

# 2002 Annual Report Recommendations

## Chapter 1 – China’s Perceptions of the United States and Strategic Thinking

- The Library of Congress China collection today is nearly unusable and is a disgrace, despite two major studies advocating a more robust and sophisticated collection. The Commission recommends, therefore, on an urgent basis that the Congress fund the appropriate implementation of the detailed recommendations already submitted by these two previous investigations.
- The Commission recommends that Congress expand the U.S. Government’s capacities for collection, translation and analysis of open source Chinese language materials, including expanding the scope of Chinese materials translated by the Foreign Broadcast Information Service (FBIS) and enhancing the Library of Congress’s collection. The Central Intelligence Agency, the Defense Intelligence Agency, and other appropriate Executive Branch agencies should report annually to the Congress on their resources and progress in this area.
- The Commission recommends that Congress request that the Foreign Broadcast Information Service restore and maintain a national research data bank which identifies Chinese authors and publications and determines their relative authority. Such a data bank would help policy makers and scholars determine the significance of the publications and their relative influence on Chinese policymaking.
- The Commission recommends that Congress provide federal funding and other incentives to strengthen Chinese language and area studies programs in U.S. universities, similar to the program that was developed with regard to the Soviet Union and Eastern Europe in the National Defense Education Act of 1958. In conjunction, there should also be incentives given to post-secondary graduates in this field to provide government service.
- The Commission recommends that Congress request that the President designate an Executive Branch agency to develop a database of all government-to-government and government-funded cooperative programs between the U.S. and China. The database should include a full description of each program, including its history, origin, activities, and statutory basis (if any), and a status report on its achievements to date, and should be in both unclassified and classified form, as appropriate. Congress should receive an annual report on official U.S.-China bilateral programs, based on the database, and the agreements should be submitted to Congress pursuant to the Case Act (PL 92-403).
- The Commission recommends that Congress encourage the Department of Defense to make renewed attempts to develop military-to-military confidence building measures, within the context of a strategic dialogue with China and strictly based on the principles of reciprocity, transparency, consistency and mutual benefit.

## Chapter 2 – Trade and Investment

- The Commission recommends the Congress request the U.S. Government review the statistical discrepancy between the National Institute of Science and Technology (NIST) and the Census Bureau trade figures that are based on different methodologies and definitions, in order to remove the complications and discrepancies that have plagued analysis of U.S. China trade and investment analysis.

- The Commission recommends the Congress request the Commerce and Defense Departments to increase the level of detail of the Harmonized Standard (HS) code and Military Critical Technologies List (MCTL) so they may be cross-referenced to track any developing U.S. dependency on China. To further enhance the U.S. Government's ability to track dependencies, Congress should also direct the Department of Defense to require its contractors and subcontractors to identify components and sourcing using the HS codes.
- The Commission recommends the Congress support efforts of various government agencies to increase contracts and exports of U.S. goods to China but should monitor and evaluate these efforts to ensure that they are enhancing U.S. job creation and are not increasing capacity in industries that already have excess world capacity.
- The Commission recommends the Congress establish and fund a federally mandated corporate reporting system to gather sufficient data to provide a comprehensive understanding of the trade and investment relationship with China. Within such a system, companies should be required to report their initial investments in China; any technology transfer, offset, or R&D cooperation agreed to as part of the investment; the shift of production capacity and job relocations resulting from the investment, both from within the United States to overseas and from one overseas location to another; and contracting relationships with Chinese firms. In addition, Congress should require the Commerce Department to maintain an authoritative account of U.S. firms' investment in R&D centers in China and a comprehensive assessment of their activities.
- The Commission recommends the Congress request the Treasury Department to conduct employment impact studies of International Financial Institutions' (IFI) projects. U.S. representatives to the IFIs should be instructed to use their voice and vote to support programs that promote U.S. interests and do not negatively effect U.S. employment or fund industries, such as steel, with global over-capacity.
- The Commission recommends the Congress should closely monitor the implementation of the "Enhanced Border Security and Visa Reform Act of 2002". The U.S. government has a poor record of implementing any effective mechanism to track and assess the activities of the very large number of Chinese students, scholars, and researchers present in the U.S. academic and industrial establishment. Careful implementation of the new legislation is required, if the U.S. is to address this serious matter.

