# U.S./CHINA INTELLECTUAL PROPERTY AGREEMENT AND ACCESSION TO THE WORLD TRADE ORGANIZATION

## HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

TESTIMONY OF HON. MICHAEL KANTOR, U.S. TRADE REPRESENTATIVE

MARCH 9, 1995

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# U.S./CHINA INTELLECTUAL PROPERTY AGREEMENT AND ACCESSION TO THE WORLD TRADE ORGANIZATION

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**THURSDAY, MARCH 9, 1995**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 9:36 a.m., in room 1100, Longworth House Office Building, Hon. Philip M. Crane (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

# *ADVISORY*

## FROM THE COMMITTEE ON WAYS AND MEANS

### SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
March 2, 1995
No. TR-5

CONTACT: (202) 225-6649

## CRANE ANNOUNCES AMBASSADOR KANTOR TESTIMONY ON CHINA ISSUES

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways & Means, today announced that Ambassador Michael Kantor, the United States Trade Representative, will testify before the Subcommittee concerning the recent intellectual property agreement signed with the People's Republic of China and the prospects for China's accession to the World Trade Organization (WTO). **The hearing will take place on Thursday, March 9, 1995, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

No other witnesses will testify on March 9, and an opportunity to present oral and written testimony on China-related issues will be provided at a later time.

BACKGROUND:

After an eight-month investigation, the Office of the United States Trade Representative (USTR) found on February 4, 1995, that China failed to protect intellectual property rights, and that many U.S. industries, including computer software, pharmaceuticals, agricultural and chemical products, audiovisual works, books and periodicals, and trademarks, had been adversely affected. Consequently, USTR ordered the automatic imposition of 100% tariffs on over $1 billion of imports of Chinese products beginning February 26 if an acceptable agreement could not be reached by that date. On February 26, USTR announced that the United States and China had reached agreement to provide for the protection of intellectual property rights for U.S. companies and provide market access for U.S. intellectual property-based products. USTR's action was taken under the Special 301 provision of the Trade Act of 1974, as amended, concerning the protection of intellectual property rights.

In addition, China has been seeking membership in the WTO for the past eight years. Although it had been a member of the 1947 General Agreement on Tariffs and Trade, China had abandoned its membership after the communist takeover in 1949. In December 1994, China's efforts to join the WTO were blocked, and it did not become one of the founding members. Some of the concerns about China's membership include its non-tariff trade barriers, the non-convertibility of its currency, its massive state-run sector, and its closed services market. Another issue relates to whether China may join the WTO as a developing country member or whether it must meet the obligations of a more advanced economy.

In announcing Ambassador's Kantor's appearance before the Committee, Chairman Crane said: "I am pleased that the United States and China have reached agreement to assure the protection of U.S. intellectual property rights in China. Now, we should aggressively enforce the agreement we have reached in order to make sure that China will in fact respect intellectual property rights within its borders. In addition, we must assure that China is complying with the rules of the multilateral trade regime before it can become a member of the World Trade Organization."

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Chairman CRANE. The committee will come to order. We are most pleased that we have Ambassador Kantor and his delightful Deputy Ambassador, Charlene Barshefsky, with us today. I know that the Ambassador is on a tight time constraint because he has to catch a plane to China and bask in the sunshine over there on the beautiful beaches around Shanghai. It's because of our weather here that he made the decision to make the trip.

But I want to welcome you, Ambassador Kantor, to the committee. And I want to congratulate you with regard to the concluded agreement between the United States and China on intellectual property rights protection and on the prospects for Chinese accession to the World Trade Organization. We plan to hold another hearing at a later time where we'll provide an opportunity to the public to present oral and written testimony on China-related issues.

I'm very pleased that we've reached an agreement to assure the protection of U.S. intellectual property rights in China and I commend you and Ambassador Barshefsky and your staff on the results of these difficult negotiations. Because of this agreement we can avoid imposing trade sanctions on imports of Chinese products and any possible counterretaliation against our exports. Trade sanctions are a powerful weapon that we should use when necessary, but it's far better for all concerned to reach agreement instead to remove the cause of the trade friction. The integration of the world economy means that we'll all suffer when we're forced to take retaliatory action.

The fact that we've reached an agreement does not mean that the intellectual property issue is closed. Now we must aggressively enforce the agreement in order to make sure that China will in fact respect intellectual property rights within its borders. This subcommittee intends to keep a watchful eye on developments in this area.

This agreement will also improve the negotiating environment for China as it works toward acceding to the World Trade Organization. However, I believe, Ambassador Kantor, that the agreement alone should not cause us to back down on our demands for accession. Economic reforms in China have substantially transformed their centrally planned economy toward a market-oriented economy. However, if China wishes to become a member of the World Trade Organization it must go further and show that it can fully comply with the rules in the multilateral trade regime.

As Chairman Archer, Mr. Gibbons, Mr. Matsui, and I stated to you in our letter of December 15, 1994, we believe that China's eventual entry into the GATT WTO system would be beneficial for all concerned given the size of the Chinese economy. However, I support China's entry into the WTO under conditions that are commercially sound and fully demonstrate China's acceptance of the obligations of being a WTO member. If China were to compete within the WTO framework on a less-than-equal footing it would create serious imbalance and a dangerous precedent. We set forth our specific concerns in our letters to you of April 12 and December 15.

Finally, we should take whatever time is necessary to ensure that any Chinese accession is done properly. China's accession to

the WTO would be beneficial only if it carries out its obligations as a full-fledged member in good standing.

Ambassador Kantor, and Ambassador Barshefsky, we're very pleased to have you both here today. We look forward to your testimony and to continuing to work with you and your staff on these critical issues.

Now I would like to yield to my distinguished colleague, Mr. Matsui, for an opening statement.

Mr. MATSUI. Thank you very much, Mr. Chairman. What I'd like to do with unanimous consent is to actually introduce a statement into the record by Mr. Rangel, the ranking member, if I may.

Chairman CRANE. Absolutely. Without objection.

[The opening statement of Mr. Rangel follows:]

OPENING STATEMENT OF HON. CHARLES B. RANGEL

Thank you, Mr. Chairman, for scheduling this morning's hearing with Ambassador Kantor to review the status of our trade relations with China. Our trading relationship with China is rapidly becoming one of the most important and complex of all our trading relationships and involves a number of key issues that will require careful consideration by this subcommittee.

Clearly, the economic stakes with China are high. The United States exported nearly $9 billion to China in 1994, while importing $38 billion from China during that same time. Unfortunately, this left us with a bilateral trade deficit of nearly $30 billion, which is clearly unsustainable over the longer run. Therefore, we must do our utmost to improve our access to China's market of 1.2 billion people. I understand Ambassador Kantor will be continuing the USTR's efforts in this direction during his upcoming trip to China over the weekend.

Let me also commend Ambassador Kantor and his negotiating team for their outstanding efforts in concluding a comprehensive intellectual property agreement with China. This agreement should help to reduce dramatically the rampant piracy of U.S. intellectual property-based products in China and improve the ability of U.S. intellectual property-based industries to sell their legitimate products to Chinese consumers. This agreement's ultimate success, however, will depend on our vigilance and our followup efforts to ensure that the agreement is properly implemented.

Finally, with respect to the ongoing negotiations concerning China's accession to the World Trade Organization, let me state for the record my support for the position taken by Ambassador Kantor in these negotiations and set forth in two bipartisan letters sent last year by the leadership of the Committee on Ways and Means to Ambassador Kantor. The United States should support Chinese accession to the WTO provided it is done on commercially sound terms and with full acceptance by China of the basic obligations of the WTO system. No WTO accession negotiation will be as commercially significant as that of China. Therefore, I urge Ambassador Kantor and the administration to take whatever time is necessary and pursue whatever negotiating positions are appropriate to ensure that this negotiation is done properly.

Thank you, Mr. Chairman.

Mr. MATSUI. Thank you. I would also just very briefly like to congratulate both Ambassador Kantor and Ambassador Barshefsky for the tremendous job they did on the issue of intellectual property with the Chinese. I know that it was a long drawn out process and certainly we all appreciate your efforts on behalf of particularly California industries with high tech semiconductors and obviously the motion picture industry.

I might just like to reiterate, if I might, the words of the Chairman in terms of the accession into the WTO. I think it's very important that we allow the Chinese that opportunity, but they must understand that we don't look upon that as a less-developed power. They in fact are a strong industrial power, and that being the case, it's my belief that they must understand that whatever accession

they get to the WTO will have to be on terms that other industrialized countries participate as well.

Thank you, Mr. Chairman.

Chairman CRANE. Now Mr. Payne I think has an opening statement.

Mr. PAYNE. I'd just ask unanimous consent to have my statement entered into the record, Mr. Chairman.

Chairman CRANE. Yes.

Mr. PAYNE. I too wanted to thank Ambassador Kantor and Ambassador Barshefsky for the remarkable job that they have recently done, and in the interest of time I have no further opening statement. Thank you.

[The prepared statement follows:]

OPENING STATEMENT OF HON. L.F. PAYNE

Thank you, Mr. Chairman. Mr. Ambassador, thank you for appearing here this morning to bring us up to date on the status of negotiations on China's accession to the World Trade Organization and to review with us the recently concluded agreement on intellectual property protection.

Last December, I was pleased to see U.S. negotiators stand firm in insisting that China's accession to the WTO proceed only on a sound commercial basis. Our trade with China must be on an equitable basis and must be governed by the same rules respected by our other trading partners. If China wishes to enjoy the benefits of WTO membership, it must also be willing to meet the obligations and responsibilities of WTO membership.

China has already agreed to improve enforcement of intellectual property rights protections and I congratulate you and your deputy, Charlene Barshefsky, for your tremendous efforts in this area. However, there are a number of other areas in which China must make improvements before it becomes a member of the WTO. China must improve market access for American goods and services. Existing trade agreements must be fully implemented. Chinese trade law must be made fully transparent and consistent with Uruguay round disciplines.

China's past performance and its current insistence on special status in the WTO makes extending the benefits of the phaseout of the Multi-Fiber Arrangement particularly problematic. China's apparel imports doubled between 1989 and 1993, yet U.S. apparel exports to China amount to some $40 million in used clothing. Before receiving MFA benefits, China must provide effective market access by lowering tariffs, removing nontariff measures and establish a transparent regime of import laws and regulations. During and after the phaseout, the United States should insist on maintaining the ability to impose unilateral safeguards, without compensation, in order to prevent a massive flood of Chinese imports.

