quantitative limits on the number of licenses issued.
- China will progressively eliminate all geographic limitations within 3 years. Internal branching will be permitted consistent with the elimination of these restrictions.
- China will expand the scope of activities for foreign insurers to include group, health and pension lines of insurance, phased in over 5 years. Foreign property and casualty firms will be able to insure large-scale commercial risks nationwide immediately upon accession.
- China agreed to allow 50 percent ownership for life insurance. Life insurers may also choose their own joint venture partners. For non-life, China will allow branching or 51 percent ownership on accession and wholly owned subsidiaries

in 2 years. Reinsurance is completely open upon accession (100 percent, no restrictions).

BANKING

Currently foreign banks are not permitted to do local currency business with Chinese clients (a few can engage in local currency business with their foreign clients). China imposes severe geographic restrictions on the establishment of foreign banks.

- China has committed to full market access in five years for U.S. banks.
- Foreign banks will be able to conduct local currency business with Chinese enterprises starting 2 years after accession.
- Foreign banks will be able to conduct local currency business with Chinese individuals from 5 years after accession.
- Foreign banks will have the same rights (national treatment) as Chinese banks within designated geographic areas.
- Both geographic and customer restrictions will be removed in five years.
- Non-bank financial companies can offer auto financing upon accession.

SECURITIES

China will permit minority foreign-owned joint ventures to engage in fund management on the same terms as Chinese firms. By three years after accession, foreign ownership of these joint ventures will be allowed to rise to 49 percent. As the scope of business expands for Chinese firms, foreign joint venture securities companies will enjoy the same expansion in scope of business. In addition, 33 percent foreign-owned joint ventures will be allowed to underwrite domestic equity issues and underwrite and trade in international equity and all corporate and government debt issues.

PROFESSIONAL SERVICES

China has made strong commitments regarding professional services, including the areas of law, accounting, management consulting, tax consulting, architecture, engineering, urban planning, medical and dental services, and computer and related services. China's commitments will lead to greater market access opportunities and increased certainty for American companies doing business in China.

MOTION PICTURES, VIDEOS, SOUND RECORDINGS

China will allow the 20 films to be imported on a revenue-sharing basis in each of the 3 years after accession. U.S. firms can form joint ventures to distribute videos, software entertainment, and sound recordings and to own and operate cinemas.

PROTOCOL PROVISIONS

Commitments in China's WTO Protocol and Working Party Report establish rights and obligations enforceable through WTO dispute settlement procedures. We have agreed on key provisions relating to antidumping and subsidies, protection against import surges, technology transfer requirements, and offsets, as well as practices of state-owned and state-invested enterprises. These rules are of special importance to U.S. workers and business.

China has agreed to implement the TRIMs Agreement upon accession, eliminate and cease enforcing trade and foreign exchange balancing requirements, as well as local content requirements, refuse to enforce contracts imposing these requirements, and only impose or enforce laws or other provisions relating to the transfer of technology or other know-how, if they are in accordance with the WTO agreements on protection of intellectual property rights and trade-related investment measures.

These provisions will also help protect American firms against forced technology transfers. China has agreed that, upon accession, it will not condition investment approvals, import licenses, or any other import approval process on performance requirements of any kind, including: local content requirements, offsets, transfer of technology, or requirements to conduct research and development in China.

ANTIDUMPING AND SUBSIDIES METHODOLOGY

The agreed protocol provisions ensure that American firms and workers will have strong protection against unfair trade practices including dumping and subsidies. The U.S. and China have agreed that we will be able to maintain our current antidumping methodology (treating China as a non-market economy) in future antidumping cases. This provision will remain in force for 15 years after China's accession to the WTO. Moreover, when we apply our countervailing duty law to China we will be able to take the special characteristics of China's economy into account when we identify and measure any subsidy benefit that may exist.

PRODUCT-SPECIFIC SAFEGUARD

The agreed-to provisions for the protocol package also ensure that American domestic firms and workers will have strong protection against rapid increases of imports.

To do this, the Product-Specific Safeguard provision sets up a special mechanism to address increased imports that cause or threaten to cause market disruption to a U.S. industry. This mechanism, which is in addition to other WTO Safeguards provisions, differs from traditional safeguard measures. It permits the United States to address imports solely from China, rather than from the whole world, that are a significant cause of material injury through measures such as import restrictions. Moreover, the United States will be able to apply restraints unilaterally based on legal standards that differ from those in the WTO Safeguards Agreement. This could permit action in more cases. The Product-Specific Safeguard will remain in force for 12 years after China accedes to the WTO.

STATE-OWNED AND STATE-INVESTED ENTERPRISES

The Protocol addresses important issues related to the Chinese government's involvement in the economy. China has agreed that it will ensure that state-owned and state-invested enterprises will make purchases and sales based solely on commercial considerations, such as price, quality, availability and marketability, and that it will provide U.S. firms with the opportunity to compete for sales and purchases on non-discriminatory terms and conditions.

China has also agreed that it will not influence these commercial decisions (either directly or indirectly) except in a WTO consistent manner. With respect to applying WTO rules to state-owned and state-invested enterprises, we have clarified in several ways that these firms are subject to WTO disciplines:

- Purchases of goods or services by these state-owned and state-invested enterprises do not constitute "government procurement" and thus are subject to WTO rules.
- We have clarified the status of state-owned and state-invested enterprises under the WTO Agreement on Subsidies and Countervailing Measures. This will help ensure that we can effectively apply our trade law to these enterprises when it is appropriate to do so.

TEXTILES

China's protocol package will include a provision drawn from our 1997 bilateral textiles agreement, which permits U.S. companies and workers to respond to increased imports of textile and apparel products. This textile safeguard will remain in effect until December 31, 2008, which is four years after the WTO agreement on Textile and Clothing expires.

The CHAIRMAN. Thank you, Mr. Secretary. I hope you have the same success that you had in your outstanding efforts on behalf of the North American Free Trade Agreement. I thank you for being here today.

Senator Hollings.

Senator HOLLINGS. Thank you, Mr. Chairman. I hope you do not have the success that you had with the North American Free Trade Agreement.

Secretary Daley, you said NAFTA was going to create 200,000 new jobs. When in fact we have lost over 420,000. To be exact, in the State of South Carolina. We have lost 37,200 manufacturing or textile industry jobs.

You said it was going to improve the standard of living for our neighbor Mexico. On the contrary, they have take-home pay less today than what they had in 1994, prior to NAFTA.

You said it was going to solve the immigration problem. It has worsened.

You said it was going to solve the drug problem. They have got a narco-country down there. They killed a Monsignor, they killed a candidate for president, and they killed a police chief in Tijuana, so let us not have your success that you have had with NAFTA.

Now, after you have been up here for a few years you listen to a lot of Secretaries—in 1992, Secretary Franklin said that the agreements made could result in the elimination of the trade deficit by the turn of the century. We have now hit the turn of the century, and the Special Trade Representative, Mr. Kantor, said during his visit that it would help reduce the deficit a lot.

Secretary Daley it is just unacceptable to have these sorts of trends continuing. Daley told the American business executives, quote, “what these figures say is that the Chinese market has yet to open.” The trends have just got to change. And then, of course, in the Great Hall in 1998, at the signing ceremony, Mr. Daley held the agreements as a boon to relations and said that they would reduce the trade deficit and, quote, “significantly encourage China’s other efforts in economic reform.”

Mr. Chairman, let’s include in the record please, the 1990 trade deficit with the People’s Republic of China was \$10 billion, in 1991 \$12 billion, in 1992 \$18 billion, 1993, \$22 billion, 1994, \$29 billion, 1995, \$33 billion, 1996, \$39 billion, 1997, \$49 billion, 1998, \$56 billion, 1999, \$68 billion, up, up, and away.

You know, after you hear this going on for years on end, how can we believe that this is in the best interest of the United States? What is going to change? What is going to happen?

Secretary DALEY. I believe, Senator, that the opportunity that this agreement creates will not be there if Congress does not pass this.

Can one guarantee that American products will be sold anywhere? No. This is a very competitive world. This is a very competitive market, as our market proves, and even though our deficit is at a record pace, or at a record level, our economy in many ways is viewed in a rather envious way by most of the world today.

They see our economy as strong. They see our employment levels, and they are rather jealous of them. They see opportunities with our dynamic economy for entrepreneurs and for creation of not only jobs but creating these new technologies that are helping to drive the world, and they are desirous of that.

We are committed and trying to work to lower the deficit. How do you do that? You do it either by opening other markets or trying to close your market. We believe attempting to open the market of China is the way to go, and this agreement goes a long way, after 13½ or 14 years of Republican and Democratic administrations attempting to negotiate a deal and get commitments from China, and I think it goes a long way.

Am I going to sit here and guarantee anything to you? No, I am not, Senator. I believe that the opportunity, if this is passed, for U.S. companies will be greater than it is today, and surely greater than it has been in the past. And with no reflection on the comments of my predecessors. I did not say that NAFTA would solve the drug problem or the immigration problem. I did not say that, but I do believe—

Senator HOLLINGS. Come on, you all had them under the white tent. That is all I heard. You have got all of those Republican business leaders under the white tent, and you said they were going to solve all these problems.

But in any event, Mr. Secretary, how can we believe that when you say it is trade it opens the opportunity for production in China? They have got to produce the movies now in China. They have to produce the airplanes in China. That is why the Boeing workers demonstrated and led the march out there in Seattle.

Wherever it is, in technology and communications and everything else, the American business community has pell-mell gone to invest in China for their production, downsizing back home, and the jobs are all lost here in manufacturing, and invested over there. They have not increased our trade. The proof of the pudding is otherwise. The deficit has gone up, up and away.

Secretary DALEY. I think there are a lot of reasons that companies produce products around the world. They can be producing today in China. What this agreement does—and I agree with you, Senator, historically they have all been forced to produce there if you want to do business there.

This agreement states so that those sort of requirements and restrictions will not prevail, and that a freer flow of reasonable investment and decisionmaking will be made not only by U.S. companies but companies in other parts of the world.

Senator HOLLINGS. Well, with the labor conditions there, it is quite obvious they can produce more economically, let us say, in cold rolled steel. You took up the issue. You launched an inquiry into cold rolled steel being dumped into the United States. That is last year in June, and then they found out in January that the Commerce Department determined that cold rolled steel products produced by Nippon, Kobe, Kowalski and Nissan were being sold 53.0 percent below fair market value over—they are dumping the steel.

So you go over to the International Trade Commission and they said, “Oh, there is no injury, and that is a fix by the Finance Committee that we set up years ago.” The business crowd knows how to do that, so you get nothing done.

And that is why I am saying—I ask for this hearing to say ‘No’ to the United States. We do not know how to maintain our economic security, and our jobs in manufacturing, unless we just hold up a while and start using—that is where you have got to come in. Administration, the executive branch, not this free trade, free trade. We have got to use this rich market to have bilaterals, one on one, as to their interests, as to our interests, and we can maintain our economic strength.

But to throw it into the WTO, where Cuba can cancel me out—come on. I mean, and you all think this is in the interests of the working men and women of America.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Hollings.
Senator Ashcroft.

Senator ASHCROFT. Again, I want to thank you for coming, Mr. Secretary, and I commend the negotiation of the terms of the agreement. I want to move quickly to the enforcement, because I am troubled about our ability to enforce these agreements.

I have a letter in my hand from a Missourian James Brown, the district business representative of the International Association of Machinists. In part he says, and I quote, “China has a history of

failing to live up to every other trade agreement it has signed with the United States, the 1992 memorandum of prison labor, the 1996 bilateral agreement on unilateral property rights, the 1994 bilateral agreement on textiles, and the 1992 memorandum of understanding on market access, and this is a matter of concern to me.”

Do you think that he outlined China’s record accurately?

Secretary DALEY. I think there has been a serious question of their compliance. At the same time, that is the reason, as I mentioned in my testimony, and if you have the opportunity to see this actual agreement, why this agreement was so specific, and why Ambassador Barshefsky made sure that this was not like some of the previous agreements back to the 1979 agreement, which was a three-page kind of memorandum of understanding.

This is very specific. And, in addition to the specificity of this agreement, and the WTO dispute settlement process, which we can argue about, and I do not disagree with you, Senator, we have been frustrated at a number of points along the way regarding beef and bananas and other fights, we have gotten relief. Most of the cases that we have brought, the majority of cases that either we have brought or have been filed against us, we have been successful in settlement or in final resolution of them on behalf of our interests.

But in addition to the process, we maintain the full use of our trade laws, whether they are dumping laws or 301 actions or 201 actions, and Ambassador Barshefsky negotiated specific provisions in this agreement on product-specific safeguards, so that for 12 years we would be able to bring a safeguard action solely against China, not through the WTO, solely against China, with an injury standard that is lower than the 201 standard.

We can also use—as I mentioned before—continue to use our nonmarket methodology under the dumping laws administered by the Commerce Department. In addition, China has agreed to eliminate the forced technology transfers which have been so important to American businesses.

So I think in addition to the WTO process, which we will continue in the next administration, I would assume we would continue to be aggressive. We have additional safeguards specific to China, which were specifically negotiated in this agreement, which have never been there in other agreements that have been negotiated since the 1979—

Senator ASHCROFT. Well, after the 1992 agreement China eliminated 176 licensing requirements in 1995, but then imposed 400 new de facto licensing requirements, according to the USTR in the 1997 report. Also, the 1999 USTR report said that China has removed over 1,000 quotas and licenses on a wide range of key exports, but despite the removal of these license requirements required under the 1992 memorandum of understanding, there are indications that China is erecting new barriers.

Also, the 1999 USTR report recited the fact that China had agreed earlier not to impose import substitution limitations for all sectors specifically mentioning autos in a footnote. And within the last 2 years China went ahead, then, and imposed import substitution limitations on autos, and in the last 2 years, according to the 1999 report, China has imposed similar restrictions on telecom utilities and pharmaceutical industries.

Now, it seems to me that we have made some substantial progress in the area of intellectual property and that is an area where we have had the ability, and used that ability, under 301 to threatened such retaliation. We threatened about \$4.6 billion in retaliation in 5 years. Everytime we threatened such retaliation, the Chinese responded, and we have made some real progress in intellectual property.

We do not have that right in the WTO vis-a-vis the European Community with the beef dispute. Under the WTO, we gave up your Section 301 rights in a significant way, because the WTO determines the level of retaliation.

You have talked about how the Administration has retained, for a 15-year interval, U.S. rights in dumping cases, which will allow the U.S. to protect its market from imports. Are you willing to negotiate and find a way to have a retention of our Section 301 rights in those settings for market access, which would allow us to export, and other areas of this agreement with China?

Secretary DALEY. We have maintained, Senator, the ability to use our existing laws, including 301 and 201, in addition to, as I mentioned, the antidumping methodology and the sector-specific safeguards that would only relate to China, so if we had an incredible surge in a certain sector of imports from China, we would be able to unilaterally take action against them.

Senator ASHCROFT. But that is to guard against a flood of unfair imports from China to the United States, and I commend you for retaining that kind of authority. What kind of similar stick in addition to the normal WTO procedures are you willing to have in order to preserve and protect the negotiated right to market access?

It seems to me that you have conceded that you need extra authority when you are dealing with China as a result of its history, and you have got it as it relates to them sending goods to us. What kind of extra enforcement authority are you going to have that ensures our right to send goods to them, because that is where we have come up short when it has related to things like beef and the Europeans?

Secretary DALEY. There are no special market access sticks we would have in addition to the normal WTO process. Let me just say, Senator, one of the advantages of this situation will be others, Europeans, other Asian countries, will be supportive of our attempts, because if we are running into problems in China the odds are so will their companies that are trying to do business in China. So one of the major advantages of being in a multilateral system would be that we do not stand alone in our attempt to open the market.

Senator ASHCROFT. Well, I guess it is because of the disenchantment I have with the way we have been shoved aside, the Europeans totally willing to pay the penalty rather than to open their markets to certain of our agricultural exports. I think we need to guard our ability to export with the same kind of intensity and integrity that you have sought to guard our ability to protect against the wrong kind of imports.

Article 22 of the WTO's Dispute Settlement Understanding is that the level of retaliation must be agreed to or approved by the WTO, and if the WTO does not want us to have very strong retalia-

tion, we find ourselves, in my judgment, at the mercy of a trading partner, such as Europe, that is willing just to take the penalties and deny rights under the agreement.

I guess what I would like to encourage the Administration to do is to find some way to give the same kind of authority and rights, which you have given against improper imports, to secure market access for those in this country who are focused primarily on exports. Exports are just as related to the vitality of our jobs and opportunity as our guarding against the dumping and other things that would erode the job base in our country.

Mr. Chairman, thank you.

The CHAIRMAN. Senator Dorgan.

**STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. Mr. Chairman, thank you very much.

Mr. Secretary, thank you for being here, and let me say that I appreciate your stewardship at the Department of Commerce, and I have worked with you on many issues and have great regard for your talents and your record.

Let me ask a number of questions about this China issue, and I might say that for me it is a difficult issue. I had voted on previous occasions for normal trade relations, but I think China is going to be a significant influence in our future, in our lives. The question is, what kind of influence, and how do we alter that influence in a manner that we think is important to us and to the world.

You have concluded a bilateral trade agreement with the Chinese and, frankly, I think less of it than some do. I mean, it is advertised as a significant market opening in China and so on, but my colleague from Missouri raises an important question about compliance.

We have had other agreements with China that did not mean a thing. They did not comply with them. They talk about, in agriculture, TRQ's. We have had tariff rate quotas. I think in 1994 and 1995 they announced tariff rate quotas in China. It did not mean a thing. In fact, during the intervening period our goods deficit with China has run up to nearly \$70 billion, and we have been displaced as the major wheat supplier to China by other countries and in fact, of course, China is involved in a self-sufficiency program for grain, so they are buying very little wheat in the first place.

But I think it is important to raise these questions: number 1, is there any reasonable expectation of compliance, and number 2, I would go back again to the agreement. Even if you had compliance, I do not think we do a good service to this country, its producers, its workers, and others, when we negotiate agreements with such low expectations.

Let me give you an example. We do not produce automobiles in North Dakota, but my colleague, Senator Levin, raised the point the other day—and it is an appropriate point, and I could raise it about agriculture as well—after we negotiate for a long period of time, we finally get to a point where the Chinese will have a 25-percent tariff on automobiles, and we will have 2½ percent, so after a long phase-in period we will allow them to have a 10 times greater tariff on automobiles than we will have.

Now, why would we expect that? Why would we allow that of a trade competitor, especially one that has a \$70-billion surplus with us, and in agriculture I can make the same point on a range of circumstances.

Now, when I raised the question the other day with Charlene Barshefsky and Dan Glickman they said, well, but look at the progress we have made. You are looking at the 14 percent, or the 25 or the 48. You know, we came down from 100 percent to 30, or from 50 to 14 percent in agriculture.

And I said, yes, but with a country that has a \$70-billion surplus with us, or we a deficit with them, why would you not in negotiations start with reciprocal policies, and say, "Let us talk about

autos, we want reciprocal policies on autos and same with agriculture?" Why would you not start in that circumstance?

So I just mention that to say I am not nearly as impressed with this bilateral. I think it reflects what was done in NAFTA. I think it reflects what has been done in most recent trade negotiations, and we short-change our producers, short-change our country by trade agreements that I think are not sound agreements, and expect far too little of our trading partners.

Having said all that, which is therapeutic for me to say, at least occasionally, let me ask you a little more in some detail about compliance.

Again, the WTO negotiator for China, following the bilateral, went to South China and, as reported in the South—I believe it is the South China Asia Post said, you know, the TRQ on grain, he said, that is just theory. That does not mean we are going to import any more grain from America. He said, the notion that we will allow more meat in from the several thousand meat plants in America, you should understand, that is just theory. That does not mean more American meat will be coming into China.

And I have written letters asking, what do you really mean? Do you mean what is in the agreement, or do you mean what you are talking about in South China to your constituents? I have not gotten any answers on that.

But give me your impression of all of that, compliance, the statements that have been made and so on.

Secretary DALEY. There is no question in my mind that the changes that are going on in China are enormous, that you are very familiar with, and are putting enormous strains on their economy, and there are many people who are fighting these changes. They do not want to see any change. They want the old system, which I think the Chinese leadership has made the decision cannot sustain what they need to accomplish in this century.

They are undergoing an enormous change. There is no question in my mind there are plenty of people in the political, and in the economic structure which has been very closed, totally closed over the years, that do not want to see these changes implemented, that do not want to see the commitments made implemented.

On the other hand, in order to see the economic growth and see the benefits that China wants, they are going to have to implement those changes. I think it will be difficult for them. I think it will be difficult for us. I do not pretend to think that the implementation of this agreement by the Chinese will be easy for them, and I would assume that we will have to, in the next administration, be very aggressive in their enforcement of the commitments that have been made.

As to the specific commitments in agriculture, of which you know much better than I, the industries, the agricultural interests in sectors that were priorities to us where there have been reductions, substantial reductions, are, according to our information, pleased with the levels at which we were able to get the commitments by the Chinese.

There are many areas of no priority to us, or to certain agriculture interests, but in those areas of priority to us my understanding is, from the indications of the agriculture community, that

they are pleased with those levels. We would like them lower. Will we get them lower at some date? We hope to. But at this point, compliance will be difficult, no question about it, Senator. And as I said earlier in my testimony, we have requested a substantial increase in our ability to fund additional personnel for compliance efforts.

Senator DORGAN. Secretary Daley, there is no question that some are pleased with these reductions, but I must say I recall some while ago, or nearly a decade ago, I guess, when we reached a beef agreement with Japan, you would have thought we had won the Olympics. I mean, my Lord, the negotiators were celebrating; it was on the front page of the Washington Post headlines.

You know what the agreement was? It was that 12 years later, which is now, every pound of American beef going into Japan has a 40-percent tariff on it. What a wonderful thing. So we get more beef into Japan, but we still have such low expectations of our trading partners, and I am just wondering when we can, in bilateral negotiations, start on behalf of American producers demanding reciprocal trade treatment.

I understand we are not talking about Japan here, but it is the same principle with respect to the bilateral with China.

Now, let me ask you one additional question, and I should say, again I find this issue difficult. I do not find it difficult to evaluate the bilateral trade agreements, which I think we come up short on, and did again, but I find it difficult for a range of reasons, because, as I said, I think China is going to be a significant influence in our lives, and I want it to be a positive influence.

I would like you, if you would, to respond to the testimony of Harry Wu. He has not given it yet, but I have read it. Mr. Wu, as you know, spent many, many years in Chinese prisons for advocating for democracy. I have not met him, but have read his testimony. He feels very strongly that essentially it is a kind of an appeasement to the Chinese leaders to move in this direction.

Now, I have been to China a couple of times. I am not a Chinese expert, but my evaluation is that some things have changed in China for the better. I am not someone in China who is standing on a street corner trying to speak out, and there are those who have who are in prison, and so while we talk about progress, Mr. Wu, who has spent a fair amount of time in Chinese prisons, says that he thinks that moving in this direction without forcing some significant political changes in China is appeasement. Can you respond to his testimony?

Secretary DALEY. Well, I obviously have not had the pleasure of reading Mr. Wu's testimony. As Chairman McCain stated, we all have enormous respect for him and for those others who have fought to see a different China and a different country. As we stated very clearly, and stood alone in Geneva as we issued our statement regarding the violations of China on human rights, we do not take a back seat to any country in the world in condemnation of China on human rights. As a matter of fact, as of last year we basically stood alone in that condemnation, and we will continue to do that if necessary.

I do believe that there are others also who have a feeling that encouraging China and getting China into multilateral organiza-

tions encourages them to continue on the path of reform. We obviously, as the President said in his State of the Union address, cannot guarantee which way China will go. We can hope that they continue, and that there are steps that continue to see a different China than obviously we have known in the past.