### **Chapter 3 – China and the World Trade Organization**

- The Commission recommends that the U.S. Government clearly and publicly articulate, in both multilateral and bilateral settings, the importance of China's compliance with its WTO commitments and provide technical assistance to this end. Current technical assistance programs would benefit from greater resources and coordination. Due to the restrictions placed on USAID's involvement in China, the Commission recommends that Congress appropriate and authorize funds directly to technical assistance programs such as the Commerce Department's Commercial Law Development Program (CLDP).
- The Commission recommends that Congress require that the Department of Commerce obtain Congressional approval before implementing any determination that a non-market economy (NME) has achieved market economy status.
- The Commerce Department currently interprets the countervailing duty (CVD) law to be

inapplicable to NMEs. The Commission recommends that Congress amend the CVD law to specifically state that it applies to NMEs and thereby can be used to protect U.S. industries from unfair competition from the imports of these economies.

- The Commission recommends that the U.S. Government encourage the use of existing U.S.-China state government-to-provincial government and city-to-city bilateral mechanisms to help promote and monitor WTO compliance.
  - Congress currently charges the Commerce Department to submit annually a report on U.S. trade promotion activities in the form of the Trade Promotion Coordination Committee (TPCC) report. In addition, the Secretary of Commerce is charged to testify to Congress on that report. During Secretary Evans' recent testimony on that report he discussed the importance of China complying with its WTO obligations and noted that a senior Commerce official would travel to China once a month to evaluate China's compliance efforts. The Commission recommends that Congress request that each annual TPCC report assess China's WTO compliance progress and recommend any additional resources or other initiatives to facilitate compliance, and that this report include a survey of the market access attained by key U.S. industry sectors in China, including agriculture. The report should compare actual market access results with the initial estimates made by the Executive Branch in support of granting China Permanent Normal Trade Relations status and compare U.S. market access in those key sectors with that gained by the European Union and Japan.
  - China's WTO accession agreement includes three important China-specific safeguards: the ability of WTO members to use a non-market economy methodology in anti-dumping cases, a product specific safeguard that allows WTO members to restrain Chinese imports that disrupt their domestic markets, and a textile safeguard. Inclusion of these safeguards was a key component of U.S. support for China's accession as they provide important tools to combat unfair trade practices or import surges. The Commission recommends that USTR and the Commerce Department make aggressive use of these safeguards during the limited time period for which they will be available.
  - With regard to the WTO China-specific textile safeguard, the Commission recommends that Congress request the Commerce Department to prepare an annual report on the U.S. textile industry addressing whether "market disruption" is occurring with regard to any products in this industry as a result of imports from China. A determination of "market disruption" would trigger the textile safeguard mechanism.
  - The Commission recommends that Congress encourage USTR to request consultations at the WTO on China's noncompliance with its obligations under the TRIPs Agreement, in particular the lack of adequate enforcement to reduce and deter counterfeiting and piracy of U.S. motion pictures and other video products. If China's noncompliance in this area is not adequately resolved through such consultations, Congress should encourage USTR to request that a WTO dispute settlement panel be convened on this matter.
  - Congress mandated the Commission to evaluate and make specific recommendations for the U.S. Government to invoke Article XXI of the GATT (relating to security exceptions) as a result of any adverse impact on U.S. national security interests. Current trends indicate that China's rapid growth as a steel producer may have an adverse impact on the U.S. steel industry. The Commission believes that the steel industry is a likely candidate for using Article XXI, as demonstrated by the Bush Administration's decision to impose temporary

safeguard measures on key steel products and President Bush's statements on the importance of the U.S. steel industry to our national security. The Commission therefore recommends that Congress consider using Article XXI to ensure the survival of the U.S. steel industry, if the Administration's current safeguard measures prove ineffective.

- The Commission recommends that Congress renew the Super 301 provision of U.S. trade law to address unfair trade practices that have the greatest impact on U.S. export market opportunities in China and elsewhere.
- The Commission recommends that Congress examine the tools available to the U.S. Government to address market access-limiting practices by China not covered by its WTO obligations, and direct U.S. trade officials to make full use of these tools to protect U.S. export opportunities.