Mr. Ambassador, I want to thank you again for the hard work you have done on behalf of American workers and industry, especially in the intellectual property agreement concluded in February. I look forward to your testimony and to working with you on these important issues in the future.

Chairman CRANE. Mr. Thomas.

Mr. THOMAS. Thank you. Obviously I want to congratulate you and thank you, not just for solving this immediate problem. All of us realize China, in joining the rest of the world, is obviously going to have to be dealt with. You've added to our storehouse of knowledge and technique in terms of learning how to work with the Chinese, and I compliment you on that. We're going to need this experience over time. Thanks for helping us.

[The opening statement of Mr. Ramstad follows:]

OPENING STATEMENT OF HON. JIM RAMSTAD

Mr. Chairman, thank you for calling today's hearing to give Ambassador Kantor an opportunity to discuss the agreement the United States recently reached concerning China's protection of intellectual property rights.

I also want to thank Ambassador Kantor, and everyone at the U.S. Trade Representative's office, for their hard work on the agreement.

Like everyone else on the committee, I had several constituents who were very concerned about certain items listed on the possible retaliation list. The USTR was extremely receptive to our input and concerns and very responsive to many of my constituent companies.

I am extremely pleased the retaliation effort was unnecessary and I applaud the USTR's tenacity in this regard.

I look forward to hearing from Ambassador Kantor today and to discussing the details of the agreement reached.

Thank you again, Mr. Chairman, for calling this hearing. And thank you, Mr. Kantor, for your testimony.

Chairman CRANE. Now, Mr. Ambassador, if you'll make your presentation.

## STATEMENT OF HON. MICHAEL KANTOR, UNITED STATES TRADE REPRESENTATIVE, ACCOMPANIED BY CHARLENE BARSHEFSKY, DEPUTY AMBASSADOR, UNITED STATES TRADE REPRESENTATIVE

Ambassador KANTOR. Thank you very much, Mr. Chairman, and members of the committee, for the opportunity to appear here today. With your permission, the committee's permission, Mr. Chairman, I'd like to submit my whole testimony for the record and summarize it in order not to take too much of the committee's time.

Chairman CRANE. It shall be.

Ambassador KANTOR. Thank you very much. As you noted, Ambassador Barshefsky is here with me today, and if the committee wishes to go longer she can stay after I have left to catch an airplane to China to take, as you said, that relaxing weekend in Beijing.

Let me say that Ambassador Barshefsky along with Lee Sands, Deborah Lehr, and Kathy Field, who are also here today, did a magnificent job on behalf of our country in these negotiations. Too many times some of us in these exalted positions get too much credit, and those who have done the hard work and have shown great resolve, and who have fashioned the position don't get the credit. This is a case where Ambassador Barshefsky and Lee Sands, Deborah Lehr, and Kathy Field deserve tremendous credit for what they have done. That's not to say their Chinese colleagues and counterparts don't deserve some credit as well. But I'd just like to take note of the fact that too many times some of us get the limelight and the glory and it's deserved in this case by those that I've referred to.

We faced with China, as this committee knows, historic concern over a failure to enforce intellectual property rights which was having a pernicious effect on U.S. industries ranging everywhere from agricultural chemicals and pharmaceuticals, to computer software, to Jeep Cherokees, to the misuse of trademarks including Kongaloo flakes which were a substitute for Kellogg's Corn Flakes and Del Monte corn, to of course, the pirating of compact discs and other products including tapes for movies. Piracy is rampant in China and continues in fact today.

The failure to enforce these laws, which were passed by the way and implemented by China under a 1992 agreement with the United States had cost us, we estimated in 1 year alone in lost sales in China, about $1 billion. That of course, led to the United States

invoking proposed sanctions of 100-percent tariffs on 1 billion dollars' worth of imports from China which was a forerunner to this agreement.

Not only has China in the past allowed for the pirating of these goods and for the spoilation of trademarks and the failure to protect patents, they've also, of course, restricted if not eliminated market access for U.S. products in this category that are protected by intellectual property rights by using quotas and licensing arrangements.

Just to give you one indication, there are 29 compact disc and laser disc factories operating illegally in China today, or were operating in China today—7 have been closed—which produced last year 75 million compact and laser discs, only 5 million of which were absorbed in China, 70 million of which were exported to third countries including to Mexico, the United States, and Canada. We didn't calculate, for the purposes of our proposed sanctions, the enormous impact that would have had or was having on U.S. industry. So you can imagine, Mr. Chairman, and members of the committee, what magnitude of damages we have been suffering over the last number of years if we had calculated both the internal damage, the lost sales in China as well as, of course, the export of pirated goods into third country markets.

This new agreement does a number of things which I think are enormously important. One, it sets up new rules to protect intellectual property. It provides for enforcement. It provides for court access and reform, and provides for technical assistance on the part of the United States to China by our Patent and Trademark Office, by our Justice Department including the FBI, and also by our Customs Service.

Also, Mr. Chairman, it leads to, I think, a new respect for law on the part of the Chinese. Last year, as you know, the President, with overwhelming support in the Congress, separated in his MFN decision, trade from human rights. There has been some criticism of the President for that decision.

Nothing could support his decision more and the decision made by a great majority of Members of this committee and Congress to support that separation, than what's happened here. Because by building a respect for law for China, by in fact reforming the court system and providing more access to the courts, what we are doing, of course, is affecting all rights in China. So I think the President's decision, much of which was supported by the members sitting in front of me here today, is to be praised by all of us because I think that what we have shown here is by operating successfully in the trade or economic area we can affect other areas as well.

It's also important in fact to the Chinese, this agreement. What it will do, of course, by allowing market access, by protecting intellectual property, will encourage more investment in China. Clearly, not only U.S. investors but others are reluctant to go into China under the old system where the laws were on the books but weren't enforced and you couldn't protect your property.

So I think this is an agreement that is a win-win situation. We appreciate the support we have received in the administration. Without the bipartisan support of the Congress, both on this side

and in the other body, and the unanimous support of the American business community, there would have been no agreement.

Frankly, in the past, especially in the business community, there has been some split of authority you might say when we have tried to negotiate certain agreements. The 100-percent support by the American business community including, Mr. Chairman, companies that might have been somehow hurt in the short run by a failure to reach agreement, was enormously important for our reaching this agreement. The Chinese were unable in this situation to divide Republican from Democrat, House from Senate, industrial interests in the United States from, let's say, other interests. Not being able to do that I think gave Ambassador Barshefsky and her team tremendous support as they completed these negotiations.

We have attempted in the 2 years of this administration to support open and fair trading, as this committee has. We have believed in rights and responsibilities. We have believed that the only way we're going to ever achieve global growth, raising the standard of living, creating more jobs here at home, raising our own standard of living is by open markets and free trade and fair trade. What has happened here with this agreement is we have taken a step in the right direction.

What I'd like to do here today as we go over this agreement, Mr. Chairman, is not engage in inflated hyperbole. I think we have to be somewhat cautious, not only in terms of the impact of the agreement—it is a step forward—but in terms of what it means for the future. Both in terms of making sure the agreement is carried out and carried out correctly as it has been executed by both sides and will be formally executed in Beijing this weekend, but especially as it relates to other negotiations that we will carry out.

As you know, we have a 1992 agreement with the Chinese on market access. For the most part that agreement has worked. I would note that last year alone about 800 tariff lines in industrial products have opened up for U.S. companies in the Chinese market. But that doesn't mean it has been perfect or that everything in that agreement has been carried out. In fact some of our discussions this weekend that I will carry on with my Chinese counterparts will involve that agreement.

Whether it's in computers or heavy capital equipment or in the area of agriculture, we have not had full compliance with that agreement. Now we have substantial compliance which we welcome, but we insist on full compliance and those negotiations will continue. I think reaching this agreement on intellectual property rights, or IPR, helps. But let me say again, it doesn't mean that we're going to reach agreement on that and we will continue to insist that, of course, the Chinese live up to their commitments under that agreement as well.

Let me mention four or five areas that I think are the most important in this intellectual property rights agreement then, of course, I will be pleased, and so will Ambassador Barshefsky, to answer any questions you might have on this or any other aspect of our trade relations with China or, of course, any other questions you might have.

First on enforcement. There's going to be an intensified inspection system set up with specific time periods where these inspec-

tions will take place. This agreement provides for copyright and trademark recordation, provides for comprehensive enforcement mechanisms. We establish representative offices in China under this agreement for our various trade associations including for the movie industry and the record industry and for the computer software industry in order to try to monitor this agreement.

There's technical assistance, as I mentioned before, that China has accepted and welcomes from this country. In fact, representatives from Customs, Patent and Trademark, the Justice Department and FBI will be going with me this afternoon to China to begin those discussions.

In the short term, all factories, all offending factories in China will be inspected and closed if offending by July 1, 1995. I think the Chinese, to be fair, have shown good faith in this area by closing 7 already and destroying over 2 million compact and laser discs. They also have agreed in these inspections, and in the long run to destroy the equipment making these products, which is a giant step forward from where they were, of course, in the past.

They've also agreed to investigate firms that are distributing audiovisual products which are violating their copyright laws. They've also agreed to intervene at the retail level.

In the court reform or administrative action area they've agreed to expeditious handling of cases that have been or will be filed on behalf of foreign entities, which has not happened before. They've agreed to national treatment—in other words, foreign entities will be treated in their courts as are local entities in terms of filing fees. That has been a major problem in the past. Exorbitant filing fees were required of non-Chinese entities filing in their courts in the past, and they have agreed now to provide national treatment.

They've also agreed, which is the most critical of all, to preserve both prehearing or pretrial, and trial and posttrial, the evidence which is necessary to show there have been offenses against the laws in China. They've also agreed to an exchange of information, statistics, and to monitor the implementation of this agreement, and to consultations, every quarter I think it is, on each of these levels of statistics.

Let me finish with market access. Nothing is more important in this agreement than allowing market access. Without that, Mr. Chairman, just enforcing the law is of no moment. The desire for U.S. products in this area, whether it be computer software or pharmaceuticals or agricultural chemicals or movies or music, or any other items covered by intellectual property rights, or for U.S. products such as Del Monte or Kellogg's or other products in these areas is huge. Without market access we're creating the atmosphere which almost requires piracy or the violation of trademark protection.

So what the Chinese have agreed to is, number one, no more quotas, no more import licensing restrictions. That's an enormous step forward.

