

COMMITTEE TO SUPPORT U.S. TRADE LAWS

3050 K Street, NW #400
Washington, DC 20007
202.342.8450 TEL
202.342.8451 FAX

DAVID A. HARTQUIST
Executive Director

May 19, 2004

DELIVERY BY HAND

The Honorable James J. Jochum
Assistant Secretary for Import Administration
U.S. Department of Commerce
Attn: Import Administration
Central Records Unit, Room 1870
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Re: U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues

Dear Mr. Jochum:

The Committee to Support the U.S. Trade Laws (“CSUSTL”) submits these comments in response to the May 3, 2004 Federal Register notice of hearing and request for comment, 69 Fed. Reg. 24,132 (May 3, 2004).

The notice explains that the Department of Commerce is seeking comment so as to identify relevant topics and issues for discussion in the working group established at the April 21, 2004 meeting of the U.S.-China Joint Commission on Commerce and Trade; the discussions will focus on “the range of issues that are relevant to considering China’s desire to no longer be treated as a non-market economy country (‘NME’) under the U.S. antidumping law.” Id. at 24,132-33.

CSUSTL is aware that individual companies, trade associations, and other entities will be providing detailed comments on the structural issues that are relevant to China's treatment as a non-market or market economy, so these comments will not focus on those issues. CSUSTL's comments, instead, are directed at the question of what process should be followed for considering a change in China's treatment under the trade laws.

CSUSTL is concerned that the Department's notice makes no mention whatsoever of the letter or intent of the terms of China's accession to the World Trade Organization, as the accession agreement is the starting point for considering any change in China's treatment as a non-market economy. The Draft Protocol on the Accession of the People's Republic of China contains specific provisions that place the burden squarely on China to establish that the criteria for a change in treatment are met. For example, section 15 states in relevant part:

should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.

WT/ACC/CHN/49 at 80 (emphasis added in italics). As this language provides, the United States and other WTO members are permitted to treat China as a non-market economy for the first 15 years of China's WTO membership, but if China demonstrates that it has met the hurdle of being treated as a market economy earlier than this, its status can be changed. In its working group discussions, the United States should not ignore this fundamental point: China bears the entire responsibility for demonstrating that it is deserving of a change in treatment from non-market to market economy status under U.S. law.

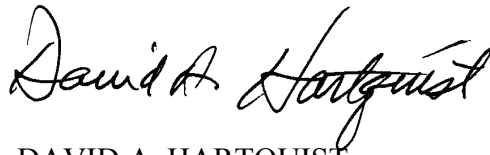
CSUSTL also reminds the Department that the fifteen-year period during which NME methodology would apply to China was identified as a reason why Members of Congress should vote to pass the legislation implementing China's WTO accession and the associated U.S.-China bilateral agreement under U.S. law. See Normal Trade Relations With the People's Republic of China, Pub. L. No. 106-286 (Oct. 10, 2000). In fact, USTR Charlene Barshefsky stated to Congress that the November 1999 bilateral agreement "provide{s} adequate means to address the shoe and textile industries' concerns about imports from China. In particular, we would note that the agreement allows the United States to continue to use existing NME provisions with respect to China for 15 years after China's entry into the WTO." 146 Cong. Rec. S8539, S8564 (Sept. 14, 2000). The United States should not truncate this fifteen-year period and undermine the bargain reached in the U.S. Congress, especially without a comprehensive examination of the Chinese economy and a clear demonstration that China has met its burden of proof on all relevant statutory criteria.

CSUSTL also is concerned that the process for considering these very important issues does not allow sufficient time for affected parties to meaningfully participate. The Federal Register notice of May 3, 2004 has allowed the public only 12 business days to prepare comments on a wide range of critical issues, many of which involve a significant amount of time for research and analysis. Given the importance of the issues involved, it is surprising that the public was not given significantly more time to provide input.¹

¹ The notice makes clear that the deadline is extremely strict, moreover: "The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will not be considered." 69 Fed. Reg. at 24,133.

CSUSTL members sincerely hope that the Department is interested in listening to the concerns of U.S. businesses that can greatly be affected by a change in China's status. We hope that the process will provide a meaningful opportunity for all those potentially affected to be heard. We also respectfully request an opportunity to have a witness testify at the Department's June 3, 2004 public hearing for at least five minutes; in addition to other witnesses that we may later identify, David A. Hartquist will testify on behalf of CSUSTL.

Sincerely,

A handwritten signature in black ink that reads "David A. Hartquist". The signature is written in a cursive, flowing style.

DAVID A. HARTQUIST
Executive Director