

**PREPARED TESTIMONY OF  
DEPUTY ASSISTANT U.S. TRADE REPRESENTATIVE  
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BEFORE THE  
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS  
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE  
FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA  
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Mr. Chairman, Senator Durbin and Members of the Subcommittee, I appreciate the opportunity to testify today on the human capital challenges of negotiating, monitoring and enforcing U.S. trade laws and agreements, as well as these trade policy challenges as they apply to China.

### **Human Capital Challenges**

USTR is keenly aware of the effect that an expanding trade agenda has on the agency's workloads and staffing levels. In a little more than three years, we have moved from conducting just one major negotiation to advancing seven at the same time. During this same period, our dispute caseload has risen by nearly 50 percent. These workload increases have obvious effects on USTR staff resources, and the President's requested budgets have reflected this reality, providing a 23 percent increase for USTR from FY 2002 to FY 2004.

USTR can manage the growing workloads within the President's requested budget for the agency. However, we note that the omnibus FY 2004 appropriation bill being considered by the Senate would add 16 new positions this fiscal year, of which nine would be for China-related workloads.

In addition to managing a growing workload, USTR must contend with many of the same human capital issues that other organizations face: recruitment, technical specialization, training, attrition, and retention. Human resources are USTR's greatest asset, and our ability to manage the trade agenda is dependent in part on how we manage human resources capital.

USTR has a reputation as a place where bright and energetic employees are given challenging assignments and the flexibility and tools to carry out those assignments. Because of this reputation, we have been very fortunate in attracting highly qualified candidates for job openings, and as a result have been able to quickly adapt to employee retirements and resignations. Because our network with the private sector and other Federal trade agencies with specialized missions is so strong, we have also been able to get candidates with technical, scientific or specialized job skills or language proficiency quickly. Thus, recruitment has not been a significant human capital issue for USTR.

Job retention at the agency is a human capital concern, but one that we are managing closely. Retirements and resignations from job burnout, other employment offers, or for family or other personal reasons contributes to higher employee turnover than some other government agencies. To manage this, we have in place employee counseling programs, retirement planning

seminars, new training opportunities, and automation tools that allow employees to work from home on special projects, and from airlines or hotels when they are on business trips. Because we are relatively small and are able to provide more personal attention to each employee, we have not found that attrition has been a major management problem for the agency.

USTR also has a responsibility to ensure that our trade agenda is commensurate with our human capacity and budget resources. Even with bright and motivated workers, there are limits on how many new negotiations we can begin, how many country practices we can monitor, and how many trade agreements we can enforce. For that reason, each time the agency considers launching a new round of free trade agreement negotiations, we consider whether we have the resources needed to conduct the negotiations. In addition, our internal budget review processes carefully consider our resource needs in light of our trade agenda. USTR will continue to keep the practical concern of resources as a critical aspect of our evaluation of new FTAs in the next year and beyond.

### **U.S. Trade Policies Regarding China**

This is an important subject and a matter of abiding concern to the President and Ambassador Zoellick. It is also of particular relevance this week, with Chinese Premier Wen Jiabao meeting with the President here in Washington today, and with the second anniversary of China's accession to the World Trade Organization this Thursday, December 11. China made numerous trade commitments to the United States and other WTO members upon joining the WTO, and these are set forth in China's WTO protocol of accession. While USTR is the lead agency responsible for monitoring and enforcing China's WTO commitments, it works closely with officials from the Departments of Commerce, State, Agriculture, Treasury and Labor and other agencies in Washington, Beijing and Geneva.

China acceded to the WTO on December 11, 2001, after 15 years of negotiations with the United States and other WTO members. Under the terms of its accession, China committed to implement a set of sweeping reforms designed to implement the WTO's market access, national treatment and transparency standards, to protect intellectual property rights (IPR), to limit the use of trade-distorting domestic subsidies and to make other changes to bring its legal and regulatory system in line with those of other WTO members. China viewed joining the WTO as a means to preserve and expand China's access to export markets abroad, and to promote domestic economic reforms. In turn, other WTO members envisioned that faithful WTO implementation by China would reduce the ability of non-market forces, including government policies and officials, to intervene in the market to direct or restrain trade flows.