Twenty five years ago it was a country that was basically closed to the rest of the world. It is changing. It is changing dramatically in some people's opinions, not fast enough in most people's opinions, but as they continue to change we need to—as the President stated, take the steps so that if by chance they decide to go another path, a path which we are not encouraging of, we can at least say we did everything we could to encourage those in China that want to continue to see reform and change, and opening.

And that is what we believe part of this, in addition to the commercial aspects of this agreement is about trying to get China into multilateral organizations where the pressure would not be just by the United States but along with Europe and other parts of the world who have the same, similar economic interests as us, and hopefully a similar interest in seeing China change politically.

Obviously, we have a disagreement with Mr. Wu and the way to do that, but do not question, obviously, his motives or his position.

Senator DORGAN. One additional brief question. Ten years ago in the Ways & Means Committee, when I served on that Committee in the House, there was a big debate about where we were headed with China with respect to the trade balance, because at that point we had an \$8 or \$9 billion deficit. Many suggested this is going to improve, and I insisted it was not going to. In fact, now it is nearly \$70 billion in goods deficits. Can you tell me what is going to happen with the trade balance with China? Is our deficit going to improve and, if so, when?

Secretary DALEY. I would not sit here and tell you that it is going to improve, or when it will change. I believe this agreement and a continuing growth in China will give American companies the ability to sell more in China, and if our economy stays strong and American consumers continue to purchase at the sort of levels they have, I would imagine our imports from most of the world will continue to stay strong.

At the same time, we are the world's number one exporter, and need to continue in that role, but I would not sit here, Senator, and predict to you that this agreement alone is going to bring down the trade deficit, or on any schedule. I think the goal is to try to keep our overall economy strong and take steps that give us the opportunity to open markets that have been historically closed, as China has been.

Senator DORGAN. Thank you, Mr. Secretary.

The CHAIRMAN. Senator Cleland.

**STATEMENT OF HON. MAX CLELAND,
U.S. SENATOR FROM GEORGIA**

Senator CLELAND. Thank you, Mr. Chairman.

Thank you very much, Mr. Secretary, and thank you for your service to our country.

Less than 2 weeks ago, according to the Labor Department, my State, the State of Georgia, recorded the second highest number of

initial joblessness claims in the country, about 1,300. The reason given for this high number was due to layoffs in the textile industry.

While overall unemployment in the country is at record lows and some industries clearly will experience growth because of permanent normal trade relations with China, do you have any idea how many U.S. jobs you expect will be lost, particularly in the textile industry, as a result of permanent normal trade relations with China?

Secretary DALEY. I do not have any estimate. There have been private estimates made, Senator, by different organizations. No question about it, the textile industry, as you and Senator Hollings know much better than most, has been under great pressure for 20-plus years, and from all parts of the world, and at the same time there have been some successes seen in the textile industry and the apparel industry as they have taken advantage of new technologies in some specific markets.

We would hope that that trend would change. In many of the areas of the country where there were predominant textile or apparel industries other industries have opened and new jobs have been brought in. These other sectors have created low unemployment in parts of the country that a few years ago had rather high unemployment.

It is a dynamic, but as I say, there have been private estimates. We have no government sort of estimates as to what impact this agreement would have on potential growth of China. What we have seen in textiles and some other sectors is a shift within Asia to China for export. The overall percent of imports into the United States from Asia has not changed over the last couple of years, but the shift within Asia has occurred.

Senator CLELAND. Actually, a couple of agricultural products in my State actually stand to benefit from the bilateral agreement signed last November in Beijing—poultry and cotton. Mr. Secretary, what assurances do you have that China will actually live up to these agreements when they repeatedly failed from time to time to fully honor similar agreements in the past?

Secretary DALEY. We will have the dispute settlement process of the WTO and be able to take advantage of that, and we do have a very clear agreement that is not just a broad sort of statement. It is clear as to what tariffs come down when, and so it would make a case easier to prosecute, and at the same time we retain, as I mentioned, different safeguards and protections under our existing trade laws.

Senator CLELAND. I am fascinated by the question by Senator Dorgan from North Dakota about the trade imbalance or the trade deficit. We have a \$70 billion trade imbalance now, trade deficit with China.

Actually, there are some who feel that the entrance of China into the WTO would set off an even larger expansion of our exports into China. I understand the Institute for International Economics concludes that accession would lead to an immediate U.S. export jump of at least \$3 billion to China. Goldman Sachs reports that number could rise to about \$14 billion in the next five years. The International Trade Commission report concludes that as a result of the

agreement the nearly \$70 billion U.S. trade deficit with China will drop.

Is that a sense that you have, or do you think it will stay the same, or do you think it will rise?

Secretary DALEY. Well, I believe that if China opens their market and this agreement helps to open that market, U.S. companies, as they have proven in many other parts of the world, can be as competitive as anyone else doing business there.

As China's economy improves, they will have greater need for products from the U.S., and from other parts of the world in those areas that we have expertise. Therefore, if we have an ability, as you will hear, I believe, from some business people in the next panel, to distribute the goods and to have a clear distribution system, there will be a greater opportunity to sell those goods and not have the barriers, nontariff barriers, that have been put up in China historically. I believe that will occur.

Am I going to predict how much and when? I will not do that. Obviously, as Senator Hollings has stated, previous Secretaries have made the mistake of doing that, and I would like him in 10 years not to be able to quote me again sitting here at this hearing not being as accurate as he would like.

Senator CLELAND. Most of us would like never to be quoted by Senator Hollings. [Laughter.]

Do you believe it is absolutely necessary for Congress to pass a permanent normal trade relations agreement with China in order to fulfill our obligation with respect to the bilateral agreement just signed, a permanent NTR?

Secretary DALEY. We do, Senator, and I believe most legal authorities who have commented on the WTO and commented on the rules of the WTO believe very strongly that we must grant China the unconditional NTR that we have given every other member of the WTO, save, I think, one, who is in the process right now of being granted that by Congress.

Senator CLELAND. Do you have any idea just off the cuff of how many countries we do have normalized trade relations with? It must be in the scores of nations.

Secretary DALEY. I believe we have normal trade relations with 134.

Senator CLELAND. 134 nations we have normal trade relations with?

Secretary DALEY. And Congress has, on an annual basis, for 20 years given China that normal trade relation status.

Senator CLELAND. So we have had these relations for 20 years. It is just that it has to pass the Congress every year.

Secretary DALEY. Right.

Senator CLELAND. What you are suggesting is that we obviate that process and go with an agreement and support China's entrance into the WTO and that that would be ultimately the best for us in the long run economically and politically for our country, is that correct?

Secretary DALEY. Yes, Senator. It is not about China entering the WTO. When they complete the final agreements they will enter the WTO. It is: "what conditions will China enter under, and what impact that will have with us."

If we are the only Nation not to give them what everyone else has given, they have stated that they will not give us the benefits of the agreement and they would not be subject to the terms and conditions of the bilateral agreement, and we would therefore not be the beneficiaries of it, and American businesses would be at a serious disadvantage to the European and Asian and other competitors in doing business in China.

Senator CLELAND. That was my next point exactly: that some feel if we do not take this action, that the Japanese and the members of the European Union and others will, in effect, go ahead and be part of normal trade relations with China and put our own businesses at a disadvantage. Is that your understanding?

Secretary DALEY. That is clearly our understanding and the Chinese, as I say, have stated that if we were to not give them what we have given everyone else, that would be their position, and we would be at a serious disadvantage.

We have negotiated this for 14 years. I would also believe strongly that if PNTR does not pass Congress, you would see the Europeans come to the conclusion with their negotiations with China rather rapidly so that they would be in a different position than we would.

Senator CLELAND. Thank you very much, Mr. Secretary. Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Snowe.

**STATEMENT OF HON. OLYMPIA J. SNOWE,
U.S. SENATOR FROM MAINE**

Senator SNOWE. Thank you, Mr. Chairman, and thank you, Mr. Secretary. I did want to drop by, because I did obviously think this is very important for our Nation, and I also want to state over the years—I served in both the House and in the Senate—I have had serious concerns about our ability to enforce agreements, and as I look at this agreement that has been negotiated with China, obviously textiles have certainly been adversely affected. In fact, the industry released a study that indicated that 154,000 jobs could be lost.

I know the agreement includes a protection against surges, but that is little comfort for the number of jobs that certainly could be lost within the overall industry, but also within my State. You know, under the NAFTA we lost more than 26,000 textile and apparel jobs in the State of Maine, and it has had a tremendous impact, because those jobs are not replaced by equally good jobs in terms of pay.

I would like to have you address the issue of compliance. I know it has been explored with other members of this Committee, but it has been of little comfort to me in terms of whether or not these agreements over the long haul would be complied with. So, could you address the compliance issue within the WTO? I mean, they may or may not live by the rules. What is it going to take? We have had experience, under the NAFTA mechanism, that it has shown us the difficulties enforcing these agreements in particular disputes.

Secretary DALEY. One of the major differences between this agreement and other agreements, especially the agreements that

have been referred to this morning that we have negotiated in the past with China, is the specificity in which this agreement deals with tariff reductions. I just returned from China last week. There is no question the implementation is of great concern to us and to the Europeans.

The changes that are necessary, both legal and regulatory, the changes within ministries at the federal, state, provincial, and local level are enormous in order to accomplish much of what has been agreed to. We are working with the Chinese, in addition to having the WTO dispute settlement process, having the import surge protection, continuing our dumping methodology for 15 years, and keeping our section 201 and 301 trade law remedies.

The fact of the matter is, we are working with the Chinese to try to help them implement this agreement, help them as they change their regulations and their laws to make sure they are in compliance with our agreement.

No question about it, as stated to the Committee a few minutes ago, this will be difficult for them to accomplish, and for many years we are going to have to be—this Government is going to have to be very aggressive in pushing them for compliance with this agreement, as I believe the other members of the WTO, who will have similar interests in pushing them, will do also.

Senator SNOWE. But is it not true in the past that it has required extensive negotiations, or renegotiations with the Chinese with respect to enforcement and compliance? I mean, what is it going to take? What satisfies you within the WTO that we will be able to ensure that there will be compliance with this agreement?

Secretary DALEY. I think the changes that are going on in China are enormous, and the compliance with this agreement, our condemnation of their human rights, and their efforts to change, are very difficult; but I believe they are on the road to changing, and that it is necessary if they want to see the economic growth that they need for their country. I believe the leaders have made a basic choice to change, to improve, and to open their economy in order to accomplish that.

The commitments they have made in this agreement, and commitments they have made to other countries in the WTO, are a major part of that economic success that they want to see in their country, which still to this day lags behind the vast majority of the world.

Senator SNOWE. So what are the specific mechanisms within WTO that satisfy you?

Secretary DALEY. Well, we have a dispute settlement process we have taken advantage of, and we have won most cases, including most cases that have been filed against us, and we have gotten relief.

Are there difficulties with that? Is it too long? Yes. We need to have a reform of the dispute settlement process, and we hope to see that occur within the WTO not just for our sake, but for the other party's sake. Other countries have disputes with us that they feel the WTO has not been efficient in their response. We would like to see improvement in the WTO process itself, but when we have taken action we have usually been successful, and we have gotten either a change or a compensation.

In addition to that, as I mentioned, this agreement specifically allows us to continue our antidumping methodology, which we in the Commerce Department aggressively take action under, and the import surge provision and other areas.

Senator SNOWE. Could you tell me what you think the impact will be on the textile and apparel industry as a result of this agreement?

Secretary DALEY. I was saying to Senator Hollings, I believe, earlier, that there are plenty of estimates, private sector estimates as to the job impact. The textile industry has been under siege from the rest of the world for 20-plus years now. This agreement will probably not change that.

I do not believe it will increase the pressure that is on that industry and will remain on that industry over the next number of years, but at the same time, as I said, there is nothing unique in this agreement, in my opinion, that would create additional pressure on the textile industry.

Senator SNOWE. You do not believe that that will be the case, that there will be a major shift within China towards the textile industry?

Secretary DALEY. The textile industry in China has been pretty aggressive. There may be a shift from parts of the world to China. Many parts of the world that have been producing textiles and selling not just in the United States but to Europe and other developing nations are greatly concerned that China may replace them. You may see a shift in some of that production from other countries to China, but as far as an increase by virtue of this agreement, no, we do not.

Senator SNOWE. Finally, I know it has been referred to, but in terms of a potential increase in the trade deficit as a result of this agreement, the International Trade Commission did a report last fall regarding the fact that that is potentially likely. Is that true?

Secretary DALEY. I think if our economy stays strong, as it has done—there are probably three reasons that our trade deficit has been as substantial as it has, is (1) the strength of our economy and the very aggressive buying patterns of American consumers and businesses, (2) the openness of our market, and (3) many markets around the world being closed, or not doing as well as they had done earlier in the nineties than they had.

So the strength of our economy is still the main reason why the trade deficit continues to grow as much as it does.

Senator SNOWE. But with China.

Secretary DALEY. Specifically with China, I would not predict what would happen.

Senator SNOWE. Could it go up?

Secretary DALEY. It could go up, it could go down, depending on the strength of our economy and the strength of the Chinese economy.

Obviously, if the Chinese economy does not grow, they are not going to be able to purchase goods, not just from the United States but from other parts of the world, which will diminish our capacity to export to them. If their economy collapses, it is not going to be a market where U.S. companies are going to be selling a heck of a lot. If they grow, and they open, which this agreement helps

them do, then I believe American companies have an opportunity to sell there, which will increase our exports.

Senator SNOWE. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Hollings.

Senator HOLLINGS. I did not understand your answer. Did you say that your testimony is that with this agreement the trade deficit will go down or go up?

Secretary DALEY. I said I would not—I am not predicting which way it would go.

Senator HOLLINGS. So you do not say either way.

Secretary DALEY. What I am saying is, our economy stays strong and the rest of the world's stays not as strong as ours is—

Senator HOLLINGS. I am wondering about the effect of WTO, in other words.

Right to the point, the International Trade Commission took a model entitled, "The Assessment of Economic Effects on the United States of China's Accession to the WTO." This is a hearing not on whether our economy stays up or down, but the impact of China's accession to the WTO, and I read:

"A most significant impact was found on U.S.-China trade flows. Imports into China would be stimulated by its tariff reductions. As a result, U.S. exports to China would likely be approximately 10 percent higher. U.S. imports from China are also estimated to be almost 7 percent higher as trade liberalization helps make China's export sectors more competitive. As a result of this increase, the model estimates an increase in the U.S. trade deficit with China."

Do you agree with that?

Secretary DALEY. I assume one of their assumptions is that our economy stays very strong. The second thing is, that study only considered tariffs, and did not consider any other sort of market-opening activities that occur in this agreement that was reached with the Chinese. That study only dealt with tariffs.

I do not pretend to be an economist, Senator, but that study by the ITC only dealt with tariffs, and I assume their main assumption was our economy would stay strong and American consumers would continue at the pattern that they have had the last couple of years.

The CHAIRMAN. I thank you again, Mr Secretary.

Secretary DALEY. Thank you, Mr. Chairman.

The CHAIRMAN. Our next panel is Lieutenant General Brent Scowcroft, Mr. Richard Kahler, president of Caterpillar, Inc., Mr. Jack Valenti, Ms. Lori Wallach, who is director of Global Trade Watch, and Mr. Harry Wu.

We thank all the panelists for their patience. Obviously, this is a very serious issue. I would like to welcome all of our panelists here today. General Scowcroft, we would like to begin with you, in deference to your age.

[Laughter.]

**STATEMENT OF LIEUTENANT GENERAL BRENT SCOWCROFT,
USAF (RET.), PRESIDENT, SCOWCROFT GROUP**

General SCOWCROFT. Thank you, Mr. Chairman, Senator Hollings, members of the Committee. It is a great privilege to be here

with you today, especially to discuss an issue of such importance to U.S. national interest. I do not have a formally prepared statement to submit, but I do have a few opening observations I would like to make.

Let me state at the outset I am strongly in favor of granting permanent normal trade relations to China, not as a favor to China, but because doing so would be very much in the U.S. national interest. This, in my judgment, goes far beyond American business and economic interests, important as these are, to key U.S. political and security interests.

China is certainly no democracy, but instead of judging where China is now in political development compared to the United States, let us compare where it currently is with where it was in 1972, when President Nixon made his historic visit. On that scale, the degree of change, most of it for the better, is astonishing, and must also be seen so for the average Chinese.

I do not want to make too much of this general point, but it is a fact that the China of 1972, the Cultural Revolution and so on, is fast disappearing. It still has a long way to go, but, after all, we waited patiently for 40 years while Taiwan developed into a democracy.

We face two fundamental questions. The first is, where is China heading? The second is, how and how much does what we do affect the answer to the first question?

We cannot know China's vision of its long-term future, nor how the forces of change now at work will mold that future. Indeed, it is not at all certain that the Chinese leaders themselves have a clear vision of where that vast country is heading, or that a similar vision is held by each Chinese leader, and even less that the leaders will be able to accomplish whatever their vision may be.

A few things do seem reasonably clear to me. The Chinese leaders deeply resent what they consider the humiliation of the past 150 years at the hands of the, quote, West, unquote, and they are determined not to submit to western dictation. Psychologically that affects a lot of what they do.

The Chinese leaders have a deep fear, maybe even paranoia, of internal political instability, and there is near consensus within the Chinese leadership on giving top priority to the continued modernization of the Chinese economy. That now means, above all, the privatization or marketization, whatever word you use, of state-owned enterprises and the creation of a modern banking and financial system.

While it is not easy to project the direction of China's political evolution, I am basically optimistic on several counts. One important factor is the tens of thousands of Chinese students, including sons and daughters of most of the top Chinese leaders, studying in the United States each year. Not all return to China, but most do, and they carry with them a sense of the principles which have motivated this country and made it such a success.

Another factor is the explosion of information technology. The Chinese Government is now trying to figure out a way to control the Internet, for example, but it is almost certainly a losing proposition. As a case in point, there are already Internet cafes in most

of the large Chinese cities, where one can rent a computer or rent computer time along with one's cup of tea.

But arguably the most important factor of all is the privatization of the state-owned industries. Premier Zhu Rongji has repeatedly shown his determination to pursue this program, regardless of its complicating factors for the China social scene. The WTO is Premier Zhu's ally in abolishing this system, because there is no way most of these state-owned dinosaurs will survive the competition which will come with admission into the WTO and adherence to WTO rules. This program of privatization is profoundly in the interest of the United States.

At present, the managers of these state-owned industries owe and retain their jobs at the political whim of the leaders in Beijing, and they receive the loans essential to the survival of their uneconomic enterprises on the same basis. When an enterprise manager's job and his access to capital becomes based, not on the goodwill of the political bosses in Beijing but, rather, on his or her ability to make a profit, their relationship to the Central Government will undergo a fundamental transformation as will, I believe, the political system itself.

It is frequently charged, as we have heard this morning, by opponents of permanent normal trade relations (PNTR), that it forces us to give up our leverage to compel political change in China, and that it will result in us being flooded with goods made by cheap Chinese labor. To me, it is difficult to find substance to either of these arguments.

The annual renewal of normal trade relations has not, in fact, provided much political leverage, as opponents tacitly admit by claiming that Chinese Government repression has actually increased in recent years. Annual normal trade relations to China have not been cut-off, as Secretary Daley stated, in any year since the Jackson-Vanik legislation was applied to China. Not exactly great leverage.

And our denial of permanent normal trade relations now would not deny China WTO membership, but only mean that U.S. firms would not enjoy the market-opening steps which would then be available to our industrial competitors. But above all, Congress will retain the ability to terminate permanent normal trade relations by the same legislative procedure through which it can now terminate the present annual renewal.

Additionally, permanent normal trade relations is one of the few tools we have to provide incentives to those people and institutions within the Chinese system whose interests are similar to ours, and who want to make progress similar to the U.S. model.

And as a last point, China's WTO membership is supported by the Taiwanese Government and by the duly elected President Chen. Taiwan's leadership realizes that the WTO will influence China's behavior for the better, as well as open the door for Taiwan's own participation in the WTO.

As for being flooded with Chinese goods, U.S. markets are already open. The important thing to remember here is that the WTO process is directed at opening China markets. The U.S. needs to do nothing further. Our tariff system will not change.

In conclusion, Mr. Chairman, this may be one of those rare occasions on an important issue where there is virtually no downside to taking affirmative action. We cannot ourselves determine the ultimate course China will take, and denying permanent normal trade relations will remove none of the blemishes that China's opponents have identified. But we can take steps which will encourage China to evolve in directions compatible with U.S. interests. To me, granting permanent normal trade relations is one of the most important such steps that Congress could take.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, General Scowcroft. You are always welcome here before this Committee, and we appreciate your insight.

Mr. Wu, we are very honored by your presence today before the Committee. All of us who have followed your service and sacrifice are very honored by your presence. We thank you for being here before the Committee today to give us your very unique and valuable insight into this issue. Thank you, Mr. Wu.

**STATEMENT OF HARRY WU, EXECUTIVE DIRECTOR,
LAOGAI RESEARCH FOUNDATION**

Mr. WU. Thank you, Mr. Chairman. It has long been fashionable to think what is good for Wall Street is good for the United States, and it is true that PNTR and WTO entry for China will further help these companies economically, but the other major beneficiary of China's entry into the WTO will be the Chinese Communist Party.

The Chinese Communist Party maintains political and economic control in China, and WTO entry will not change that. In recent years, many people have argued that money really can transform a tyrannical government. You heard that engagement with the Chinese Communist government by trade, investment, and technology exchange is the best way to foster democracy and improve human rights in China. Of course, these arguments would not apply to the former Soviet Union, today's North Korea, Cuba, and Vietnam.

It is true that living conditions for many Chinese have improved, thanks to millions of dollars of foreign investment, but it is the Chinese Government that benefits most from the foreign trade and investment. This Government needs foreign money and technology to maintain and increase its power, and to modernize its system of tyranny.

Do you remember this picture? 10 years ago, the People's Liberation Army tank almost rolled over the student at Tiananmen Square in Beijing, and in 1997 Chinese President Jiang Zemin came here and he said, "the Tiananmen massacre was necessary for stability. And, the stability is good for the foreign investment."

Have you seen this picture? This is Cardinal Joseph Kung. He just passed away last month. He was in the Chinese prison camp for 30 years. He was a champion of religious freedom in China and today, you know, the Roman Catholic Church is still illegal in China.

Tibetans are tortured for being loyal to the Dalai Lama. Members of underground Protestant Churches are imprisoned, and

thousands of followers of the Falun Gong are in the labor camps today.

Here is another picture of the labor camps of the Chinese Laogai systems. The Laogai is the Chinese Gulag. Why do you only condemn the Gulag from Soviet Union and ignore the Laogai in China? We estimate as many as 4 to 6 million today are in these Laogai camps. They live in horrible conditions, and they must undergo thought reform, and they also are forced to labor, and some of the products continue to come to our markets.

Here is another picture of the execution of a young man, who participated in a pro-democracy protest in China. China executes more people every year than every other country in the world combined, and there is a national policy to harvest these death row prisoners' organs to make a profit.

The Administration says that we negotiated the WTO agreement with the Chinese. No, that is wrong. We do not negotiate with the Chinese Communist government. We negotiated with the Chinese Communist government, and this government does not represent the Chinese people. It is not normal. It is not a normal country, and we do not think it will be permanent, just like the former Soviet Union and Eastern Bloc.

We must also consider the effects of Chinese entry into the WTO on national security. The People's Liberation Army, which the United States fought against in Korea and Vietnam, still serves as a major component of the tyrannical regime. When we talk about China slowly achieving superpower status, we must be aware that this is a communist power.

