

**Written Testimony of Henry Levine
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*China and the WTO: Assessing and Enforcing Compliance***

I. Introduction

Mr. Chairman, members of the Commission, thank you for the opportunity to testify today on behalf of the Commerce Department regarding China's compliance with its World Trade Organization (WTO) commitments and our role in promoting market access and compliance with international agreements.

We recently passed the three-year anniversary of China's WTO accession. December 11, 2004 ushered in some of the remaining obligations in the phase-in of liberalization in the areas of tariffs, trading and distribution rights, and investment. So, I believe today's hearing is very well timed. Let me start with some comments on where things stand three years into China's WTO Accession.

II. China's Compliance with its WTO Commitments

Throughout the three-year period from December 11, 2001 to December 11, 2004, China's leadership has exhibited a good faith effort to bring China into compliance with its WTO commitments. This has involved thousands of tariff reductions, revocation of outmoded regulations and the subsequent issuance of hundreds of new regulations and legal revisions. It has been a monumental task in terms of scope and complexity. China deserves due recognition for this tremendous effort.

That having been said, China's compliance record has not been consistently positive over the past three years and problems remain today. Generally speaking, in 2002 - China's first year of WTO commitments implementation - China appeared to be off to a good start. By 2003, there was a clear slowdown in the pace of implementation and significant WTO-related problems that were surfacing as new regulations and laws were being put into place. Many of these concerns have now been settled and cleared. China's efforts in complying with its WTO commitments gained momentum during 2004, and U.S. companies have expressed much greater satisfaction with China's WTO performance in the past year. The American Chambers of Commerce for China and Shanghai (AMCHAM), which represent more than 1,800 American companies, stated the following in their 2004 joint, annual White Paper:

“[While the 2003 White Paper] conveyed an overall sense of dissatisfaction with the slow pace of implementing some of China's WTO

commitments, our message this year is much more positive. With the exception of intellectual property rights, we believe China is substantially in compliance with its WTO deadlines and specific obligations.”

Although China’s performance in 2004 showed marked improvement over its performance in 2003, there is still much to be done. In this regard, protection of U.S. intellectual property rights (IPR) remains paramount “unfinished business” in our bilateral discussions with the Chinese government.

While China continues to work diligently to overhaul its legal regime to ensure protection in accordance with the WTO’s Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement), I cannot report to you today that American companies can export or do business in China without serious concern for the sanctity of their intellectual property. This is damaging to U.S.-China trade relations and is an area where we are demanding change so that our companies can enjoy the benefits due them from China’s WTO accession.

One problem that remains is the inability of the Chinese government to systematically and vigorously enforce the laws and regulations in place to protect intellectual property. In 2004, China intensified the crackdown on IPR infringements and moved to lower the threshold for criminal convictions for IPR violations. While these were positive developments flowing from the April 2004 Joint Commission on Commerce and Trade (JCCT) meeting, the long-term results of these actions remain to be determined. As promised by Vice Premier Wu Yi at the 2004 JCCT, a Judicial Interpretation was released in December, lowering the thresholds that must be met to allow criminal convictions of IPR violations. The Judicial Interpretation is a step forward, though it does contain some problematic elements. We continue to press China to do more; to do whatever it takes to produce tangible results in the protection of intellectual property. This is a serious problem and I believe Secretary Evans said it well last month in Beijing with regards to how we are judging China on IPR: “Process isn’t progress. Results are progress.” Primarily, this means enforcement, enforcement, enforcement.

One of Secretary Evans’ last orders of business in his capacity as Secretary of Commerce was a return to China to confer a final time with China’s leadership on IPR and other issues of concern to the U.S. In his meetings he conveyed the depth of our concerns on these issues. In his Senate confirmation hearings last month, Secretary-designate Carlos Gutierrez highlighted IPR protection in China as a priority issue when he takes office. This Administration places the highest priority on the protection of IPR in China, and the Department of Commerce, along with USTR and other agencies, will continue to push China to step up its lax protection of intellectual property until we see results.

In addition to IPR, we continue to have concerns about China’s practices in specific industry sectors and broad-based commercial policies. Some of these are related to WTO commitments and others are not. These include issues of standards and other technical barriers to trade, regulations on the Government procurement of software, transparency, Customs valuation on certain products, direct selling regulations, implementation of

distribution rights and express delivery services. In addition, the Treasury Department has led the Administration effort to encourage China to adopt a market-based, flexible exchange rate. We monitor all actions, policies and implementing regulations affecting manufacturing and services, and we pursue each and every matter brought to our attention. While not reaching agreement on all issues, we have successfully resolved many disputes and continue to work with China on a case-by-case basis to resolve our remaining differences. When this process is not successful, the Administration will not hesitate to employ the full range of dispute settlement and other tools available to us through China's WTO accession agreement. At the same time, the Administration will continue to strictly enforce its trade laws to ensure that U.S. interests are not harmed by unfair trade practices.

III. Department of Commerce Role in Achieving Market Access and Compliance in China

I'd now like to lay out for you some of the approaches that we at the Commerce Department, working with other agencies, are taking to ensure market access and compliance in China.