In 2003, total U.S.-China trade is projected to top \$170 billion, with imports from China exceeding U.S. exports by more than \$120 billion. Two years after acceding to the WTO, China has become the United States' fourth largest trading partner. China is expected to pass Mexico as our second largest source of imports this year, and will almost certainly be the sixth largest market for U.S. exports. Imports from China are growing rapidly, and are increasingly displacing those from third country markets – including other economies in Asia, but also Mexico and other parts of Latin America. While in real terms import from China are outpacing

U.S. exports to China, the growth rate of U.S. exports to China is largely in line with that of imports from China. In addition, over the last three years, while U.S. exports to the world have decreased by 9 percent, exports to China have increased by 62 percent. China has become a major consumer of U.S. manufactured exports, such as electrical machinery and numerous types of components and equipment, among other goods. China is a major importer of agricultural products from the United States, and U.S. service providers have been increasing their share of China's market in many sectors as well.

### **USTR Activity on China**

There is no doubt, however, that China needs to be more open to U.S. goods and services. The Administration is determined to continue to address market access problems that contribute to the deficit. Our markets are certainly open to exports from Chinese companies, and we need to ensure that China operates with fair, transparent and predictable rules when it comes to our companies' access to China's market. That means, most importantly, that China must live up to the commitments that it made upon joining the WTO. We also need to ensure that China engages in fair trade when it comes to its exports to the United States. What our producers and manufacturers want, and are entitled to, is a level playing field.

The areas we have been pressing are:

- WTO implementation, including implementation of China's obligations to open its agricultural market and provide for full liberalization of trading rights and distribution services;
- Fairness in market access, such as providing for effective enforcement of intellectual property rights, lifting excessive restrictions on financial services firms, and non-discriminatory value-added tax policies;
- Fair and transparent standards and regulations, including science-based sanitary and phytosanitary measures and technology neutrality for new high technology products;
- Better cooperation on the international economic issues, including in the WTO; and
- Enforcement of U.S. trade remedies.

To achieve these goals, USTR and other agencies have engaged the Chinese from the working level all the way up to the top Chinese leadership. In some areas the Chinese have made important progress. Over the past 22 months, China has taken many positive and sometimes difficult steps to meet its WTO commitments. China has completed much of the nuts-and-bolts work of WTO implementation by reviewing thousands of laws and regulations and making necessary revisions to effect its WTO commitments, and by establishing new

transparency procedures in many national and sub-national agencies. It has also reduced tariffs to their committed levels, and has begun the process of removing market access barriers affecting a wide range of goods and services sectors.

Of course, there are forces in China, as elsewhere, that are resistant to the changes wrought by WTO implementation. Despite the best of intentions by many Chinese officials, these forces have not been unsuccessful in limiting China's progress toward the goals the United States and other WTO members foresaw through China's WTO accession. As a result, China's market for U.S. goods and services is not as open as it should be, our engagement with China in the WTO has not been as useful as it should be, and China's record of WTO implementation is too fraught with inconsistencies to allow definitive statements on Chinese progress toward the rule of law.

China's potential as a market for U.S. exports of bulk agricultural commodities was a key factor in U.S. support for China's WTO accession and grant of Permanent Normal Trade Relations status to China. While bumper harvests of some crops in China in 2002 may have limited the commercial potential of some U.S. exports, China's attempts to restrict certain agricultural imports has been a recurring problem since China's WTO accession. The use of – or even the threat to use – questionable biotechnology standards and sanitary and phytosanitary (SPS) measures to restrict imports of some products for alleged health and safety concerns has frustrated efforts of U.S. agriculture traders, most notably in the case of soybeans. In the case of those bulk agricultural commodities subject to negotiated tariff-rate quotas (TRQs) in China, the setting of sub-quotas, use of burdensome import licensing procedures, allocation of TRQs in commercially unviable quantities and a lack of transparency in TRQ allocation and management have restricted what should be a ready market for U.S. exports, particularly wheat, corn and cotton.