Last summer, I was in Vladivostok, headquarters of the Russian Pacific Fleet. I saw many battleships lined up in the port because the Russian Government does not have the money to keep them running. But you know that there are two new missile destroyers in the PLA Navy recently, but the Chinese government is using hard currency, and it has come from foreign investment, to strengthen their security force. Today, there are 2,000 former Soviet Union military experts working in China for the PLA. They are not pro-democracy in China at all, and the Chinese government supports terrorist countries like North Korea, Iran, and Iraq, and they are becoming more and more capable of posing a serious threat to the security of Taiwan.

Facing this bankruptcy of the socialist economy, what the Chinese government wants most is increased foreign investments and guaranteed access to foreign markets with no threat of bilateral sanctions. The WTO and PNTR will give a timely boost to this Chinese communist leadership. This blood transfusion to an obsolete and dying regime is both unwise and unnecessary.

Why do the western capitalists want to rush into China? China has a population of 1.25 billion. This is a lucrative market. Nobody can turn away from it, but even more importantly, China has a huge, cheap, and obedient labor force. In that country, there are no free trade unions, and all the men and women are controlled by one hand, the Chinese government. Chinese officials will maintain order in your business.

As the Chinese Communist Party grows richer and stronger from this deal, parts of its new wealth will go to upgrading its instru-

ments of authority, the police and the military. Foreign investment will help them crack down on the Falun Gong efficiently, and it will help them harvest organs from prisoners with better technology.

In 1994, the Clinton administration delinked human rights and trade. This fulfilled the basic desires of the Chinese Communist government. Last month the State Department human rights report admitted that the human rights situation in China is worsening, and the Administration intends to introduce a resolution at the Human Rights Commission in Geneva this year, but I am asking, why not take a stand in Washington, D.C., using our economic leverage?

The Administration says the WTO deal is not an endorsement of Chinese human rights policy, but it is an endorsement, because it adds to the legitimacy and hard currency of the oppressive regime. It is that simple.

If a foreign policy does not contain a moral basis, it is a typical appeasement policy, and I am asking you, policymakers, to rethink the United States China policy that currently puts profit over principle, otherwise we will be traveling down a road to larger and more difficult problems. We should not give the Chinese Communist Party in China a blank check.

Thank you.

[The prepared statement of Mr. Wu follows:]

PREPARED STATEMENT OF HARRY WU, EXECUTIVE DIRECTOR,
LAOGAI RESEARCH FOUNDATION

It has long been fashionable to think, "What is good for Wall Street is good for the United States." Globalization has greatly benefited multinational corporations, and it is true that PNTR and WTO entry for China will further help these companies economically. But the other major beneficiary of China's entry into the World Trade Organization will be the Chinese Communist Party. The CCP maintains political and economic control in China, and WTO entry will not change that.

So we must first consider the effects of China's entry into the WTO on national security. Congress should, when it considers permanent NTR status for China, put this agreement under a national security microscope. The relationship between a lack of democracy, economic growth, and China's military expansion is a serious one and must be closely examined. The People's Liberation Army, which the United States fought against in Korea and Vietnam, still serves as a major component of this tyrannical regime. When we talk about China slowly achieving superpower status, we must be aware that this is a Communist power.

In recent years, many people have argued that money really can transform a tyrannical government. You heard that engagement with Chinese Communist government by trade, investment and technology exchange is the best way to foster democracy and improve human rights in China. Of course these arguments were not applied to the former Soviet Union, today's North Korea or Cuba. It is true that living conditions for many Chinese have improved thanks to millions of dollars of foreign investment. But it is the Chinese government that benefits most from foreign trade and investment. The government needs foreign money and technology to maintain and increase its power and to modernize their system of tyranny. The Chinese government is using hard currency from foreign investment to rebuild its security force: to hire 2,000 former Soviet Union military experts to work for PLA; purchase missile destroyers and SU-27 jets from Russia; and support terrorist countries like North Korea, Iran and Iraq.

Faced with the bankruptcy of socialist economy, what the Chinese government wants most is increased foreign investments and guaranteed access to foreign markets, with no threat of bilateral sanctions. This trading status gives just that to the Chinese Communist dictators, increasing their authority and claims to legitimacy. The WTO and PNTR deal will give a timely boost to the Chinese Communist leadership. This blood transfusion to an obsolete and dying regime is both unwise and unnecessary.

Unfortunately, investing in China is putting your money into the pockets of the Communist government, and of corrupt officials. The Chinese government is the ultimate decision maker, and all companies have to obey its political choices. These investments involve high risk.

American business partners in China are not free capitalists. Most of these big companies in China are owned completely by the Chinese government. That's why you saw many Communist businessmen driving Mercedes Benzes to come to Wall Street, even to the White House.

It is a serious mistake when some try to tell you that China is becoming a market economy. The Communist Party cannot institute a true market economy. The Chinese economic miracle is based on bad loans, a transfer of wealth from the state to Party cadres, and bad accounting—not on true production of wealth. The so-called “market economy” in China's mainland is actually a “socialist market economy,” controlled by the government.

The Chinese Communist leadership has not proven to be a reliable partner in its international dealings. Its human rights abuses violate the United Nations treaties it has signed, and it continues to violate other trade treaties by dumping and exporting forced labor products.

Why do the Western capitalists want to rush into China? China has a population of 1.25 billion. This is a lucrative market. Nobody can turn away from it. But even more importantly, China has a huge, cheap, and obedient labor force. In this country there are no free trade unions, all the men and women are controlled by one hand—the Communist government. Chinese officials will maintain order in your business.

We've heard many politicians and business people say that doing business in China helps spread American values and business practices. It is true, that Chinese businessmen are willing to learn how to be more efficient, but U.S. businesses in China will never be allowed to take steps to improve human rights that go against the fundamental policies of the Communist Party. The Chinese communist government is one of the worst human rights violators in the world today. In China, there is a national “population control” policy. Every woman and family is subject to this policy. If a woman in an American company gives birth to a child without a permit, Chinese law says that she will be fired. There is nothing the American bosses can do. If Chinese workers want to organize an independent trade union in an American company in China, these people would be fired or even arrested. Again, there is nothing the American bosses can do.

We have seen the “dollars to democracy” theory fail over the past twenty years. The Chinese people may have more brands to choose from at the store, but they still risk arrest, torture and imprisonment because of their political beliefs or their faith. China continues to imprison political dissenters and labor activists, to repress religious freedom, to execute more of its citizens than any nation in the world, to violate the rights of women in its population control policy.

The current crackdown on the Falun Gong is a sad but perfect example of the how the Chinese government treats common citizens. We have all seen the people of the members of Falun Gong practicing their beliefs. What are these people doing? Are they throwing bombs? Are they gathering secretly to discuss the overthrow of the government? No, they are practicing traditional breathing exercises. But the government is so paranoid, as all totalitarian regimes are, so it considers these people a threat. And will treat them as it does any threat, by cracking down quickly and completely. The members of Falun Gong are dragged into waiting vans to be detained and imprisoned. Lawyers in China have been instructed not to represent these people, showing that the Chinese government will easily break its own laws when it decides to.

As the Chinese Communist Party grows richer and stronger from this deal, part of its new wealth will go to upgrading its instruments of authority: the police and the military. Foreign investment will help them crackdown on the Falun Gong more efficiently, it will help them harvest organs from prisoners with better technology.

In 1994, the Clinton administration de-linked human rights and trade. This fulfilled the basic desires of the Chinese Communist government. Last month the State Department Human Rights Report admitted that the human rights situation in China is worsening. The administration intends to introduce a resolution at the Human Rights Commission in Geneva this year. But why not take a stand in Washington DC, using our economic leverage? If foreign policy does not contain a moral basis, it is a typical appeasement policy.

From a human rights standpoint, one can only hope this focus on trade agreements will not completely overshadow the long road that must be traveled towards democracy in China. Perhaps one day, the U.S. government will try to promote human rights in China with the same zeal that it runs after market access.

I am asking you—policymakers—to re-think the United States' China policy that currently puts profit over principle, otherwise we will be traveling down a road to larger and more difficult problems. We should not give the Communist Party in China a blank check.

The CHAIRMAN. Thank you very much, Mr. Wu.
Ms. Wallach.

**STATEMENT OF LORI WALLACH, DIRECTOR,
PUBLIC CITIZEN'S GLOBAL TRADE WATCH**

Ms. WALLACH. Thank you, Mr. Chairman and members of the Committee.

The question before Congress is: Given China will go into the WTO, what then is in the U.S. interest in the area that Congress controls, which is the issue of U.S.-China bilateral trade status? You have been given two options. You can maintain the current approach of annual Normal Trade Relations (NTR). You can preserve the use of assorted enforcement instruments, such as Section 301, that are banned under WTO. You can preserve Congress' role by maintaining the status quo and the leverage, though not now often used, to review and annually determine U.S.-China trade relations. By maintaining the status quo, you are clearly not ignoring or cutting off China, because, absent an act of Congress, Normal Trade Relations with China will continue year after year.

Alternatively, you can shift to permanent NTR. And you can shift U.S.-China relations to the World Trade Organization. You will cede the use of Section 301 and other effective U.S. unilateral enforcement mechanisms and you will remove Congress' role from the U.S.-China trade relationship.

Now, here is the hitch. It is not necessary to do the shift to PNTR, which clearly has some downsides, for the U.S. to obtain whatever potential benefits could accrue when China enters the WTO, if China actually complies with the terms of the WTO. Footnote: As many Senators have noted, China's compliance is uncertain. And footnote 2: The GAO recently reported that many of the provisions of China's WTO accession, including all of those dealing with the state sector and with subsidies actually have yet to be negotiated. So Congress cannot even know exactly what it is that the U.S. is getting prior to the PNTR vote.

That having been said, assume China goes in and they follow WTO rules. And let us say even that the terms of the full package are good. Thanks to the agreement on trade relations between the U.S. and China, known in shorthand around Washington as the 1979 Agreement, the U.S. gets the goodies if China complies with WTO rules because that 1979 Agreement requires reciprocal Most Favored Nation between the U.S. and China.

The 1979 Agreement explicitly covers tariffs; i.e., all of the tariff cuts you just heard touted by Secretary Daley if China enters the WTO, (which Senator Dorgan notes are not good enough but are something) we get those tariff cuts anyway. You do not have to give China PNTR. We get those tariff cuts without PNTR under the bilateral agreement. And I would submit for the record, the transcript of USTR Barshefsky saying so to the House Ways and Means Committee as regards to the 1979 bilateral and the tariff cuts.

[The following material presented by Ms. Wallach for the record.]

HOUSE WAYS AND MEANS COMMITTEE HEARING

FEBRUARY 16, 2000

U.S. TRADE REPRESENTATIVE BARSHEFSKY ADMITS CHINA WOULD GIVE TARIFF
REDUCTIONS WITHOUT CHINA PMFN

REP. KLECZKA. And, using autos as an example, if, in fact, this Congress would not grant permanent trading status to China, they, in fact, could continue their tariff of 100 percent on automobiles that we ship there; however, they would give the current negotiated tariff of 25 percent to all other trading partners.

AMB. BARSHEFSKY. We may have an argument *under a pre-existing 1979 agreement with China that China would have to give us the advantage of tariff reductions*, but we would have no such claim in the case of trading rights, distribution, the ability to service in China, setting up dealerships in China. We would have no such claims.

REP. KLECZKA. Okay. Now, I have some feel for those who say we still must keep a short leash on this agreement, know full well that we've seen China and some of their practices in the past years. What can we do, either in the permanent trade legislation that we'll have before us or in existing WTO legislation, to provide for a more frequent review than that as what's called for today under the trade policy review mechanism?

AMB. BARSHEFSKY. I think that Congressman Levin had some very, very good suggestions in that regard. In other words, certainly we are going to want to be able to have a very strict monitoring regime on China's adherence to its commitments. I think this is essential and China needs to know we are watching that closely.

But there is more. That 1979 treaty requires that the U.S. be given Most Favored Nation treatment—i.e., the best—any third country gets on all laws, regulations and requirements “affecting all aspects of internal sale, purchase, transportation, distribution, or use of imported goods.” So not only do you get the tariff cuts without having to do PNTR, you get distribution rights for the imported goods.

That treaty also requires China to “accord firms, companies and corporations treatment no less favorable than it affords any third country,” MFN for services and investment. The benefits of China's accession, if it follows the WTO rules, accrue to the U.S. under the 1979 bilateral. And I submit, the 1979 Agreement and a memo describing it by Columbia University Law Professor Barenberg, also for the record.*

Now, let me clarify one thing: the U.S./China November 1999 deal, that is not a freestanding agreement, the benefits of which go away if Congress does not do PNTR. As USTR stated to the press, and I submit this for the record also: there is no quid pro quo. As you can see in looking now at the text of the November 1999 deal, the U.S. does not agree to give PNTR in order for the U.S. to get benefits. Rather, the U.S. bilateral and all the other countries' bilaterals will get multilateralized. And the best that everyone gets bilaterally becomes what everyone gets multilaterally. It will become the terms of China's accession to the WTO.

And under the 1979 Agreement, the U.S. gets whatever is the best China gives to any other country, which becomes the WTO accession terms China agrees to—all those tariff cuts and all the other goodies. The whole basis of MFN is a fluid, changing notion of countries giving each other the best, as it changes over time, to each other.

*The information referred to has been retained in the Committee's files.

Now, the administration has derided the 1979 Agreement. Commerce Secretary Daley called it a three-page MOU. It happens to be 10 pages. But, more importantly, it is the basis for the billions of dollars of U.S.-China trade. So it is a little difficult to now say it is inconsequential, to say nothing of all the other bilaterals that Senator Hollings mentioned, which stand to cover intellectual property issues and all of these sectoral issues covered in the memorandum of understanding.

The issue, though, always is enforcement. And many Senators have raised that. The reason to not go for permanent NTR but to maintain the annual standard is because we need to maintain our effective enforcement tools. The U.S. could have the best of both worlds. We could get the concessions that China has to make to enter WTO—China's new best treatment—while keeping tools to deal with China's abysmal record on enforcement.

It is an open question exactly what the WTO requires WTO Members to give each other, as noted by Georgetown Law Professor John Jackson. However, the U.S. is going to avoid ever testing the question. USTR has announced they will apply for non-application in the WTO between the U.S. and China. The one thing everyone agrees that means is the U.S. and China will not have WTO dispute resolution assurances between them. And to that we say, thank God.

There are many who would argue that it is actually a much better idea to get the goodies of China's WTO accession, the trade benefits, and keep our non-WTO enforcement. As a matter of politikreal, in the WTO, the U.S. is one of 136 countries versus with U.S.-China bilateral enforcement, the U.S. takes 42 percent—yes, 42 percent—of China's total exports—a bit of leverage.

Also under Article 23 of the WTO Dispute Resolution Understanding, which allows that WTO Members only use WTO dispute resolution to resolve disputes between each other. It takes at least 2 years; and, as several Senators noted, it relies on something totally missing in China: the rule of law. If countries decide not to follow a WTO ruling as with the E.U., they simply do not.

Now, as we have seen in recent rulings, while the Administration talks about maintaining Section 301, in fact the WTO has ruled that the U.S. may not use Section 301 except within the WTO's 2-year time line, making it Section 301-not. The U.S. has just lost the first ruling on its anti-dumping laws last week in the Japan case regarding steel.

I would conclude by saying that as regards the potential trade concessions of China's WTO entry, the way to proceed is to maintain the annual review and find out what happens with China's accession to the WTO. This is a trust-but-verify stance that allows the U.S. to have the best of both worlds.

Now, before I totally conclude, I would just note that not only is PNTR not necessary, the arguments for why it is not merited are equally compelling, as Mr. Wu has pointed out. And I submit my full written testimony for the record, which also lays out these issues.

I would just make two final points. One is that de-linkage in 1994 was a bad idea. The U.S. should reverse that decision. The Congress needs to have a role to ensure that the enormous leverage

of our market, the U.S. market that everyone wants access to, is used both to get trade benefits that are reciprocal and to suit other U.S. goals.

But the one upside to de-linkage was that we tested the touted policy that more free trade and more liberalization equals more freedom and democracy. For 6 years we have had more free trade with China and we have had more trade liberalization in China, and we have had the U.S. State Department say, under that little experiment, freedom and democracy have deteriorated every single year. With that kind of data, it is not the kind of experiment you want to lock in permanently.

And finally, on the issue of the potential benefits of China's WTO entry, there are so many issues of injustice that the U.S. has leverage to deal with, if it would only exercise it. But on the issue of the Internet, this notion of the great new China market—here in the Commerce Committee's area, the Internet—in fact, in China right now, there are many people in jail simply for using the Internet. It is a crime to send information unfavorable to the Chinese Government over the Internet to another country. So in my testimony I list the names of journalists who are in jail for e-mailing friends in the U.S. information on Falun Gong. What kind of business opportunity is it if the customers go to jail for using your service?

Thank you very much.

[The prepared statement of Ms. Wallach follows:]

PREPARED STATEMENT OF LORI WALLACH, DIRECTOR,
PUBLIC CITIZEN'S GLOBAL TRADE WATCH

Permanent NTR for China: Neither Merited nor Necessary

Mr. Chairman and members of the Committee, on behalf of Public Citizen and its members nationwide, thank you for the opportunity to testify on the issue of China's admission to the World Trade Organization (WTO) and related matters regarding Normal Trade Relations (NTR) status for China.

My name is Lori Wallach. I am the director of Public Citizen's Global Trade Watch. Public Citizen is a consumer advocacy group founded in 1971 by Ralph Nader. My testimony today is also endorsed by the Citizens Trade Campaign of which Public Citizen is a member group along with hundreds of other consumer, labor, religious, environmental, family farm and other citizens' groups across the country. The combined membership of the Citizens Trade Campaign member organizations is over 7 million nationwide.

Most simply, Permanent NTR for China is neither merited nor necessary.

PNTR is not merited on the basis of the Chinese government's dismal and steadily decaying record on an array of issues from human rights and weapons proliferation to meeting its international obligations or conducting fair trade. At issue with Congress' PNTR decision is really one thing: eliminating Congress' annual review of the U.S.-China relationship under the Jackson-Vanik Amendment, which sets procedures for annual grants of NTR to non-market economies. Whether or not NTR is permanent, the U.S. and China will continue to trade. Indeed, absent an act of Congress to change the status quo, the U.S. would continue to provide the same basket of trade privileges to China annually that it grants its most favored trade partners. The only real question is whether Congress should give up its annual review and the related ability to determine the U.S. trade treatment China should be granted.

The Chinese regime and U.S. corporations seeking to relocate production to China and guarantee unconditional access for their products back into the U.S. market seek termination of the annual review because it shines a spotlight of scrutiny on an otherwise totally unaccountable Chinese regime. The Clinton Administration severely undercut the effectiveness of the annual review by formally delinking it from human rights and other concerns. However, be-

fore the current Administration put this tool up on the shelf, it was used effectively. The leverage created by the review combined with the specter of access to the U.S. market being reconnected to China's human rights, non-proliferation or trade violations, is a powerful tool for change that must not be denied to future Congresses and Administrations. Yet, a core principle of the WTO is that countries may not consider other countries' human rights conduct or the conditions, such as with forced labor, under which their goods are produced in determining those countries' market access rights.

The one useful outcome of the Administration's move to delink China's trade status and human rights is that it has allowed the theory—that greater trade links with the U.S. and greater economic freedom will improve human rights and democracy—to be proved to be false. Greater trade links and economic liberalization with China have not resulted in improvement in China's human rights conduct nor promoted the growth of democracy in China. In fact, the opposite has occurred. The U.S. State Department's 2000 annual human rights report documents the worst human rights, democracy, religious freedom, and free press violations in China of any past year. Meanwhile, during this same period the U.S. trade deficit with China exploded and now tops \$70 billion.

PNTR is also not necessary: even if Congress opposes China PNTR, U.S. exporters still would obtain the potential trade benefits of China's WTO accession under the 1979 U.S.-China Agreement. Because proponents of PNTR have an extremely difficult time making the human rights case, given the data, they typically fall back on the argument that PNTR is necessary to avoid putting U.S. businesses at a competitive disadvantage relative to other WTO countries if China joins the WTO.

Yet, the Agreement on Trade Relations Between the United States and China ("1979 Agreement"), which automatically renews every three years and which is the basis for billions of dollars of current U.S.-China trade, provides U.S. farmers and manufacturers with the identical benefits China must give all WTO nations if it joins the WTO. The 1979 Agreement unequivocally requires that the U.S. and China "shall" grant each other "any advantage, favor, privilege or immunity" they grant to any other nation.¹ Thus, the major tariff cuts required if China enters the WTO apply to U.S. goods regardless of the fate of PNTR.

The 1979 Agreement means that U.S. exporters will obtain the same trade benefits from China's WTO entry as would businesses in other nations, including regarding distribution and other matters related to internal sales of imported goods. The broad Most Favored Nation (MFN) requirement in the 1979 Agreement means that China must give the U.S. the same best treatment it gives any other nation. If China enters the WTO, that "best treatment" will be the WTO terms China gives other nations. Thus, claims by the Administration that U.S. goods alone would miss out on the significant tariff cuts that the Administration is touting as a key result of China's WTO entry or that U.S. businesses would still face domestic content or performance requirements are false.

The plain language of the 1979 Agreement invalidates the USTR's claim that distribution and other sales-related aspects of importing goods are not covered. The actual language of the 1979 Agreement requires China to grant the U.S. "any advantage, favor, privilege . . ." in "all matters regarding:"² "*all laws, regulations and requirements affecting all aspects of internal sale, purchase, transportation, distribution or use of imported goods.*"³

The U.S. could have the best of both worlds: tariff cuts and other trade benefits required if China enters the WTO and effective enforcement via U.S. measures such as speedier domestic surge-protection, anti-dumping laws, and Section 301 which WTO forbids.

The Clinton Administration says that if Congress does not grant PNTR, it will file at the WTO for "non-application" with China—meaning the U.S. and China won't have a full WTO relationship. PNTR advocates and opponents agree if this occurs, WTO dispute resolution will not apply between the U.S. and China. However, opponents see the ability to use speedy and effective U.S. unilateral trade enforcement tools as a benefit of maintaining annual MFN. If the U.S. does grant PNTR it will be bound to only using WTO dispute resolution to enforce China's trade commitments. *As we have seen with assorted U.S.-EU WTO fights, WTO dispute resolution takes at least two years and ultimately relies on something entirely missing in China: commitment to the rule of law.*

¹ 1979 Agreement, Article II.

² 1979 Agreement, Article II.

³ *Id.* at Article II (D)

The U.S. has nothing to lose by taking a “trust but verify” approach to China trade by maintaining U.S. enforcement tools forbidden by the WTO regarding China while reviewing whether China follows its WTO commitments. The November 1999 U.S.-China WTO deal is not a separate trade agreement, but rather the U.S. contribution to what will be the WTO terms China gives to all 136 WTO Members. U.S. negotiators built on what the previous countries negotiating with China had obtained, and countries still negotiating, such as the European Union, will build on what the U.S. obtained. The best commitments that are obtained in all of these bilateral talks will be multilateralized and become the terms of China’s WTO accession, along with some issues to be negotiated in Geneva. (This includes how the state-owned sector will be treated and rules on subsidies unfinished issues noted in a recent General Accounting Office report⁴ on China-WTO, begging the question of how Congress would rush to approve PNTR without knowing the terms of China’s WTO accession.) All of these “concessions” will be equally available to all WTO countries. The U.S. will obtain these same concessions under the 1979 U.S.-China Bilateral Agreement whether or not the U.S. Congress grants China PNTR.

