

2004 Annual Report Recommendations

Chapter 1 - China's Industrial, Investment, and Exchange Rate Policies

Currency Manipulation

- The 1988 Omnibus Trade and Competitiveness Act requires the Treasury Department to examine whether countries are manipulating their exchange rates for purposes of gaining international competitive advantage. The Treasury is to arrive at its finding in consultation with the IMF, which defines manipulation as “protracted large-scale intervention in one direction in the exchange market.” The Treasury has repeatedly evaded reporting on this test. The Commission recommends that Congress require the Treasury to explicitly address this test in its required report to Congress. Furthermore, a condition for taking action against a country that manipulates its currency is that an offending country be running a material global current account surplus in addition to a bilateral surplus. The Commission recommends that Congress amend this provision so that a material global current account surplus is not a required condition.
- The administration should use all appropriate and available tools at its disposal to address and correct the problem of currency manipulation by China and other East Asian countries. With regard to China, this means bringing about a substantial upward revaluation of the yuan against the dollar. Thereafter, the yuan should be pegged to a trade-weighted basket of currencies, and provisions should be established to guide future adjustments if needed. As part of this process, the Treasury Department should engage in meaningful bilateral negotiation with the Chinese government, and it should also engage in meaningful bilateral negotiations with Japan, Taiwan, and South Korea regarding ending their long-standing exchange rate manipulation. The administration should concurrently encourage our trading partners with similar interests to join in this effort. The Commission recommends that Congress pursue legislative measures that direct the administration to take action—through the WTO or otherwise—to combat China's exchange rate practices in the event that no concrete progress is forthcoming.

Mercantilist Industrial and FDI Policies

- The Commission recommends that Congress direct the United States Trade Representative (USTR) and the Department of Commerce to undertake immediately a comprehensive investigation of China's system of government subsidies for manufacturing, including tax incentives, preferential access to credit and capital from state-owned financial institutions, subsidized utilities, and investment conditions requiring technology transfers. The investigation should also examine discriminatory consumption credits that shift demand toward Chinese goods, Chinese state-owned banks' practice of noncommercial-based policy lending to state-owned and other enterprises, and China's dual pricing system for coal and other energy sources. USTR and Commerce should provide the results of this investigation in a report to Congress that assesses whether any of these practices may be actionable subsidies under the WTO and lays out specific steps the U.S. government can take to address these practices.
- The Commission recommends that Congress direct the administration to undertake a comprehensive review and reformation of the government's trade enforcement infrastructure in light of the limited efforts that have been directed at enforcing our trade laws. Such a review should include consideration of a proposal by Senator Ernest Hollings (D-SC) to establish an assistant attorney general for international trade enforcement in the Department of Justice to enhance our capacity to enforce our trade

laws. Moreover, the U.S. government needs to place an emphasis on enforcement of international labor standards and appropriate environmental standards.

- The Commission recommends that Congress direct the administration to work with other interested WTO members to convene an emergency session of the WTO governing body to extend the MFA at least through 2008 to provide additional time for impacted industries to adjust to surges in imports from China.

Chapter 2 - China in the World Trade Organization: Compliance, Monitoring, and Enforcement

- The Commission recommends that Congress press the administration to make more use of the WTO dispute settlement mechanism and/or U.S. trade laws to redress unfair Chinese trade practices. In particular, the administration should act promptly to address China's exchange rate manipulation, denial of trading and distribution rights, lack of IPR protection, objectionable labor standards, and subsidies to export industries. In pursuing these cases, Congress should encourage USTR to consult with trading partners who have mutual interests at the outset of each new trade dispute with China.
- The Commission recommends that Congress press the administration to make better use of the China-specific section 421 and textile safeguards negotiated as part of China's WTO accession agreement to give relief to U.S. industries especially hard hit by surges in imports from China.
- Notwithstanding China's commitments at the April 2004 JCCT meeting, the Commission recommends that Congress press the administration to file a WTO dispute on the matter of China's failure to protect intellectual property rights. China's WTO obligation to protect intellectual property rights demands not only that China promulgate appropriate legislation and regulations, including enacting credible criminal penalties, but also that these rules be enforced. China has repeatedly promised, over many years, to take significant action. Follow-through and action have been limited and, therefore, the Commission believes that immediate U.S. action is warranted.
- The Commission recommends that Congress urge the Department of Commerce to make countervailing duty laws applicable to nonmarket economies. If Commerce does not do so, Congress should pass legislation to achieve the same effect. U.S. policy currently prevents application of countervailing duty laws to nonmarket economy countries such as China. This limits the ability of the United States to combat China's extensive use of subsidies that give Chinese companies an unfair competitive advantage.
- The Commission recommends that Congress encourage the administration to make a priority of obtaining and ensuring China's compliance with its WTO commitments to refrain from forced technology transfers that are used as a condition of doing business. The transfer of technology by U.S. investors in China as a direct or indirect government-imposed condition of doing business with Chinese partners remains an enduring U.S. security concern as well as a violation of China's WTO agreement. A WTO complaint should be filed when instances occur.
- The Commission recommends that Congress encourage USTR and other appropriate U.S. government officials to take action to ensure that the WTO's Transitional Review Mechanism process is a meaningful multilateral review that measures China's compliance with its WTO commitments. If China continues to frustrate the TRM process, the U.S. government should initiate a parallel process that includes a specific and comprehensive measurement system. The United States should work with the European Union, Japan,