After the efforts of Ambassador Zoellick, Agriculture Secretary Veneman and others in the Administration, the commercial impact of these potential barriers was contained. U.S. exports of soybeans topped \$1.2 billion – a record – and cotton sales were already 8-10 times greater than in any previous calendar year by July 2003. In fact, as noted earlier, we are actually running a surplus with China in the agricultural area, which is projected to triple to \$3.5 billion from 2002 to 2003. Chinese officials have assured us that systemic problems with both GMO and SPS regulation will be addressed, and a negotiated settlement to our concerns with China's TRQ system is in progress. However, until solutions are successfully implemented, these issues will hang like a cloud over the marketplace. These and other emerging concerns, such as China's apparent use of supports to promote agricultural exports, will require continued vigilance and engagement by the Administration in order to ensure fair competition and market access for U.S. goods.

With regard to China's future WTO implementation, the top concern of many U.S. industries involves trading rights and distribution services. These were key areas for WTO members when negotiating the terms of China's entry into the WTO. Within three years after its WTO accession, or by December 11, 2004, China agreed to make trading rights automatically

available, which means that U.S. businesses will be able to import and export goods on their own, without having to use Chinese trading companies. By that same time, China also agreed to fully open up the distribution services sector, which will allow U.S. companies to sell their goods freely in China, without being required to turn the job over to Chinese wholesalers and retailers or establish a joint venture with a Chinese enterprise. In the interim, China agreed to progressively liberalize in these areas pursuant to timetables set out in its accession agreement. So far, however, while China has begun the required liberalization, it has imposed stringent conditions, which have greatly limited the number of enterprises eligible to take advantage of the intermediate liberalization. China's "go slow" approach also raises concern that China will not complete full implementation of its commitments in these areas on a timely basis. The Administration is actively engaged with China on these issues – most recently in Ambassador Zoellick's meeting with Vice Premier Wu Yi – and has made clear its views on the importance of China's full and timely implementation, both now and when full liberalization is scheduled to take place at the end of 2004.

### **Fairness in Market Access**

In his meeting in October with Vice Premier Wu Yi, Ambassador Zoellick stressed the importance of not just predictability and consistency but also fairness in the rules governing access to China's market. Ambassador Zoellick explained that China's conspicuous failure to effectively address rampant counterfeiting and piracy greatly undermines China's credibility as a fair market. He also highlighted other fairness concerns by conveying the frustrations of many U.S. service providers with China's restrictive regulations and U.S. exporters' concerns regarding China's apparent discriminatory value-added tax (VAT) policies.

In the year leading up to WTO accession, China made significant improvements to its framework of laws and regulations protecting patents, copyrights, trademarks and other intellectual property rights. However, the lack of effective IPR enforcement in China is a major obstacle toward a meaningful system of IPR protection. IPR problems run the gamut, from rampant piracy of film and other entertainment products, to sophisticated software and semiconductor products, to counterfeiting of consumer goods, electrical equipment, automotive parts and pharmaceuticals. IPR infringements not only have an economic toll, but they also present a direct challenge to China's ability to regulate those products that have health and safety implications for China's population and international purchasers of such products. While a domestic Chinese business constituency is increasingly active in promoting IPR protection for self-interested reasons, the problem is immensely widespread. If significant improvements are to be achieved on this front, China will have to devote considerable resources and political will to this problem, and there will continue to be a need for sustained efforts from the United States and other WTO members.

In the Administration's view, the key to achieving this end will be for China to demonstrate a clear commitment to fight piracy at the highest levels, to increase deterrent-level criminal penalties for IPR violators, to show a willingness to increase prosecution and punishment of IPR offenders, to lower thresholds for criminal prosecution, to increase resources

and devote more training for enforcement in all parts of China, and to establish more effective communication procedures between relevant officials of China's courts and investigative units, the Supreme People's Procuratorate and China's lawmaking bodies. Ambassador Zoellick made this point directly to Vice Premier Wu Yi in October and Deputy USTR Ambassador Josette Shiner followed up that message with senior Chinese officials in meetings in Beijing in November at the IPR Roundtable hosted by Ambassador Randt.

### **Fair and Transparent Standards and Regulations**

One important incentive behind U.S. support for China's WTO accession was the role we foresaw WTO implementation would play in promoting transparency and the development of the rule of law in China. Indeed, in the first year of its WTO membership alone, China issued, modified or repealed more than one thousand laws and regulations to conform with WTO requirements. A China that plays by the rules of international trade promotes more accountable government and is building a transparent, open and fair regulatory environment is a China that all Americans want to see.