The U.S. has plenty to lose by granting PNTR, including effective trade enforcement tools, the leverage of annual congressional review of China’s record and WTO attacks on U.S. laws by China. In the 21 years of U.S.-China trade, different Administrations have declared each and every U.S.-China trade agreement as the “First,” the “Last,” and the “Most Important.” Yet, China has systematically broken trade commitments to the U.S. and other countries. China has only halted violations of trade—and other international commitments—when threatened with dire economic implications in the form of large and speedy trade sanctions. By not granting PNTR, the U.S. can take a “trust but verify” approach on China trade under the WTO, obtaining the WTO benefits via the 1979 Agreement and maintaining our annual review until we have evidence that China will follow WTO terms. Meanwhile, by not granting PNTR and avoiding a full WTO relationship with China, the U.S. can also avoid challenges by China to U.S. human rights, environmental, and other laws using WTO dispute resolution. As the past five years of WTO jurisprudence have shown, plaintiffs generally win cases at the WTO and each and every domestic environmental, health, or other public interest measure brought to the WTO has been ruled an illegal trade barrier.⁵ Thus, in addition to requiring the U.S. to give up effective U.S. enforcement tools, a full U.S.-China WTO relationship would mean U.S. laws newly would be exposed to WTO attack by China whose government has been very vocal in challenging the legitimacy of U.S. laws and policies.

A. *PNTR for China Is Not Merited*

In 1994, the Clinton Administration launched a major experiment by delinking U.S. trade treatment for China from our human rights concerns regarding China. During each year of this experiment on whether free markets lead to freedom, the U.S. State Department has reported that human rights have deteriorated. It is time to reverse that policy and to use the enormous, if unexercised, U.S. leverage on China. The U.S. receives over 40% of China’s exports and it is these exports that fuel the economic growth that is the only basis for legitimacy for the current Chinese regime.

The complete absence of democracy and freedom in China should give pause to what “free” trade might mean to the Chinese government. In 1989, China repressed thousands of peaceful demonstrators at Tiananmen Square. Hundreds were killed or “disappeared,” thousands more served lengthy prison terms, and even now, nearly 250 still languish in Chinese prisons.

How will Members of Congress justify to voters back home ending review and scrutiny over a regime that has brutally repressed the most basic freedoms Congress pledges to defend while sticking its proverbial thumb into the eye of Congress time and again with its bellicose statements. The conduct of the Chinese regime during the years it has been free of effective congressional scrutiny (thanks to the delinkage policy) has resulted in tens of thousands of stories of abuse, any one of which shows how shameful it would be for Congress to give up its only tool for change.

There is no free flow of information or open press in China. China says it will permit foreign investment in Internet services in the future. Yet, in China people who use the Internet freely risk long prison sentences. Given China’s free trade in

⁴GAO Report GAO/NSIAD-00-94 “China’s WTO Membership”

⁵See Wallach and Sforza, *Whose Trade Organization?: Corporate Globalization and the Erosion of Democracy*, (1999) at chapter 8.

Internet services commitments did not include free speech on the Internet commitments, it is very important to understand the enormous obstacles for both investors and individuals to free use of this information service and the enormous obstacles to the free flow of information in and out of China. For instance, journalist **Zhang Ji** was convicted and jailed for “disseminating reactionary documents.” His “crime”? Emailing information on the Chinese crackdown on Falun Gong practitioners over the Internet to the U.S.^{6,7} The international Committee to Protect Journalists reported this year that China had more reporters behind bars than any other country.

Attacks on democracy activists and journalists have escalated, with leaders and members of the Chinese Democracy party either jailed or exiled. For instance, **Gao Hongming** a prominent member of the Beijing Chinese Democracy Party (CDP), was under police surveillance for eight years, including monitoring and videotaping his contacts with foreigners. The CDP is a banned opposition party because its platform includes open and free elections in China. Mr. Gao was picked up and detained in June 1999 when the Chinese government swept the country free of democracy activists to prevent any demonstrations to memorialize the ten year anniversary of Tiananmen. Weeks later he was released, only to be arrested again in August for “subversion” and sentenced to eight years in prison.

The Chinese government controls all religious activity within China and those who seek religious freedom are imprisoned. There are only five officially recognized religions in China, and each official faith is tightly controlled by the Chinese government. For instance, China recognizes only the Catholic Patriotic Movement as its “Catholic Church.” However, the Catholic Patriotic Movement is not recognized by the Vatican as a Catholic Church. Though China counts as many as 4 million official Catholics, the Vatican believes there are as many as 10 million “underground” Catholics. In the past year several Bishops ordained and recognized by the Vatican have been detained and a long list of priests and nuns have been imprisoned. Recently, the 80-year-old Archbishop ordained by the Pope but not recognized by China disappeared in Fuzhou in the Province of Fujian. Many people believe he has been arrested again. **Archbishop John Yang Shudao** has already spent nearly three decades in Chinese prisons; thus his health is fragile. His exact whereabouts remain unknown despite demands for information from numerous governments and the Vatican.

The official Protestant “Three Self Patriotic Movement” has between 10 and 15 million members, but the growing Protestant evangelical and home church movement has as many as 30 million followers. In the past year the Chinese government has conducted severe crackdowns on these Protestant groups. Protestant churches have been raided with their followers and Bibles swept up by police, and **Xu Yongze**, a prominent evangelical leader was publicly labeled a cultist. When police in Xinyang arrested 16 Christians on March 2, 2000, they also confiscated their Bibles, a typical practice. No one is certain what has happened to Mr. Xu and the others who were interred during these church raids.

The highest holy person in the Buddhist religion is the Dalai Lama, yet no picture of the Lama is allowed to be displayed anywhere in his Tibetan homeland. Indeed, many Tibetans are serving long prison terms for the crime of posting his likeness.⁸ Amnesty International reports that the hundreds of teenage girl and boy Buddhist monks jailed in Tibet face horrible abuse, from systematic rape to starvation. Meanwhile, the child that the Dalai Lama chose to be the Panchen Lama, the second holiest figure in the Buddhist religion, has not been seen in three years since the young child and his family were detained by the Chinese government. The Chinese government named its own Panchen Lama and installed that child shortly after disappearing the Dalai Lama’s choice.

The Chinese government only allows the existence of the official Chinese government-sponsored union, a notoriously corrupt wing of the communist party known for ignoring the demands of Chinese workers. Workers for decades have tried to organize independent unions who will actually fight to clean up horrifically unsafe work places and demand living wages. Labor leaders have long been on the front lines of the fight for democracy in China. Many languished in prison or in forced labor camps after Tiananmen.

A major Chinese mining operation, Sichuan Xinkang Asbestos, is part of the “Laogai” prison labor camp system.⁹ Americans view the Laogai system as forced

⁶“Report: China Arrests Archbishop,” *Associated Press*, February 14, 2000

⁷“Attacks on the Press in 1999,” Committee to Protect Journalists, March 22, 2000.

⁸U.S. Department of State, 1999 Human Rights Report, China, February 25, 2000

⁹“A Rare Insight into China’s Laogai Economy: Dun & Bradstreet Directory Lists Forced Labor Camps,” Laogai Research Foundation, 1998.

labor camps, but China calls them “education camps.” At Xinkang Asbestos Mine, hundreds toil under the gun; working and living conditions contribute to the high death rate. The **Guangzhou #1 Reeducation Through Labor Camp** also is part of the “Laogai” prison forced-labor system. Prisoners at this facility work in a stone quarry and also assemble artificial flowers for export to the U.S., among other nations. The Chinese Ministry of Justice has refused U.S. Customs officials’ requests to visit this facility even though in 1992 China signed an agreement with the U.S. on prison labor requiring such access.

Last year according to the Committee to Protect Journalists, three people who have struggled for years to establish independent unions were arrested when they created and published the *China Workers Monitor*, a journal which campaigned for workers rights. Two of these leaders are sentenced to decade-long terms. **Yue Tianxiang, Guo Xinmin, and Wang Fengshan** represent the best of the labor movement worldwide by putting their lives on the line fighting for workers rights and publicizing the conditions for Chinese workers. China’s footwear industry produces 6 billion shoes a year—enough for every person on earth. Many name brand sneakers are produced in plants such as the Tung Tat Garment Factory in Shilong, Dongguan province where workers toil 80 hours a week for 24¢ an hour making Adidas.¹⁰ Until real unions are permitted in China, Chinese workers will not be paid a living wage, much less enough to afford U.S. products

Retaining the ability to effectively pressure against such abuses would be sufficient grounds for Congress to reject PNTR and the termination of the annual review. However, to make matters even clearer, there is little to be lost and much to be gained economically if Congress rejects PNTR.

B. PNTR for China Is Not Necessary

There have been numerous misconceptions—as well as a certain amount of outright mendacity—regarding China WTO accession and Congress’ role. Given I am joined on this panel by Harry Wu, a person better qualified than I to explain why granting China permanent MFN is a terrible idea, I will now shift my focus onto clarifying what Congress’ role really is on this matter—and Congress’ options. I will start by clearing up some myths and misconceptions:

Proponents of granting China permanent NTR suggest that China could not enter the WTO unless the U.S. Congress granted it permanent NTR status. Contradicting their first point, proponents of permanent China NTR also claim that if China entered the WTO and the U.S. Congress does not pass permanent NTR for China, U.S. businesses would be excluded from whatever trade benefits China grants other countries when it joins. Both claims are entirely false. However, given that numerous pro-PNTR experts and the Chinese government have both dispelled the first notion—that China’s WTO admission has anything to do with Congress’ P vote—I will not focus on it.

Recently, the Clinton Administration has intensified its campaign of misinformation about the second myth, the implications for U.S. business if China does enter the WTO and Congress refuses to grant China PNTR. For instance, in late March the Administration widely released to Congress, the press and public a USTR memo that arbitrarily reinterprets our existing array of commercial bilateral agreements with China. In the name of arguing why Congress must approve PNTR, this new USTR analysis reinterprets existing U.S.-China agreements to be meaningless while arguing that all U.S.-China trade problems would be solved by passage of PNTR. The new position contrasts sharply with past Clinton Administration characterizations, on the front pages of the U.S. national press, touting the very same U.S.-China bilaterals as providing unprecedented U.S. market access to China and as tremendous breakthroughs in U.S.-China relations.

In addition to conflicting with past Administration pronouncements, these highly restrictive reinterpretations of existing U.S.-China commercial commitments have no basis in law.

As well, this “analysis” puts the short term political goal of convincing Congress there is urgent need to grant China Permanent NTR ahead of U.S. economic interests. When Congress rejects PNTR, it is the 1979 Agreement and the other bilaterals on which USTR will need to rely to obtain trade benefits for U.S. business. Indeed, Chinese trade officials could employ the USTR memo to try to undercut the clear language of the 1979 Agreement.

The 1979 Agreement, as was revealed in a March 1, 2000 legal memorandum by Columbia Law School Professor Mark Barenberg, would provide U.S. businesses with the trade benefits China must provide WTO countries if it accedes to that body. **Thus, even if Congress opposes China PNTR, U.S. exporters would ob-**

¹⁰“Behind the Label ‘Made in China,’” National Labor Committee, 1998.

tain the potential benefits China must provide other nations if it enters the WTO while retaining the effective U.S. trade enforcement mechanisms forbidden under the WTO, such as Section 301.

Clarifying this information is vital because it shows that Congress has an array of options regarding China's trade status that can provide U.S. economic interests with any potential benefits of China's WTO admission while maintaining a meaningful Congressional oversight role in U.S.-China commercial relations.

1. The 1979 Agreement Provides U.S. Farmers and Manufacturers Seeking to Export to China with the Tariff Cuts and Distribution and Marketing Rights for Their Products Which WTO Members Obtain if China Enters the WTO Regardless of What Congress Decides on PNTR.

The 1979 U.S.-China bilateral agreement is unequivocal in requiring that the U.S. and China "shall" grant each other "any advantage, favor, privilege or immunity they grant like products originating in or destined for any other country or region¹¹." This language describes a broad reciprocal grant of Most Favored Nation (MFN)¹² treatment between the U.S. and China.

If this broad coverage were not clear on its face, the general Article II language in the 1979 Agreement is followed by explicit extension of such MFN coverage to "all matters regarding:"¹³

- tariffs, duties and charges of any kind; (Article II(A))
- **"all laws, regulations and requirements affecting all aspects of internal sale, purchase, transportation, distribution or use of imported goods;"** (Article II (D))
- customs clearance, transit, warehousing; (Article II (B))
- taxes and other internal charges levied directly or indirectly; (Article II(C))
- administrative formalities for import and export licenses. (Article II(E))

Most simply, the terms of the 1979 Agreement mean that China must give to U.S. goods the best treatment it provides to any other nation's goods—including in "all matters regarding . . ." the above list of sales and distribution-related aspects. The plain language of the 1979 Agreement proves false the Administration and business claims that distribution and other sales-related aspects of importing goods to China are not covered by the 1979 Agreement.

As well, the Administration continues to be ambivalent when asked whether all WTO-required tariff cuts would be available to U.S. exporters regardless of passage of PNTR. The answer to that inquiry is yes, unequivocally U.S. goods would obtain those steep tariff cuts which the USTR has touted and which China would be required to make if it enters the WTO. Article II(A) of the 1979 Agreement explicitly guarantees these tariff cuts for U.S. goods regardless of what Congress decides about PNTR for China.

2. The November 1999 U.S.-China Deal on Terms for China's WTO Accession Is Not a Free-Standing Trade Agreement, and the Potential Benefits of that Deal Will Not be Lost if Congress Rejects PNTR

Many in Congress have been confused by the Administration's focus on the November 1999 U.S.-China deal about the terms for China's WTO accession. That deal is *not* a free-standing U.S.-China trade agreement, the benefits of which will be lost if the U.S. Congress does not take action.

Rather, the process by which any new country enters the WTO includes a series of bilateral negotiations with key WTO countries, the results of which are then combined to form one multilateral protocol which sets the terms for the new country's accession to the WTO.¹⁴ U.S. negotiators built on the commitments obtained by countries which had previously completed bilateral talks on WTO terms with China. Countries still negotiating with China will build off of what the U.S. obtained. For instance, one major sticking point in the on-going European Union (EU)-China talks about China's WTO terms is that the EU seeks even better access for automobiles

¹¹ 1979 Agreement, Article II, chapeau.

¹² The term Most Favored Nation comes from the text of the GATT, is used throughout the WTO and appears repeatedly in the 1979 Agreement. MFN refers to a concept under which a country commits to give the best trade treatment it provides to any trade partner to all trade partners with whom it has a MFN commitment. In the U.S., the statute providing annual grants of MFN treatment to non-market economies was amended to replace the term MFN with "Normal Trade Relations."

¹³ 1979 Agreement, Article II, chapeau.

¹⁴ See GAO Report GAO/NSIAD-00-94 "China's WTO Membership" at 8-11 for a description of the WTO accession process.

into the Chinese market than the U.S. deal achieved. If the EU obtains the improved commitments from China, the U.S. will also obtain those benefits as they will be multilateralized into China's overall WTO terms along with the best of the commitments that the U.S. and other countries obtained in their bilaterals.

The 1979 Agreement's MFN requirements mean that China must give U.S. goods the best treatment it provides to *any* other nation's goods—this treatment will be the totality of the WTO package once all of the bilaterals, including the U.S.-China November 1999 deal, are multilateralized.

Currently, China's most favored treatment (now provided to the U.S. and China's other trade partners) includes higher tariffs than the WTO permits and assorted distribution and regulatory restrictions forbidden by WTO rules. When China enters the WTO, China must cut its tariffs and regulatory restrictions to meet the WTO's rules and to conform with the assorted additional commitments it has made in its bilateral talks. Whether or not the U.S. passes PNTR, and whether or not the U.S. and China have full WTO relations, China must grant its new most favored treatment to the U.S. under the 1979 Agreement.

Indeed, the very notion of reciprocal MFN that is the basis of the 1979 Agreement requires that whatever and all benefits given to any other nation must also be granted to all MFN partners. Fluidity of coverage is inherent in the MFN concept: the benefits available to any MFN partner changes as does the granting country's treatment of other nations. Thus, if China gives other countries additional freedom from internal Chinese regulations regarding distribution and marketing of imported goods whether or not this is connected to China's WTO accession U.S. goods obtain the same treatment under the 1979 Agreement generally and explicitly under the 1979 Agreement's Article II(D) covering regulatory and issues regarding internal sale.

The notion that the U.S. would not obtain explicit WTO benefits China grants to other countries regarding imported goods—like those removing conditions for importing goods such as local content requirements—is incorrect. The specific example presented in the USTR March 2000 memo is that U.S. agricultural goods could be banned from China based on food safety or pest control rules that would be forbidden under WTO rules. Yet, under the 1979 Agreement, China must provide the U.S. the same treatment it provides any other country. The 1979 Agreement has a specific provision—Article II(D)—explicitly extending this requirement to regulatory matters related to internal sale of imported goods. Thus, if China applies the WTO's Sanitary and Phytosanitary rules, as required, to any WTO member, it must provide the same treatment to U.S. goods. The USTR, the Administration and PNTR business boosters are relying on Congress' lack of understanding of this core aspect of MFN as a fluid state of equal treatment versus any one set specific trade benefits.

Moreover, contrary to USTR suggestions, China could not "make up" the major tariff cuts by charging U.S. goods higher internal taxes than are charged other imported goods thanks to Article II(C) of the 1979 Agreement. As well, Article II(C) prohibits taxing U.S. goods at a higher rate than Chinese domestic goods. This specific example is only one element of another general point on which the USTR aspect of a larger point about which PNTR boosters have not been honest: national treatment for U.S. goods in China.

NATIONAL TREATMENT: The March 2000 USTR memo declares that unless Congress approves PNTR, U.S. goods would not receive "national treatment," which means that China could discriminate against U.S. goods relative to domestic Chinese goods regarding regulatory matters. This is false. It is irrelevant if the 1979 Agreement does not contain specific language on National Treatment, as USTR knows.

Under WTO rules, China will be required to treat all of its WTO trade partners in a non-discriminatory fashion (meaning treating domestic and imported goods the same for internal taxation and regulation). As a practical matter, this means that China must apply the same set of domestic regulations to imported goods that it does to domestic goods. And, once China provides that treatment for one of its trading partners' goods, the U.S. and its imported goods must receive the same treatment, thanks to the requirements of MFN generally and the specific application of MFN to matters such as domestic regulations in Article II(D) of the 1979 Agreement. While the concept of National Treatment is not present in the 1979 Agreement, the results and benefits of that principle—as translated into the actual treatment U.S. goods must be given—are guaranteed for U.S. goods because of the 1979 Agreement's broad MFN obligations.

3. The 1979 Agreement Provides U.S. Companies Seeking to Export Investment and Jobs to China Investment and Service Sector Rights, but These

Rights Are Being Undercut by USTR's New Declarations that these Sectors Are Excluded from the 1979 Agreement

The 1979 Agreement also contains explicit language on services and a requirement to “accord firms, companies, corporation, and trading organizations of the other party MFN treatment.”¹⁵ These provisions and the benefits they provide to U.S. businesses are explained in a March 1, 2000 memorandum by Columbia Law School Professor Mark Barenberg. As Professor Barenberg describes, several provisions of the 1979 Agreement require that U.S. investors and service sector firms also be provided with MFN treatment. Many benefits in the service sectors which are part of China’s WTO accession—including those negotiated by the Administration in its November deal—would be covered, thus requiring China to provide equal treatment in these areas to U.S. “firms, companies, corporations and trading organizations.”¹⁶

Those trying to minimize the impact of the 1979 Agreement note that the language in these areas is less detailed than other elements of the 1979 Agreement. Of course, these are same sources who claim the 1979 Agreement does not cover distribution rights, even though there is explicit coverage by name of distribution and other internal sales matters. However, more generally, any commercial agreement—and certainly any commercial agreement with China—will involve disputes about what is covered and what rules apply. As the U.S. has found in a series of WTO cases against the EU, having rules in the WTO about an issue is no guarantee of compliance with those rules.

As well, the U.S. has other bilateral agreements with China that cover these sectors: two comprehensive 1992 and 1995 Memoranda of Understanding with China which were touted in the national press as guaranteeing massive market access for U.S. farmers and manufacturers, the 1995 intellectual property agreement which was similarly lauded and other sectoral bilaterals. Members of Congress will recall that these agreements were lauded as providing incredible market access for U.S. services and new rights for investors when they were signed and the results of these agreements have been touted heavily by USTR since. The specific contents of these additional, specific bilateral agreements are outside the scope of this testimony, but go to revealing the fallacy in the Administration’s claims that absent PNTR, U.S. firms would be cut out of all service sector, intellectual property, and investor rights

4. The Administration Has Pronounced an Array of New Interpretations of the 1979 U.S.-China Agreement Which Have No Legal Basis and Which Are Contrary to U.S. Economic Interests

In the name of passing PNTR, the Clinton Administration has gone on a mission to undercut the scope and coverage of existing U.S.-China trade agreements. For instance, a March 9, 2000 USTR memo includes an array of limiting interpretations of the 1979 Agreement which simply have no basis in law. For instance, the USTR memo cites a highly politicized Ways and Means Committee report as its “legal authority” for newly declaring that the treaty, which has been the basis for billions of dollars of U.S.-China trade, is nothing more than a concept paper.

The USTR employs two arguments in its attempt to undercut the 1979 Agreement’s coverage.

First, the USTR memo concocts an array of limitations to the clear language of the 1979 Agreement by referring to U.S. statutes under which the 1979 Agreement was negotiated. For instance, in trying to minimize the language in Article II of the 1979 Agreement covering “reciprocating” satisfactory concessions with regard to trade *and services* (emphasis added), the USTR memo argues that this provision was negotiated to comply with a section of the U.S. trade law with a more limited scope, and thus, despite the clear language in the 1979 Agreement, service sectors would not be covered after all.

Yet, even if the 1979 Agreement language was negotiated under such a provision of U.S. law, U.S. law does not cover China. The actual international commitment between the U.S. and China in the 1979 Agreement is contained in the actual terms of the 1979 agreement. U.S. law—whether it includes provisions that expand or limit the actual language of an international agreement—has no legal effect whatsoever on China.

The actual legal commitment created by the 1979 Agreement is that which is contained in the actual document which binds both parties in international law. The USTR argument to the contrary would mean, for instance, that if China has a domestic law under which it negotiated its WTO accession agreement which includes

¹⁵ Article III, 1979 Agreement.

¹⁶ Article III, 1979 Agreement.

provisions contradicting China's WTO commitments, the Chinese domestic law binds all other WTO Member countries. Under the USTR's bizarre argument, such a domestic Chinese law would control and limit any contrary terms of China's international WTO accession agreement. Obviously, this is not how international law operates.

Second, the USTR memo stretches credulity one step further in arguing that despite an absence of language in the 1979 Agreement so requiring, the 1979 Agreement's application is limited to only what is covered by the General Agreement on Tariffs and Trade (GATT). GATT was the precursor institution to the WTO, and now its provisions and jurisprudence are incorporated under the WTO. USTR employs this device argument once again to claim that the 1979 Agreement denies U.S. exporters distribution rights and excludes services sectors, despite language in the 1979 Agreement to the contrary, because these issues were not covered by the language of the GATT.

In fact, the 1979 Agreement contains no reference to GATT or any other agreement which limits the application of its provisions. The language of the 1979 Agreement focuses on, for instance, all "products" originating in or destined for the U.S. or China and requires the same standard of treatment "in all matters regarding" the comprehensive list of activities regarding distribution and sale of such imported goods. As noted above, the notion of MFN treatment is inherently fluid with the best treatment granted to one country flowing to all other nations with which the granting country has MFN commitments.