Number two, that we can now, for instance in the music industry, market their entire catalog of CDs and other products they will have available in the Chinese market.

Number three, in the film area we can now collect royalties or enter into joint ventures, enter into licensing agreements. Next,

joint ventures in the computer software and other industries will be allowed and a nationwide distribution system will be put into place, and in fact, by the year 2000 will cover the 13 largest cities in China.

Last but not least, we'll have the right of establishment of U.S. companies in China to operating there independently. So everything from royalties, to licensing, to joint ventures, to the right of establishment are called for under this agreement and can be enforced. That is an enormous step forward. We've been restricted prior to this time and I can't tell you how much good that's going to do.

Let me just briefly address—and then I'll, of course, be delighted to take questions—references both the Chairman and Mr. Matsui made with regard to the World Trade Organization and China's potential accession. The United States has always said we support China's accession to the World Trade Organization. However, it must be done on a commercially reasonable basis.

China is the third largest economic power in the world. They're growing anywhere from 10 to 14 percent a year. They're both an enormous potential market for the United States and other of our trading partners, but they also have an enormous potential effect for good or for bad on world markets. We have got to be resolute as we potentially engage in new negotiations with China over WTO accession.

Let me make it clear, it's up to China whether or not they want to come back to the table. We had negotiations through December of 1994 in Geneva, and China left the table not agreeing to the criteria that had been laid out, not only by the chairman of the committee but by almost every country engaged in those negotiations. This is not just a U.S. position. This is a position widely supported throughout the membership of the WTO. And I'd be happy to go into some of those details if the committee wishes.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

**TESTIMONY BEFORE THE**
**HOUSE WAYS AND MEANS SUBCOMMITTEE ON TRADE**
**AMBASSADOR MICHAEL KANTOR**
**UNITED STATES TRADE REPRESENTATIVE**
**MARCH 9, 1995**

Mr. Chairman, it is a pleasure to appear before this subcommittee today to bring you up to date on our recent agreement with China which will provide for strong enforcement of copyrights, trademarks, trade secrets and other intellectual property rights in China. Our computer software, motion picture, sound recording, and publishing industries will also benefit from new, improved access to the Chinese market.

Until now, China's failure to provide effective enforcement of intellectual property laws has caused substantial damage to U.S. industries in what is one of the fastest growing markets in the world. Theft of copyrighted products (computer software, motion pictures, videos, sound recordings, books and periodicals) has reached epidemic proportions. The failure to enforce intellectual property rights (IPRs) combined with quotas and other market access barriers have kept our legitimate products out of China and pirate copies have displaced sales in third-country markets. Some of our most famous trademarks, Kelloggs, Del Monte, M&M, have been copied and applied to fake goods. Our announced estimate of the burden or restriction on U.S. trade was over $1 billion.

The recently completed IPR Agreement protects U.S. industries that are consistent export earners from the flagrant piracy of their products, and provides new markets for the products of U.S. workers in these industries. Through full implementation of this Agreement, China will demonstrate that it can play by international rules on a matter of importance to its own development and economic interests as well as its trading partners. China will also have access to high quality products from the United States and assistance in the implementation of this Agreement. In addiiton, this enhanced protection will attract new investment to China.

Let me express my appreciation for the support that the Administration has received from the members of this subcommittee as we have negotiated with China. It was critical to our success in reaching this agreement that the Chinese government understand that there was strong support from both the Congress and the business community for remaining resolute in the face of the Chinese government's tolerance for piracy of U.S. intellectual property.

President Clinton believes that increased trade is critical to our efforts to create jobs and raise standards of living in this country. The importance of trade to our economy and the rest of the world demands that the global trading system be based upon a set of rights and responsibilities that all countries must accept. The Clinton Administration, with bipartisan support in Congress, has pursued this goal of an open and fair trading system through multilateral agreements like the Uruguay Round, regional initiatives like the NAFTA, and bilateral negotiations like our current agreement with China. All of these initiatives share a common purpose of opening markets, expanding trade, creating jobs and strengthening the U.S. economy.

Mr. Chairman, on February 26, we took the latest step in that effort, when the Administration announced that the United States and China had reached an agreement that will provide for both immediate and longer term improvements in enforcement of intellectual property rights (IPR) owned by U.S. individuals and companies and market access for industries that rely on IPRs to protect their products. As President Clinton said, "This is a strong agreement for American companies and American workers...we

have used every tool at our disposal to fight foreign barriers against competitive U.S. exports."

The importance of this Agreement is bolstered by the fact that it sets the stage for achieving solutions to other trade issues on our agenda with China. Full implementation of the October 1992 agreement on market access is being discussed now. Barriers to exports of U.S. computers, textiles, heavy machinery and other products must be eliminated if the U.S. market is to remain open to accelerating exports from China.

We are also discussing market access for agricultural products. China maintains a number of non-science based quarantine measures which restrict access for U.S. agricultural products. We are asking China to adopt Sanitary and Phytosanitary (S&P) measures which comply with the Uruguay Round Agreement standards and base all S&P measures on scientific principles. China's quarantine restrictions on certain U.S. fruit exports (grapes and apples) because of med fly concerns is one of several S&P issues under discussion. We have also targeted Chinese S&P measures limiting U.S. exports of wheat, tobacco, live cattle, bovine embryos and bovine semen.

China's services markets must also be opened to U.S. companies. We have asked that China commit to substantial liberalization of its insurance, distribution, advertising, travel, communications and service sectors. We have also initiated discussions on telecommunications services in the context of China's accession to the World Trade Organization.

We believe that these issues should also be addressed in a positive manner. But for now, allow me to summarize the major aspects of our agreement with China on IPR enforcement and market access for our audio-visual and computer software industries.

**I. Major Industries Benefitting**

- Computer software producers, including producers of CD-ROMs and video games, will benefit from increased action against manufacturers and retailers to eradicate piracy in China, including a ban on infringing exports and improved market access.

- Motion picture and video producers will benefit from enforcement of their copyrights, in particular against producers of pirated Laser Discs (LDs) and tapes, elimination of quotas, import licensing requirements and more transparent rules on censorship and faster implementation of censorship rules.

- Sound recording producers of compact discs (CDs) and tapes will immediately benefit by enforcement actions against CD pirate factories and enforcement against exports to third countries, the right to exploit a company's entire catalogue and other market access provisions.

- U.S. trademark owners in all categories of goods and services that must enforce rights in China and, especially companies that have well-known marks, like Del Monte, 3M, and Kellogg, will benefit from expedited and improved procedures to permit enforcement of trademarks. Protection against unfair competition, through copying of trade dress and other actions that could mislead or confuse consumers will also provide benefits for a wide range of U.S. industries that trade with China.

**II. Immediate Benefits--Enforcement**

- Export and import of pirated CDs, LDs, CD-ROMs and counterfeit trademark goods will be prohibited and infringements strictly punished, through:

  -- intensified inspections and commitments to detain suspected goods for investigation, and when infringement is found, pirated CDs, LDs CD-ROMs and other infringing goods will be seized, forfeited and destroyed and the machinery and implements directly and predominantly used to make the infringing goods will be seized and destroyed.

  -- Establishment of a copyright and trademark recordation system modeled on the U.S. Customs system.

- Creation of a comprehensive enforcement mechanism that is empowered to investigate, prosecute and punish infringing activities throughout China.

This will be accomplished through:

  -- A State Council working conference on intellectual property rights (IPRs) that will issue directions and coordinate IPR policies.

  -- Establishment of sub-central (provincial, regional and local) intellectual property working conferences in at least 22 provinces, regions and major cities and special enforcement task forces.

  -- Cross-jurisdictional enforcement efforts will be specifically authorized, coordinated and carried out by enforcement task forces.

  -- Enforcement task forces in which all relevant departments, including the police and customs, will participate so that the task force has authority to search premises, preserve evidence of infringement and take action to shut down production of infringing goods, impose fines and revoke operating permits and business licenses.

  -- An intensified enforcement effort over the next six months with possible extensions of this time period for specific areas depending on success in eradicating infringement.

  -- Establishment of a copyright verification system and use of unique identifiers (special codes stamped on the molds) on CDs, LDs and CD-ROMs that will help identify infringers and ensure that only firms with permission from the copyright holder will be authorized to reproduce, import or export these products.

  -- Associations of right owners (the Motion Picture Association, and Software Publishers Association) will be permitted to establish representative offices in China to assist in this verification process and engage in other activities that representative offices are permitted to undertake in China.

  -- Technical assistance from the U.S. Customs Service, Department of Justice and the Patent and Trademark Office to ensure effective implementation of these programs and mechanisms.

Short term efforts by the Enforcement Task Forces will focus on:

CDs, LDs and CD-ROMs. This will be done through:

- -- investigation of all factories producing CDs, LDs and CD-ROMs to determine whether they are producing authorized products will be completed by July 1, 1995.
- -- investigation of firms engaged in distribution, leasing or public performance of audio-visual products (CDs, LDs, video tapes, motion pictures, audio tapes, video games) during the special enforcement period.
- -- establishment of an inventory check system at the retail level to ensure that only authorized product is being sold.
- -- revocation of operating/permits belonging to those who infringe more than one time and revocation of business licenses for serious repeat offenders with a commitment not to grant a business license in the same field of activity for a period of three years.

Computer Software

- -- investigation of all entities, including public (government), private and not-for-profit entities that engage in commercial reproduction, wholesale, retail or rental of computer software.
- -- establishment of an inventory check system for software under which any product that is not distributed by a licensed firm will be seized and destroyed. Business licenses for dealing with computer software will be required and those firms found to deal in infringing or unauthorized product repeatedly will lose their business license for three years. Normal administrative and judicial remedies will also be available.
- -- All entities (including public entities) must provide resources sufficient to purchase legitimate software.

Books and other Published Material

- -- intensified investigation of publishing houses and revocation of business licenses of those engaged in piracy.
- -- verification that printers have authorization from the right holder to print the book or other material. Printing houses operating without a license will be shut down.

Trademark

- -- Pursuit of "model" cases to provide a deterrent effect on other counterfeiters
- -- Immediate access to all trademark agents operating in China, and for the purposes of enforcement, joint-ventures, wholly owned subsidiaries, and licensees in China will be permitted to act on behalf of the U.S. owner of a trademark.