While China has made significant progress in revising its legal framework, other problems have persisted. In particular, China has a poor record of providing opportunities for public comment on draft laws and regulations. In addition, many of the regulatory measures that China has adopted have been issued without advance notice and, in some cases, have unfairly prejudiced foreign companies and their goods and services.

Since China's accession to the WTO, we have repeatedly engaged China on the cross-cutting need for transparency in the operation of its trade regime, as China grapples with the fundamental changes required of it. And as we have witnessed how China has been implementing its new laws and regulations, we have urged China, for example, to use only science-based SPS measures. We have also stressed the importance of regulating with technological neutrality, citing areas such as the wireless 3G field, and the need for a fairer approach in areas such as basic versus value-added telecom services and automobile industrial policy, among others. We are prepared to continue our efforts for as long as these problems persist.

### **U.S. Management of WTO Implementation Concerns**

The Administration has stepped up its efforts to engage senior Chinese leaders. As I mentioned earlier, today the President is meeting with Premier Wen and economic issues will be an integral part of their discussions. Over the course of the past year, as China's WTO implementation progress has slowed, President Bush met with his counterpart, Hu Jintao, and emphasized the importance of China's WTO obligations. United States Trade Representative Zoellick made two separate visits to China for talks on WTO implementation matters with China's Premier, Wen Jiabao, and Vice Premier Wu Yi. The Secretaries of Commerce and Treasury made similar trips to China, again carrying the message that China's WTO implementation was a matter of the highest priority. Sub-cabinet officials from various U.S.

economic and trade agencies also met with their Chinese counterparts in China, Washington and Geneva to work through areas of concern, including WTO implementation issues, on numerous other occasions.

In 2003, the Administration also utilized the newly established sub-cabinet dialogue on WTO compliance and other trade matters (the Trade Dialogue), which brings together U.S. economic and trade agencies and various Chinese ministries and agencies with a role in China's WTO implementation. Trade Dialogue meetings were convened twice in 2003, once in February, led by then Deputy United States Trade Representative Jon Huntsman Jr., and later in November, led by Deputy United States Trade Representative Josette Sheeran Shiner. The Trade Dialogue meetings have proven to be effective in communicating specific trade concerns and in serving as an early warning mechanism for emerging trade disputes.

### **Enforcement of Trade Remedies Laws**

The rapid expansion of trade between our two countries has inevitably led in some cases to competition between our domestically produced goods and Chinese imports. When our industries face injurious trade with China, the Administration is fully committed to enforcing U.S. trade remedy laws and to exercising the important rights that the United States has under China's WTO accession agreement, particularly our ability to continue to apply special methodologies to China under the antidumping laws.

China also agreed to two separate China-specific safeguard mechanisms to allow WTO members to cope with market disruptions caused by increasing economic integration with China. One such mechanism, the product-specific safeguard, was codified as Section 421 of the Trade Act of 1974, as amended, and is available until December 11, 2013. Since the implementation of Section 421, four petitions have been brought requesting import relief. In one case, the International Trade Commission found that our domestic producers' market had not been disrupted by imports from China. In two other cases, while the ITC found market disruption, the President determined that the adverse impact on the U.S. economy was clearly greater than the benefits from providing import relief. On December 4, the ITC found market disruption in the fourth case regarding ductile iron waterworks fittings, and the President will make a determination on import relief in early March next year. While to date no import relief has been granted under Section 421, the President, in his most recent determination, reiterated his commitment to using the safeguard when the circumstances of a particular case warrant.

The second safeguard agreed to by China as part of its WTO accession package is an additional mechanism specific to textiles, and allows WTO members under certain circumstances to invoke limited import relief – specifically a 7.5 percent (6 percent for wool products) cap on growth in imports of a given textile category for up to one year – until December 31, 2008. Last month, the Committee for Implementation of Textile Agreements (CITA) found for petitioners in response to all three of the requests that CITA reviewed. The limits on imports will go into effect as soon as the Administration formally requests consultations with the Chinese government. CITA is currently working on the specifics of that

request and we expect it to be passed to the Chinese in the very near future.

**Conclusion**

Mr. Chairman, thank you for providing me with the opportunity to testify. I look forward to your questions.