Over the course of the last eighteen months, the Administration's strategy with China has included monthly visits by Cabinet or other senior officials to China to engage with China's leaders. Senior Commerce Department officials have been a key part of this strategy. Further, our efforts have involved development of goals for progress, achieving Chinese government agreement to pursue those goals, and structuring senior-level meetings to establish milestones to push this process forward. In particular, President Bush and Premier Wen Jiabao reached agreement in December 2003 to elevate the level of the U.S.-China Joint Commission on Commerce and Trade (JCCT) and to pursue a set of concrete outcomes for the subsequent JCCT session. Between December 2003 and April 2004, the two agencies chairing the JCCT on the US side, Commerce and USTR, supported by the entire interagency community, held an intensive set of meetings and teleconferences with our Chinese counterparts to push forward our mutually agreed upon agenda of issues.

These efforts paid off. At the JCCT meeting in April 2004, we resolved several significant issues and laid the foundation for progress on others. Issues resolved included implementation of China's commitments on trading rights and major progress on distribution services, potentially worth billions of dollars of increased market access to U.S. companies; and the WAPI encryption issue. We also achieved significant commitments on IPR. Further, we achieved Chinese concurrence to open a dialogue on the key structural issues (such as subsidies) that can distort U.S.-China trade and create an un-level playing field for U.S. companies. While not technically a WTO implementation issue, I would note our breakthrough understanding at the JCCT on improved cooperation for end-use visits on high-technology items. This understanding has already born fruit as we have eliminated the backlog of end-use visits and begun to build the confidence necessary to facilitate U.S.-China high-technology trade. In

addition, I believe the successful JCCT paved the way for the subsequent resolution of the integrated circuit VAT issue, which was resolved bilaterally without the need for lengthy litigation at the WTO.

In addition to our intensive focus on solving immediate issues of concern, the Department of Commerce has undertaken extensive “capacity building” efforts as part of a strategic effort to ensure China’s compliance with WTO commitments and avoid future obstacles to U.S. exports to China. These include training for Chinese officials in areas such as criminal enforcement of IPR and exchanges on drafting of key economic laws and regulations. These efforts have produced results that help us identify and address key problems in China’s WTO implementation.

Second, to reinforce the Administration’s strategy, the Department of Commerce has undertaken a number of new steps that will continue to pay dividends in the future. These include establishment of the IPR Policy and Compliance Investigations Office, increased staffing and recruitment of top language-qualified China experts to manage our China compliance efforts, the creation of a China Office in our Import Administration to focus and deepen our expertise on unfair trade cases from China, and for the first time using technology to enable compliance officers in China and the United States to work collaboratively on compliance cases in the Market Access and Compliance Bureau on a real-time basis. We have also maintained an office at our Embassy in Beijing staffed by two Compliance and two Import Administration Officers to ensure a focused effort on those issues. Reflecting the importance of the issue of IPR protection in China, last year the US Patent and Trademark Office (USPTO) established in Beijing the first Intellectual Property Rights attaché position at a US Embassy abroad. This position is staffed with a Chinese-speaking attorney from USPTO who is an expert on China IP issues. He is an invaluable resource for US companies and the US Government on these issues.

We have also taken steps to enhance the effectiveness of our staff working on China compliance issues by, for example, providing a continuous cycle of training opportunities to enhance their skills. We have made strenuous efforts to increase our staffing on China compliance issues to reflect its importance to the United States, and we have added additional experienced managers to this staff to enhance their effectiveness.

I would also note the enhanced efforts the Commerce Department is making to promote US exports to China. While not strictly speaking a WTO compliance issue, these efforts are an important factor in ensuring that US companies and workers enjoy the benefits that they should from China’s WTO commitments. China today is our fastest growing export market. In fact, from 1999 to 2004, US exports to China increased nearly ten times faster than US exports to the rest of the world. As a result, China has risen from our 11th largest export market five years ago to our fifth largest export market today. However, we believe there are even greater opportunities ahead. Our Commercial Service has roughly one hundred employees on the ground in China to assist US companies. Further, we have created the China Business Information Website in the US that provides a one-stop shop for US Government information and assistance on doing business in China. Finally, we are establishing American Trade Centers in China to enhance our ability to develop trade

leads and other information in major commercial centers outside of those where we have an Embassy or Consulate. We have also been conducting an active program of “Doing Business in China” seminars across the US, providing information to small and medium US companies on the opportunities and challenges of the China market, including tips on how to best protect of their intellectual property rights.

IV. Conclusions

China’s global trade volume has more than doubled since 2001. Last year it surpassed the U.S. to become Japan’s largest trading partner. It is a top destination for foreign direct investment and (with the US) the other main engine of global economic growth. It is the source of our largest trade deficit and it is our fastest growing export market. China’s emergence as a major economic and trading country poses enormous opportunities and challenges for US companies and workers. We will continue to insist that China’s growing economic importance must be based on a strict adherence to the promises China made in conjunction with its WTO accession. We at the Department of Commerce are committed to working strenuously and effectively to that end.

Mr. Chairman, thank you again for inviting me to testify today.