

The Honorable David Spooner
Assistant Secretary of Commerce for Import Administration
Testimony before the
Committee on Ways and Means, Subcommittee on Trade
U.S. House of Representatives
“Legislation Related to Trade with China”
August 2, 2007

Thank you Chairman Levin, Ranking Member Herger, and Members of the Subcommittee for inviting me to appear before you today to discuss the Administration’s views on the legislative proposals relating to trade with the People’s Republic of China.

Our trading relationship with China in general is a positive one, with important benefits to the U.S. economy. However, at the same time, we recognize that U.S. companies face a number of challenges as they try to compete in the China market, as well as with Chinese companies in the U.S. and other markets. These challenges include market barriers, intellectual property issues, and unfair trade practices. The Administration is strongly committed to free trade and to securing the benefits of open markets around the world, which is why we are firmly committed to ensuring that such trade be conducted according to international norms of fair trade and be as free as possible from government intervention and distortion. We understand and support the proposition that maintaining public support for open trade means preserving the ability of the United States to enforce rigorously our trade remedy laws.

The U.S. clearly benefits from trading with China; it is our fastest-growing market and is now our fourth-largest export market. U.S. exports to China totaled \$55 billion in 2006, up 32 percent from the previous year. To put this in perspective, U.S. exports to China were greater than U.S. exports to India, Brazil, and France combined. According to industry surveys, U.S. companies in China are generally successful and report solid sales in the China market. And, our companies and consumers derive benefits from imports from China as well.

The benefits derived by the United States’ trade with China are bolstered by a framework that requires China to abide by its international obligations. For the last 35 years, it has been the policy of the United States to engage China as it moves toward market economics. This policy culminated with China’s accession to the WTO in 2001, so that China now has both the rights and responsibilities that come with membership in the international trading system.

Just as China’s economy has evolved over the years, so has the range of tools available to make sure that China abides by these rights and responsibilities. Earlier this year, Commerce preliminarily modified a 23-year-old government policy by applying the anti-subsidy law to China. The basis for the recently reversed policy was the 1984 Georgetown Steel decision, in which the Court of Appeals for the Federal Circuit affirmed that the Department of Commerce has the discretion to decide whether to apply the countervailing duty law to non-market economy countries. In the circumstances presented by that case, though, Commerce reasoned that non-market economy firms were

not independent, profit-driven allocators of resources and, therefore, could not take into account the impact of government subsidies when making pricing decisions. From then until March of this year, Commerce had a practice of not applying the CVD law to NME countries, including China, and the antidumping law was a commonly used instrument to address unfair trade practices on the part of Chinese producers and exporters. We currently have 62 antidumping orders against China. Since 2001, we have issued 31 antidumping orders against China, compared to the 24 orders put into place between 1993 and 2000.

In our countervailing duty investigation of coated free sheet paper from China, initiated on November 20, 2006, Commerce preliminarily determined on March 30, 2007, that the current nature of China's economy does not create the obstacles to applying the anti-subsidy law that were present in the "Soviet-style economies" at issue when we originally developed our policy more than 20 years ago. China of 2007 is not the Soviet Bloc of 1984. There is no legal bar to Commerce's application of the CVD law to non-market economies, including China. In the case of China, we will continue to investigate properly alleged subsidy allegations and will countervail subsidies where there is sufficient evidence that warrants such application.

Indeed, I was just in China two weeks ago for an on-the-ground investigation of subsidies to China's paper industry. Additionally, my agency is now investigating subsidies to several industries, including steel and tires. Our CVD investigations are among the most transparent in the world and all interested parties will have ample opportunity to provide comments for the record in each of these ongoing subsidies proceedings. Commerce will make its final determination in the glossy paper case in October.

Our preliminary decision to apply the countervailing duty law to China in no way reverses our decision, reaffirmed last August in the context of the antidumping investigation of imports of lined paper from China, to treat China as a non-market economy country under the antidumping law.

The Department of Commerce is committed to identifying and addressing trade-distortive and injurious subsidies in all countries, including China. That is a top priority for us. Commerce has always maintained, and we believe the courts have agreed with us, that we have the statutory authority to apply the CVD law to NME countries. However, if Congress would like to affirm Commerce's authority, we would welcome the opportunity to work with you, Mr. Chairman, and with this Committee. I should note that, because of the complexity of this issue, it is important for the language of any bill to be crafted with appropriate precision, not only to ensure consistency with our international trade obligations but also to avoid unintended consequences for existing provisions of U.S. countervailing and antidumping duty laws. Beyond that issue, I must make clear that the Department of Commerce is deeply concerned that the other legislative proposals that have been advanced to date raise serious concerns under international trade remedy rules and could invite WTO-sanctioned retaliation against U.S. goods and services, as well as foreign "mirror legislation" and trigger a global cycle of protectionist legislation.

Before concluding, please allow me to comment on another important issue that is under review in today's hearing – the question of whether dumped sales should be offset by non-dumped sales in an antidumping analysis. This issue, also known as “zeroing,” is an extremely important issue, and the Administration finds that the WTO Appellate Body's findings on zeroing are very troubling. However, we place significant importance on respecting the dispute settlement system and addressing the findings, whether we agree with them or not, through the appropriate mechanisms. We are committed to consulting closely with Congress as to the appropriate way to move forward in response to the Appellate Body's findings on zeroing. We will continue to use the Rules negotiations as a forum to educate other WTO Members on the troubling implications of the Appellate Body's findings, particularly with respect to their own antidumping systems. We firmly believe that this zeroing issue is one that must be addressed through negotiation, and we will continue to work closely with USTR on such efforts.

Thank you for giving me this opportunity to testify. I am happy to take your questions.