To date, the Chinese have raided and closed seven factories, including the most notorious of the pirating factories, the Shenfei Laser Optical Systems Company outside of Hong Kong. Over 2 million CDs and LDs have been seized and destroyed in recent weeks. As I outlined the Chinese government is committed to take further steps necessary to discover any other infringing factories and move against them within the next three months,

seize and destroy infringing products and seize and destroy any machinery directly and predominantly used to produce infringing products.

**III. Other Enforcement and Administrative Actions**

- Improved access to effective administrative and judicial relief, including expeditious handling of intellectual property cases involving foreigners, the right to investigate alleged infringement and present evidence, and to request preservation of evidence of infringement while the case is pending.

- Establishment and publication of standards to govern the registration and renewal of trademarks in China, including standards on the key issues of determining likelihood of confusion, descriptiveness, rules for cancellation and opposition procedures.

- Enhanced protection against unfair competition, including abuse of trade dress, trade names and other actions that mislead the public as to the relevant goods and services.

- Exchange of information and statistics on Chinese enforcement efforts and regular consultations to discuss the adequacy of enforcement efforts. The United States will also provide information on intellectual property enforcement actions in this country.

- Enhanced training for Chinese judges, lawyers, students, government officials, and business persons on the nature of intellectual property and the importance of its protection.

**IV. Enhanced Access to the Chinese Market**

- Confirmation that China will not put in place quotas, import licensing requirements or other (non-censorship) requirements on the importation of U.S. audio visual products, including sound recordings, motion pictures and videos.

- U.S. record companies will be permitted to market their entire catalog of works in China, subject to censorship rules.

- U.S. film product companies are permitted to enter into revenue sharing agreements with Chinese companies.

- U.S. companies in the audio-visual industries will be permitted to enter into joint venture arrangements for the production and reproduction of their products in China. These joint ventures will also be able to enter into contractual arrangements immediately with Chinese publishing enterprises for the nationwide distribution, sale, display and performance of their products in China. They will now be able to establish operations in Shanghai and Guangzhou and other major cities, with the number of cities to grow to thirteen by the year 2000.

- U.S. computer software companies will also be permitted to establish joint ventures in that sector and produce and sell computer software and computer software products in China.

**A Review of the Problem and a History of U.S. Efforts to Resolve It**

From 1984 through 1994, U.S. yearly exports to China rose from $3 billion to $8.8 billion. In the same period, however, Chinese exports to the U.S. rose from $3.1 billion to almost $38 billion. Some of the fastest growing and most competitive industries in the United States -- and ones in which we frequently have a trade surplus -- have been adversely affected by China's failure to enforce intellectual property rights, including computer software, audio-visual products, books and periodicals and trademarked goods and services.

While China did make significant improvements in its IPR legal regime as a result of the 1992 U.S.-China Memorandum of Understanding on Intellectual Property Protection, piracy of copyrighted works and trademarks continued to be rampant because China did not live up to its obligation under the Agreement to enforce its laws and regulations. Until recently, enforcement of intellectual property rights has been virtually absent, with piracy rates soaring in all major urban centers along China's increasingly prosperous east coast.

Piracy of computer software -- one of the most competitive industries of the United States -- has been running as high as 94 percent, according to U.S. software industries. Chinese piracy of U.S. CDs, laser discs, cassette tapes, videos and movies has been close to 100% in many parts of China.

In the past two years, Chinese companies have begun to export pirated products in large volume -- invading markets in southeast Asia and even reaching Latin America, Canada, and the United States. This trend is exemplified by the fact that 29 CD and LD factories in China have had a production capacity of 75 million CDs for a domestic market that can absorb only 5 million CDs annually. In addition, some of these factories began to produce and export CD-ROMS, which can hold dozens of computer software programs and other copyrighted works on a single disk. The administrative apparatus in China for policing copyright piracy has been extremely weak. Piracy of trademarks has also been rampant, especially in south China. Enforcement, while effective in some locales, has been sporadic at best.

On February 4, 1995, the Administration announced that, although the United States stood ready to continue to engage in serious negotiations, it had ordered the automatic imposition of 100% tariffs on over $1 billion of imports of Chinese products beginning February 26 if an acceptable agreement could not be reached by that date.

Our February 4 announcement was the result of an eight month investigation under the Special 301 provision of the Trade Act of 1974 into China's intellectual property rights enforcement practices. On December 31, I issued a proposed determination that China's IPR enforcement practices were unreasonable and burdened or restricted U.S. commerce and denied fair and equitable market access to U.S. IPR owners. USTR published a proposed retaliation list of $2.8 billion and held hearings on the proposed increase on tariffs on these products. At the same time, I extended the investigation until February 4 to allow negotiators time to pursue an acceptable settlement.

**China's WTO Accession**

There has been some speculation about the relationship between the IPR agreement and China's interest in becoming a member of the World Trade Organization. There has been no link between the two exercises. However, I am hopeful that this recent IPR agreement will help to improve the negotiating environment on China's eventual membership in the World Trade Organization. But, I want to be very clear: substantial work and improvements are necessary in a number of areas before an agreement on China's WTO protocol package can be completed. That package comprises a

protocol of the terms and conditions of the accession, a working party report which are negotiated multilaterally, and market access schedules in goods, agriculture and services which are the result of bilateral negotiations.

We are prepared to work with China, as we have in the past, to develop a mutually advantageous and commercially viable agreement. This will be beneficial to our goal of strengthening our bilateral relations. The Ways and Means Committee has been similarly clear that this is the way the Administration should proceed in this matter. The Administration, the Congress and the private sector are of one view on accession: it can only be completed on strong commercial terms.

The last set of meetings held on China's accession were in December. The Chairman produced negotiating texts and we conducted bilateral negotiations on market access, as did other countries. The progress was insufficient, and greater flexibility will be required before an agreement can be reached. In December, China's was unwilling to commit to align its trade regime with international norms or increase market access in goods, services and agriculture. The United States as well as other WTO members have outlined the areas where China must make commitments to undertake basic GATT and WTO obligations and to secure transparent and meaningful market access opportunities.

In early February, the Chairman conducted informal consultations. The consensus of China's partners was that unless and until China was prepared to undertake liberalization in market access and provide assurances about its regime conforming with WTO obligations, there was little point in resuming negotiations. The Chairman of the Working Party has asked all sides to review their negotiating positions, we are actively consulting with labor, business and agriculture on the status of negotiations and U.S. priorities and interests. We understand that China is undertaking its own review.

I remain hopeful that the results of China's review will enable China to signal that it is now prepared to pursue its accession to the World Trade Organization. China is not now participating as an observer in WTO meetings, unlike other accession applicants. I know that members of the Committee agree that it is in the interests of the United States that China become a member of the WTO, but only if it is secured on a commercially acceptable basis.

China's accession to the WTO on acceptable terms remains important and beneficial to all trading nations. China's accession would guide the structure of China's reforms, and it will cement reforms that are currently in place. A good protocol package will lead also to substantial additional market opening and a much improved trade and investment regime.

China's accession is important for reasons beyond our bilateral relations. There are now some 25 accession applications pending, including many other countries that are in the process of transforming their regimes to market-based systems. If China accedes to the WTO on anything less than commercially reasonable terms or without commitments to take further reform measures the integrity of the WTO will be at risk. We are prepared to resume our efforts with China and look forward to working with the Committee as the negotiations proceed.

**Conclusion**

Mr. Chairman, this is a good agreement for U.S. workers and firms. It will bolster our efforts to create more high-wage jobs in some of our most competitive industries. Our legitimate, high-quality products will not be required to compete against

Chinese pirated and counterfeit goods in third countries and in China. Our exports to China and third countries should increase. It means American businesses can gain the confidence they will be fairly treated as they enter the Chinese market, one which presents immense potential for U.S. businesses.

It is also a good agreement for the Chinese. It will provide evidence that China is willing to play by the international rules and enforce them. It will also improve the investment climate and encourage access to the high quality, technologically advanced U.S. goods and services. The agreement contains key features ensuring transparency in the Chinese system, which bolsters efforts to have a more open and democratic society.

Mr. Chairman, it is critical that we do not rest on this Agreement alone. Equally important, we must ensure that the agreement is fully implemented and enforced. We will be working aggressively to make sure that it is.

Again, let me say that I appreciate the support and cooperation we have received from the members of these subcommittees. I look forward to working with you in the weeks and months to come as we implement and enforce this historic agreement. Thank you.

Chairman CRANE. Thank you, Mr. Ambassador. I salute you and Ambassador Barshefsky again for your unrelenting effort to advance the cause of free trade. I agree with you wholeheartedly that free trade does more to advance and promote human rights concerns than any other single issue. It's not that it's confined exclusively to the question of economics, but you get into other areas as well.

You made reference to the fact that some of these factories have already closed. My understanding is that government officials owned some of the factories that were manufacturing CDs in violation of intellectual property rights. Do you know whether any of the factories that have been closed were either owned by government officials or the military?

Ambassador KANTOR. Some of the factories that have been closed have a connection to government ministries in Beijing. I could not comment with any authority on whether or not any particular individuals in or out of the Chinese Government have an interest in those operations. However, it would be, I think, important to note that the Chinese Government in a show of good faith, regardless of the connection these factories had, including the Shenfei factory which is the largest in China, operating in southern China, were closed as a result of their show of good faith during these negotiations. And as far as we know today they remain closed. And as I said, 2 million CDs were destroyed.

Let me also add, Chinese ministries in Beijing were using pirated computer software in their operations. They have now agreed—and I think this is awfully important—to discontinue to that use. To use nonpirated or legal computer software and to enhance their budgets under their agreement to make sure they can purchase such software. That is also a major step forward.

Chairman CRANE. What specific criteria and/or benchmarks do you plan to use to enforce the intellectual property agreement with China?

Ambassador KANTOR. Number one, we'll use the monitoring—first we start with a system of providing statistics and information on a quarterly basis from the Chinese. Second, a consultation system on a quarterly basis.

Third, we'll be able to monitor, not only because we have the right of establishment of U.S. companies there and the right of establishment of these offices representing the various industries, but frankly because we will be providing technical assistance and we will have literally U.S. employees on the ground in China working with their Chinese counterparts in the customs area or in the enforcement area. I believe we can be satisfied that we have taken a major step toward being certain that this agreement is either carried out appropriately or we can be fully cognizant of any weaknesses in the agreement or weaknesses in the willingness of the Chinese to carry it out.