5. WTO Dispute Resolution Is Less Effective for the Enforcement of China Trade Commitments than the Powerful U.S. Enforcement Tools, such as Section 301, Which Are Banned By the WTO

The USTR has stated that if Congress does not grant PNTR, it will file at the WTO for "non-application" with China. The WTO rules permit an existing WTO Member to declare, in advance of the admission of a new Member, that full WTO terms will not apply as between those countries.¹⁷

PNTR advocates and opponents agree that if the U.S. files for nonapplication regarding China, and thus the U.S. and China do not have full WTO relations, then WTO dispute resolution will not apply between the U.S. and China. PNTR boosters lament this outcome as a major limitation of relying on the 1979 Agreement.

However, many others view the ability to use speedy and effective U.S. unilateral trade enforcement tools as a benefit of rejecting PNTR and avoiding a full WTO relationship with China. If the U.S. does grant PNTR it will be bound only to use WTO dispute resolution to enforce China's trade commitments.¹⁸ WTO rules require: "When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objectives of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding. In such cases, Members shall: not make a determination to the effect that a violation has occurred . . . except through recourse to dispute settlement in accordance to the rules and procedures of this Understanding . . ." ¹⁹ The same constraints to use only WTO dispute resolution apply to the timing of sanctions even when the WTO finds a violation²⁰ and the amount of sanctions permitted.²¹

As we have seen with assorted U.S.-EU WTO fights, WTO dispute resolution takes at least two years before an initial ruling is enforceable and ultimately relies on something entirely missing in China: commitment to the rule of law. The WTO enforcement system relies on countries' investment in the well-being of the multilateral trade system so that changing a domestic policy against which the WTO has ruled is given priority over the specific national interest in that policy.

¹⁷The nonapplication provisions are contained in Article XIII of the Agreement Establishing the WTO which updates GATT Article XXXV. The WTO requires "unconditional" Most Favored Nation status be granted between WTO Members, but is silent as to the duration of such grants. USTR chooses to interpret this provision to require PNTR and invoke non-application if Congress does not provide PNTR, however, what is actually required is an open legal question. Thus, if the Administration did not invoke nonapplication and Congress chose to remove the free emigration conditions of the Jackson-Vanik Amendment and grant China one year of unconditional MFN, only a WTO tribunal could judge whether or not that satisfied WTO requirements. Such a WTO ruling would require China to bring a case against the U.S. arguing that its WTO rights were violated. However, because USTR has announced that it will file for non-application absent PNTR, this question does not arise.

¹⁸WTO Dispute Settlement Understanding Article 23.

¹⁹*Id.*

²⁰*Id.* at Article 23.2(b).

²¹*Id.* at Article 23.2(c).

Thus, if Congress rejects PNTR, all U.S. trade laws would still be applicable to China, including U.S. anti-dumping and surge protection measures. These laws provide for much quicker adjudication of claims. They also provide for much speedier application of trade sanctions against trade barriers.

Moreover, many of China's practices which create barriers to U.S. trade and investment are not covered by WTO rules. Yet, even in these areas the U.S. could not apply sanctions under U.S. trade law if it has a full WTO relationship with China. Under WTO, Members cannot increase tariff levels above the WTO bound tariff levels as against other WTO Members except when authorized by the WTO's Dispute Resolution Body. Thus, even if the U.S. has the right to unilaterally determine that a country has trade barriers that are outside WTO coverage, effective sanctions to pressure for their removal are not available.

The U.S. has been trapped by the WTO's dispute resolution system before. A high profile example was the Kodak fight with Japan. When the U.S. threatened Japan with Section 301 action for an array of private marketing pacts and informal regulations which kept U.S. film off Japan's retail shelves, Japan accurately charged that use of a unilateral trade law such as Section 301 would violate WTO rules.²² The U.S. backed down²³ and instead filed a WTO case on the matter. The U.S. lost on every point it raised, with the WTO panel concluding that the conduct alleged by the U.S. was outside the coverage of WTO rules.²⁴

PNTR boosters also argue that there is a benefit to the multilateral nature of WTO dispute resolution. Yet, it is hard to argue that a multilateral system in which the U.S. is one of 136 countries provides greater leverage than the lopsided nature of the U.S.-China bilateral relations, wherein the U.S. accepts a lion's share—40%—of China's exports. Moreover, either China will or will not comply with WTO rules. If China fails to do so, the injured country, for instance the U.S., takes a case to WTO dispute resolution and awaits the outcome of that process. If that process drags out, under WTO rules, the U.S. could no longer take action on its own to threaten or put in place sanctions limiting those 40% of China's exports' access to the U.S. market to force lifting of barriers. Indeed, the WTO recently ruled that the U.S. violated WTO rules and faces sanction in the banana case against the EU because the U.S. imposed sanctions prior to receiving WTO permission to do so.²⁵

6. Given the U.S. Accepts 40% of China's Exports, China Would Not Terminate the 1979 Agreement if Congress Rejects PNTR Because the 1979 Agreement Becomes China's Only Means to U.S. Market Access

Finally, PNTR boosters note that Article X of the 1979 Agreement allows countries to terminate the pact at the end of its automatically renewing three-year terms. This argument is of little merit given two facts: First, WTO rules also allow any country to withdraw at any time on six months written notice.²⁶ Second, the U.S. is China's largest export market taking more than 40% of total Chinese exports which fuel the growth which is the sole basis for the current regime's domestic legitimacy. The U.S. sends less than 1% of its exports to China. If China refused to renew the current 1979 Agreement's term, which runs into 2001, it would lose the basis for its entry into the U.S. market. As the annual U.S.-China trade deficit tops \$70 billion, clearly China has the least interest in terminating NTR access to the U.S. market.

C. WTO Rules Would Empower China to Challenge U.S. Human Rights, Labor, and Non-Proliferation Policies

One final technical, legal consideration about China and the WTO is the new powers and rights China would obtain as a WTO Member as against the U.S. While it is clear that the U.S. would be forbidden from using enforcement tools such as Section 301 if Congress grants PNTR and the U.S. and China have full WTO relations, *it is also true that China could use WTO dispute resolution against an array of U.S. laws.*

Most simply, WTO rules forbid countries from banning goods made with child or forced labor and also forbid countries from treating other WTO members differently

²² Martin Crutsinger, "U.S. Sends Film Dispute to Global Trade Panel," AP, 6/14/96.

²³ *Id.*

²⁴ WTO, Japan-Measures Affecting Consumer Photographic Film and Paper (WT/DS44/R), Report of the Panel, March 31, 1998.

²⁵ The WTO issued a preliminary ruling in early March 2000 that the U.S. sanctions against the EU on the WTO banana case put in place on March 3, 1999, violated WTO rules which only permitted sanctions starting on April 19, 1999. U.S. liability for this violation will be assessed in the final WTO ruling. ("WTO Rules Against U.S. on Timing of Banana Retaliation Against EU," Inside U.S. Trade, March 17, 2000, p 3.

²⁶ Article XV, Agreement Establishing the WTO.

according to their human rights, weapons proliferation or other non-commercial behavior.

If the U.S. sought to use trade sanctions against China—or for that matter to grant preferential trade benefits to other countries to reward progress on non-commercial issues—China as a WTO member would have standing to bring the U.S. to WTO dispute resolution wherein three trade officials would decide if the U.S. action violated China's WTO rights. If not, the panel—which includes private trade attorneys and has no conflict of interest rules for judges and no outside appeal—could order the U.S. to either change the law or face trade sanctions.

The WTO rules that China could use to challenge an array of existing U.S. human rights and other laws include:

- GATT Article III which requires national treatment meaning “like products” must be treated equally whether made by domestic manufacturers or foreign made. The past decade of GATT and WTO jurisprudence has interpreted the ban on discriminating on the basis of where a product is made to also forbid treating goods differently on the basis of how they are made. Thus, a shoe is a shoe regardless if it is coming from forced labor in a People's Liberation Army factory in China or from a union shoe craftsman cooperative in Maine.
- The Agreement on Government Procurement (AGP) which is one of the 18 underlying agreements enforced by the WTO, requires that no non-commercial considerations are used in choosing bids for goods and services to be purchased by governments. Obviously, directing the use of one's own tax dollars has been a significant tool of human rights activism, for instance regarding preferential procurement policies concerning South Africa's apartheid regime.

Conclusion

I will end where I began: Most simply, permanent NTR for China is neither merited nor necessary. There is little to lose by maintaining the status quo of annual NTR grants but much to be lost by granting China PNTR.

The CHAIRMAN. Thank you very much, Ms. Wallach.
Mr. Valenti, welcome back.

STATEMENT OF JACK VALENTI, PRESIDENT AND CHIEF EXECUTIVE OFFICER, MOTION PICTURE ASSOCIATION OF AMERICA

Mr. VALENTI. Thank you, Mr. Chairman.

I think that General Scowcroft gave some revelatory political arguments, and I am going to take just a slightly different view. I think this transcendent issue can be defined by a single question. And the question is: How does the United States benefit from a “No” vote on granting permanent normal trade relations with China? The answer is it does not. And I think a “No” vote would equal tragedy on a grand scale. And the losers would be the American consumer and the American working man and woman.

Now, like you, I was deeply moved by Mr. Wu's passionate description of the landscape in his native land. But I pose this question: Would a “No” vote suddenly and cheerfully reshape favorably whatever infects the issue of human rights in China? That is a question I think that ought to be asked. And the answer, I think, is it would not.

To reject China as a normal trading partner would hardly entice the Chinese government to leap for joy and gratitude at this gratuitous slight. The power of the United States to influence any issue in China would be nonexistent. Every professional who casts a confiding eye on Sino-U.S. relationships understands that aspect of the human condition very clearly. We would have repudiated the largest nation on earth and we would have done it deliberately.

Now, why would China react in any other manner except fierce dismay at this humiliating loss of face? I put it to you this way, in homely terms: If you slapped your neighbor's face in a public forum, would that neighbor thereafter treat congenially and satisfactorily your suggestions and your comments about how he ought to change his behavior toward his wife and his children? Would you? Put yourself in their shoes.

Would a "No" vote increase job formation in this country? And I recognize very much what Senator Hollings was saying. The loss of any one job is a great calamity and a malady that we should cure. But, what I am saying to you is the answer to the question of would it increase job formation is no. And the reasons are simple: It can produce an opposite effect. China would find it far more agreeable to do more business with nations in Europe and in Asia and in Latin America, those nations which embrace them, and not the United States, which snubbed them.

I think every American company now doing business in China—and, by the way, it is not capitalism, Mr. Wu; capitalism is defined as jobs. That is how people make their living. That is how they feed their family. That is how they educate their children—jobs. Every American company doing business in China and every American company wanting to do more business in China would suddenly find the gates closed, the drawbridge up, the moat filled to the brim. And if that is so, then those American companies now exporting to China—and we are doing about \$13 billion to \$15 billion there, and we will do a lot more, I pray—would suddenly find their revenues reduced. And then they come to face this fatal affliction, which is reducing their own labor force of American working men and women in this country.

There are those, and Ms. Wallach is one of them, who say, well, let us just grant annual NTR to China, and then we will watch. And if the trade deficit balloons, we have got them in the vice, we will squeeze them and we will raise tariffs or we will exile their products from America. Well, all I can say is that, with all due respect, Ms. Wallach, I think anybody that is endorsing that kind of a program is endorsing a defunct mythology. That is the kind of thinking that led to Smoot-Hawley and the Great Depression.

I think Ms. Wallach also said we have to worry about whether or not China will keep up to their agreements. Well, I do not know anything about tractors or aircraft or women's sweaters, but I can testify from personal experience in my five-plus trips to China over the last several years that when China made pledges and promises to me in our long negotiations about protecting American intellectual property from being pirated in China, they redeemed their pledges and they kept their promises.

In the written testimony that I have presented to you, I documented some vivid detail of how China worked very intimately and closely with me and my colleagues in battling thieves who were stealing our property. And they ran the virus out of China. It has taken up residence in Macao and other Asian countries. These pages of my written testimony document, I think, the integrity, as far as my own personal experience is concerned, the integrity of China's commitment to the Motion Picture Association.

I ask these hard questions. I am not one who believes that America is always right and everybody else is always wrong. I might add that, in the WTO disputes, we have won 2 to 1 more disputes than we have lost. But, again, we are not paragons of virtue. And it may be we are on the losing side sometimes. But we are doing just fine in these WTO disputes. I ask these hard questions because I think it is in the long-term interest of this free and loving land not to commit a bewildering blunder that is bound to haunt us and grieve us in the years ahead.

That is why I say I do not know any other way to describe what a "No" vote would mean in the future journey of this country.

I am quite enchanted with what I am saying up here, Mr. Chairman, but I will stop now and hope that I have an opportunity to answer some questions at the proper moment.

Thank you.

[The prepared statement of Mr. Valenti follows:]

PREPARED STATEMENT OF JACK VALENTI, PRESIDENT AND CHIEF EXECUTIVE OFFICER,
MOTION PICTURE ASSOCIATION OF AMERICA

HOW DOES THE UNITED STATES BENEFIT FROM A "NO" VOTE FOR
PERMANENT NORMAL TRADE RELATIONS WITH CHINA?

The *answer is **it doesn't*** and the losers are the American consumer and the American working man and woman

A Defining Moment In History

Each member of the United States Senate faces important, even critical issues, every single day. But at the end of a career only a handful of votes prove, with hindsight's clarity, to have changed the movement of history. I believe that the upcoming vote on Permanent Normal Trade Relations with China is one of those historical confrontations.

This transcendent issue can be defined by a single question that every Member of the Senate must ask. The answer will guide the final vote of this Chamber.

The Question: How does the United States benefit from a "NO" vote?

The Answer: It doesn't. "NO" equals tragedy on a grand scale.

Will a "NO" vote suddenly and cheerfully reshape whatever infects the issue of human rights in China? It would not. To reject China as a normal and permanent trading partner would hardly incite the Chinese government to gratitude for this slight. The power of the U.S. to influence anything in China would be non-existent and every professional who casts a confiding eye on the Sino-USA relationship understands that aspect of the human condition. We would have repudiated the largest nation on earth. Why would China react in any other manner except fierce dismay at this humiliating loss of national 'face'? If you slap your neighbor's face in a public place, would that neighbor thereafter find it congenial to listen to, much less follow, your suggestions about how to improve his behavior toward his family or his children?

Will a "NO" vote increase job formation in the U.S.? Not only would this **NOT** be the case, it would produce the opposite effect. Does not every expert confirm that in the event of a "NO" vote, China would find it far more agreeable to do business with European countries, its neighbors in Asia, and its new friends in Latin America than with the U.S.? It would immediately revise its purchasing plans, so that every American enterprise now doing business in China and those who hope to export to China would find the gates closed to them, but wide open to all other nations. And if that is so, then American companies residing in this country would feel the pain of reduced revenues, developing into lost American jobs. Moreover, there would be no reduction in the appeal of Chinese goods here, nor is it likely that our government would suddenly ban or restrict the importation of Chinese products. Those who argue that we need to continue to grant NTR on an annual basis so that if the trade deficit gets even worse we could withdraw NTR, raise tariffs, and slam the door on imports from China are endorsing a defunct mythology. That's the kind of thinking that led to Smoot/Hawley and the Great Depression in an earlier era. Raising the cost of Chinese imports, or denying them entry would severely harm

American consumers through higher prices on a wide range of goods ordinary folks buy.

So, how does a “NO” vote help the individual working man and woman in America? It doesn’t. It hurts them.

Does a “NO” vote increase our national security? No one who is a student of security affairs and an observer of the antagonisms which run through the global arteries anticipates that China would more readily listen to our counsel in their relationship with, say, Taiwan after we rejected them in our Congress. When we deliberately exile a nation from our national community or force them to believe they are exiled, why should that nation feel any confidence in our counsel in other areas?

The bilateral WTO accession package that Ambassador Charlene Barshefsky and her band of first class associates negotiated with China offers an admirable opportunity to increase exports to China, products made by American working men and women in America, enlarging job-creation in America. But in the event of a “NO” vote, China will give the benefits of the Barshefsky agreement to all our trading partners, but the U.S. industry will be denied those benefits. We are the losers. Does any one believe differently? Most of us would find any such opposite view barren of reality.

I can testify from first hand experience that when China made pledges and promises to the MPAA, they redeemed their pledges and kept their promises, particularly in the area of piracy of intellectual property. In the pages that follow I outline for you in detail how China has worked intimately with MPAA representatives in battling thieves in China who were relentlessly stealing so much of our valuable property. These latter pages document the integrity of Chinese commitments to MPAA.

I pose all these questions on behalf of a creative industry which produces America’s most wanted export, an industry that has a **SURPLUS balance of trade** with every one of the more than 150 countries whose audiences hospitably welcome our visual story telling. But in the interest of full disclosure, the MPAA member companies are not going to wax rich and prosperous from our current China trade or in the near term. We hope that the Chinese market for our films, TV programs, and home entertainment will grow persistently in the future. But for us now it is a small market. But the Chinese people love American movies. The agreement struck by Ambassador Barshefsky opens up new opportunities in the Chinese market for American visual entertainment. We believe that over time it will become a most alluring and expanded marketplace.

So it is that MPAA asks these questions because it is in the long range best interests of this nation not to commit a bewildering blunder in rejecting permanent NTR for China. There is no other way to describe the gloomy results of a “NO” vote in the Congress.

The Economic Importance Of The American Filmed Entertainment Industry

The filmed entertainment industry is an economic engine, driving hundreds of thousands of well-paying jobs in the United States. The copyright industries, including the film industry, provided employment for 6.9 million U.S. workers in 1997, or 5.3% of the U.S. workforce. The copyright industries are a bigger employer than any single manufacturing sector. The number of U.S. citizens employed in the copyright industries has grown by 24% over the past five years, and has more than doubled over the past 20 years. The rate of new job creation in the copyright industries is twice the rate of the U.S. economy as a whole.

The copyright industries are also big exporters. In 1997 the copyright industries’ foreign sales and exports were approximately \$67 billion—larger than agriculture, larger than autos and auto parts, larger than aircraft. For the filmed entertainment industry, foreign revenues topped \$12.3 billion in 1997. Foreign markets accounted for almost half the total revenues earned by the U.S. film industry.

PNTR would benefit the American film industry

If Congress approves PNTR for China, the U.S. film industry and its workers would benefit in the following ways:

- **China will double access for export of films by the U.S. film studios.** The quota for foreign “revenue-sharing” films will increase from the current level of 10 films per year to 20 films per year. (‘Revenue-sharing’ means that China splits box office receipts at Chinese theaters on a 50–50 basis). Of significance to U.S. independent film producers is China’s pledge to permit access for an additional 20 foreign films per year on flat fee licensing terms. The combined film quota will grow from 40 to 50 total films per year by the third year.

China's decision to double access for revenue-sharing films is significant. It shatters the old 10 revenue-sharing films per year limit that had held firm since 1995. The growth in the quota is also challenging China to make its film distribution system more efficient and to introduce some competition into its domestic film distribution system. These structural reforms will create the conditions to allow future growth in access for America films.

So far this year, "Matrix," "Stuart Little," "Double Jeopardy," and "General's Daughter" have been released in China. "Mickey Blue Eyes," "Mission to Mars," and "Bone Collector" will be opening soon. (A complete list of MPA member companies films released in China since 1994 is attached.)

If PNTR fails, film industries in other nations throughout the world will harvest the results of the successful negotiations of the USTR team.

- **China will, for the first time, permit foreign investment in joint ventures engaged in the distribution of videos.** By participating in the video distribution businesses, U.S. companies can help build markets in China for U.S. home video entertainment.

- **China has lifted its investment ban on cinema ownership.** U.S. investors will be allowed to own up to 49% in companies that build, own and operate cinemas.

The need for more cinemas in China is acute. The ratio of screens per person in China is approximately 1 screen per 122,000 persons, if one generously counts not only theaters dedicated solely to exhibition of motion pictures, but also general-use theaters that can exhibit movies as well as live performances. In contrast, the United States has 1 screen per 8,600 people.

Foreign capital to build new cinemas will help modernize China's aging cinema infrastructure, attract Chinese consumers back into cinemas, and increase demand for U.S. films. It will also open a new export market for U.S. companies that manufacture sound and projection equipment and other furnishings for new cinemas.

- **Tariffs on films and home videos will fall.** Tariffs on films will decline from the current level of 9% of the value of the film to 5%. Tariffs on home videos will drop from 15% to 10%. Significantly, China agreed to change the method they use to calculate those duties. Instead of calculating a percentage of the *value* of the films and videos, China will assess a specific duty that is not tied to the value of the product, substantially reducing the effective tariff rate.

- **China will assume full obligations to protect intellectual property, as required by the WTO's Agreement on Trade Related Intellectual Property.** China is one of the few countries in the world that took effective measures to halt large-scale pirate production and export of optical media piracy (Video CDs, DVDs, music CDs, and CD Roms.) While China continues to have a significant piracy problem in its domestic market, China is not the source of the pirate product. China suffers from illegal import of pirate products made in places like Taiwan, Macau, Hong Kong and Burma. TRIPS provides a new tool to help encourage China to address its remaining domestic piracy problems.

The History of Intellectual Property Enforcement in China

The recounting of history is instructive. I was personally involved, along with my MPAA colleagues, in all the negotiations with China, and can confirm its realities. I pay tribute to the United States Trade Representative, Ambassador Charlene Barshefsky and her superbly qualified and energetic staff, for their successful labors, for which the U.S. film/TV/home video industry is grateful.

In January 1992, China and the U.S. entered into a Memorandum of Understanding that committed China to adopt Berne-compatible regulations to this copyright law and to join the Berne Convention and the Geneva Phonograms Convention. China complied promptly, making U.S. works fully eligible for protection in April 1991, amending its copyright regulations to in September 1992, joining the Berne Convention in October 1992 and adhering to the Geneva Phonograms Convention in June 1993.

A bilateral agreement signed in February 1995 addressed specific enforcement concerns. In response to the commitments contained therein, China established task forces to better respond to the pirate threat, promulgated Customs regulations to help control the import of optical media production equipment, instituted controls over the output of pirate CD plants, and conducted raids against retail pirate operations. A number of temporary plant closures and sanctions failed to stem the rising tide of pirate production in the initial year of the agreement, but USTR's continued close monitoring of the 1995 agreement led to permanent plant closures in late 1996.

To date, a total of 79 pirate plants, including 86 VCD production lines, have been closed down. Since that time, Chinese authorities have continued to monitor the production of optical media works closely. Last year, six new underground plants, which were bold enough to test the continued resolve of the Chinese government, were shut down by Chinese authorities.

China's Recent Actions Against Piracy

Although China has succeeded in halting the illegal export of pirated optical media products that had flooded worldwide markets in the mid-1990s, domestic markets in China continue to suffer from high levels of retail piracy. Much of the illegal import of pirate products is smuggled into China from Taiwan, Macau, Hong Kong and Burma.

Chinese policy makers officially recognize the problem, as demonstrated by a policy statement by Cultural Minister Sun Jiazheng at the National People's Congress Standing Committee meeting on February 28. Serious efforts are underway to try to bring the domestic problems under control.

Four Chinese authorities joined forces in March 2000 to hit DVD pirates in China. On March 2, 2000, the State Press and Publication Administration, the National Copyright Administration of China, the Ministry of Public Security and the State Administration of Industry and Commerce issued an urgent joint circular to urge every provincial, regional and municipal government authority to launch a special campaign against DVD piracy in China. During the special campaign, more than 200,000 pirated DVDs of MPA titles were seized, and 24 persons were arrested. Highlights of this recent action included (but were not limited to) the following:

- On March 15, 2000, Chinese authorities in Shanghai arrested a DVD pirate and seized 24,000 pirated DVDs of MPA titles.
- On March 16–18, 2000, Chinese authorities smashed three main audio-video markets in Guangzhou, Panyu and Zhuhai and seized 80,000 pirated DVDs. Seven people were arrested.
- On March 17, 2000, Chinese authorities smashed an illegal warehouse in Fengtai and seized 4,000 pirated DVDs of MPA titles. Two people were arrested.