and other major trading partners to produce a separate, unified annual report that measures and reports on China's progress toward compliance and coordinates a plan of action to address shortcomings. This report should be provided to Congress. In addition, independent assessments of China's WTO compliance conducted by the U.S. government, such as USTR's annual report, should be used as inputs in the multilateral forum evaluating China's compliance, whether that forum is a reinvigorated and effective TRM or a new process.

- The Commission recommends that Congress consider options to assist small—and medium-sized business in pursuing trade remedies under U.S. law, such as through section 421 cases.

Chapter 3 – China's Presence in the Global Capital Markets

- The Commission recommends that Congress reinstate the reporting provision of the 2003 Intelligence Authorization Act [P.L. 107-306, Sec 827] directing the director of Central Intelligence (DCI) to prepare an annual report identifying Chinese or other foreign companies determined to be engaged or involved in the proliferation of weapons of mass destruction or their delivery systems that have raised, or attempted to raise, funds in the U.S. capital markets. The Commission further recommends that Congress expand this provision to require the DCI to undertake a broader review of the security-related concerns of Chinese firms accessing, or seeking to access, the U.S. capital markets. This should include the establishment of a new interagency process of consultations and coordination among the National Security Council, the Treasury Department, the State Department, the SEC, the Federal Bureau of Investigation (FBI), and the intelligence community regarding Chinese companies listing or seeking to list in the U.S. capital markets. The aim of such an interagency process should be to improve collection management and assign a higher priority to assessing any linkages between proliferation and other security-related concerns and Chinese companies, including their parents and subsidiaries, with a presence in the U.S. capital markets.
- The Commission recommends that Congress require mutual funds to more fully disclose the specific risks of investments in China. This should include disclosure to investors of the identities of any local firms subcontracted by funds to perform due diligence on Chinese firms held in their portfolios. Subcontractors' principal researchers, location, experience, and potential conflicts of interest should all be disclosed.
- The Commission recommends that Congress direct the Commerce Department and USTR to evaluate whether Chinese state-owned banks' practice of noncommercial-based policy lending to state-owned and other enterprises constitutes an actionable WTO-inconsistent government subsidy and include this evaluation in the report on subsidies recommended in Chapter 1.
- In its 2002 Report, the Commission recommended that Congress prohibit debt or equity offerings in U.S. capital markets by any Chinese or foreign entity upon which the State Department has imposed sanctions for engaging in the proliferation of weapons of mass destruction (WMD) or ballistic missile delivery systems. The Commission further believes that Congress should bar U.S. institutional or private investors from making debt or equity investments, directly or indirectly, in firms identified and sanctioned by the U.S. government for weapons proliferation-related activities, whether they are listed and traded in the United States or in the Chinese or other international capital markets. For example, NORINCO, a company sanctioned by the U.S. government, is currently available for purchase on the Chinese A share market. U.S.-based qualified foreign institutional investors that have

rights to trade on this exchange should not be permitted to invest in NORINCO or any other firm officially determined to have engaged in the proliferation of WMD or ballistic missiles.

Chapter 4 – China’s Regional Economic and Security Impacts and the Challenges of Hong Kong and Taiwan

Regional Engagement

- The Commission recommends that Congress revitalize U.S. engagement with China’s Asian neighbors by encouraging U.S. diplomatic efforts to identify and pursue initiatives to demonstrate the United States’ firm commitment to facilitating the economic and security needs of the region. These initiatives should have a regional focus and complement bilateral efforts. The Asia-Pacific Economic Cooperation forum (APEC) offers a ready mechanism for pursuit of such initiatives. The United States should consider further avenues of cooperation by associating with regional forums of which it is not a member.

Hong Kong

- The Commission recommends that Congress consult with the administration to assess jointly whether the PRC’s recent interventions impacting Hong Kong’s autonomy constitute grounds for invoking the terms of the U.S.-Hong Kong Policy Act with regard to Hong Kong’s separate treatment. This includes U.S. bilateral relations with Hong Kong in areas such as air services, customs treatment, immigration quotas, visa issuance, and export controls. In this context, Congress should assess the implications of the National People’s Congress Standing Committee’s intrusive interventions with regard to matters of universal suffrage and direct elections. Congress and the administration should continue to keep Hong Kong issues on the U.S.-PRC bilateral agenda and work closely with the United Kingdom on Hong Kong issues.