Chairman CRANE. As you know, Mr. Ambassador, I've long been concerned about a lack of progress in some of these areas of obtaining adequate and effective protection and enforcement of patent rights, and this goes actually even beyond China. The cost of piracy of U.S. patented pharmaceutical products in Brazil, Argentina, and India I've been told reaches an estimated $1.5 billion in lost U.S.

sales annually. I was wondering—and it's not immediately germane to your trip to China, but what effort is the USTR undertaking with respect to intellectual property protection in, say the countries I just enumerated, especially in the context of the announcement of special 301 in April?

Ambassador KANTOR. Number one, we'll address that issue in April at special 301. Number two, I've recently had meetings with my Brazilian counterparts on that issue. They have again committed themselves to addressing the problem in an effective manner. President Cardozo will be here, as you know, on April 20 to meet with President Clinton. We have also had numerous conversations with Argentine officials, including with President Mina. I've had those personally with him. We've made it clear to Brazil and Argentina, as well as to India, that we are not going to stand idly by and allow patent rights of American companies to continue to be violated.

Number three, we have also said that we believe that it is critical that each of these countries implement their TRIPs, or intellectual property requirements under the Uruguay round, which they have signed onto to be implemented more quickly than the period which is called for in the TRIPs agreement.

Let me assure this committee that we are not going to leave this area and this subject unaddressed. I want to be somewhat cautious in advance of—as you would I think advise me to do—in advance of our special 301 review which we come out with every year. But let me make it clear, these are serious problems. They're as serious as what we addressed in China. And just as we were resolute and focused with bipartisan support here in this committee and in the Congress on the Chinese issue, we're going to follow the same pattern with regard to Brazil, with regard to Argentina, with regard to India.

Let me say, in our negotiations over Chile's accession to the NAFTA, there are certain problems with Chilean law and Chilean enforcement in the intellectual property that we'll be addressing as well during those negotiations.

Chairman CRANE. On the question of the WTO, Ambassador Barshefsky has indicated already that the Chinese accession offer to date has been inadequate from your perspective and that you will not give China developing country status. I'm wondering, are you considering recognizing that China has certain features for a developing country, and how would you ease the ability of China to accede? Are you, for example, considering developing country status with respect to intellectual property which would give China a 10-year phase-in of these obligations?

Ambassador KANTOR. Our position is we should maintain some flexibility. For certain limited purposes China is a developing country. For almost all other purposes China is not and is a major economic power. Let me indicate where we are in terms of our negotiations with China. The United States has taken the lead in these negotiations in terms of their accession to the WTO.

First, in market access, China must be comparable commitments to those secured in the Uruguay round in goods, services, and agriculture. For instance, in the zero for zeroes—remember, we have 10 categories of zero for zero where tariffs go down to zero—and

in chemical harmonization, just to mention two examples where we're insisting on that.

Second, in the transition, which is part of what we call protocol issues, the scope of any special provisions as China transforms its economy. In basic obligations, immediate uniform application and transparency of trade rules throughout China. That is critically important if we're going to operate and our companies will operate successfully in that economy, to have transparent rules and regulations.

In national treatment, that U.S. companies that operate in China have the same market opportunities as Chinese companies. In trading rights, the right to buy and sell directly to any Chinese company, which are severely restricted right now. In the foreign exchange, that this not be used as a barrier, a disguised barrier I would say, to trade.

There are also some Chinese-specific problems that need to be addressed; State trading subsidies, industrial policies such as conditions for access to China's market, access to technology, local content, which affects autos and electronics. And of course, other areas where LDC status would have some effect using balance of payments, infant industry to protect domestic markets and so on.

So we are requiring that China take on the same obligations, as they should, as everyone from Bangladesh to Brazil has taken on. We think we should require nothing less. However, just as in the case of those other countries, there is some flexibility. I believe it would be not appropriate and certainly not realistic to assume that China can take on every obligation that the most developed nations have taken on immediately. However, there is no excuse for China not to take on the basic obligations of the Uruguay round and the WTO, to become a member, in order to gain that accession on a commercially reasonable basis.

Chairman CRANE. In that context, are you planning to initiate any overtures to them or are you waiting for them to give you some kind of a signal first?

Ambassador KANTOR. The ball is in China's court. If China wants to come back to the table to engage in discussions regarding accession to the WTO we'd be pleased to join them at the table. But we have to hear from the Chinese first.

Chairman CRANE. I thank you very much for your testimony, Mr. Ambassador, and want to wish you a safe journey. We look forward to hearing from you on Monday or after Monday when you get back.

Now, Mr. Thomas.

Mr. THOMAS. Thank you very much, Mr. Chairman.

Obviously, this is an important step for the Nation, but I join my colleague from California indicating our thanks because of the work in two specific areas, intellectual property rights and agriculture. Not just because California happens to be on the Pacific rim, but given the size and importance to the Nation's economy, not to mention California's economy, I want to thank you.

Notwithstanding the agreement with Beijing, I want to underscore some points that you made that have concerned me over time in my visits with Chinese officials and the discussions that we've had. I hope they're beginning to understand the fundamental im-

portance of uniformity of enforcement at their multiple ports of entry. I know it's going to be difficult for them and they still have, in some ways, a developing country structure in terms of being able to provide really consistent, uniform enforcement.

In addition to that, the continued selective use of nontariff barriers, and most specifically, the political use of phytosanitary standards with no scientific basis in the agricultural area continues. They seem to be willing to meet and discuss, and I hope as you move forward in these agreements that you'll reinforce that.

Mr. Chairman, I do not want to unduly burden the Ambassador. He's got a major task in front of him. I would like to then ask for the record if I may submit a series of written questions to the U.S. Trade Representative so that I can get responses.

As you might guess, it's in the areas that I usually send the written questions over. But I want to underscore how pleased I am with the progress that you've made. Thank you very much.

Ambassador KANTOR. If I might just, Mr. Chairman, respond to Mr. Thomas' observations. First of all, we'll answer your questions quickly. But number two, let me say specifically addressing grapes, apples, other fruits. The Chinese have used sanitary and phytosanitary regulations without any scientific basis as a way to keep U.S. products out of the market.

Grapes are an obvious example using what I think is an unfortunate basis, the medfly in California, which has no basis in fact whatsoever—none. And on the basis of that have kept other fruits out, including apples from Washington. They look at the United States as one whole region which is, of course, nonsensical.

We addressed that issue and continue to address that issue in the WTO accession talks in Geneva. I plan to raise that this weekend with my counterparts in Beijing. Let me assure you, this is high on our agenda and we'll continue to raise it. We're not going to approve accession of China to the WTO until these kinds of issues are addressed.

Mr. THOMAS. I thank you for that comment very much.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman.

I just have two questions, Mr. Ambassador. One is that with the Uruguay round now being implemented, the reduction of tariffs now are in place or about to be in place over the next 10 years. All countries that receive MFN status, most-favored-nation status, get that reduction of tariff even if they're not a member of the WTO. China obviously has MFN status at this particular time. So China benefits even though they're not a member of the WTO with the reduction in tariffs from the Uruguay round negotiations.

As you know, in the implementing legislation that we passed last December we have given the President through your offices the authority to provide for a snapback provision, to raise those tariffs back up to what they were prior to the Uruguay round negotiations if a country is not a member of the WTO, or if the country has not allowed access to their markets. Are you prepared under certain circumstances with the Chinese, outside of the intellectual property area, to use this authority and also perhaps go back and look at

some of these areas where tariffs might increase even though they might have MFN status?

Ambassador KANTOR. We are prepared, under the appropriate circumstances and under the procedures set out in section 301, to use our trade laws when and if necessary in order to address issues regarding China or any other nonmember of the WTO.

Let me add a parenthetical remark. One of the major features that I think we all agreed on in the Uruguay round was, it is a single undertaking. In other words, we have gotten away from the MFN free rider problem and all countries who become a member of the WTO or accept the Uruguay round agreement, have to play by the same rules after some phase-in for the developing countries. It is an enormous step forward.

Now for China or any other nonmember, we have other options. One is bilateral agreements such as this IPR agreement, or a market access agreement, or an agreement on agriculture, or an agreement on textiles as we reached last year which has worked very well. I'm sure Mr. Payne would want to talk about that, if I anticipate some questions this morning. The fact is that because China is not a member of the WTO we are able to use our trade laws in just the way you articulated your question. We would be prepared under the appropriate circumstances to do it.

Let me add though, it's always I think somewhat misleading if I indicate how quickly we would be willing to use our trade laws, without saying what we want first is agreements; agreements that work. We want to open China's market. We want to make sure that what's happened over the last 10 years begins to be resolved.

What is that? Ten years ago we exported 3.8 billion dollars' worth of goods to China, goods and agriculture. They exported to the United States 3.1 billion dollars' worth of goods. In 1994 China exported 38 billion dollars' worth of goods to the United States and we exported 8.8 billion dollars' worth. We had almost a $30 billion trade deficit. Much of that trade deficit is based upon the fact we didn't have market access to China. They were using licensing and quota requirements to keep our products out. They were pirating intellectual property. They were using sanitary and phytosanitary regulations to keep out agricultural products. We must address that issue.

So as we go forward we'd like to reach agreements, but not at any price. We'll use our trade laws where appropriate, but in a responsible manner. But you're absolutely correct, we have that facility to raise those tariffs in the form of a snapback if and when appropriate.

Mr. MATSUI. I appreciate that response because I think as our commercial relations with the Chinese continues to mature we're going to find other opportunities where their markets perhaps might be closed or not open to this and this tool obviously will be a very great help.

If I can just ask one very quick further question, Mr. Chairman?

Chairman CRANE. Yes.

Mr. MATSUI. I know my time has run out. You mentioned that the European countries are standing with us in terms of the WTO accession of China. I think they demonstrated that support with us last year. There's some feeling that many of the European coun-

tries, Asian countries that are in the WTO look upon allowing China to come into the WTO more as a political exercise rather than on, as you mentioned, a commercially reasonable basis, which I think is the appropriate measurement.

Do you feel that the countries that are working with us and staying with us on this issue will continue to in the future? And perhaps this is a question that shouldn't be discussed in a public forum, but it seems to me to be one in which we need to have some assurances from our trading partners that they'll stick with us.

Ambassador KANTOR. In the final 2 or 3 months of the negotiations regarding China's accession in Geneva, I think it's fair to say that through the advocacy on the part of the United States by our officials and, frankly, the good common sense of our trading partners, we all came to the conclusion that the only way we'd support China's accession is on a commercially reasonable basis. I believe that our trading partners will stick to that position. The European Union was resolute in that.

