

**The Hon. Sander M. Levin, Statement for the Record
U.S.-China Economic and Security Review Commission
China and the WTO: Assessing and Enforcing Compliance
February 3, 2005**

Let me start by thanking the U.S. China Economic and Security Review Commission for its active review of different facets of the U.S.-China relationship.

During the debate over granting China permanent normal trade relations (PNTR), I emphasized the need to think about China not only as a potential economic opportunity, but also as a potential economic competitor. Experience has shown that to very much be the case.

Improvement/Lack of Improvement

Today's hearing about China's WTO commitments is an important one. About a year and a half ago, the Commission invited me to testify on the same issue. Much has changed since that time, but too much has stayed the same.

China did make significant progress on WTO compliance in certain areas in 2004. Many U.S. businesses operating in China have been able to expand their activities there as a result of reforms brought about by China's WTO commitments. Overall, the U.S. China Business Council recorded "satisfactory progress" by China in the period September 2003 to September 2004, giving it a grade of five on a ten-point scale. It is important that we recognize the progress that China has made.

It is also critical not to overstate it, however. While some U.S. firms may acquiesce in a "C" from China – perhaps affected by their investments there – the role of U.S. policymakers is to pursue a higher standard. When China joined the WTO, we did not bargain for "just barely good enough." We bargained for China to follow the rules – every one, full compliance, and on time – not late, begrudging, and *a la carte*.

Strict compliance by China with its WTO commitments has become even more vital because of China's role in the world economy. When I testified before the Commission back in September 2003, I inventoried a variety of areas in which China was out of compliance with its WTO obligations:

- quota administration and import licensing rules;
- failure to fully live up to commitments in distribution rights;
- various unreasonable regulatory burdens for service providers;
- use of standards and technical product regulations;
- industrial policy that calls for WTO-consistent measures to promote domestic production.

In some of those areas, China made significant progress. In some areas, U.S. firms have expanded market access, but China is still not complying fully with its WTO commitments. In

some areas, however, the same exact problems that existed in 2003 exist today. In other areas, China has found new and innovative ways to block trade and investment or to favor Chinese producers over U.S. (and other foreign) firms. So, while China has moved forward on some of its commitments, it has not on others, leaving significantly farther to go.

Administration Allowed Culture of Non-Compliance to Emerge

In the critical first years of China's WTO Accession, there was an opportunity to establish the basic attitude of China toward its WTO obligations. It was possible to establish a culture of strict compliance. Unfortunately, the Administration allowed a culture of "compliance-as-you-please" to emerge. The Administration was inconsistent and wavering; on good days it sent mixed signals to China; on bad days it sent the wrong signal. Sometimes the Administration made strict compliance seem like a priority; sometimes it indicated that unrelated issues would trump; sometimes it sounded like it would be tough and aggressive; sometimes it looked the other way; sometimes it made clear that only real progress on the ground would be acceptable; sometimes it sent a clear signal that press events with no substance or follow through would suffice.

When granting PNTR to China, Congress took steps to make certain that the Administration would have the tools available to both engage and pressure China to ensure strict WTO compliance. At best, the Administration did not effectively use the tools at its disposal; at worst, it eviscerated some of them. The Administration's record on each of the tools Congress provided is, quite frankly, sorely lacking.

–The Administration fumbled the first year of the WTO's annual **Transitional Review Mechanism**, allowing China to dictate the terms of engagement, essentially making the TRM a meaningless exercise in that year and years after.

–On the **special China safeguard**, the Administration sent the wrong signal to the Chinese. After rejecting relief in each of the first three cases where the ITC found U.S. industries had been injured, the Administration cast serious doubt on whether U.S. industry could justify the expense necessary to bring such a case.

–The Administration failed even to issue regulations for the **special China textiles safeguard** until 17 months after China's WTO accession, while imports from China increased substantially. When the regulations were finally issued, they were unnecessarily restrictive. The Administration tried to backtrack and say the regulations were less narrow than they actually appeared, but a federal court recently enjoined the Administration from taking this expanded view.

–The Administration failed to make good use of the **Section 301 process** – which has been used as an effective source of leverage by Republican and Democratic Administrations in the past. Last year, the Bush Administration rejected three separate 301 investigations – refusing even to begin a simple investigation – against China.

–The Administration barely used the **WTO dispute settlement process** against China. Although China filed its first WTO case against the United States in April of 2002 (less than four months after joining the WTO), the Administration refused to bring a WTO claim against China until after significant congressional pressure in 2004. The Administration’s refusal to use the WTO dispute settlement system to enforce US rights – not only against China but also more generally – is frankly baffling.

–Exemplifying its own failures, the Administration has **attempted to claim credit for antidumping cases** brought by U.S. industry. The Administration has repeatedly trumpeted the fact that half of all antidumping investigations involve China. But that is like a judge claiming credit for the work of the prosecutors – unlike a safeguards case, the Administration has no discretion to ignore an antidumping case that meets statutory standards. To the extent the Administration has a record in this area, it is also negative – the Administration has allowed over \$300 million in antidumping duties to go uncollected over the past two years, most of which were due on Chinese products.

–While using tough rhetoric, the Administration has consistently given China a free pass on its **currency manipulation** in the semi-annual Treasury Department report. It has most often talked quite softly, and acted not at all. The result has been, as reported in a recent AP story, an economist from a major think tank in China “stressed that the Chinese government is under no pressure to revalue its currency.”

Rather than helping to establish a culture of full compliance, the Administration’s back-and-forth, its inconsistency, its mixed and wrong signals, its premature claims of victory, have helped produce the opposite.

Need for an Aggressive New Approach

We will never know whether the tools Congress provided to engage and pressure China would have been sufficient had there been a far more activist approach during the crucial first years of China’s WTO accession. The question becomes, what do we do given where we are now; how do we change the culture moving forward?

The first step is for the Executive to change course and act in an aggressive, proactive and consistent manner to change the culture of non-compliance that they have allowed to build. This is critical in order to bring about real and lasting improvements in China’s adherence to its international trading obligations.

Immediate steps include:

- Work with other WTO Members to change the terms of the annual review within the WTO so that China can no longer dodge this process;

- Reinvigorate the special China safeguard by announcing that relief will be granted in future cases in which the ITC finds injury unless extraordinary circumstances exist (*i.e.*, correct application of the safeguard standard enacted by Congress);
- Obtain a reversal of the injunction on threat cases for the special textile safeguard or issue on an expedited basis new regulations that allow threat cases;
- Negotiate a comprehensive approach to the textiles and apparel issue;
- Self-initiate trade remedy cases, rather than waiting for U.S. industries to be injured;
- Give life to the section 301 process by self-initiating cases against Chinese practices that have cross-cutting impact;
- More actively use the WTO dispute settlement process against China;
- Make sure that China is a full participant in the new WTO Round.

If there is failure to take these steps, Congress will need to establish more effective oversight procedures and will need to consider changing U.S. laws to provide for more aggressive approaches. For example, it may become necessary to turn the USTR's annual review into a Super 301-type process, a mechanism that requires action automatically in the areas where there has been repeated failure to achieve compliance.

Our commercial relationship with China deserves the kind of attention evidenced by the Hearing before this Commission. Failure to pay serious attention and to take serious action will only lead to more difficult problems in what is increasingly a set of relationships of the first magnitude.