Cross-Strait Issues

- The Commission recommends that Congress enhance its oversight role in the implementation of the Taiwan Relations Act. Executive branch officials should be invited to consult on intentions and report on actions taken to implement the TRA through the regular committee hearing process of the Congress, thereby allowing for appropriate public debate on these important matters. This should include, at a minimum, an annual report on Taiwan’s request for any military equipment and technology and a review of U.S.-Taiwan policy in light of the growing importance of this issue in U.S.-China relations.
- The Commission recommends that the Congress and the administration conduct a fresh assessment of the one China policy, given the changing realities in China and Taiwan. This should include a review of:
 - The policy’s successes, failures, and continued viability;
 - Whether changes may be needed in the way the U.S. government coordinates its defense assistance to Taiwan, including the need for an enhanced operating relationship between U.S. and Taiwan defense officials and the establishment of a U.S.-Taiwan hotline for dealing with crisis situations;
 - How U.S. policy can better support Taiwan’s breaking out of the international economic isolation that the PRC seeks to impose on it and whether this issue should be higher on the agenda in U.S.-China relations. Economic and trade policy measures that could help ameliorate Taiwan’s marginalization in the Asian regional

economy should also be reviewed. These should include enhanced U.S.-Taiwan bilateral trade arrangements that would include protections for labor rights, the environment, and other important U.S. interests.

- To support this policy review, the Commission recommends that the appropriate committees of Congress request that the executive branch make available to them a comprehensive catalogue and copies of all the principal formal understandings and other communications between the United States and both China and Taiwan as well as other key historical documents clarifying U.S. policy toward Taiwan.
- The Commission recommends that Congress consult with the administration on developing appropriate ways for the United States to facilitate actively cross-Strait dialogue that could promote the long-term, peaceful resolution of differences between the two sides and could lead to direct trade and transport links and/or other cross-Strait confidence-building measures. The administration should be directed to report to Congress on the status of cross-Strait dialogue, the current obstacles to such dialogue, and, if appropriate, efforts that the United States could undertake to promote such a dialogue.

Chapter 5 – China’s Proliferation Practices and the Challenge of North Korea

- Should the current stalemate in the Six Party Talks continue, the Commission recommends that Congress press the administration to work with its regional partners, intensify its diplomacy, and ascertain North Korean and Chinese intentions with a detailed and staged proposal beginning with a freeze of all North Korea’s nuclear weapons programs, followed by a verifiable and irreversible dismantlement of those programs. Further work in this respect needs to be done to determine whether a true consensus on goals and process can be achieved with China. If this fails, the United States must confer with its regional partners to develop new options to resolve expeditiously the standoff with North Korea, particularly in light of public assessments that the likely North Korean uranium enrichment program might reach a stage of producing weapons by 2007.
- The Commission recommends that Congress press the administration to renew efforts to secure China’s agreement to curtail North Korea’s commercial export of ballistic missiles and to encourage China to provide alternative economic incentives for the North Koreans to substitute for the foreign exchange that would be forgone as a result of that curtailment.
- As recommended in the Commission’s 2002 Report, and now similarly proposed by President Bush and the U.N. Secretary General, the Commission reiterates that Congress should support U.S. efforts to work with the U.N. Security Council to create a new U.N. framework for monitoring the proliferation of weapons of mass destruction and their delivery systems in conformance with member nations’ obligations under the Nuclear Non-Proliferation Treaty, the Biological Weapons Convention, and the Chemical Weapons Convention. This new monitoring body would be delegated authority to apply sanctions to countries violating these treaties in a timely manner or, alternatively, would be required to report all violations in a timely manner to the Security Council for discussion and sanctions.¹

¹ Recognizing deficiencies and loopholes in the current nuclear nonproliferation regime, President Bush has made several new proposals. First, that the Nuclear Suppliers Group nations (forty members) “refuse to sell enrichment and reprocessing equipment and technologies to any state that does not already possess full-scale, functioning enrichment and reprocessing plants.” Second, an “Additional Protocol” has been submitted to the Senate for ratification. This protocol requires members of the NSG to declare a wide range of nuclear activities and facilities and for these to be open to IAEA inspectors. Only those countries