This recent action against the Digital Video Disc format follows a similar action last fall against the older Video CD format. In September 1999, Chinese conducted a nationwide anti-piracy campaign against the VCD copying of two different pirated series of blockbuster movies owned by MPA's member companies. More than 3 million pirated VCDs of MPA titles were seized.

On January 18, 2000, Chinese authorities put in place a National Anti-Piracy Reward Scheme in which monetary rewards will be issued to the informant for successful seizure of pirated products, including optical discs, publications and optical disc production line and machinery. The maximum reward is RMB Yuan 300,000 (U.S.\$37,083) per optical disc production line or 2% of the total seizure value. Similar reward programs in Guangdong and in Hong Kong have proven extremely useful in developing leads into the hidden operations of the criminals who produce and distribute pirated materials.

Appendix to testimony of Jack Valenti:

MPA FILMS RELEASED IN CHINA

1994

1. The Fugitive

1995

1. True Lies
2. Forest Gump
2. The Lion King
3. Speed
4. Bad Boy
5. Die Hard III

1996

1. Outbreak
2. A Walk in the Clouds
3. Bridges of Madison County

4. Broken Arrow
5. Toy Story
6. Water World
7. Jumanji
8. Twister
9. The Rock

1997

1. Mission Impossible
2. Sabrina
2. Eraser
3. Courage Under Fire
4. Dante's Peak
5. Space Jam
6. The Lost World
7. Speed II
8. Batman & Robin

1998

1. Volcano
2. Daylight
3. Titanic
4. Home Alone III
5. Deep Impact
6. Saving Private Ryan

1999

1. Mulan
2. Enemy of the State
3. Star Wars
4. Tarzan
5. Entrapment

2000

1. Matrix
2. Stuart Little
3. Double Jeopardy
4. General's Daughter
5. Mickey Blue Eyes
6. Mission to Mars
7. Bone Collector

The CHAIRMAN. Thank you very much, Mr. Valenti. And I appreciate always your very interesting and very entertaining rhetoric. Yet I understand also the passion behind your statements. And I appreciate it very much.

Mr. Kahler.

**STATEMENT OF H. RICHARD KAHLER, PRESIDENT,
CATERPILLAR, INC., CHINA, ON BEHALF OF THE BUSINESS
ROUNDTABLE, AND THE AMERICAN CHAMBER OF COM-
MERCE IN HONG KONG**

Mr. KAHLER. Thank you, Senator and members of the Committee.

While I appear here today on behalf of a couple of very large organizations, the Business Roundtable and the American Chamber of Commerce in Hong Kong, I think that perhaps the perspective that I can bring today, in addition to complementing that of my fellow panelists, is that of someone at the micro-level, someone who is living in China, working on the ground, day to day, in China, trying to make things happen on behalf of American business and in support of the values that are important to us.

I represent Caterpillar China. I head Caterpillar China. And for the last 6 years, we have been trying very hard to increase our distribution, increase our manufacturing investments in China, and undertake the people development that is necessary to accomplish those things, obviously with the goal of trying to improve our presence in China and our success there. We would be viewed, I think, as a mid-range company in that market.

Our sales in China this year will be somewhere in the range of \$300 million. That is not small, but neither is it large by the scale of some. And that growth, our presence there has tripled in the last 6 years. So we are headed in the direction that is very appropriate and very positive for us.

The key point that I want to make here today is that for us to continue that trend in the direction that we and many others like us are headed, we need the advantages, the benefits, the openness of the WTO deal that has been recently negotiated. And to get there, we need the prerequisite approval by Congress of permanent normal trading relations with China.

I would like to cite a couple of areas that are particularly important to my company and I think to many others that are like us. The first is that the regulatory environment for the distribution of goods in China is going to change dramatically.

Using my industry as an example, in China's heavily regulated and restricted environment today, our independent dealers, our distributors through which we do business all over the world, simply are not able to gain the natural advantage that they can gain in other marketplaces. They must operate through a complex and very often convoluted series of regulatory work-arounds to be able to serve our customers.

But people ask for specifics: What happens under WTO?

Under WTO, in the package agreed by the United States and China, in 3 years, our dealers will be able to operate in China as they do everywhere else in the world. And based on that, I can offer you very strong assurance that companies like ours will prosper, and that will be to the benefit of our sales from U.S. sources, and other sources around the world, into China.

The second point that I would like to stress in terms of implications for us in the WTO deal is to build on something that General Scowcroft said just a few minutes ago. And that is that we can support the Chinese initiative to change the state-owned enterprises. Again, using my industry as an example, China's domestic earth-moving construction industry sector is a jumbled array of highly inefficient state-owned enterprises, many of which are surviving and dominating the local markets only because companies like ours are not able to be there. We are not able to offer our goods and services.

Clearly, one of the things that China must do is to rationalize these bloated industries. China's accession to the WTO, and the concurrent opening of the Chinese market, is, in my view, going to do more for rationalization of the state-owned enterprises than any domestic policies that China can bring to bear in that direction.

I do not mean to suggest that any of this—that the benefits of tariff reduction and non-tariff barrier elimination, is going to happen quickly. As several others have said here today, this is going

to take some patience. It is going to take some time. And I know that even after PNTR and China's accession to the WTO, we and companies like us are going to face extreme price competition.

We are still going to face a domestic sourcing bias. And I regret, frankly, that we are probably still going to face business channel difficulties. But China's entry into the WTO is going to create a platform for us to improve those situations.

I would like to move for just a minute to a question that Senator McCain pondered in his opening comments. And that is, what does all of this mean for the average Chinese, the man that works for a Caterpillar, Incorporated, or another one of our American companies in China? And critics of my position would suggest that we can exert more pressure on China by isolating it than engaging it. I simply do not believe that is the case. And I will pat ourselves on the back a little bit for some of the things that we are doing as evidence of trying to improve the standard of living and the human condition in China.

Every Caterpillar-related employee in China, which is gaining on 2,000 now, operates under the standards of the principles of our worldwide code of business conduct, something that has been part of Caterpillar's heritage for decades and which is far more stringent than U.S. laws and regulations regarding the business conduct that we impose on ourselves. We are proud to bring our values to our Chinese employees.

A lot of critics of positions like mine say that the Chinese do not care about the environment. And you know what? There is some validity to their concern. But companies like Caterpillar and others are bringing international technology to environmental control in China.

I would like to cite as another example the fact that if you look throughout the whole Caterpillar organization in 1999, the factory with the best safety record in all of the Caterpillar world was a CAT China factory. We stress safety in human development in our facilities. We do things in the community. We are 100 percent sponsoring a school, called the Chinese-English Language Training Center. In a small, remote, difficult community we are bringing some Western knowledge to that.

And in a fascinating area, way out in the most desolate parts of Central China, the parts of Central China that China wants today to see companies like ours focusing on, we are developing a new foundry, where, gentlemen, people come from their cave houses to work in our clean, well-lit foundry. They have good jobs. And they come because they find there an environment that emphasizes training, which gives them hope about the future for themselves, their families and their communities.

My point is only that, by our presence there, we are bringing American values. We are bringing international standards to the workplace. And through that, I believe we are contributing to the well-being of the Chinese society and to its people. And we want to continue that role in a very positive way.

I would like to conclude with an anecdote. Just about 3 or 4 weeks ago, I was in the office of one of your colleagues, a U.S. Senator, who was pondering his decision on whether or not to support China's PNTR. And he asked me, what would he see if he walked

into a Caterpillar facility in China? And would it be similar to what he saw in other American initiatives in China? I said yes, it would be similar to what you saw in other American factories in China.

I said, you would see a world-class manufacturing facility, managed by employees trained in Caterpillar values and operating under our code of worldwide business conduct. You would find a commitment to employee training that is equal to any Caterpillar facility in the world. You would find environmental control that matches our worldwide standards, and far exceeds the Chinese norm. You would find CAT-funded education, arts and social programs in the community. And you would find an atmosphere of co-operation and optimism about the future.

My goal is that the U.S. Congress share my personal optimism, my passion for China, about the future of U.S. business there, and about our ability to help bring U.S. values to that country, to bring U.S. disciplines and expectations to the forefront in that country. If you share that optimism, I hope you will support PNTR for China. Because, by doing so, you will help create an environment in which we, American business, can do our job. Let's get on with it.

[The prepared statement of Mr. Kahler follows:]

PREPARED STATEMENT OF H. RICHARD KAHLER, PRESIDENT, CATERPILLAR, INC., CHINA, ON BEHALF OF THE BUSINESS ROUNDTABLE AND THE AMERICAN CHAMBER OF COMMERCE IN HONG KONG

Good morning Chairman McCain and members of the Committee. It is my privilege to testify this morning regarding the benefits of China's accession to the World Trade Organization (WTO) and the necessity of granting Permanent Normal Trade Relations (PNTR) status to China.

My name is Dick Kahler, and I am President of Caterpillar China. Caterpillar is a long-active member of The Business Roundtable and of the American Chamber of Commerce in Hong Kong, which I chair this year. Caterpillar is a \$20 billion company; our overseas sales account for 50 percent of our revenue; and we consistently rank among America's top exporters. Caterpillar sells and operates in most countries of the world and has been active in China since the early 1970s.

Today I also represent The Business Roundtable, an association of chief executive officers of leading corporations with a combined workforce of more than 10 million employees in the United States. The chief executives are committed to advocating public policies that foster vigorous economic growth; a dynamic global economy; and a well-trained and productive U.S. workforce essential for future competitiveness. They also strongly support China's accession to the WTO and PNTR.

Finally, I also represent the American Chamber of Commerce in Hong Kong, one of the largest (with some 2500 members) in the world. AmCham's top policy priority for 2000 is Congressional approval of PNTR for China.

I. The Commercial Benefits of the WTO Deal Are Comprehensive

This year Caterpillar's business in China will approach a third of a billion dollars in revenue—a substantial portion of which is direct exports from the United States. Those exports include diesel engines manufactured in Indiana, turbine generators produced in California, large mining trucks manufactured in Illinois, and components and parts sourced from approximately 11,000 direct and indirect suppliers from all over the United States.

Caterpillar companies operate six manufacturing ventures in China, primarily to serve the Chinese market. And we sell our product through a combination of Caterpillar-owned and independently-owned dealers in China.

Let me give you one example of our growth trend: in 1996 and 1997 combined, we sold about 85 hydraulic excavators in China. Last month alone, we sold almost 150 hydraulic excavators there, and this month we should deliver more than 200! Our dollar sales this year for Caterpillar and its affiliated companies will be roughly

three times what they were in 1994. We are deeply committed to the customers we serve in China and to the local communities in which we operate.

Our investments in China have made us better known and respected there. And because of that we have created an opportunity for an increase in goods exported from the United States to China. We will have a record year this year, I project. We are not losing U.S. jobs—we are gaining U.S. jobs. And the market opening promised in the U.S.-China WTO deal will move that further forward.

You know the details of the WTO deal, based on input from Secretary Daley, Ambassador Barshefsky, and others. But let me bring them down to the micro-economic level, where most of us can understand them best.

A. The regulatory environment for the distribution of goods will change dramatically based on China's commitments in the U.S.-China trade package. In countries with open trading climates, Caterpillar's dealer-driven sales and product support-driven approach to the market are almost universally acknowledged to be the best in our industry. But in China's heavily regulated and restricted environment today, our dealers cannot gain their natural advantage. They must operate through a complex and often convoluted series of regulatory "workarounds" to be able to serve our customers.

By contrast, under the U.S.-China WTO deal, within three years, our dealers will be able to operate in China as they do elsewhere in the world. I can offer very strong assurance that in that more open environment, Caterpillar, and companies like us, will prosper. Give us the chance—let us show you what we can do!

B. China's domestic earthmoving and construction industry sector is a jumbled array of highly inefficient state-owned enterprises, many of which are surviving and dominating the local market place only because companies like Caterpillar and our major worldwide competitors are kept out by tariff and non-tariff barriers for goods and services. Chinese leaders know these bloated industries must be rationalized; and companies like mine know we cannot gain full advantage of the Chinese market opportunity until that rationalization is complete.

China's accession to the WTO and the concurrent opening of the Chinese market will do more than any of China's domestic policies and the annual NTR debate to drive the rationalization of Chinese industry. When that happens, American companies that offer world-class products at competitive prices will have a great opportunity for growth in China. Give us the chance!

C. The most obvious advantage of the WTO deal is reduction of tariffs and removal of other barriers to imports. These changes will make us more price competitive and provide greater market access potential. We will sell more products and services in this more open environment—give us a chance!

I do not mean to suggest that all this will happen quickly or easily. Six-plus years of working in China have taught me better. I predict that, even after PNTR and China's WTO accession, we will still face a domestic sourcing bias, I know we will still face extreme price competition, and I regret that we will still face business practice and business channel difficulties. But China's WTO entry provides a new and more effective process for breaking down these barriers.

If Congress grants PNTR to China, American businesses and their workers will benefit from the concessions discussed above and from the corresponding break down of trade barriers. If Congress rejects PNTR, however, American businesses and their workers will lose almost all of those concessions and our foreign competitors will gain an unearned advantage in the Chinese market.

II. Enforcement Is Essential

I understand that there is some concern regarding China's fulfillment of the obligations it accepts under the WTO. I accept that concern as valid. But I also accept as valid the assurances by such people as Secretary Daley and Ambassador Barshefsky that the monitoring and compliance programs used by our government will be very useful and that the WTO dispute settlement mechanisms will effectively protect our interests.

In my view, China has no alternative but to fulfill its commitments. It simply cannot accomplish its stated economic development goals unless it opens its economy to international competition. The breadth of commitments China has made in the WTO package is impressive. They reflect a vision of the future China that is more

in sync with our Western economic thinking. They *need to* comply with their WTO obligations to get there.

It will not be easy! Providing U.S. and other foreign companies “national treatment” goes against decades of past policies. So does opening up distribution and the service sectors. But with the Chinese leadership committed to progress, I believe that they will take enforcement seriously.

III. Engagement Is Critical

Critics of the position I present in favor of China’s accession to the WTO believe that we can exert more pressure by isolating the country than by engaging it. I contend they have not seen the good that we are doing by our presence there. Let me share some examples with you:

- All of Caterpillar’s operations in China operate in accord with Caterpillar’s worldwide Code of Business Conduct. That key presentation of Caterpillar’s value structure is translated into the Mandarin language and all employees know that it is a foundation document for us.
- In our manufacturing operations in China, we are applying world-class environmental-control technology to assure that we deal effectively with air, water, and waste treatment. We are following the highest standards, and by doing so, we are showing the Chinese people and other Chinese-based industry our respect for the environment.
- In 1999, Caterpillar’s factory in the city of Xuzhou in Jiangsu Province had *the best* safety record of any plant in the entire Caterpillar family worldwide. We teach and stress safety in a country whose business culture is less committed to safety than we are.
- In the same city, Xuzhou, Caterpillar fully funds and arranges U.S. teachers for the “Caterpillar English Language Training Center.” This is a program directed at community support, not corporate development. Through this center, we are bringing an important new skill-set to some of the people in this Chinese city.
- In the town of Er Li Ban in southern Shanxi Province, one of the most isolated and economically depressed areas of China, our employees come to work in a newly developing foundry where they are attracted, more than anything else, by good jobs in an environment that emphasizes training, which gives them hope about the future—for them, their families, and their communities.

I am not simply “bragging” about Caterpillar’s commitments in China. I am telling you that by our presence we (and many other U.S. companies like us) are bringing U.S. values to China. We are not imposing those values; rather, we are showing our Chinese partners, employees, and government officials the benefits of our values-oriented business culture.

Caterpillar is not alone in making these kinds of commitments. A number of my colleagues in Hong Kong are involved in programs to improve the human condition in China. Many orphanages, for example, see the generosity of Americans living and working in China. By this presence, we gain their respect and they gain a greater appreciation of American leadership, values, and goodwill.

A report recently released by The Business Roundtable, entitled “**Corporate Social Responsibility in China: Practices by U.S. Companies**,” effectively documents that U.S. companies do more than sell goods in China. It shows that U.S. business is a catalyst for positive change. We want to continue that role at the same time that we build our businesses to participate in the longer-term growth of the Chinese market.

“Engagement” with China is an objective that has been part of U.S. foreign policy for some time, through both Republican and Democratic administrations. The reason: it works.

Engagement does not mean that we endorse all of China’s policies or that we give China any special treatment. And my endorsement of stronger economic ties does not mean that I am an apologist for the things that are wrong with the Chinese system. I simply believe we will do more good working with China as part of the world economic system than we could by isolating and lecturing it as an outsider.

The WTO deal, which would bring China into the international trading system, would require it to follow the international “rules,” rather than setting its own. Opponents of PNTR would hold us back from realizing the potential benefits of engagement.

Conclusion

I would like to end my discussion with an anecdote. A few weeks ago, one U.S. Senator asked me what he would see if he walked into a Caterpillar facility in

China, with special reference to labor and environmental conditions. I told him: you would see a world-class manufacturing facility, managed by employees trained in Caterpillar values, and operating under our worldwide Code of Business Conduct; you would find a commitment to employee training that is equal to any Caterpillar facility in the world; you would find environmental control that matches Caterpillar's worldwide standards and far exceeds the Chinese norm; you would find Cat-funded education, arts, and social programs in the community; and you would find an atmosphere of cooperation and optimism about the future.

My goal is to see the U.S. Congress share my optimism about the future of China, about the future for U.S. business there, and about our ability to help bring some U.S. values, disciplines, and expectations to the forefront. If you share that optimism, you will support PNTR for China, because by doing so you will create the environment in which we can do that job. Let us get on with it!

Thank you.

The CHAIRMAN. Thank you very much, Mr. Kahler.

Mr. Wu, you wanted to respond, and we certainly would like to hear it.

Mr. WU. Thank you for giving me this opportunity. I really want to respond to Mr. Kahler, when he is talking about American business in China. I would just say business is business. Your business in China is to make money. It is not a charity. Do not try to tell me that you are really helping the Chinese promote democracy, freedom, whatever.

It is true that American values and business practices are spreading in China. Two years ago, I was in RIT, the Rochester Institute of Technology. I met a former CEO from Eastman Kodak, and we had a conversation. And I said Eastman Kodak is very well-known in the United States. One of the reasons is they have a very good welfare policy for their employees. And I said, do you apply the same standard to your Chinese employees? He said "Yes, we do."

And I said, in China, there is a national population control policy. Every woman and family is subject to this policy. If a woman in this American company gives birth to a child without a permit, Chinese laws says she will be fired. Do you know about that? He said that he did not know. But the American worker in America, he would not be fired.

There is nothing that American bosses can do. If Chinese workers want to organize an independent trade union at an American company in China, these people also will be fired and even arrested. And there is nothing the American boss is going to do.

Today there is a very interesting phenomenon. The capitalist capital flows into a communist regime. And they tried to create a kind of a concept that is the best way to turn down the Communist system and benefit the Chinese people. I am confused that this idea never applied to some country like Cuba, North Korea, Vietnam, and even today in Moscow. I am confused. I cannot answer that.

I really want to emphasize one more thing. I cannot convince the businessmen's thinking about human rights. They are concerned with business rights. They are concerned about copyrights. But as the policymaker, please think about our national security.

I heard Warren Christopher, in December 1996. He ended his diplomatic life in China. He said, we have to deal with this country, because China will become a superpower. How many Americans realize China has now become a superpower? Normally we

heard superpower as being the Soviet Union and the United States. Now, we will have to go in, facing a new superpower. This time, not in Berlin. Not in Europe. And it is happening in Asia. And we still have 100,000 soldiers in this area.

Thank you.

The CHAIRMAN. Ms. Wallach, I also noted that you were somewhat stimulated by Mr. Valenti's remarks. Would you like to respond?

Ms. WALLACH. Well, in Mr. Valenti's suggestion that demanding reciprocal, enforced trade agreements would lead to a return of Smoot-Hawley and the Depression, I was wondering if he intended to leave Nazism out. His argument is obviously ridiculous.

The real point is: are we going to have a commercial policy or a broader relationship that looks at the national interest or only one that looks at special interests—that special issue of interest to the Senator. I would say that there is a high relationship between campaign finance cash at this moment and the zeal to do a policy with China that suits companies that want to relocate investment to China and guarantee permanent, unconditional access back into the U.S.

But given that U.S. goods—agricultural and manufactured—those made or grown here and sent there, get the benefits that China will give the rest of the world under its WTO accession by merit of the 1979 bilateral, it is not in the U.S. economic interest and, as we have heard in our broader human rights, national security or other interests to concede Congress' role and to give China a blank check.

And it is interesting rhetoric to claim that the end of the world will occur if we fail to dispense this blank check. But, in fact, the great loss is if we do so. There is nothing to be gained if Congress makes this change, and great loss to be suffered if Congress gives up its leverage over China. Thank you.

The CHAIRMAN. General Scowcroft, Mr. Wu just raised the point that he is, "somewhat confused over how we can differentiate China from Cuba, North Korea and other nations and our policies toward them, and yet obviously our approach to China is somewhat different." Can you respond to what Mr. Wu just said?

General SCOWCROFT. Yes, I think so. Although, may I say, I think Cuba is a very special case. Cuba is basically no longer a foreign policy issue. It is a domestic U.S. political issue.

But on countries like North Korea, Iran, the so-called rogue states, we are trying to do things with most all of them. And maybe, after 60 years or so, the North Koreans may be coming around. But there has been no opening to do anything. And I think the issue with China is, does this help a little? Does it hurt a little?

We cannot remake China in our image. I am very sympathetic with Mr. Wu's approach to the problem. But I think it is wholly unrealistic. China is not going to become another United States. But can our actions help in some way to steer China toward becoming a more respectable country in the world? China is not going to go away. And how can we best do things which, at the margin, help and do not hurt?

What I am suggesting is, basically, since 1972, what we have done has helped. The China of today is not the China of 1972. And

I think Mr. Wu would agree to that. It has a long way to go. But one of the things that will help is to cut the umbilical between Chinese industry and the government, so that the industrialists do not owe their jobs to political whims in Beijing; they owe their jobs to their ability to make a profit. That, if you believe in the American dream, is a fundamental change in their system.

The CHAIRMAN. One additional question. This is not exactly on that subject. How should American policymakers react to the remarks that can most charitably be described as incredibly immature by Zhu Rongji before the elections in Taiwan?

General SCOWCROFT. I think we should react boldly. And to me, as I tried to indicate in my remarks, this is a country carrying a lot of psychological burdens. It is run by a Communist Party which is discredited, is no longer a motivating force. And I think they do not understand what works and what does not. And for them, their instinct is still to bludgeon. It did not work with Taiwan. It did not work in 1996. It did not work in 2000. And having them open more to the world will teach them how they have to behave. I think they are gradually learning, but shutting them off is not the answer.

I think Ms. Wallach's idea is cute, but wholly ridiculous. The United States cannot behave this way. And if we have our set of rules alongside the WTO rules, the Chinese of course will follow the WTO rules and will not grant us the 1975 understandings. And they will have 135 of our trading partners on their side.

The CHAIRMAN. Mr. Valenti, you wanted to speak.

Mr. VALENTI. I just want to make three brief points, Mr. Chairman. No. 1, as General Scowcroft said, what we are overlooking is if we repudiate China, the rest of the world will be in the WTO, along with China, and they will be China's trading partners. They will be their soul mates or whatever. We will be the odd man out.