We had some discussions, as you know, in the summer of 1994 where there was some disagreement. But I think it is clear now that almost all—not all—almost all of our trading partners agree with us on that position.

Mr. MATSUI. Thank you very much, Mr. Ambassador.

Chairman CRANE. Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

I too want to join my colleagues once again in commending you, Ambassador Kantor, Ambassador Barshefsky, and your lean but very effective and efficient staff in terms of what you've been able to accomplish relative to the intellectual property agreement with China. It's truly an important conclusion and one that I'm very pleased that we reached and reached when we did.

As you mentioned, I do want to turn my attention, my questions, to the textile area. Let me try to put this in some perspective. You mentioned that we have a $29 billion trade deficit with China; textile and apparel account for almost $5 billion, $4.9 billion last year in 1994. It's a particularly lopsided situation where we received 4.9 billion dollars' worth of goods from China. We actually only exported 40 million dollars' worth into China. So that the difference is that we receive more than 100 times the amount of goods into this country that we ship.

I really have two questions. The first one then deals with market access and your comments about where we are and where we're going relative to market access in the textile and apparel area.

The second one has to do with something that you alluded to earlier, and that is the Memorandum of Understanding that was reached in 1994 as a result of the transshipment problem. In addition to the $4.9 billion, the Customs Service says that there's probably another $2 billion that come into this country from China that's transshipped. Others would suggest it's higher than that, maybe as much as $4 billion. We last year reached an agreement that reduced the rate of growth of the textile quota. It also had some tough new transshipment procedures.

If you would also then comment, in addition to market access, where we are in terms of the Memorandum of Understanding of

January 1994 and what has been implemented in the past year. I would appreciate that very much.

Ambassador KANTOR. First let me speak about market access. As you know, that is part not only of our MOU in 1992, which I will be discussing this weekend, access of textiles and apparel to China, but it's also part of the accession negotiations, China's potential accession negotiations, assuming China expresses a desire to come back to the table. As part of those accession negotiations we insist, of course, that China, like everyone else, as a result of our willingness to phase out the multifiber arrangement, provide effective market access.

As you know, Ambassador Hillman has been, frankly, wildly successful in getting those kinds of agreements, including with India and Pakistan which some predicted we'd never be able to reach, but we did. We insist, of course, we are going to insist that China reach the same kinds of agreements. They won't be the same in every aspect. That's number one.

Number two, let me talk about the 1994 agreement which came as a result of invoking sanctions in the textile area when China refused to reach agreement with us in late 1993 on an effective new bilateral textile and apparel agreement. From 1991 to 1992 China increased its exports in this category by 29.9 percent—almost 30 percent. From 1992 to 1993 it increased by 17 percent. In 1994, as a result of this agreement, Chinese exports of textiles and apparel to the United States dropped by 1.4 percent. That is an enormous step forward.

In addition to that, we've been able to identify, with the effective work of our Customs Service, transshipments or circumvention of U.S. laws on the part of some goods coming from China. We just finished consultations last night, in fact late last night on this area. The Chinese have presented us with, frankly, some effective and important documentation to address this issue. But this agreement is being enforced, and enforced, frankly, almost on a weekly basis. I think we can thank the Treasury Department and the Customs Service under Commissioner Weise for his effective administration of that agency.

So this agreement is working, Mr. Payne. But we're going to insist, in addition, on effective market access. Because just like in intellectual property, it's not enough just to enforce the law. If we don't have access to their markets we're never going to begin to address this difficult, difficult trade deficit that we have with China.

Mr. PAYNE. Thank you very much, Mr. Ambassador. I do appreciate the fact that we're seeing some positive results. I look forward to continuing to work with you and your very able staff as we continue to pursue these objectives, and I wish you great success in your trip. Thank you.

Ambassador KANTOR. Thank you very much, Mr. Payne.

Chairman CRANE. Mr. Zimmer.

Mr. ZIMMER. Thank you, Mr. Chairman. Ambassador Kantor, you described many of the concessions that you won from the Chinese in these negotiations. What concessions did the United States have to make in order to reach the agreement?

Ambassador KANTOR. One concession we had to make is we weren't going to impose 100-percent tariffs on over 1 billion dollars'

worth of Chinese goods, which would be the biggest retaliation in American history. That's number one.

We made no other specific concessions except—and this is not a concession. I think it's in our interest—except to supply technical assistance to the Chinese Government in order to implement this agreement. Frankly, we have a much more sophisticated and mature system in terms of customs, or patent and trademark and copyright enforcement, and law enforcement in this area. The Chinese asked for and we were, frankly, delighted to provide that kind of assistance.

So therefore, the concessions on the part of the United States I think are in the interest not only of the Chinese but the interest of our country. Obviously, to get this kind of agreement you would have, I hope, agreed with us that we should have dropped our retaliation on that 1 billion dollars' worth of goods.

Mr. ZIMMER. I certainly do. Did we also drop our claim to compensation for past use of bootlegged software by Chinese ministries?

Ambassador KANTOR. We never had a claim such as that, sir.

Mr. ZIMMER. So we and the companies in this country will never pursue that?

Ambassador KANTOR. First of all, I am not an expert in Chinese law so forgive me. I quit practicing law on January 21, 1993, so let me give you a layperson's estimate of that. I'm not sure whether or not our companies could enforce their rights with regard to the pirating of certain computer software products by Chinese ministries in the past in the Chinese courts. I'm just not an expert and I'm not sure that we have anyone on our staff who is expert enough to be able to give you an effective judgment in that area.

However, the willingness of the Chinese to stop these practices in their ministries, and to provide a budget to purchase legitimate software both from the United States and, of course, any other competitive foreign company, is an enormous step forward. But I couldn't remark or give you a real estimate as to whether or not we would have any legal rights, or our companies would, to pursue past violations in this regard.

Mr. ZIMMER. Just to clarify this prospective use of the software. You're saying that the ministries will not continue to use illegally obtained software?

Ambassador KANTOR. That is their commitment under this agreement.

Mr. ZIMMER. You refer to the technical assistance——

Ambassador KANTOR. By the way, just to add one other note just so we can have as full an answer as possible. Our companies didn't ask for compensation. We, of course, worked very closely with the software industry in reaching this agreement, as we did with other industries, and they never asked us to pursue that.

Mr. ZIMMER. You referred to the technical assistance that we'll be providing the Chinese. It's certainly in our interest to do so. How much do you anticipate that will cost the United States?

Ambassador KANTOR. What we are negotiating and hoping is that other international bodies might provide some relevant financing in order to carry out this technical assistance and the implementation of the systems. Obviously, there will be some cost. Just

the mere fact that going with me today, for instance, are officials of the FBI, Customs Service, Patent and Trademark Office, Justice Department, there are some costs associated with that.

However, I think the small cost involved as compared to the potential benefits are clearly in our favor. So I would suggest that those costs be borne by us. But we also hope that some of the more major costs, implementation of a system and computerization and so on can be financed by international bodies. We're currently in some negotiations with, for instance, the Asian Development Bank, to see if we can provide such financing.

Mr. ZIMMER. Will you be seeking authorization or appropriations from Congress for the cost of the technical assistance?

Ambassador KANTOR. No.

Mr. ZIMMER. Thank you very much.

Chairman CRANE. Mr. Hancock.

Mr. HANCOCK. Thank you, Mr. Chairman, and welcome, Ambassador Kantor. I've got a couple of questions that I'd like to ask about, but we've discussed them in previous conversations so I'm not going to ask about them again. I would hope that we could get those situations resolved there before too long. I know you're doing everything you can on it.

One of the things that I'd like to just have part of the record here, if I could, is the declining value of the American dollar. Are you going to be considering this in your negotiations on this trade agreement on the trip you're going to be making?

Ambassador KANTOR. This is going to be an uncharacteristic reply for me, Mr. Hancock. Secretary Rubin speaks for this administration with regard to the dollar. So I think I'm going to allow him to answer that question, not me.

I will say in terms of our other conversations about bedding products and so on with regard to Mexico and tariffs, we're doing everything we can to reduce those tariffs in the four categories that we have talked about. I would like to report to you today we have met with success. We haven't. I'd like to even report we've made great progress. We haven't. But we have raised that in every meeting with our Mexican counterparts and we continue to do so. I think we have an opportunity, frankly, as we enter into the accession of Chile into the North American Free Trade Agreement to address that problem in an effective manner.

Mr. HANCOCK. Thank you very much. I agree with you that our monetary policy is the responsibility of Secretary Rubin. However, I don't think that the Ambassador of Trade and the Treasury Department of our Government should be operating just completely autonomously. I think that our trade negotiations should be related to our monetary policy because the declining dollar does affect our trade posture.

To me, we should address those in conjunction, looking at the whole picture instead of just part of it. I think the Ambassador of Trade and the Secretary of the Treasury should be considering the effect of our trade discussions on what's happening to the American dollar.

Thank you, Mr. Chairman.

Ambassador KANTOR. Let me just say, Mr. Hancock, I'm in constant communication with Secretary Rubin, with the new chair of

the NEC, Laura Tyson, and with other of my counterparts with regard to this and many other problems. So you can be assured we're talking about this.

Mr. HANCOCK. Thank you.

Chairman CRANE. Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman. Chairman Crane indicated a couple moments ago, Mr. Ambassador, that trade really wasn't the answer for everything, but he accepted that as the best measure of promoting human rights and other initiatives. What was different in this scenario in terms of rounding up business support for your position? It was almost monolithic, even businesspeople back home who had said to me in the past that they were skeptical of imposed sanctions, this time around they pretty much gave you a blank check.

Ambassador KANTOR. In the main, it's the magnitude of the problem. I think everyone recognized throughout American industry, regardless of whether they had a major stake in the intellectual property rights area protecting products or a not-so-major stake, that if we didn't address this problem effectively or show we would use our trade laws, they would be subject in their own particular area as they tried to do business with China to the same kinds of restrictions, quotas, licensing requirements, failure to provide access, lack of access to the courts, all the things that have been plaguing the intellectual property rights protected products.

So I think our industry correctly saw this as a long-term problem that needed to be addressed and it was in their interest, in the interest of the country frankly, to address it now and address it in a way that was effective. And they recognized, to their credit, that if they didn't stick together and support us, as all of you on both sides of the aisle have done which we appreciate so much, then we would be undercutting these negotiations and we would never have reached an agreement.

So everyone from—I won't mention the companies, but those who had pending contracts, large pending contracts who were frankly threatened by the Chinese publicly and privately, stood firm. And two good things happened. Number one, we reached an agreement. But number two, those contracts were not in any way affected adversely.