- As recommended in the Commission's 2002 Report, the Commission reiterates that Congress should act to broaden and harmonize proliferation sanctions by amending all current statutes that pertain to proliferation to include a new section authorizing the president to invoke economic sanctions against foreign nations that proliferate WMD and technologies associated with WMD and their delivery systems. These economic sanctions would include import and export limitations, restrictions on access to U.S. capital markets, restrictions on foreign direct investment into an offending country, restrictions on transfers by the U.S. government of economic resources, and restrictions on science and technology cooperation or transfers. The new authority should require the president to report to Congress the rationale and proposed duration of the sanctions within seventy-two hours of imposing them. Although the president now has the authority to select from the full range of economic and security-related sanctions, these sanctions are case specific and relate to designated activities within a narrow set of options available on a case-by-case basis.²

Chapter 6 – China's Energy Needs and Strategies

- The Commission recommends that Congress direct the secretaries of State and Energy to consult with the International Energy Agency with the objective of upgrading the current loose experience-sharing arrangement, whereby China engages in some limited exchanges with the organization, to a more structured arrangement whereby the PRC would be obligated to develop a meaningful strategic reserve, and coordinate release of stocks in supply disruption crises or speculator-driven price spikes.³
- The Commission recommends that Congress encourage work that increases bilateral cooperation in improving China's energy efficiency and environmental performance, such as further cooperation in Clean Coal Technology and waste-to-liquid-fuels programs, subject to any overriding concerns regarding technology transfers. Further, the Commission recommends that Congress direct the State and Energy departments, and the intelligence community, to conduct an annual review of China's international energy relationships and its energy practices during times of global energy crises to determine whether such U.S. assistance continues to be justified.
- The Commission recommends that the Commerce Department and USTR investigate whether China's dual pricing system for coal and any other energy sources constitutes a prohibited subsidy under the WTO and include this assessment in the Commerce/USTR report on subsidies recommended in Chapter 1.

Chapter 7 – China's High-Technology Development and U.S.-China Science and Technology Cooperation

- The U.S. government must develop a coordinated, comprehensive national policy and strategy designed to meet China's challenge to the maintenance of our scientific and

that agree to the protocol would be allowed to import equipment for civilian nuclear programs. And third, the president proposed a new IAEA committee to focus on safeguards and verification and that IAEA members would be precluded from serving on the board of governors or the special committee if they are under investigation for violations of the NPT.

² Under the International Economic Emergency Powers Act (IEEPA), the president does have the authority to select from the range of sanctions, but this implementation is an unlikely remedy as the IEEPA is to be invoked only in the event of a national economic emergency.

³ The IEA is an autonomous body within the OECD. OECD membership is limited to countries that can demonstrate its attachment to the basic values shared by all OECD members: an open market economy, democratic pluralism, and respect for human rights.

technological leadership. America's economic competitiveness, standard of living, and national security are dependent on such leadership. The Commission therefore recommends that Congress charge the administration to develop and publish such a strategy in the same way it is presently required to develop and publish a national security strategy that deals with our military and political challenges around the world. In developing this strategy, the administration should utilize data presently compiled by the Department of Commerce to track our nation's technological competitiveness in comparison with other countries.

- The Commission recommends that Congress revise the law governing the CFIUS process (Title VII of the Defense Production Act) – which gives the president authority to investigate mergers, acquisitions, or takeovers of U.S. firms by foreign persons if such activities pose a threat to national security – to expand the definition of national security to include the potential impact on national economic security as a criterion to be reviewed. In this regard, the term national economic security should be defined broadly without limitation to particular industries.
- The Commission recommends that Congress direct the administration to transfer chairmanship of CFIUS from the Secretary of the Treasury to the Secretary of Commerce.

Chapter 8 – China's Military Modernization and the Cross-Strait Balance

- The annual report to Congress recommended in Chapter 4 on Taiwan's requests for military equipment and technology should include an assessment of the new military systems required by Taiwan to defend against advanced PRC offensive capabilities.
- As recommended in Chapter 4, Congress and the administration should review the need for a direct communications hotline between the United States and Taiwan for dealing with crisis situations. This is important in light of the short time frame of potential military scenarios in the Strait, together with Chinese strategic doctrine emphasizing surprise and deception.
- The Commission recommends that Congress urge the president and the secretaries of State and Defense to press strongly their European Union counterparts to maintain the EU arms embargo on China.
- The Commission recommends that Congress direct the administration to restrict foreign defense contractors who sell sensitive military-use technology or weapons systems to China from participating in U.S. defense-related cooperative research, development, and production programs. This restriction can be targeted to cover only those technology areas involved in the transfer to China.
- The Commission recommends that Congress request the Department of Defense to provide a comprehensive annual report to the appropriate committees of Congress on the nature and scope of foreign military sales to China, particularly from Russia and Israel.

Chapter 9 – Media and Information Control in China

- On June 30, 2003, the Commission recommended that Congress direct the Broadcasting Board of Governors to target funds for efforts aimed at circumventing China's Internet firewall through the development of anticensorship technologies and methods. Congress approved such funding as part of the 2004 Omnibus Appropriations Act. The Commission

recommends that Congress continue this program with enhanced resources, pending successful results for the current fiscal year.