And, No. 2, I want to follow on to General Scowcroft's idea. We cannot remake China in our own image or any other country, nor should we try. A little story:

When I was a schoolboy, I read about Nero, the mad Emperor of Rome. And he had a trusted advisor named Seneca. And one day he woke up and called Seneca in and he said, "Last night I realized in a dream that I am without sin and I am without flaw;" therefore, said Nero, "I am a god." And Seneca responded this way. He said, "Sire, no man is without flaw. And the man who claims to be without sin does so with relation to a witness and not his own conscience."

Now, I might add that advisors to presidents and prime ministers and kings have taken into account Seneca's bold remarks, because some months later he was poisoned. And therefore it did affect how one talked to a president or a king.

The only point I am making is—and I say this as someone who loves this country more than life itself—we are not perfect. There are lots of things wrong in this country. I am proud to say that when I was in government, we tried, in a modest way, to reshape that. But we have got a long way to go. Therefore, I do not understand why it is that we want to inflict upon others all over the world an imposition of so-called American values. Maybe somebody in Southern Italy or in Saudi Arabia or maybe in the Cornwall

country of Great Britain would say, "Wait a minute, I have got my own values here." We ought not try that.

What I think is happening in China today, though, is the irresistibility of change. I will promise you, no matter what the Communist government does—and I do not know how long they will be in power—they cannot stop this change any more than Canute could hold back the tides. The binary number world is upon them. And it will have a profound and shattering effect on what people learn and what they see and feel.

Frankly, I am hopeful that if we can get more American movies into China, then they will see the American values. I think Tom Hanks and Julia Roberts will have more persuasive effect on the Chinese people than the whole Sixth Fleet moving off the China Sea. So we ought to keep that in mind. On a cost/benefit ratio, there is nothing to be gained with repudiating China. Nothing. Zero.

The CHAIRMAN. Ms. Wallach, you wanted to respond again. And, Mr. Wu, you did, too. Could you both be fairly brief, because both Senator Dorgan and Senator Cleland would like to ask questions, as well.

Mr. WU. First of all, we have to make clear one thing. Today there is no one, including myself, who suggests to isolate China. There is no way. It is impossible. But when we are talking about PNTR, the WTO, whatever, it does not mean we will try to put the Chinese in a corner, to fight against us.

The other thing is, why not just be a little bit patient? In China, we have a slogan. It comes from the Communist authorities in the last 30-some years: The Soviet Union today is our tomorrow. They would not want to repeat that today, but they will. The Soviets yesterday will become our today. The thing happening in Moscow soon will happen in China.

That is why I am thinking why not just be a little bit patient. To rush into China, to grab this market, to earn money—I am not talking about the moral basis, I am talking about security. It is just like a blood transfusion, this assistance.

Let me give you two incidents. It really makes me kind of nervous. One is 1998, when President Clinton came back from China. He said, well, we finally have an agreement. We are not going to target each other by intercontinental missiles. Wait a minute. Why did we need this agreement? There are a couple of countries, including India, who have the intercontinental missiles. We are never seeking that kind of agreement. Now we are looking for it from China.

For 2 years now, the number of intercontinental missiles in China is decreasing or increasing? Why this backward country today has the ability to become a new superpower and has such intercontinental missiles? Our money is just fuel in the tank, running this Communist vehicle.

The second thing is recently I heard Mr. Sandy Berger talking about WTO. If you carefully read his statement, I want to be straight—it is just like a salesman talking about benefit, talking about it is good for the United States. He is not talking about American security.

And if this thing is still going on this way, we are facing a Communist giant. This time not in Moscow. This time in Beijing. And we will have a more difficult time negotiating the Korean Peninsula issue.

Thank you.

The CHAIRMAN. Ms. Wallach.

Ms. WALLACH. I wanted to clarify the China WTO process, because it seems unclear from some of my colleagues' comments. The theoretical umbilical cord gets cut with the state sector when China goes into the WTO. And that is unrelated to whether or not Congress does PNTR. China will have to concede to WTO compliance and make the domestic policy changes.

Once China is in, then what the 1979 Agreement gets us is merely that basket of concessions that were required to enter WTO, which becomes China's most favored treatment, which we then get reciprocally. So we are not left out alone from the 136 WTO member nations; we are getting the same thing. The 1979 Agreement merely requires, in different sectors, that we get the best of any third country.

And then, finally, there is nothing cute, General Scowcroft, about getting U.S. business all of China's WTO concessions while maintaining effective enforcement. That would seem to me to be a good policy. And it certainly is doable, because it is what all the other countries do to us in their trade policies. It is what is in their interest.

And as far as the leverage to do it, the legitimacy of China's ruling regime is limited. It maintains itself on growth and creating jobs. And its export-led growth. And 42 percent of those exports come into our market. So it is hard to imagine what more leverage to make this doable policy there could be.

Thank you.

The CHAIRMAN. Well, I would like to have this panel exposed to all Americans, because I think it represents the most articulate points of view on this issue, so that Americans could be far better informed as the Congress of the United States makes this decision. And that is why I want to thank all of the witnesses for their very eloquent, passionate and forceful presentation of your points of view. It has been very helpful to me, and I am sure to the other members of the Committee. And I thank you for being here today.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, let me echo that. This has been a most interesting panel, with very different points of view, but expressed with great passion.

Mr. Valenti, you are always one of my favorite witnesses before congressional committees. I have long enjoyed your presentations. But let me describe, if I can, why I think the export of American values is in fact part of what we need to do on trade issues. We have had people die on the streets in America for the right to organize. Workers' rights to organize are critical.

We have had great strife for almost 100 years over the question of preventing people from exploiting kids in the job market, providing for a safe work place, preventing people from throwing chemicals into the water and the air when they produce. So we have had very large battles for over a century on these issues. And

as I said, people have died in the streets for the principle of the right of workers to be able to organize.

So when we say now, let us set up international competition under global arrangements, the question is, what is fair competition? Is it fair competition for us, when we have established these basic values, to compete against someone that wants to hire 12-year-old kids and put them in an unsafe plant and pay them 12 cents an hour and work them 12 hours a day and pollute the air and the water?

The answer is absolutely not. That is not what competition is about. Values that we have fought for and worked on for a century, does that matter in terms of what we are trying to do in creating fair competition? You are darn right it does. The part of the march toward globalization has moved much faster than the issue of fair rules in determination of what is fair trade. I just wanted to make that point, because you raised it, and I think it is very important.

Let me just ask two very quick questions, because I know we are late. But, again, all of you I think are excellent witnesses and express yourselves with great clarity.

Mr. Kahler, you produce in China. Your company is one I have great respect for. Let me ask you, who do you produce in China for? The products that you produce in China move to what market?

Mr. KAHLER. Senator, I am glad you asked that question. We produce in China primarily for the China market. We do some very limited exporting of components to other Asian markets and a very, very small amount of components sold back to the United States.

But I mentioned before in my comments that our sales, our revenues in China have gone from about \$100 million 6 years ago to \$300 million this year. An interesting and important point I think that relates to the jobs issue, which may be part of what you are asking about, is that that \$200 million increase over the last 6 years, only half of that is domestically produced in China. And so our sales in China that are imported into China today are double what they were 5 or 6 years ago, when we started the process of investing in China to give us access to certain sectors there.

Senator DORGAN. Just briefly, what are the arrangements of the ownership of your facilities in China?

Mr. KAHLER. Well, we have six different facilities. About three of them are 60/40, 70/30 kinds of joint ventures, with us the majority owner, with a state-owned enterprise as the minority owner. And a couple of them are wholly foreign-owned enterprises, where we have 100 percent ownership and complete control. And the reason there is a difference in them is a reflection of the industry in China and what, frankly, made most sense for us in terms of getting into an investment position there.

Senator DORGAN. Now, the restriction on ownership in cinemas is going to be 49 percent. At the briefing I was at the other day, most of the industrial facilities are going to be 50 percent, not 51. And the bilateral agreement made progress in improving ownership positions, but not to a majority position. And I am curious about your 70/30.

Mr. KAHLER. Well, in fact, we have one venture that is 85/15, sir, and then several wholly foreign-owned enterprises. And I cannot speak to the cinema. Mr. Valenti obviously can. But one of the situ-

ations in investing in China is that they have set aside certain sectors of the economy for special attention. The automobile sector is one that is close to us that is relevant.

In the auto sector, you can only have a 50 percent investment in a Chinese organization. In our industry, we do not have that kind of restriction. The Chinese state-owned enterprises that have any strength on their own will fight very hard to sustain a majority or at least a 50/50 ownership position. But absent regulations that require it, we have simply not been prepared to go into a minority owned situation.

Mr. VALENTI. Senator, I would just point out to you that one of the reasons why is because the three areas where the Chinese Government has fear that borders on paranoia is television, the Internet and the cinema. The Chinese love American movies. The American movies that have been over there play to packed houses.

I have made it clear to the Chinese with whom I have developed some good relationships that 49 percent is not going to cut it. The only way we are going to invest millions of dollars in cinemas is if we can operate them. But, most of all, unless we can bring more American pictures into China—because, at this moment, the local Chinese films and the few amount of American pictures will not sustain the building of state-of-the-art cinemas in China today, but they understand this—and in my judgment, I know in the original agreement—and, frankly, I am not sure if it stayed in the final one—was that after 3 years we could go into majority control.

Senator DORGAN. Two final points. For example, and concerning the purchase of American grain, under the new agreement, 90 percent will be purchased by the state, by the government, 10 percent privatized, and we say Hosanna. Is that not wonderful? Look at the progress we have made. We have a trade arrangement now, under global trade and free trade, that only 90 percent will be purchased by a government purchasing agent. So you just shake your head and you say, who negotiated that?

Mr. VALENTI. That is grain?

Senator DORGAN. Yes. And I would say, Mr. Valenti, in some ways, while I almost always agree with you, in your testimony, you kind of do what has happened to us in agriculture in trade agreements. You say the current level of 10 films per year will be increased to 20 films. And you actually use the words, “it shatters the old 10 revenue.” That is like if we send them one hog and we get to send them a second hog, we have a doubling of our hogs.

Well, 20 films? We ought to expect much, much more from a country with whom we are negotiating and with whom we have a \$70 billion goods deficit. Twenty films is miserable. What a miserable arrangement.

Now, I understand that you are excited about it. But I would say, on behalf of your industry, we ought to expect so much more. We are a cash cow for Chinese hard currency needs. There is nowhere else in the world they will sell their shirts and their shoes and their trousers and their trinkets—nowhere else. There is no market like ours. We have significant leverage. And every time we enter a trade negotiation, we come up far too short.

Mr. Kahler, we came up short for you. And I know you are satisfied. And, Mr. Scowcroft, you are satisfied. I am not satisfied. Now

that does not respond to how I am going to vote on NTR or PNTR. I would just make one final point and then you can respond.

This is not a vote about whether or not we repudiate the Chinese. This vote is not about repudiation. It is about normal trade relations we are going to accord them this year or permanent normal trade relations, NTR or permanent NTR, not repudiation. That is a very important thing for us to understand. And I have not decided how I am going to vote on this. I do not like the bilateral, but that is nothing new. We have never negotiated a trade agreement with our trading partners in which we exhibited any strength or common sense at all. So that is not new for me. But this is not a question of repudiation, yes or no.

You frame an important question, Mr. Valenti. What occurs if we vote against PNTR? That is a fair and important question. That is the one you started with. But this is not, in my judgment, a question of whether we repudiate. So I wanted to make those comments. Again, let me say that all of you have presented, I think, some of the most interesting testimony I have heard from a panel in Congress for some long while. Because they are very difficult points of view, but expressed with great clarity from different perspectives. And I think that is very helpful.

Mr. VALENTI. Let me just say one thing, Mr. Chairman. I used the word "repudiation" because is there any other country in the world that we would so treat if we voted "No"? As I understand it, and I may be wrong, we have permanent normal trade relations with just about everybody in the world, do we not?

Senator DORGAN. Not Cuba and not North Korea.

Mr. VALENTI. Well, not Cuba and not North Korea, but all Middle Eastern countries and all of Africa.

Senator DORGAN. You asked a very important question.

Mr. VALENTI. I am just saying that here we are voting against that; 134, I think Secretary Daley said, have permanent normal trading relations with America, and then we single out China. I understand the logic of what you say. But if you were the Chinese government, I think you would count it as a repudiation if you were in their shoes.

Mr. KAHLER. May I add just a quick point, Senator?

I do not think anybody would say we got everything we wanted or we are 100 percent satisfied with the deal. But we are very, very satisfied with the deal. We got a lot of what we wanted. And one of the most under-represented, important parts of that deal is the distribution rights. For Caterpillar and for many companies like us, it is the single most important evolution in the Chinese thinking about how they are going to allow business to be done in their country.

It is going to take us 3 years to get our distribution system in China good enough to take advantage of what they are going to allow us to do in 3 years. And that, in and of itself, is an absolutely critical and positive move forward for us.

Senator DORGAN. Mr. Wu.

Mr. WU. Yes, we do give 134 countries normal trading status. Yes, we do single out China. But the basic problem is China themselves single out themselves, because this is a Communist country.

Very few countries today exist in the world as a Communist regime. The problem is China is so different from the other 134.

And I want to say, why do we all the time care about the Chinese government's face? Do you really give our face? During the Cold War, we never cared about Moscow's face. Why do we today all the time care about Zhu Rongji and Jiang Zemin's face and face and face?

Yes, Cuba has become a domestic issue. Let me say it this way. If Cuba had 600 million in population, our policy would be different.

Senator DORGAN. Thank you.

Senator CLELAND. Thank you very much.

I agree with the members of the Senate here who have spoken. And that is that this is the most enlightening panel I have seen in 4 years here. I wonder in my own mind if we are not talking about what is the title of a popular book out there that tries to describe what is going on in the world, "The Clash of Civilizations." And I wonder if increasing this clash by normal permanent trade relations with China, what impact that really has.

I think it is fascinating. If you read "The Lexus and the Olive Tree," by Tom Friedman, he buys the Jack Valenti argument that the more information, whether through movies or television or the Internet—particularly the Internet—the more democratization occurs—democratization of finance, democratization of consumption, and ultimately democratization of politics.

And then Mr. Wu seems to indicate that if we do increase trade, that strengthens the government, not weakens it. Mr. Wu, you threw in right at the end of one of your answers a fascinating point that I have been operating on, and I wanted to ask General Scowcroft the question and then I will ask you, Mr. Wu, too.

General Scowcroft, I have been traveling under the assumption that if we went ahead with normal trade relations with China, acceded to their entrance into the WTO, that, in effect, we were enhancing our national security by giving the administration of their regime something that they wanted, so that when we wanted something from them, like subtle pressure on the North Koreans or the Pakistanis, in terms of real issues that we face, the buildup of missiles, the buildup of nuclear capabilities that threaten our hemisphere, then that regime would be more amenable to our interests, as well.

Yet Mr. Wu seems to indicate that if we trade, then we strengthen the regime and it hardens our ability to get them to be sympathetic to our concerns about North Korea or Pakistan. General Scowcroft, do you see increased trade with China as strengthening our ability to get some of the things from them that we want in terms of national security, particularly on the Korean Peninsula?

General SCOWCROFT. Well, I am not sure, Senator, whether we can translate increased trade to help on the Korean Peninsula. But I think what can help on the Korean Peninsula is if we have a cooperative attitude on the part of China, that they think they are being treated, from their perspective, in a reasonable way. If we now, after having negotiated bilateral arrangements, which were all one-sided—we did not give up anything—we then turn around and say no, we are really not going to follow through and we are

going to do something else, it is not likely to enhance the Chinese interest in helping us on the Korean Peninsula.

On the other hand, they are going to follow their interests in Korea anyway. I do not think those are too far from ours in fundamental areas.

But I think what happens with the increase in trade is what Mr. Kahler was saying. At least we, as Americans, believe that a modern economy helps preserve and enhance individual freedom, individual rights. And it seems to me that it is quite clear that as China—it definitely wants to improve its economy, because that is the one thing, that is their only claim for legitimacy with the Chinese people, that they are improving the economic lot of the Chinese people—that in the process of doing that, they will set loose these forces, by the Internet, by people focusing on their business prosperity, not doing what they need to please the leaders in Beijing. That will in fact make a more normal country out of China. And I think that is what this is all about.

Senator CLELAND. Yes, sir, Mr. Wu.

Mr. WU. I just want to indicate one thing. The question is: Who is our business partner today in China? Are these people free capitalists? No. They are Communist bureaucratic capitalists. They are not free capitalists. They have no interest in promoting democracy or promoting freedom in China.

Yes, they will cooperate with you and do business. They control these men and women working for you and make profit. And they share the profit with you. But that does not mean they are going to give up their Communist Revolution.

Senator CLELAND. Yes, sir, Mr. Kahler.

Mr. KAHLER. If I may just add. I guess, as a businessman operating in China, it is not my role to stop the Communist Revolution. That is bigger than I can undertake. But I would like to say, in response to what Mr. Wu said, I am a newcomer. I have only been there 6 years. But I have seen dramatic change in 6 years in the amount of responsibility and authority and decisionmaking activity that is taken by executives in Chinese companies. And I suspect, to somebody who had been there 20 years ago, if they could take a snapshot today and compare it to 20 years ago, the change would be even more dramatic.

The centralization of power in China clearly, clearly, clearly is dissipating from a political and from an economic situation. And I will stick with the point that I have made, and others have as well, that having people like Caterpillar and other world-class American companies in China is contributing to the education and the understanding of the Chinese people about the international world in which they live and is contributing to the pressure that they put on their local communities and on their national government for change that is in fact in the direction that I think most of us at this table want to see.

Senator CLELAND. Yes, Mr. Valenti, I cannot help but think that the silver screen has been a powerful influence in the lives of Americans and other people around the world, and it would be an increasingly powerful influence in China, as well.

Yes, Ms. Wallach.

Ms. WALLACH. On the question that you posed of what way, which approach, as you characterized it, Mr. Wu's or Mr. Valenti's China will take. To quote General Scowcroft: "China is going to follow its own interests." And the history of relations with China shows that the one thing that has caused changes in conduct is taking away access to this U.S. market on which so much of China's growth relies. And before the de-linkage in 1994 of human rights and trade, there had been uses—for instance, right after Tiananmen Square, where it looked like China would be denied the annual MFN—of that leverage in that instance to spring thousands of kids out of jail. And then Congress voted afterwards.

And in the commercial context, despite lots of huffing and puffing, bilaterals, and threats, the only time there has actually been changed conduct is at midnight plus one minute of the day the trade sanctions are going to kick in. And the intellectual property rights fight was a pretty dramatic case in 1996. That has been the actual record.

So where it may be the case that voting down PNTR would not earn China's "joy and gratitude"—as Mr. Valenti put it—it seems to me that is an approach we should use for our mothers. But for business competitors with different goals and different philosophies, who are also armed to the teeth and regularly threaten our allies and our West Coast cities, a more leveraged, tougher position might be an appropriate one.

Senator CLELAND. Mr. Wu.

Mr. WU. Well, I am not interested about the entertainment business, but I want to point out one thing. Remember the Hollywood-produced movie "Kundun." And the Chinese foreign spokesperson right away said, "stop it." And "Kundun" disappeared in the American cinema in about one week. They crossed over the Pacific Ocean, come to the United States, and tell the American media "No freedom of speech. We do not like this movie."

So maybe some movie like "Mulan" is right now getting to China. Twenty movies, well, for the Chinese, yes, we like American movies very much. But we have to know that the thing is, until this moment, it is still controlled by one hand.

Mr. VALENTI. Let me just respond to Mr. Wu. He is now in an area where I think I am a little more of an expert than he is—the only area, I might add. And that is that every country in the world, Mr. Wu, except Germany, Japan and the United States, have government censorship. The United Kingdom, the cradle of all of our liberty and Common Law, has banned several American movies.

Kirk Douglas' picture, "Paths of Glory", was banned for 25 years in France. Every country has the sovereign right to say, "I do not want this movie in my country." And they all do it. And they did not like "Kundun." But that did not keep Martin Scorsese from making it. And the Chinese had zero influence on whether or not we make a movie.

Our total income, total income today, to the movie industry and the television industry is maybe between \$20 million and \$30 million. Even capitalists do not sell their birthright for that kind of money.

The point is that we know censorship. We fight it every day all over the world, government censorship in democratic countries. So China is no different than anybody else on that score.

Senator CLELAND. Well, this is a fascinating discussion. I wish we could continue for hours. But you all have been very patient and this has been among the most fascinating issues with which I have dealt since I have been in the Senate, and it will continue to be.

Thank you very much. The hearing is adjourned.

[Whereupon, at 12:20 p.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENT OF HON. SLADE GORTON,
U.S. SENATOR FROM WASHINGTON

To begin, I would like to extend a thank you and congratulations to Secretary Daley for the recent Department of Commerce decision regarding the apple juice concentrate anti-dumping case against China. As some of my colleagues here today know, the Department of Commerce recently ruled in favor of American apple producers in this significant trade case; a case that could set the stage for anti-dumping actions in the future.

Essentially, American apple juice concentrate producers charged that the price paid for Chinese imports was far below market value and that dumping had occurred. Since initially pursuing their case approximately one year ago, the industry has won a favorable decision by the International Trade Commission and two subsequent determinations by the Department of Commerce. Commerce's most recent determination solidified the fact that U.S. apple producers and concentrate processors were harmed by the influx of cheap imports. As a matter of fact, due to Commerce's decision to levy duties of more than 50% on Chinese concentrate, the price paid for juice apples has increased from a very low \$10 per ton back to the normal level of \$120 per ton.

While the specifics of this case might not be of great significance to my colleagues, what this scenario has provided is a window into the future and possibility of anti-dumping cases against China. Many arguments against China's entry into the World Trade Organization or extension of Permanent Normal Trade Relations hinge on the concern that free market trade will result in an over-abundance of Chinese product imported into the United States. I believe these valid concerns can now be addressed with a concrete response. This particular case exemplifies that the United States does have an avenue for retribution and recoil should trade with China result in any dumping scenarios.

While I am still somewhat skeptical about whether or not the trade agreement between the United States and the People's Republic of China will be executed to the level at which it is written, I do recognize that this nation and my own State of Washington have more to lose by bypassing trade with one-fifth of the world's population. In conjunction, China has more to gain by embracing our free market principles.

I will reserve my definitive remarks about trade with China until the full Senate is prepared to debate and discuss this subject matter, and thank Chairman McCain for holding this hearing.

PREPARED STATEMENT OF DOUGLAS LOWENSTEIN, PRESIDENT,
INTERACTIVE DIGITAL SOFTWARE ASSOCIATION

Mr. Chairman, thank you for inviting the Interactive Digital Software Association to appear before you this morning to discuss legislation granting Permanent Normal Trade Relations status to China. My name is Douglas Lowenstein and I am President of the IDSA, the trade body representing U.S. video and computer game software companies. IDSA supports granting PNTR to China and its eventual full admission into the World Trade Organization.

In 1999, our industry generated \$6.1 billion in retail software sales in the U.S. alone. IDSA's 32 members account for 90% of the edutainment and entertainment software sold in the U.S.. Worldwide, our industry generates in excess of \$17 billion in software sales alone, and many of our members generate 40% or more of their revenue from foreign markets. Between 1991-99, the industry has grown more than 145%, far outstripping the growth rate of any other entertainment sector in the world. In 1999, 215 million electronic entertainment games were sold in America alone, or two per household. It is estimated that our industry now employs more than 50,000 people in the United States, many in highly skilled positions. Video and

computer game software developers and publishers are in dozens of states across America.