#### **Chapter 4 – Political and Civil Freedoms**

- Enforcement against the import of prison labor goods from China should be improved by shifting the burden of proof from the U.S. Government to companies that import such goods into the United States. Such companies would be required to certify, based on good faith efforts, that the products they are importing are not made by forced or prison labor. The Commission made recommendations to Congress on this issue in a May 2002 letter. (See the appendix for the letter to Congress and the accompanying recommendations.)
- The Commission recommends that Congress establish a corporate code of conduct for U.S. businesses operating in China. Aside from addressing traditional human rights and labor issues, the code should also mandate corporate responsibility in categories of special concern, such as the suppression of personal freedoms. Companies that fail to comply with the code of conduct should be afforded less favorable terms on Ex-Im Bank or OPIC-supported transactions or on other U.S. Government financial assistance.
- The Commission recommends that Congress request Voice of America, Radio Free Asia and other relevant government entities to seek ways to help Chinese Internet users access banned information sources.
- The Commission recommends that Congress request that the President direct the Department of Commerce and other relevant agencies to conduct a review of export administration regulations to determine whether to control the export of U.S. technologies that permit the Chinese government to surveil its own people or censor free speech.

#### **Chapter 5– China's Growth as a Regional Economic Power**

- The Commission recommends that the Congress should encourage the Administration to initiate consultations with other Asian countries to assess and make recommendations on the impact of the "hollowing-out" phenomenon with respect to China on regional economies and on U.S. economic relations with the region.

#### **Chapter 6 – China's Presence in U.S. Capital Markets**

- The Commission recommends that Congress codify in legislation the disclosure guidelines outlined by the SEC in its May 8, 2001 correspondence to Representative Frank Wolf. These guidelines require the SEC to solicit from foreign registrants and disclose to investors information regarding a foreign registrant's material business

operations in a country, or with an entity, subject to U.S. economic sanctions administered by the Treasury Department's Office of Foreign Assets Control. These guidelines recognize that a foreign registrant's material business operations in terrorist-sponsoring and other U.S.-sanctioned countries or with sanctioned entities – countries and entities with which U.S. companies cannot do business – pose a material risk to investors.<sup>1</sup>

- The Commission recommends that Congress request the Treasury Department, in coordination with the Executive Branch agencies tasked with identifying and monitoring Chinese and other foreign entities associated with the proliferation of weapons of mass destruction or ballistic missile delivery systems, to assess whether any such entities are accessing, or seeking to access, the U.S. capital markets. If the Treasury Department determines that any such entities are accessing, or seeking to access, the U.S. capital markets, this information should be provided to the SEC and made available to investors including state public pension systems and other institutional investors.
- The Commission recommends that Congress prohibit debt or equity securities offerings in the U.S. capital markets by any Chinese or other foreign entity where the State Department has imposed sanctions on that entity for engaging in the proliferation of weapons of mass destruction or ballistic missile delivery systems.
- The Commission recommends that Congress enhance reporting requirements for Level I ADRs and Rule 144A and Regulation S offerings. None of these types of offerings is now subject to full SEC reporting and registration requirements. As a result, foreign entities can trade their securities in the U.S. markets without the need to disclose detailed aspects of their business operations, including overseas activities that may be harmful to U.S. security interests and pose a material risk to investors.
- Consistent with recommendations in Chapter 1, the Commission recommends that Congress provide additional resources to strengthen the U.S. intelligence community's collection and analysis concerning the national security dimensions of Chinese and other foreign fundraising in the U.S. capital markets, as well as of Chinese and other foreign entities selling their securities to American investors from exchanges overseas.
- The Commission urges the Treasury Department to follow-up on the recommendation made by the Deutch Commission that the Department lead an interagency review of current and potential mechanisms for exercising financial/economic leverage to combat proliferation, including denying proliferators access to the U.S. capital markets.

## **Chapter 7– Proliferation and Chinese Relations with Terrorist-Sponsoring States**

- The Commission recommends that Congress should create new authorization to broaden and harmonize proliferation sanctions. The new legislation would amend all current statutes that pertain to proliferation<sup>2</sup> to include a new section authorizing the President to

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<sup>1</sup> The Commission made this recommendation in a letter dated March 15, 2002 to the Chairman and Ranking Members of the Senate Banking, Housing and Urban Affairs Committee and House Financial Services Committee, with copies to the Senate and House leadership. The text of this correspondence can be obtained on the Commission's website <<http://www.uscc.gov/>>.