- As recommended in the Commission's 2002 Report, the Commission reiterates that Congress should direct the Department of Commerce and other relevant agencies to conduct a review of export administration regulations to determine whether specific measures should be put in place to restrict the export of U.S. equipment, software, and technologies that permit the Chinese government to surveil its own people or censor free speech.
- The Commission recommends that Congress approve legislation to establish an Office of Global Internet Freedom within the executive branch, tasked with implementing a comprehensive global strategy to combat state-sponsored blocking of the Internet and persecution of users. The strategy should include the development of anticensorship technologies.
- The Commission recommends that Congress encourage the administration to press China to freely admit U.S. government-sponsored journalists, such as those representing the Voice of America and Radio Free Asia. China frequently denies visas for such journalists, despite the fact that China's state-sponsored journalists are freely admitted in the United States. Options should be considered for linking Chinese cooperation to concrete consequences, including the possible use of U.S. visas for Chinese government journalists as leverage to gain admission of more U.S. government-supported journalists to China.

Field Hearing Report Recommendations: U.S.-China Trade and Investment: Impact on Key Manufacturing and Industrial Sectors, Akron, Ohio, September 23, 2004

- The U.S. government should immediately pursue a WTO action against China regarding the undervaluation of its currency. Months of bilateral discussions have failed thus far to yield positive results. We believe that the Treasury Department and the United States Trade Representative (USTR) should immediately file a WTO complaint, and if such action is not forthcoming, Congress should move to enact pending legislative measures to force such action.
- Many areas of China's WTO accession agreement impose dramatically unequal tariffs on Chinese and U.S. goods. For example, U.S. auto exports to China face far higher tariffs than do exports to the United States from China (e.g., Chinese tariffs on autos range from 30-50 percent, while U.S. tariffs average around 2.5 percent). China has developed at a pace far faster than was envisaged at signing of the WTO accession agreement and these unequal tariff settings now heavily disadvantage U.S. exporters, risk import markets here and are no longer supportable. The U.S. government should expeditiously examine the potential for rectifying this situation as part of the Doha Round negotiations.
- China's restrictions on the export of coke drive up costs for U.S. steel manufacturers while suppressing costs for their Chinese competitors. USTR should immediately consult with our trading partners with the goal of filing a WTO complaint regarding this violation of China's WTO commitments on export restraints.
- The U.S. government should more fully and effectively make use of all available enforcement tools, especially the Section 421 China-specific safeguards negotiated as part of China's WTO accession. Congress should consider undertaking measures to

make the imposition of such safeguards mandatory in circumstances where import growth in particular goods exceeds a threshold level. In addition, the Department of Commerce should implement a procedure to make financial assistance available to small businesses to pursue safeguard cases where prima facie evidence exists of injury or a sufficient surge in imports to merit immediate attention. Safeguard cases can be highly costly and out of financial reach for many impacted businesses.

- The Congress should fund information sessions and a public awareness campaign to inform laid-off workers about existing and newly established programs such as Trade Adjustment Assistance (TAA). Petitions for TAA eligibility should be processed expeditiously. Further, many workers adversely affected by trade are still excluded from TAA. Eligibility for TAA should be expanded in a comprehensive manner to cover the broad array of workers adversely affected by trade with China, including those in the service sector and others who have not traditionally been covered.
- Congress should reexamine the statutory advisory process by which USTR receives input on pending trade negotiations from interested stakeholders to ensure that adequate attention and input is afforded to the representatives of organized labor.

Symposia Report Recommendations: Transatlantic Perspectives on Economic and Security Relations with China, Brussels, Belgium, November 30, 2004, and Prague, Czech Republic, December 2, 2004

- European governments share U.S. concerns about continuing large-scale IPR violations in China. Brussels and Washington should integrate their strategies on improving Chinese IPR compliance, particularly through joint action in the WTO.
- U.S. and EU officials should work together within the International Monetary Fund (IMF), the WTO, and other appropriate forums to move China toward a meaningful revaluation of the Chinese yuan that is more reflective of current economic realities.
- The WTO's TRM was intended as a means for initiating collective pressure on China to identify and address key WTO compliance problems. As recommended in the Commission's 2004 Report, U.S. and EU officials should work to enhance the effectiveness of the TRM within the WTO and consider undertaking an annual joint assessment of China's compliance record (if possible, in conjunction with China's other major trade partners) that could serve as an alternative mechanism for measuring and improving China's compliance shortfalls.
- The granting of market economy status to China has significant ramifications for the application of trade remedy laws to Chinese trade practices. China's WTO accession protocol provided for a lengthy review period to evaluate China's actions and steps to open and reform its market before it earned market economy status. U.S. and EU officials should engage with each other to evaluate China's progress toward meeting U.S. and EU criteria with the goal of arriving at a consistent analysis that ensures that China had taken concrete and irreversible steps to earn market economy status.
- As the Commission recommended in its 2004 Report to Congress, the President and Secretaries of State and Defense should press their European counterparts to maintain the EU arms embargo. U.S. officials must emphasize in the starkest

terms that removal of the embargo is not merited on human rights grounds. Moreover, they should emphasize that there are important strategic considerations that warrant review and reinforce the need to maintain the embargo.