Background on Computer and Video Game Industry

While video games were once thought to be mainly the province of children, today's industry appeals to people of different ages, genders, and tastes. In fact, the average age of computer and video game players in America is now 28 years old, and 43% are women or girls. Overall, it is estimated that 145 million Americans regularly play computer and video games.

Increasingly, the interactive entertainment industry is seen as both a content provider and also a high tech industry driving major advances in artificial intelligence, computer hardware, 3D graphics, and silicon chip design. The next generation of video game console hardware, some available now and some available over the next few months, will offer consumers a set top box unit which can play video games, DVD movies, audio CDs, connect to the Internet, download content, handle e-mail, and more, all for a reasonable price. Perhaps this is why a recent story in Newsweek said, "In the century to come, the medium producing the most dynamic, vital, and exciting new art will be video games."

I offer this background to dramatize just how important our industry is to the U.S. economy, particularly the high tech economy of the new millennium. Our industry relies totally on intellectual property to fuel its growth. Demand for video and computer games is huge. It's clear that wherever our industry can sell legitimate product, sales explode. Without strong IPR protection in the United States and around the world, including the Internet, we cannot sell our products. Indeed, piracy is our biggest trade barrier. Without strong copyright protection and enforcement, the kind of growth we've experienced over the last decade will be jeopardized. The plain fact is that large and small countries around the globe are riddled with counterfeit and pirate products, making it virtually impossible to create legitimate markets and build strong businesses.

Computer and Video Game Piracy in China

Which brings us to China. We estimate that our industry loses \$1.38 billion annually due to piracy in China, and that the piracy rate there hovers around 95%. In other words, all but 5% of the products sold in China are pirate or counterfeit. While we experience similar piracy rates in other countries, the financial losses we sustain in China far outstrips that of any other country in the world.

The obvious question is, given these problems, why on earth would we support PNTR and China's entry into the World Trade Organization (WTO)? There are three major reasons: First, notwithstanding the continuing domestic piracy problems in China, we believe China has taken some important strides under the 1992 and 1995 Sino-U.S. bilateral trade agreements to improve the IPR environment.

Second, we believe that membership in WTO offers the best way to sustain and build on even the limited progress made to date.

Third, we believe that membership in the WTO will hasten China's ratification of the World Intellectual Property Organization (WIPO) treaties with respect to copyright protection on the Internet. Given the central role the Internet will play for our industry as a vehicle for distributing content, this is a fundamental and critical business issue for us.

The 1992 and 1995 Memoranda of Understanding (MOUs)

In 1992, and again in 1995, the U.S. and China signed Memoranda of Understanding (MOU) regarding intellectual property rights in China. The 1995 MOU was further supplemented by a 1996 Action Plan for implementation of its key provisions. These are relevant in the current debate since one of the issues is whether China can be trusted to carry out its obligations under international trade accords. Indeed, there are some critics who point to the IPR agreements as an example of why China cannot be trusted.

In fact, China has complied with many of the key provisions of both MOUs. This is not to say it's been easy, or that all is well. In fact, neither is the case. But it is also indisputable that progress was achieved under both the 1992 and 1995 agreements.

The 1992 plan dealt mostly with steps China needed to take to enact laws to meet various relevant international copyright conventions, such as the Berne Convention. And, in fact, China did everything it was asked to do under that agreement within the prescribed deadlines. However, China did fall well short of meeting the agreement's general commitment to improve enforcement of the new laws it enacted, and it was this failure that gave rise to the negotiation of a new, much more specific agreement in 1995.

The 1995 agreement and the 1996 Action Plan thus zeroed in on enforcement generally and particularly on the increasingly grave problem of uncontrolled production in China of counterfeit optical media products of all kinds. The main focus of the 1995 agreement was to pressure the Chinese Government to shut down these illegal CD replication plants that were churning out massive quantities of illegal video game software, movies, and sound recordings and exporting them around the world. Indeed, in the mid-nineties, the illegal CD plants in China were supplying pirate goods to numerous global markets, from Southeast Asia to South America, thus disrupting many of our legitimate and growing markets.

Candidly, our industry was not entirely satisfied with the 1995 agreement since it did not cover all forms of entertainment software (our members now publish games in three formats: cartridges, CD-ROMs, and DVD-ROMs, and the 1995 pact only covered optical media, not cartridge product). Nonetheless, the agreement was an important effort to reduce the global supply of pirate CD software emanating from China and was a net plus for our industry.

The fact is that the Chinese, over a two year period, have mostly lived up to their obligations under the 1995 agreement and the 1996 action plan to close down this pirate optical media production and halt exports. China closed down 86 production lines producing pirated optical media product since 1996. In addition, China established strict licensing controls over 50 plants that produce legitimate products. The volume of pirate CDs being exported out of China is significantly lower than it was in 1995 and 1996. We believe these gains stem directly from the determination of the Office of the U.S. Trade Representative, led by Ambassador Barshefsky and her staff, to enforce the 1995 agreement.

The Current Environment in China

What remains to be done under the 1995 agreement is to complete the job of cleaning up the domestic market now that the export problem has diminished. It is in the domestic market where we still face massive piracy problems in China.

As noted above, the piracy rate for our products is 95% and the estimated losses are \$1.38 billion. According to the International Intellectual Property Alliance Special 301 Report submitted to USTR in February, "the levels of optical media piracy in China across all lines of copyright business continue to remain high despite reports of active raiding at all levels in the production and distribution chain."

Entertainment software companies have noted that there is now massive illegal importation of pirate and counterfeit copyright product into China from Hong Kong, Macau, Malaysia, and Taiwan. This flood of illegal imports has kept piracy rates unacceptably high even though the Chinese have achieved some success in shutting down indigenous pirate manufacturing capacity. For example, we believe that 100% of the pirate games for use on the Sony PlayStation console are imported, and 70% of the pirate games for the PC are imported. Many of these pirate products are titles published by U.S. software companies.

Beyond problems with illegal imports, weak domestic enforcement remains a major problem in China. The good news is that the Office of National Antipiracy and Pornography (NAPP) has taken charge of all copyright enforcement activities throughout the country. But IIPA noted, "enforcement remains the principal weak point within the Chinese IPR system. All industries continue to believe that the system lacks significant deterrence to further piracy due to nondeterrent administrative penalties and the woeful lack of resort to the criminal enforcement system."

Examples of enforcement impediments abound. For example, the central copyright office in Beijing must clear local copyright bureau enforcement actions that involve foreign rights holders, a clear violation of the Agreement on Trade Related Aspects of International Property Rights (TRIPS) which slows down or even stops enforcement. In addition, fines are too low, both in the law and as imposed, and retail shops that sell pirate goods often remain open even after convictions for copyright piracy. The list goes on. In short, the requisite deterrence is lacking.

We also remain extremely concerned that China continues to reserve the right to keep product out of the country using vague cultural standards. China requires our members to submit software for content screening to a Software Approval Board. Only foreign companies are required to go through this screening process. The Board can reject sale of this product, and it can take months to do so. Meanwhile, pirate versions of the same product freely circulate! We were disappointed that the agreement governing entry into the WTO did not address this issue.

However, the fact that enormous piracy and market access problems in China persist does not mean that China is not taking the problem more seriously, or that no progress has been made, or that there is not an improved attitude in China toward addressing the issue. To the contrary, we believe there has been progress and there are signs China recognizes additional steps are required. Indeed, recent speeches by

top Chinese officials have been noteworthy for their open acknowledgement that domestic piracy is rampant and much more needs to be done to attack it. I am not sure these statements would have been made absent the prospect of PNTR and WTO membership.

WTO: Best Road to Reform

WTO membership is a linchpin in the long term effort to advance the cause of U.S. copyright interests in China. It offers the following benefits to our industry:

- As a member of WTO, China will be obligated to meet the requirements of TRIPS immediately upon accession. This is a significant step forward and will bring China into line with dozens of other countries that accept TRIPS standards. Most notably, a major TRIPS obligation relates to enforcement and will require China to take more effective action to deter further infringements. This imposes a critical international obligation on China which we believe China will want to abide by, and holds out the promise of a vast improvement in the piracy landscape in China.

We believe the WTO dispute settlement procedures offer the most powerful leverage to exact progress in the IP area. If, for example, China does not move to become TRIPS-compliant, the WTO affords a multilateral channel to enforce these obligations, with real teeth. As the Committee knows, under WTO rules, if the U.S. were to bring a successful action against China in the IPR area, it would be free to retaliate in any sector, even the most vulnerable domestic Chinese industry. This threat is a powerful weapon to induce responsible behavior.

The alternative is continued reliance on the bilateral Special 301 Process. While we have generated some results through this route, it has inevitably involved repeated brinksmanship, threats, and counter-threats that have unavoidably polarized dialogue. Moreover, it is not clear to us that any future Administration, Democratic or Republican, given the tremendous geo-political issues involving China, will be prepared to risk the relationship over IPR issues. Thus, bringing China into the world body established to address IPR and trade related issues is likely to offer future governments a less confrontational way to push for continued progress in the IPR area.

- The agreement negotiated between the U.S. and China governing its accession to WTO included a range of market access provisions which will be helpful to our industry, including tariff reductions and according "entertainment software" status as an audio-visual work, enhancing distribution options. These market access gains will be lost if PNTR status is not granted. Moreover, WTO becomes a forum in which our industry can pursue these and other market access relief reforms, such as the content review issue I mentioned earlier.

- The Internet is growing rapidly in China. There are now an estimated 8.9 million Internet users, double the level in 1998. IDSA knows from our experience in the U.S. and around the world that Internet piracy is costing our industry untold millions, perhaps even billions of dollars. China is currently amending its copyright law, giving it the opportunity to add provisions implementing the WIPO Internet treaties which would increase protection of digital works and provide critical protection against hacking and the use of circumvention devices to defeat copy protection. While compliance with TRIPS itself as a condition of WTO ascension will heighten copyright protection for digital works (since TRIPS covers both analog and digital works), we believe membership in WTO will create a more positive environment for full implementation of the WIPO treaties by China. As an industry widely regarded as providing some of the core content which will drive the Internet's continued emergence, copyright protection of Internet distributed works is a critical business goal.

Conclusion

As the fastest growing entertainment industry in the world over the last five years, we see tremendous opportunity for American entertainment software companies to continue to expand sales in foreign markets. China is a huge opportunity in this regard. If one looks at sales figures for our industry in the U.S. and Europe alone of \$6.1 billion and \$6.6 billion respectively, it's easy to see the potential for American entertainment software companies to significantly grow market share in China. On balance, we believe that PNTR, coupled with membership in the WTO, offers the best hope for building a viable, legitimate software market in China and realizing that potential. And that, in turn, means more jobs in the U.S. entertainment software industry as we continue our sustained growth and expansion.

Thank you.

PREPARED STATEMENT OF THE AMERICAN FOREST & PAPER ASSOCIATION

The U.S. forest products industry strongly supports China's accession to the World Trade Organization (WTO), and urges timely Congressional approval of Permanent Normal Trade Relations (PNTR) for China.

China holds great promise as a major export market for U.S. wood and paper products. However, Chinese tariffs in our sector are among the highest in the world. Those high tariffs—coupled with a broad range of nontariff barriers—currently inhibit our industry's ability to take advantage of the potential that is inherent in China's huge population, relatively low per capita consumption of wood and paper products, shortage of quality housing, economic growth and burgeoning middle class.

Bringing China into the WTO rules-based trading system, under the market access conditions that were agreed bilaterally in November 1999, should significantly enhance export prospects for U.S. producers of wood and paper products. At the same time, China's integration into the global trading system will strengthen the economic and political forces which are changing Chinese society, and thereby advance important American security, social and human rights interests.

U.S.-China Bilateral Market Access Agreement

- The bilateral WTO accession agreement concluded last November between the U.S. and China will reduce most Chinese paper and wood tariffs to the 5–7.5% level, with some tariffs as low as 1–2%. Most of these rates will be achieved by 2003. This is well below current levels of 12–18% on wood and 15–25% on paper products.
- China agreed that if an Accelerated Tariff Liberalization (ATL) agreement is reached in the WTO, China will join the forest products initiative upon accession. While an ATL agreement was not reached in Seattle, this suggests that China is not opposed to elimination of wood and paper tariffs not later than 2005. It is therefore critical that this opportunity for tariff elimination in a huge market not be lost.
- U.S. companies' ability to do business in China is currently limited by restrictions on trading rights (importing and exporting) and distribution of imported products. Within three years, any entity will be able to import forest products into any part of China and engage in the full range of distribution services.
- The agreement requires that China extend to U.S. forest products suppliers any preferential treatment it provides to other countries.

Permanent Normal Trade Relations for China

- The U.S. forest products industry has long supported the normalization of U.S. commercial relations with China. As China prepares to join the WTO, it is essential that Congress grant permanent, unconditional trade status to ensure that U.S. exporters and investors get the full benefits of the very favorable bilateral market access agreement and the other commitments China makes as a condition of its accession.

The Importance of China's Paper and Wood Market to U.S. Suppliers

- China's membership in the WTO, with its system of rules and obligations, will give U.S. exporters a means for addressing inconsistent, discriminatory and trade-distorting practices that have made doing business in China very difficult.
- China already has access to our market, since U.S. tariffs on forest product imports are at zero or very low. WTO accession on the terms of the U.S.-China bilateral market access agreement will ensure a more level playing field on tariffs.
- The removal of tariff and nontariff barriers to China's market is expected to provide significant export opportunities for U.S. producers of paper and wood products. Because China is deficient in forest resources, with limited potential for extending its own fiber supply, its need to import paper and wood products is expected to increase substantially as it pursues economic and industrial expansion.
- *Pulp and Paper Products:* U.S. pulp, paper, paperboard and converted products exported to China totaled more than 800,000 metric tons in 1998, with a value of \$430 million (there is also significant trans-shipment through Hong Kong). In 1998, China was the only Far East market which saw an increase in U.S. exports despite the effects of the Asian financial crisis (U.S. exports to all other markets in the region dropped sharply).
- Over the past decade, China has experienced the world's fastest paper and paperboard consumption growth. However, production capacity has not kept up with this growth. Projections by the Food and Agricultural Organization (FAO)

show that China's paper and paperboard consumption will continue to grow strongly over the next decade and that the gap between supply and demand will continue to widen and be filled by imports.

- *Wood Products*: Exports of solid wood to China will approach \$60 million in 1999, up from \$41 million in 1998. Most products are imported in the form of logs or lumber and re-manufactured in China for use in interior applications such as furniture, flooring, doors and windows. These markets should continue to grow as more Chinese can afford to upgrade their current dwellings or purchase new housing.
- Almost no U.S. wood is used in housing construction, but this could change as the Chinese government has launched an ambitious, market-oriented housing reform plan to privatize and increase the quality of Chinese housing. AF&PA is participating in the revision of the Chinese design standard for timber frame construction with the Chinese Ministry of Construction, and using our membership in the U.S.-China Residential Building Council to increase pressure on China to allow greater use and importation of U.S. wood building products.
- In order for U.S. products to compete in both interior and housing construction areas, high Chinese tariffs must be eliminated. U.S. value-added interior products such as flooring, veneer, molding and millwork, windows and doors cannot compete in local markets when facing an 18% tariff on top of the Chinese VAT tax.
- Price competitiveness in building materials is foremost in Chinese purchasing decisions, and U.S. wood products are competing against locally produced materials such as steel and concrete. Without tariff elimination and major building code changes, it will remain difficult for U.S. manufacturers to compete effectively in this growing and increasingly prosperous market.

SUBMITTED FOR THE RECORD BY LORI WALLACH, DIRECTOR, GLOBAL TRADE WATCH

Re: USTR Reveals that U.S. Gets China WTO Tariff Cuts Even if Congress Refuses Permanent MFN Grant for China

USTR Barshefsky today finally admitted to Congress that the U.S. could obtain all of the tariff cuts China would be required to make upon entry into the WTO even if the Congress did not grant Permanent Most Favored Nation (PMFN) status. Her statement was in stark contrast to past insistence by the Clinton Administration and the corporate coalition pushing for PMFN that the U.S. would lose out on China's WTO tariff cuts unless Congress passed PMFN.

Barshefsky's revelation came in response to a question raised by a Rep. Gerald Kleczka (D-WI) in today's Ways and Means Committee hearing. Barshefsky's testimony to the committee focused on an array of specific large tariff cuts required of China when it joins WTO. Kleczka asked Barshefsky to reaffirm that large tariff cuts for autos she touted would not obtain for U.S. manufacturers absent PMFN.

In a refreshing moment of candor, Barshefsky revealed that an existing U.S.-China treaty granting reciprocal, bilateral MFN treatment would ensure the U.S. benefitted from China's WTO-related tariff cuts whether or not Congress approved PMFN. This is a point opponents of PMFN, who argue the new grant is neither necessary nor merited, have made for months. Until today, the Administration steadfastly had repeated the "Big Lie" of the PMFN fight, which is that U.S. farmers and manufacturers would be denied all of the potential benefits of China's WTO entry and thus be placed at a disadvantage relative to other nations' businesses unless Congress passed PMFN.

The treaty noted by Barshefsky, first signed in 1979, automatically renews for three-year terms with the current term running through 2001. Article II of the treaty, which is commonly called the '79 Bilateral, requires the U.S. and China to provide the other with the best treatment offered to any other country—aka MFN. Once China enters the WTO, China's best treatment will become the WTO package, meaning the U.S. would enjoy the tariff cuts China is required to make upon entering WTO.

Unfortunately, USTR Barshefsky then returned to the old talking points, saying that although the tariff cuts would obtain, that the U.S. would lose out on distribution and services agreements reached with China. Actually, the '79 Bilateral also covers these issues. For instance, the Article II Most Favored Nations Grant Barshefsky noted also explicitly includes: "All laws, regulations and requirements affecting all aspects of internal sale, purchase, transportation, distribution or use of imported products." Art. II(1)(D)

ARTICLE FROM INSIDE U.S. TRADE—DEC.17, 1999, SUBMITTED FOR THE RECORD BY
LORI WALLACH, DIRECTOR, GLOBAL TRADEWATCH

CHINA, U.S. DIFFER ON PERMANENT MFN, OPPONENTS SEEK ANNUAL RENEWAL

A Chinese government spokesman late last week said that the Clinton Administration has promised China permanent Most-Favored Nation (MFN) status as part of a bilateral deal meant to pave the way for China's entry into the World Trade Organization. Therefore, the U.S. cannot benefit from the concessions as negotiated unless it offers China permanent MFN, Chinese embassy spokesman Yu Shuning said on Dec. 10.

"[T]he giving of PNTR (Permanent Normal Trade Relations) is a major provision in the China-U.S. agreement on China's accession to the WTO," he said in a press conference. "Without the giving of the status to China, the agreement between China and the U.S. will not come into force."

But two U.S. officials disputed this assertion. "China NTR is not expressly mentioned in the China WTO agreement" a spokeswoman for the Office of the U.S. Trade Representative said this week. "However, the President made a commitment to seek permanent NTR."

Similarly, a White House spokesman said the Clinton Administration made a commitment to the Chinese government on permanent MFN.

Under the Chinese interpretation of the commitment, the U.S. would not be able to get the benefits it has negotiated under the bilateral deal even if it decided that it could meet its WTO MFN obligations in a different form. Some critics of China have insisted that the U.S. is only obligated to offer unconditional MFN to China, which would allow an annual renewal of that status outside the current Jackson-Vanik procedures.

Commerce Secretary William M. Daley did not dismiss this argument out of hand in a Dec. 16 press conference, but highlighted the fact that annual renewal would run counter to the political commitment the Clinton Administration has made to give China permanent MFN.

"There's a question whether you can move forward on an annual by annual basis," Daley said. "There are some lawyers who believe it must be permanent, but the President has been emphatic for quite a long time that for our overall political and economic relationship, the permanency of NTR is needed."

If the Clinton Administration had made a permanent MFN commitment as part of the bilateral deal with China, it would have overstepped its statutory bounds, a congressional source said. Extending permanent MFN is the prerogative of the Congress, which leaves the Administration free to promise a major lobbying effort to persuade Congress.

Administration officials along with business supporters of the China-U.S. deal have maintained that permanent MFN is necessary for the U.S. to reap the benefits of any market access concessions China made to enter the WTO to any of its members. Under this argument, failure of the U.S. to extend permanent MFN would run counter to U.S. obligations under the WTO.

This would mean the U.S. would have to opt not to apply the WTO to China, these supporters said. This would preclude the U.S. from the dispute settlement rules and the market access benefits, they said. These proponents of permanent MFN for China dismiss the notion that China would have to extend to the United States the trade benefits it extends to other trading partners because of a 1979 bilateral trade agreement between China and the United States. This trade agreement obligates both sides to extend MFN to each other, which arguably would mean the extension of all WTO benefits China negotiated.

Opponents of granting permanent MFN for China have argued that granting annual MFN, if it is unconditional and does not lapse, is sufficient to meet U.S. obligations under the WTO. That argument was put forward Dec. 8 by Lori Wallach, Director of Public Citizen's Global Trade Watch, at the House International Relations Subcommittee on International Operations and Human Rights.

"There is simply no GATT [General Agreement on Tariffs and Trade] or WTO text nor any GATT or WTO case law precedent of requiring that MFN be granted for a specific period of time," Wallach testified.

This argument was implicit in a Dec. 2 letter to Clinton signed Rep. Dennis Kucinich (D-OH), Rep. Christopher Smith (R-NJ) and Wei Jingsheng, a Chinese democracy advocate, opposing permanent MFN for China. Opponents of permanent MFN for China said this week that if they can persuade swing congressmen on this argument, they have a better chance of defeating permanent MFN and substituting an annual renewal of MFN.

A USTR spokeswoman, however, called Wallach's argument a "creative alternative," that is not a "reflection of reality." The WTO obliges the U.S. to treat all countries equally, and since all other WTO members have been granted permanent MFN without a time limit, China should get the same arrangement, she argued.

But a critic of permanent MFN dismissed that argument by pointing out that it is theoretically possible that the U.S. would deny MFN to any country. "As long as we are applying MFN on a given day, we're fulfilling our obligations under GATT," said Scott Nova, director of the Citizen's Trade Campaign. "The possibility of the suspension always exists for any country, and that possibility exists for China even if they have permanent MFN."

But the House Ways & Means Committee issued a background paper on Dec. 15 on the procedures it sees as required for U.S. businesses and farmers to realize the benefits of China's WTO commitments. If the U.S. does not remove China from the annual review under the so-called Jackson-Vanik amendment, it will have to invoke non-application of China's WTO commitments, according to the paper. "The one-page paper does not address the issue of a stand-alone annual renewal procedure that has been advocated by Wallach."

The congressional vote on permanent MFN for China will likely come in early summer, according to Rep. David Dreier (R-CA) and House Ways & Means Trade Subcommittee chairman Phil Crane (R-IL). At that point, China will have concluded much of its accession process, Dreier said.

But Yu expressly rejected any linkage between approval of permanent MFN and completing the accession process. "These things are on different tracks," he said. "We are opposed to any linkage between these two."

He said the U.S. should extend permanent MFN as soon as possible. "This is a promise by the U.S. administration," he said. "They said they had a plan to work with the Congress to have this passed as soon as possible."

In further remarks on Dec. 10, Yu said that China would not take over Macao's textile quota now that Macao, a former Portuguese colony will be reunited with China as a special administrative region, a status similar to that of Hong Kong.

Yu also said that China "cannot discard the use of force" in its relations with Taiwan, which it considers a part of one country with mainland China, because that would "encourage separatists and foreign powers." Yu said that military exercises conducted during the last presidential elections in Taiwan were meant to send a message to "separatists," those who advocate independence for Taiwan. He also did not rule out again conducting military exercises during next year's Taiwanese presidential election.

"That all depends on how the separatists in China behave," Yu said.