Mr. NEAL. Thank you. Ambassador Barshefsky, I watched one of the electronic media's reports, I think it was on that Sunday evening when they reported that the talks had collapsed. You looked pretty dismayed as you came out of the negotiations and got into a car. The next morning the situation was transformed. So, I assume at some juncture you got their attention. Would you just care to give us some background? Was there one event or exchange that got their attention?

Ms. BARSHEFSKY. I don't think there's any one event. Part of this, of course, is the nature of negotiation. By definition they go to the last minute, and by definition progress is slow or progress isn't made until the last minute. We were at a critical juncture. Ambassador Kantor and I had had many phone calls that day and into that night. We concluded that our positions were quite sound and that we were in a position to simply bide our time and that's what we did.

Mr. NEAL. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Shaw.

Mr. SHAW. I'm somewhat amused by that answer because it looks like what you did was adopt their form of trying to figure things out, and I congratulate you and the administration for doing an excellent job in that. I think you're certainly to be complimented.

Knowing, Ambassador Kantor, just what goes on inside China, which is a much more capitalistic society as you go south in the country, what is the inner working of the Provinces to the Central Government? How can we be sure that the agreements that we get from the Central Government will be enforceable in the Provinces?

Ambassador KANTOR. One of the more important things we insisted upon is in the enforcement procedures that subcentral governments be involved in those enforcement actions as well as those enforcement procedures. Our negotiators recognized early on that if that didn't happen, as you suggest, it would be very difficult to enforce these laws from Beijing. However, Beijing has committed, and we will follow up with, and I may even be able to have some meetings this weekend with Provincial leaders, to implement enforcement at the subcentral or Provincial level. As you suggest, that's a much more effective way of proceeding.

Mr. SHAW. Did the Provinces participate in the negotiations, or were they present during the negotiations, to your knowledge?

Ambassador KANTOR. No, but we are satisfied, at least for the moment, that there will be followup and an effective addressing of this issue. We made it clear that there couldn't be enforcement without the subcentral or Provincial level being involved. The Chinese Central Government agreed to that. It's part and parcel of this agreement and we, of course, have to make sure that occurs.

Mr. SHAW. Thank you. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Thank you. Mr. Ambassador, good to see you. I hope you have a wonderful trip. I thank you for all you're doing for our country. I think you're doing a great job. You're persistent, you're tough, you wait people out. It's just the right mix that we need in somebody in your position.

It would seem to me that what you're doing, and I'm not saying anything that's brand new, is probably as important as anything because the Chinese people—and I go back to this wonderful book. I don't know whether you remember it, "General Stillwell and the American Experience in China." Basically there's a great camaraderie between the United States and China, has been for many, many years. So they want to work with us.

But it seems to me that there are three things that are important. First of all, that somehow they establish a system of laws. It seems everything is done by sort of administrative fiat. Therefore, it confuses the companies and they are not really quite sure how to operate because those fiats change from time to time.

Another thing is that trade is both ways. If you're going to have a wonderful, fine, consistent trading relationship it must help both parties, not just one.

And the third area, and I'm sure you realize this far better than I, that there are rules. We don't expect them to be disciplinarians, but we do want them to establish a sense of fairness and under-

standing and consistency. So I applaud you on what you're doing. I think it's wonderful you're going and I wish you a great deal of luck.

Ambassador KANTOR. Thank you. If I could just—thank you first of all for those overly kind comments. We couldn't agree more with you. This agreement is replete with commitments on the part of China to develop a system of laws in this area. As I said—I'm not sure if you were in the room or not, Mr. Houghton—that building a system of laws, and reforming their courts in this area, and allowing greater access, and treating foreign companies the same as you treat Chinese companies in this area, preserving evidence, all the things we take for granted, of course, in our system. Beginning to implement those changes and reforms will have not only effect in the intellectual property rights area, which of course, it will, but also in other areas as well. That's an important step forward.

Number two, trade has to be reciprocal. We cannot, under the current situation—and I just noted Dr. Kissinger had an op-ed piece in the Washington Post this morning and he talked about the spread of economic and political power around the world, and certainly that's what happened. We've gone from a unipolar economic world where from 1945 to 1973 we were unchallenged as the economic power in the world, to a tripolar world where Japan, the European Union, and the United States, of course, led the world and remain the economic powers, to a spread of economic power around the globe.

Now that is both a challenge as well as an opportunity. As economic power spreads we grow a middle-class industrialized society and that means we are greater markets for our goods which we desperately need if we're going to continue to raise our standard of living.

However, for it to work we can't have a free-rider system. I was talking I think to Mr. Matsui, we were speaking about that earlier. It has to be reciprocal. The laws have to operate fairly. If we allow access to our market, then we need a corresponding or comparable access to the markets of other countries as well, and China would be an example.

Last, of course, rules are critical. If you're going to have rules it not only helps our companies or other foreign competitive companies, it helps the Chinese as well. If companies believe around the world they can come into the Chinese market and be protected and there's a rules-based society and they can rely with certainty on how they're going to be treated, obviously they're going to invest more in that economy. And it's going to help China and it's going to help our companies as well.

Chairman CRANE. Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman. Mr. Ambassador, Madame Ambassador, I want to thank you both and everyone at the USTR's office for your hard work on the agreement. Like virtually everyone on this committee, I had a number of constituent employers who lost a lot of sleep, and a number of constituent employees who were worried about losing their jobs because of a number of items listed on the possible retaliation list. Your office was very very receptive to our input, and very responsive to my constituent companies and I appreciate that effort. I'm very pleased, like every-

one, that the retaliation effort was unnecessary. I really do applaud your tenacity in this regard.

I just want to follow up, if I may, on the line of questioning by my colleague from Missouri. I understand jurisdiction and authority, but I also understand that the value of the dollar is certainly relevant to trade policy and certainly it can't be argued that it's not central to the work of this committee. Implicit in your response, Mr. Ambassador, was that you're at least as concerned about the value of the dollar as Chairman Greenspan indicated in his testimony up here yesterday.

Can you tell us what our trading partners are saying about the value of the dollar? I know you interact with them virtually on a daily basis.

Ambassador KANTOR. Without exception, I think we've all taken the same position. I'm going to again walk away from this question. The trade ministers, economic ministers I deal with, literally on a daily basis, have really left this question up to their finance ministers. It's not helpful, or even appropriate to speak about currency except with one voice from any government. I think in this Government it's Secretary Rubin and I think I'll leave that up to him.

Mr. RAMSTAD. I respect that and I guess we'll have to pursue it through other channels. So again, thank you for your work on the agreement and for being here today.

Ambassador KANTOR. Thank you,

Mr. RAMSTAD. Thank you, Mr. Chairman.

Chairman CRANE. Ms. Dunn.

Ms. DUNN. Thank you very much, Mr. Chairman. Mr. Chairman, I want to thank you for having this important hearing this morning. Ambassador Kantor, as you know, I am from Washington State where trade accounts for two out of every five jobs in our State. China, of course, is a very large and growing percentage of our current and our future export market.

As the home of Microsoft, Nintendo, and hundreds of smaller software companies we are very, very concerned regarding the question particularly of intellectual property rights. I want to compliment you, Ambassador Kantor, on the recently negotiated agreement. Among other things it includes these items that are of special importance to us, the protection of video games within the definition of software; the immediate implementation of an enforcement action plan under the supervision of the Chinese State Council; the provisions to include actions against State-owned enterprises, who have been some of the most egregious abusers; and the provision regarding access to the Chinese markets.

My compliments on this agreement. We thank you for the fine work you and your staff have done. But due to the past level of abuse in this area I believe, as I'm sure others have told you, that it is very wise that we all remain somewhat skeptical until we have validated the information regarding the implementation of the provisions by the Chinese.

I know Mr. Zimmer and others have inquired about the intellectual property issue and I wonder if you might now, for purposes of my education, talk specifically about what the Chinese Government must do in order to ensure the legal use of software within its ministries.

Ambassador KANTOR. The Chinese Government—and I think I even remember the page number. I think it's page 5 of the letter of agreement, if I'm not mistaken—has committed itself to not using illegal or pirated software in their operations, and to provide the requisite budget increases in order to purchase legally acquired software.

The second is as important as the first. One of the problems has been that there's been no budget in these ministries to purchase legally produced software. So we wanted both commitments and Ambassador Barshefsky was able to gain both. One, to quit using or discontinue the use of pirated software, and to purchase, of course, legal software. We believe that's an enormous step forward.

Ms. DUNN. Good. Thank you.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman.

Ambassador, I want to ask not only about the agreement and how those in the ministry who may follow the present leadership may feel about the agreement on intellectual property, but also the concern about those in the Provinces and whether they were brought into this agreement and their feelings about this agreement and China's desire to join the WTO.

Ambassador KANTOR. Let me take your first question. In the agreement, the Provinces and 22 cities and their officials are officially brought in as part of these enforcement task forces. That was critical to all of us as we negotiated this agreement. We recognized, as you obvious recognize, that without a commitment for the Provinces to be involved, enforcement would be more problematical than it is under the current agreement. That was one of the most important aspects of what we were able to achieve.

We believe that commitment will be carried out. However, we're obviously not going to take that at face value. We'll work closely with the Chinese. The ability, frankly, to establish U.S. companies and trade associations in China and to provide technical assistance and the detailed data that has to be provided in the quarterly consultations all will ensure, we believe, either this agreement works correctly and we have not only Central Government but Provincial enforcement as is called for under the agreement—it's called subcentral enforcement—but that we can monitor compliance in other areas as well. That aspect of subcentral involvement and monitoring and technical assistance all go together to, we think, make this an effective agreement.

Mr. CAMP. For those U.S. companies that have lost money as a result of previous action, under the WTO what proceedings would be available to them to attempt to get compensation?

Ambassador KANTOR. First of all as I indicated earlier, our companies didn't ask us to either negotiate nor have they asked for compensation. Number two, I'm not an expert in Chinese law. However, I assume our companies could review and make a decision whether they could pursue compensation within the Chinese courts. Number three, of course, China is not a member of the WTO. Therefore, there would be no way to pursue dispute settlement in a WTO procedure.

Mr. CAMP. Thank you very much.

Thank you, Mr. Chairman.

Chairman CRANE. That concludes our hearing. Again, we want to express congratulations to both you and Ambassador Barshefsky and wish you Godspeed on your trip. Safe journey and we'll see you next week. Thank you so much.