- Congress should consider adopting a resolution urging the Administration to maintain pressure on the Europeans to ensure the embargo remains in place, commending the actions of the European Parliament and the German and Dutch legislatures in opposing the removal of the embargo, and encouraging other European parliaments to take action.
- Given ongoing European discussions over strengthening the EU Code of Conduct for Arms Exports, U.S. officials should urgently engage with their European interlocutors on appropriate enhancements to the EU's arms export control system. Strengthened controls should include, at a minimum, the following components:
 - The provisions of the Code of Conduct should be made into a legally binding and enforceable agreement for all EU member states.
 - A mandated list of criteria for assessing European arms exports should retain the existing criteria from the Code of Conduct requiring that member states weigh arms exports against the “risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim,” “the need not to affect adversely regional stability in any significant way,” and the “risk of reverse engineering or unintended technology transfer.”
 - The arms export control regime should require more intra-EU transparency. Establishing shared principles and standards on arms export approvals and denials between EU arms exporting countries is critical to the effective enforcement of the Code.
- The Commission reiterates the recommendation from its 2004 Report that Congress should consider imposing restrictions on U.S. defense cooperation – both government and private sector – with foreign firms that sell sensitive military technology to China. Enactment of such legislation would signal Congress' concern towards any loosening of European restrictions on sensitive arms transfers.
- The U.S. government should urgently coordinate with the EU to develop a strategy for obtaining near-term progress on promoting cross-Strait dialogue. A collective effort by the United States and the EU on this vital issue could help to jump-start this stalled process. As an initial matter, the United States and EU should issue a joint statement urging China to refrain from formally adopting a pending anti-secession law aimed at Taiwan and calling on both sides to make renewed overtures for dialogue. This is a particularly opportune time to engage Europe on this as U.S. concerns over lifting the embargo revolve in large measure around the cross-Strait implications.
- European governments and organizations remain significantly concerned about China's human rights record and the United States should build on this common concern to increase joint cooperation in this area. Specifically, the U.S. and EU governments should increase cooperation on capacity building programs in such areas as rule of law, journalist rights, and labor standards. Moreover, the

U.S. and the EU should establish a joint public benchmark system to gauge China's progress on human rights.

Field Hearing Report Recommendations: U.S.-China Trade and Investment: Impact on Pacific Northwest Industries, Seattle, Washington, January 13, 2005

- Congress should establish and fund a federally mandated corporate reporting system to gather sufficient data to provide a comprehensive understanding of the trade and investment relationship with China. Within such a system, companies should be required to report to the Commerce Department their initial investments in China and the shift of production capacity and job relocations resulting from these investments, both from within the United States to overseas and from one overseas location to another, and their contracting relationships with Chinese firms.⁴
- As part of any mandated corporate reporting system, Congress should require the Commerce Department to maintain an authoritative account of U.S. firms' investment in R&D centers in China and a comprehensive assessment of their activities, including any technology transfer, offset, or R&D cooperation agreed to as part of the investment.⁵
- Congress should amend and tighten the legislation governing the H-1B and L-1 visa programs. These programs were intended to make available foreign workers to fill only those jobs for which there is a shortage of appropriately qualified American workers. Under this program, foreign workers are supposed to be paid the prevailing wage. In practice, companies have filled low-wage generic positions with over-qualified foreign workers who then are assigned high-level tasks. Companies should be required to show evidence of having first attempted to fill positions with American workers, and the prevailing wage for each position should be set by reference to the qualifications of each worker who holds the position.⁶
- Congress should encourage the Administration to engage in a dialogue and raise strong objections with the Chinese government concerning its new government software procurement rules. These rules require Chinese government entities to purchase domestic software or "qualifying foreign software." The criteria for qualifying foreign software have yet to be defined. The absence of such criteria has inhibited U.S. manufacturers from entering into government business and appears intended to shut U.S. firms out of this lucrative market.
- Congress should consider new measures to strengthen research and development conducted in the U.S. in industries such as aerospace and other high-technology sectors crucial to America's future economic growth. These measures should aim to discourage the transfer of R&D facilities outside the United States.
- Congress should direct the Commerce Department to investigate ways to diminish the transfer of technology to China that is vital to U.S. national security and economic competitiveness by way of production transfers required to facilitate sales ("offsets"), particularly in the aerospace field. The investigation should identify the extent to which

⁴ Commissioners Reinsch and Wortzel dissent from this recommendation.

