U.S –CHINA COMMISSION RELEASES FINDINGS AND RECOMMENDATIONS ON CHINA'S WTO RECORD

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The US-China Economic and Security Review Commission has released the official record of its two-day public hearing held on *February 3 and 4, 2005 in Washington, DC* examining ***China and the WTO: Assessing and Enforcing Compliance***.

The hearing examined China's record of compliance to date with its WTO commitments and explored options for using U.S. trade laws and WTO mechanisms to address continuing trade problems, including China's undervalued currency and weak enforcement of intellectual property rights (IPR) protections. The Commission heard testimony from senior Administration officials, industry groups, labor organizations, economists, and trade law experts, as well as a bipartisan group of Members of Congress from both the House of Representatives and the Senate.

There was a general consensus among the witnesses that China remains in violation of its WTO obligations in a number of areas impacting vital U.S. economic interests. Witnesses highlighted China's undervalued currency and lack of IPR protections and expressed the view that U.S. government efforts to move China to address these serious problems have not achieved satisfactory results. The hearing also dealt with the application of U.S. trade remedies. The Commission heard testimony that the Administration has not effectively utilized available U.S. anti-dumping laws and China-specific import safeguards to counter China's unfair trade practices.

"It has become increasingly clear that China is not meeting key commitments it made when joining the WTO and that our trade laws have to date been insufficient in addressing these problems," said Commission Chairman C. Richard D'Amato. "In some cases our trade remedies need to be enhanced, in other cases they have been woefully underutilized. The end result has been a trading relationship that is undermining important U.S. economic interests."

In response to these concerns, the Commission has developed a comprehensive set of recommendations to the Congress designed to improve the use of U.S. trade remedies and to move China toward more effective compliance with its WTO commitments. **A list of the Commission's recommendations is attached**.

The complete hearing record is available on the Commission's web site at www.uscc.gov. Copies may be obtained by calling the Commission at (202) 624-1407.

If you are interested in receiving regular updates about the Commission's activities via fax or email, or would like to update your contact information or unsubscribe to our updates, please email your contact information to us at contact@uscc.gov. We will promptly add, update or delete your contact information.

U.S.-CHINA ECONOMIC & SECURITY REVIEW COMMISSION

RECOMMENDATIONS TO CONGRESS ON ENFORCING CHINA'S WTO OBLIGATIONS

Addressing China's Currency Manipulation

- The Commission recommends that Congress pursue the following measures to move China toward a significant near-term upward revaluation of the yuan by at least 25 percent.
  - Press the Administration to file a WTO dispute regarding China's exchange rate practices. China's exchange rate practices violate a number of its WTO and IMF membership obligations, including the WTO prohibition on export subsidies and the IMF proscription of currency manipulation.
  - Consider imposing an immediate, across-the-board tariff on Chinese imports unless China significantly strengthens the value of its currency against the dollar or against a basket of currencies. The tariff should be set at a level approximating the impact of the undervalued yuan. The United States can justify such an action under WTO Article XXI, which allows members to take necessary actions to protect their national security. China's undervalued currency has contributed to a loss of U.S. manufacturing, which is a national security concern for the United States.
  - Reduce the ability of the Treasury Department to use technical definitions to avoid classifying China as a currency manipulator by amending the 1988 Omnibus Trade Act to (i) include a clear definition of currency manipulation, and (ii) eliminate the requirement that a country must be running a material global trade surplus in order for the Secretary of the Treasury to determine that the country is manipulating its currency to gain a trade advantage.

Addressing Intellectual Property Rights (IPR) Violations

- The Commission recommends that Congress urge USTR to immediately file one or more WTO disputes pertaining to China's violation of its WTO IPR obligations, particularly China's failure to meet the requisite standards of effective enforcement, including criminal enforcement.

Treating China as a Nonmarket Economy

- The Commission recommends that Congress require that the Department of Commerce obtain Congressional approval before implementing any determination that a nonmarket economy such as China has achieved market economy status. Congress should ensure that China continues to be treated as a nonmarket economy in the application of antidumping and countervailing duties through 2016, as is explicitly permitted by China's WTO accession agreement, unless China clearly meets the statutory requirements for market economy status.

WTO Dispute Resolution

- The Commission recommends that Congress establish a review body of distinguished, retired U.S. jurists and legal experts to evaluate the dispute resolution mechanism at the WTO. The review body would consider all decisions made by a WTO dispute settlement panel or appellate body that are contrary to the U.S. position taken in the case. In each instance, a finding would be made as to whether the WTO ruling exceeded the WTO's authority by placing new international obligations on the United States that it did not assent to in joining the WTO. If three affirmative findings were made in five years, Congress would be prompted to reconsider the relationship between the United States and the WTO.

Enhancing the Effectiveness of U.S. Trade Remedies

- The Commission recommends that Congress authorize compensation to petitioners in the Section 421 safeguard process for legal fees incurred in cases where the ITC finds that market disruption has occurred but the President has denied relief. Congress should also consider eliminating presidential discretion in the application of relief through Section 421 petitions or limiting discretion to the consideration of non-economic national security factors.

- The Commission recommends that Congress maintain the Continued Dumping and Subsidies Offset Act of 2000 (CDSOA or the "Byrd Amendment"), notwithstanding the WTO's ruling that the law is inconsistent with WTO requirements, and accept any retaliatory tariffs that may ensue as the U.S. is permitted to do under its WTO obligations. Congress should press the Administration to seek explicit recognition during the WTO's Doha Round negotiations of the right of WTO members to distribute monies collected from antidumping and countervailing duties to injured parties.

- The Commission recommends that Congress clarify without delay the authority of the Committee on the Implementation of Textile Agreements (CITA) to consider threat-based petitions for use of the China-specific textile safeguard negotiated as part of China's WTO agreement.

- The Commission recommends that Congress direct the Department of Commerce to make countervailing duties applicable to nonmarket economies to provide an additional tool to combat China's use of government subsidies for its exporters.

- The Commission recommends that Congress repeal the "new shipper bonding privilege" that has allowed many importers of Chinese goods to avoid payment of anti-dumping duties. Importers of goods subject to anti-dumping or countervailing duties should be required to deposit in cash the amount of any estimated applicable duty.

Countering China's Government Subsidies

- The Commission recommends that Congress direct USTR and Commerce to investigate China's system of government subsidies for manufacturing, including tax incentives, preferential access to credit and capital from financial institutions owned or influenced by the state, subsidized utilities, and investment conditions requiring technology transfers. The investigation should also examine discriminatory consumption credits that shift demand toward Chinese goods, particularly as a tactic of import substitution for steel, Chinese state-owned banks' practice of noncommercial-based policy lending to state-owned and other enterprises, and China's dual pricing system for coal and other energy resources. USTR and Commerce should provide the results of this investigation in a report to Congress that assesses whether any of these practices may be actionable subsidies under the WTO.