U.S. – China Economic and Security Review Commission
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Testimony of Rep. Sander Levin
U.S. House Ways and Means Committee, Trade Subcommittee

When Congress considered China's entry into the World Trade Organization, I cautioned that China's role within the global economy was both an opportunity and a competitive challenge. Because of its size and growth in its economy, Congress insisted on particular provisions within the legislation granting Permanent Normal Trade Relations (PNTR) with China in an effort to ensure its compliance with World Trade Organization (WTO) rules and regulations.

The American automotive industry has worked to take on the opportunities of the rapidly increasing Chinese domestic market. In 2005, U.S. Automakers sold 722,493 passenger vehicles in China, a 27 percent increase from 2004 and representing 23 percent of overall sales. American participation in the Chinese automotive sector has provided competitive products, major investment, enhanced technology, and employment – all of which were goals of the Chinese government.

China's emergence as the fourth largest and fastest growing automotive industry in the world has increased the importance of addressing the major problems presented by China's failure to meet it obligations when entering the WTO. The Bush Administration has failed to vigorously stand up for the American automotive industry, reflective of its over-all passive approach to maintenance of a strong manufacturing base.

Our failure to address these problems hinders the U.S. automotive industry now and looms as an even greater threat in the future. It contributes to the record-setting trade deficit with China. In 2005, the U.S. – China bilateral trade deficit in goods was $202 billion which accounts for a full 25% of the overall historically immense U.S. trade deficit.

Let me highlight some of these problems.

#1 WTO rules prohibit local content requirements and no other major auto producing country has local content requirements in their auto sectors. But China's tariff classification system and tax structures pressure U.S. auto and auto parts makers to source Chinese-made parts. Newly released regulations require automakers to reach 60% domestic content and the localization of all major high technology components. If allowed to stand, this results in shifting to Chinese suppliers or the movement of parts production to China.

#2 The recent surge of serious Intellectual Property Rights (IPR) violations in auto parts is unprecedented in terms of size, scope and severity. Auto parts are being copied, intentionally misrepresented, and sold as genuine -- all in direct violation of China's trademark laws, which are clearly not being enforced in violation of its WTO obligations.

The most common counterfeit parts are aftermarket maintenance and high volume items such as brake pads, wheel rims and filters and often do not meet national or international safety specifications.

There also are numerous examples of unauthorized trademark usage on the signage of independent service centers falsely claiming they are authorized service centers, and the theft of unique and protected design elements from individual parts to the entire look and design of a vehicle is alarming.

#3 China's auto investment structures restrict the development and operation of the U.S. automotive sector in China. For example, foreign auto investment is only allowed as a joint venture with a Chinese partner and, importantly, the foreign partner (the U.S. company) is limited to 49% minority ownership. China is the only major nation with such restrictions.

#4 China is developing its own automotive safety and environmental systems for its automotive industry rather than using norms developed internationally over a long period of time. The results of these enumerable rules and regulations seem less to be a response to environmental or safety concerns and more an effort to restrict the openness of its market.

#5 China's WTO accession commitment was to lower its 25% tariff on imported automobiles. Now despite its major status in motor vehicle production and sales, it has been arguing in ongoing WTO negotiations that as a new member it should be under no obligation to be part of any agreement that requires the further lowering of tariffs.

The U.S. Governmental Response

The U.S. Automotive industry needs a vigorous U.S. governmental partner to tackle these problems. Unfortunately, the Bush Administration has allowed a culture of non-compliance to set in as to China's adherence to both the commitments they made when they entered and their ongoing practices.

China PNTR provided specifically for an annual review of the degree to which China was complying with their commitments. The rigorous timetable was established for China because it was far larger and far more competitive than any other developing economy. The Administration has completely failed to make this a meaningful review and to use it as leverage to bring about full compliance. The Government Accountability Office (GAO) documented lack of active participation in the reviews, untimely submissions by the U.S., ineffective procedures that allowed China to refuse to submit a written response, and no resulting conclusions or recommendations.

In short, we have lost the major benefit of five years of annual reviews because the U.S. has allowed them to become a meaningless exercise with no sign of a different course being set prior to their expiration in 2011.

The China PNTR legislation also provided a specific import surge safeguard that could be used when China unfairly flooded the U.S. market with imports. A total of six cases has been brought against China under this mechanism, known as Section 421. The U.S. International Trade Commission (ITC) made affirmative market disruption determinations and proposed a remedy in 4 of the 6 cases. The Bush Administration rejected providing relief to the domestic industry in every case. These cases may not seem directly relevant to the automotive sector (pedestal actuators, wire garments hangers, iron water work fittings and steel pipe), but the approach by the Bush Administration does not bode well for the future use of this special trade law and it sends a signal to our industry – don't bother to bring a case under the domestic trade law because we won't be there for you even if the ITC finds in your favor.

The Bush Administration has been very lax in using the WTO dispute settlement system to challenge the unfair trading practices of our trading partners. We have filed only 15 cases total in the last five years. Often when you press the office of the United States Trade Representative (USTR) on this, they indicate that they have not heard many complaints from domestic industry or domestic industry has not done the legal leg work to allow them to bring a case. Given the examples I cited this morning, this is a completely unacceptable approach. It is the USTR's job to lead the charge to end these violations and create a more level global playing field for U.S. business.

Finally, earlier this year the U.S. and the European Union, later joined by Canada and Japan, filed a complaint with the WTO against the local content requirements I described. The Chinese have stonewalled through the 90-day consultation process provided under WTO rules. The U.S. missed the July 6th deadline for requesting the formation of a WTO dispute settlement panel. This is such a serious matter that it is disconcerting when any deadline is missed. In addition to a lack of action at the WTO, we have failed to make clear that China's position in the negotiations on tariff reductions is a non-starter.

Conclusion

China's exceptional pace of economic growth has been providing significant opportunities and unique challenges. The American private sector has shown its interest in participating in the growth. The major challenges require a partnership role from our government that has been seriously lacking in important respects and that is strong, not halting, clear not opaque, persistent not inconsistent and proactive not passive. And sooner, not later.