⁵ Commissioners Reinsch and Wortzel dissent from this recommendation.

⁶ Commissioner Reinsch dissents from this recommendation.

such transfers are required by Chinese government rules or regulations for commercial sales and therefore are potentially WTO inconsistent.

- Congress should direct the Department of Homeland Security to give greater priority to threats posed by waterborne shipping. As part of this effort, specific attention must be paid to the need for enhancing inspection of container seals and ensuring that appropriate paperwork accompanies these containers. Import and export containers must be refused entry without proper documentation. Proper attention must be given to ensuring that bonded agents and other personnel are able to appropriately and adequately inspect all containers. Technological approaches to inspecting containers and ships must supplement, not replace, human inspections.
- Congress should direct the United States Trade Representative (USTR) to investigate an alleged \$2 billion in subsidies from the Chinese Government to radically expand China's paper products industry, including creating fast-growing tree plantations. USTR should also investigate China's practice of eliminating tariffs on raw logs and high grade paper machines while maintaining or increasing tariffs on imports of finished wood products, thereby supporting expansion of China's wood products manufacturing industry at the expense of its trading partners' industries.

Hearing Report Recommendations: China and the WTO: Assessing and Enforcing Compliance, Washington, D.C., February 3-4, 2005

- The Commission recommends that Congress pursue a three-track policy to move China toward a significant near-term upward revaluation of the yuan by at least 25 percent..
 - Congress should press the Administration to file a WTO dispute regarding China's exchange rate practices. China's exchange rate practices violate a number of its WTO and IMF membership obligations, including the WTO prohibition on export subsidies and the IMF proscription of currency manipulation. Congress should press the Administration to respond to China's violation of its international obligations by working with U.S. trading partners to bring to bear on China the mechanisms of all relevant international institutions.
 - Congress should consider imposing an immediate, across-the-board tariff on Chinese imports unless China significantly strengthens the value of its currency against the dollar or against a basket of currencies. The tariff should be set at a level approximating the impact of the undervalued yuan. The United States can justify such an action under WTO Article XXI, which allows members to take necessary actions to protect their national security. China's undervalued currency has contributed to a loss of U.S. manufacturing, which is a national security concern for the United States.⁷
 - Congress should reduce the ability of the Treasury Department to use technical definitions to avoid classifying China as a currency manipulator by amending the 1988 Omnibus Trade Act to (i) include a clear definition of currency manipulation, and (ii) eliminate the requirement that a country must be running a material global trade surplus in order for the Secretary of the Treasury to determine that the country is manipulating its currency to gain a trade advantage.

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Commissioner Reinsch dissents from this subrecommendation.

- The Commission recommends that Congress urge USTR to immediately file one or more WTO disputes pertaining to China's violation of IPR obligations, particularly China's failure to meet the requisite standards of effective enforcement, including criminal enforcement, explicitly imposed by the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement. Moreover, USTR should be pressed to move China from the status of Section 306 monitoring to that of a Priority Foreign Country in reflection of its lack of good-faith negotiations or progress in confronting IPR violations.
- The Commission recommends that Congress repeal the "new shipper bonding privilege" that has allowed many importers of Chinese goods to avoid payment of anti-dumping duties. Importers of goods subject to anti-dumping or countervailing duties should be required to deposit in cash the amount of any estimated applicable duty.
- The Commission recommends that Congress require that the Department of Commerce obtain Congressional approval before implementing any determination that a nonmarket economy has achieved market economy status. Congress should ensure that China continues to be treated as a nonmarket economy in the application of antidumping and countervailing duties through 2016, as is explicitly permitted by China's WTO accession agreement, unless China clearly meets the statutory requirements for market economy status.
- The Commission recommends that Congress establish a review body of distinguished, retired U.S. jurists and legal experts to evaluate the dispute resolution mechanism at the WTO. The review body would consider all decisions made by a WTO dispute settlement panel or appellate body that are contrary to the U.S. position taken in the case. In each instance, a finding would be made as to whether the WTO ruling exceeded the WTO's authority by placing new international obligations on the United States that it did not assent to in joining the WTO. This information would be very helpful to Congress and other public officials in ongoing evaluations of the benefits of U.S. membership in the WTO. If three affirmative findings were made in five years, Congress would be prompted to reconsider the relationship between the United States and the WTO.⁸
- The Commission recommends that Congress authorize compensation to petitioners in the Section 421 safeguard process for legal fees incurred in cases where the ITC finds that market disruption has occurred but the President has denied relief. Congress should also consider eliminating presidential discretion in the application of relief through Section 421 petitions or limiting discretion to the consideration of non-economic national security factors.
- The Commission recommends that Congress maintain the Continued Dumping and Subsidies Offset Act of 2000 (CDSOA), notwithstanding the WTO determination that it is inconsistent with the WTO Agreement. Congress should press the Administration to seek explicit recognition of the existing right of WTO Members to distribute monies collected from antidumping and countervailing duties during the Doha Round negotiations and the review of the WTO's dispute resolution mechanism.
- The Commission recommends that Congress clarify without delay the authority of the Committee on the Implementation of Textile Agreements (CITA) to consider threat-based petitions.
- The Commission recommends that Congress direct the Department of Commerce to make countervailing duties applicable to nonmarket economies.