<sup>2</sup> The primary statutes include: Prohibition on assistance to countries that provide military equipment to terrorist states (PL 104-132) of the Foreign Assistance Act 1961), Prohibition on assistance to countries that aid terrorist states (PL 104-132), Chemical Weapons Convention Implementation Act of 1998 (PL 105-277), Sanctions against the use of CBWs (22 USC 5605, enacted by PL 102-182), Sanctions against certain foreign persons for CBW proliferation (PL 102-182), Nuclear Proliferation Prevention Act of 1994 (PL 103-

invoke economic sanctions against foreign nations that proliferate WMD and technologies associated with weapons of mass destruction and their delivery systems. This would authorize the President to invoke and implement economic sanctions including import and export limitations, restrictions on access of foreign entities to American capital markets, restrictions on direct foreign investments into an offending country, restrictions on transfers by the U.S. Government of economic resources, and restrictions on science and technology cooperation or transfers. The new authority should require the President to report to the Congress the rationale and proposed duration of the sanctions within 72 hours of imposing them. They should remain in place for as long as is necessary to ensure non-proliferation goals are met.

- The Commission recommends that Congress maintain the Tiananmen sanctions that restrict U.S. export licenses for satellite launches in China until such time as the PRC effectively implements its commitment under the November 2000 agreement to put into place an appropriate export control system and the publication of a comprehensive missile-related export control list and regulations.
- Consistent with the recommendations in Chapter 6, the Congress should consider use of financial sanctions that include denial of access to U.S. capital markets to Chinese and other foreign firms found to be involved in proliferation. Unlike trade sanctions, financial restrictions would minimize “collateral damage” to U.S. exports and U.S. jobs.
- The Commission recommends that the United States work through the United Nations Security Council to formulate an effective framework enforced by sanctions to counter the proliferation of weapons of mass destruction and their delivery systems.

## **Chapter 8 – Cross-Strait Security Issues**

- The Commission recommends that Congress work with the Department of Defense to continue its current policies of substantive military dialogue with Taiwan and conduct exchanges covering issues ranging from threat analysis, to doctrine to force planning.
- The Commission recommends that the U.S. along with its allies should continue to call upon China to renounce the threat of or the use of force against Taiwan and continue to caution Taiwan about declaring independence.
- The Commission strongly recommends those provisions in the FYs 2001 and 2002 Foreign Operations Appropriations Acts, providing for briefings to the Congress by the Executive Branch on the ongoing discussion between any Executive Branch agency and the government of Taiwan on U.S. arms sales and that the defense relationship be included as a permanent requirement.

## **Chapter 9 – The Defense Budget and the Military Economy**

- The Commission recommends that the Congress direct the Congressional Budget Office and the Congressional Research Service to enhance monitoring of PRC central government’s fiscal and financial activities. Particular emphasis should be placed on China’s military budget.

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236), Transfers of missile equipment or technology by Foreign persons (PL101-510 et al), Iran Nonproliferation Act of 2000 (PL 106-178), Foreign Relations Authorization Act of 1990-91 (PL 101-246).

- The Commission recommends that the Congress request the Intelligence Community to conduct an annual “output analysis” of China’s defense budget to assess its impact on and relation to China’s military capabilities.

## **Chapter 10 – Technology Transfers and Military Acquisition Policy**

- The Commission recommends that the Congress require an annual joint DoD/FBI classified assessment of Chinese targeting of sensitive U.S. weapons-related technologies and what actions were taken, or need to be taken, to prevent or deny that acquisition. The report should also provide the Congress with information detailing trends of China’s acquisition targeting attempts.
- The Commission recommends that the Congress require that both pre-license and end user checks be conducted on sensitive exports to China.
- The Commission finds the S&T report submitted to the Congress and this Commission this year a useful tool for monitoring U.S.-PRC government-to-government S&T programs. The Commission recommends the Congress request that such a report be conducted biannually beginning in 2004. The Commission also recommends that the Executive Branch establish an effective coordinating group that should set standards for S&T transfers, monitor the programs and coordinate with the intelligence community.