⁸ Commissioner Reinsch dissents from this recommendation.

- The Commission recommends that Congress direct USTR and Commerce to investigate China's system of government subsidies for manufacturing, including tax incentives, preferential access to credit and capital from financial institutions owned or influenced by the state, subsidized utilities, and investment conditions requiring technology transfers. The investigation should also examine discriminatory consumption credits that shift demand toward Chinese goods, particularly as a tactic of import substitution for steel, Chinese state-owned banks' practice of noncommercial-based policy lending to state-owned and other enterprises, and China's dual pricing system for coal and other energy resources. USTR and Commerce should provide the results of this investigation in a report to Congress that assesses whether any of these practices may be actionable subsidies under the WTO and lays out specific steps the U.S. Government can take to address these practices.

Hearing Report Recommendations: China's Proliferation Practices and Role in the North Korea Crisis, Washington, D.C., March 10, 2005

- Current sanctions against Chinese entities that proliferate technology related to WMD and their delivery systems should be broadened and harmonized for increased effectiveness. We recommend that Congress pass legislation that increases the penalties for parent companies of subsidiaries that engage in proliferation activities. The access of the parent firms, and the access of all entities under their control, to U.S. markets (including capital markets), technology transfers, and U.S. grants and loans should be linked to the proliferation records of their subsidiaries.⁹
- In cases where diplomatic efforts are unsuccessful in spurring the government of a country such as China to take effective actions to halt proliferating activity, the U.S. should use its economic leverage to make it costly for those in positions of control to continue to permit proliferation activities. In connection with the recommendation above that Congress broaden and harmonize proliferation sanctions, and in consonance with recommendations contained in our 2002 and 2004 Annual Reports, we recommend that Congress amend all current statutes pertaining to proliferation to—
 - increase the array of sanctions the president is authorized to invoke against foreign governments that directly proliferate WMD, their delivery systems, and associated technologies to include import and export limitations; restrictions on access to U.S. capital markets; restrictions on U.S. direct investment; U.S. opposition to loans from international financial institutions; prohibition of loans from U.S. banks; reduction or elimination of foreign assistance; prohibition of arms sales and military financing; elimination of U.S. government credit or credit guarantees; prohibition of U.S. government procurement from any entity based in the offending country; and restrictions on science and technology cooperation with or transfers to the offending country. The new authority should require the president to report to Congress the rationale for and proposed duration of the sanctions within seventy-two hours of imposing them and, in any case where the president waives imposition of such a sanction, the authority should require the president to notify Congress of the justification for that waiver.
 - authorize the president to impose the same sanctions listed above against a country or the government of a country where commercial entities are persistently engaged in

⁹ Commissioner Reinsch dissents from this recommendation.

proliferation of WMD, their delivery systems, and associated technologies and where the government does not take effective steps to curtail those activities.¹⁰

- In an attempt to better monitor the financial and fundraising activities of proliferating companies in this country, we recommend that Congress reenact Section 827 of the FY 2003 Intelligence Authorization Act which required an annual report to Congress by the Director of Central Intelligence on foreign companies that raise money in U.S. capital markets while also proliferating technology related to WMD and their delivery systems.
- Congress should call on the Administration to continue to press China forcefully to use its leverage to get North Korea to halt its nuclear activities and return to the Six-Party Talks without preconditions. China also should be encouraged to offer its own proposal to resolve the Korean nuclear crisis in the context of the Six-Party Talks.
- If positive action is not forthcoming in the near future, Congress should encourage the Administration to devise and pursue alternative methods to address this problem, including working with our allies to increase pressure on China and North Korea. Congress also should encourage and support the Administration to propose a United Nations Security Council resolution which at least condemns North Korea's February 10 statement and calls on it to return to the Six-Party Talks. Placing such a resolution before China's U.N. delegation will reveal Beijing's sincerity in pressuring Pyongyang.

¹⁰ Commissioner Reinsch dissents from this recommendation.