Ambassador KANTOR. Thank you, Mr. Chairman. Thank you very much.

[Whereupon, at 10:53 a.m., the hearing was adjourned.]

[Questions for the record to Ambassador Kantor, and his responses follow:]

## FOLLOW-UP QUESTIONS ON CHINA ISSUES

General

**Question 1:**

**We all agree that our growing bilateral trade deficit with China, which reached nearly $30 billion in 1994, is a cause for concern. Please put this bilateral trade deficit into perspective for us by indicating, for example, what is the size of China's overall exports and imports; what percentage of Chinese exports come to the United States; whether other developed countries, particularly Japan and the EU, run big trade deficits with China; and whether other countries are seeking additional market access to China through bilateral negotiations (in addition to China's WTO accession).**

Answer 1:

China's overall global balance of trade now exceeds $200 billion annually and China is the world's 11th largest trading nation. Approximately 40 percent of China's exports now go to the United States. While figures for 1994 trade with China are yet available, if trends over the past year hold, both the EU and Japan will have greatly increased exports to China. To the best of our knowledge, the EU has engaged in bilateral market access discussions with the Chinese outside of the WTO accession context. China routinely engages in consultations with other trading partners on trade issues, some of which clearly involve market access issues.

**Question 2:**

**Now that the threat of U.S. retaliation has passed as a result of reaching an IPR agreement with China, what is the status of Chinese compliance with the 1992 bilateral market access agreement? Will they proceed with other market opening efforts? How?**

Answer 2:

USTR will hold bilateral consultations on implementation of the market access Agreement on March 28-29 and we would be delighted to discuss the results of those consultations with the Committee once they have been completed. During Ambassador Kantor's visit to China on March 11-13, the Chinese announced that they were lifting their "suspension" of the market access Agreement and would, by no later than March 31, 1995, eliminate quantitative restrictions on products specified in the annex to the Agreement. The Chinese also moved forward on market access for U.S. agricultural products -- also a result of the visit.

Over the next two years, under the Agreement, the Chinese will eliminate 90 percent of all non-tariff barriers, and open markets to a broad spectrum of agricultural, electronics, heavy machinery, textile and apparel, and wood products.

**U.S./China Intellectual Property Agreement**

**Question 1:**

**What was the role of the Chinese leadership in reaching the Agreement? Are you assured that the highest levels of the Chinese government have agreed?**

Answer 1:

During Ambassador Kantor's visit, Chinese leaders -- from President Jiang Zemin to trade Minister Wu Yi -- expressed support for the IPR enforcement agreement. We can only assume therefore that the highest levels of the Chinese Government are in agreement. In fact, virtually all of the senior Chinese leaders with whom Ambassador Kantor met praised the Agreement -- and the negotiating process that led to the agreement -- as a "model" for other U.S.-China negotiations.

**Question 2:**

**What is our recourse if China breaches all or part of the Agreement? How quickly could we impose sanctions?**

Answer 2:

USTR is monitoring the Agreement under Section 306 of the 1974 trade act. Should China not comply with the terms of the Agreement, Ambassador Kantor has broad powers under the Act to take expeditious trade action against China.

**Question 3:**

**How does this agreement compare to IPR agreements such as those negotiated with Taiwan and Korea? How does the enforcement mechanism compare to that included in the Taiwan agreement? Will this agreement be used as a model in future negotiations with countries that have good laws but bad enforcement?**

Answer 3:

Each agreement addressed specific enforcement problems and so, to that extent, the agreements are quite different. When negotiating the Agreement with China, USTR negotiators drew heavily on our previous experiences in Korea, Taiwan, and in Singapore, Thailand, Malaysia, Italy, Brazil and other countries as well.

**Question 4:**

**If a U.S. company believes that its IP rights are being violated in China, please describe specifically how it can seek recourse under the agreement and be satisfied that the Chinese government? Under what authority? If it is not satisfied by the Chinese government, under what authority may the company approach the U.S. government?**

Answer 4:

One of the key components of the Agreement is access to the Chinese enforcement regime by U.S. rightholders. The Agreement describes in detail points of access to both administrative enforcement agencies as well as special task forces set up to curb piracy. In addition, by December, 1995, each Chinese enforcement agency will publish a booklet that describes in detail steps that rightholders must take to gain protection for their copyrighted works, patents, or trademarks.

**Question 5:**

**It appears that the agreement will make it easier for U.S. companies to establish certain joint ventures in China. Aren't other reforms necessary in China -- broader than intellectual property -- to make this portion of the agreement meaningful?**

Answer 5:

Clearly, China must take many more steps if it is to become a market economy fully integrated into the multilateral trading system under the WTO. Nonetheless, the Agreement will permit greatly expanded trade in audiovisual, published, and computer software products -- either through investment in joint ventures or exports of products into the Chinese market.

**Question 6:**

**Are there any major issues in the intellectual property area that were not resolved by the agreement that we will have to pursue with the Chinese in future negotiations? Does China have to take further steps concerning intellectual property in order to be in conformity with the new TRIPs requirements?**

Answer 6:

China must take a number of additional measures to bring its IPR regime into compliance with the requirements of the TRIPs. During the negotiations, we discussed those requirements with the Chinese in some detail -- and expect to continue to do so, both on a bilateral basis, and of course, in the context of China's wish to accede to the WTO.

**Question 7:**

**Do you have a dollar estimate of the positive economic impact that should accrue to the U.S. intellectual property industries as a result of this agreement?**

Answer 7:

At a minimum, U.S. industries will save up to $1 billion in losses and will generate considerable revenues on the positive side from the expanded trade and investment opportunities that will result from the Agreement.

**Question 8:**

**A major concern of some of our high technology companies (particularly in areas such as biotechnology and electronics) is that some countries, such as Japan, only permit a very narrow scope of claims on their patents so that a very small change in an invention places it outside the scope of the patent. This makes it very easy for other companies to use legally our companies' patented technology in those countries in a way that would be illegal in this country. Are you aware of this problem in Japan, do you intend to address it in the context of Special 301, and is it a potential problem in China?**

Answer 8:

-- We are very familiar with the problem of the narrow scope and interpreation of patent claims in Japan.

-- We raised this issue during the Framework IPR negotiations with Japan over the past two years but were unable to resolve the problem.

-- In the context of this year's special 301 review, we received a number of private sector submissions highlighting the seriousness of this problem.

-- Genentech, a California biotechnology company, requested that we identify Japan as a priority foreign country this year due to this problem.

-- We are in the process of making our Special 301 decisions for 1995 and will carefully consider all of the private sector submissions.

-- We are not aware of any complaints from the U.S. private sector on similar problems in China.

**WTO Accession**

**Question 1:**

**Although there are many outstanding issues in the negotiations on Chinese accession to the WTO (e.g., market access, China's status as a developing country, special safeguard arrangements), what in your view are the most important issues that remain to be resolved?**

Answer 1:

We need to complete a commercially viable accession package. Such a package must include detailed commitments on how China will adhere to the rules of the WTO -- these will be contained in the protocol and working party report. Additionally, China, like any other WTO accession applicant, must agree to open its market and provide schedules of concessions in goods, produce an agricultural country schedule on export subsidies and internal support and specific commitments to open its market in services.

As indicated at the hearing, the issues remaining are complicated and related to one another. China's accession is a unique and challenging exercise for all of us. China's willingness to deal with the substance of the issues, rather than debate labels such as LDC status should make it easier to make progress. For market access in goods and services, we believe that it is important for China to make commitments comparable to those received from major trading nations in the Uruguay Round in goods and services (e.g., chemical harmonization, joining the sectoral duty-free initiatives, meaningful services commitments, and an appropriate agricultural schedule.

With respect to protocol issues, clearly the scope of any transitional provisions as China transforms its economy will be the subject of hard negotiations. China has yet to fully agree to adhere to basic WTO obligations such as transparency and uniform application of its trade regime throughout China, or to provide national treatment that would provide U.S. agriculture and industry the same opportunities as Chinese producers of similar products. Trading rights, or the right for our companies to buy, sell and distribute products in China is also a difficult issue, as is assuring that China does not use foreign exchange requirements as a barrier to trade. In terms of trade rules, there are issues with respect to remedies such as the selective and special safeguard and respect for subsidies discipline. China's industrial policies raise specific concerns about China's readiness to adhere to WTO rules. Finally, we will have to address the issue of what China can and cannot do as it transforms its economy.

**Question 2:**

**During your testimony, you stated that although China must meet the basic obligations of the WTO in order to accede, some "flexibility" should be given to China concerning whether China should be given developing country status in other areas. Specifically, which conditions could be affected by such "flexibility"? Are you considering recognizing that China has certain features of a developing country? What features are affected" How would this case the ability of China to accede. Are you considering developing country status with respect to intellectual property, which would give China a ten-year phase in of these obligations?**

Answer 2:

We need to craft a protocol package that enables China to adhere fully to WTO rules and disciplines. In meetings with Trade Minister Wu Yi in Beijing, we agreed to address realistically the issue of China's status as a developing country. This was significant, because it means that we will finally move away from labels and address China's substantive concerns with meeting WTO obligations. The Chairman of the Working Party had provided a compromise in November that we thought was workable. The language would allow a specific item by item negotiation of commitments, recognizing that "some features" of China's economy are features of a developing economy. China rejected this compromise in December. It now appears that this offers a realistic way forward. We have discussed, what, if any, transition periods should be made available to China drawing from the LDC provisions and look forward to reviewing the issues with the Chinese. In terms of negotiations, the least number of transition periods are desirable.

**Question 3:**

**China is impeding exports of California grapes and cherries because of alleged phytosanitary problems with California industry believes can easily be resolved. Are you planning to address these issues when discussing China's accession to the WTO?**

Answer 3:

We have been very strong on this issue in our accession negotiations. The issue is one of credibility. China has said that it can and will adhere to the terms of the Uruguay Round Sanitary and Phytosanitary Agreement. Solving these issues, as we believe we have started to do as a result of Ambassador Kantor's trip, will increase China's credibility that it can and will adhere to multilateral rules in this area.

**Question 4:**

**We understand that China has balked at the inclusion of a general safeguard mechanism in the WTO accession protocol. The safeguard mechanism would all the unlimited withdrawal of concessions indefinitely by any of the trading partners if they are unsatisfied with China's progress on trade disputes. What are your vies on inclusion of this safeguard mechanism. Doesn't it really highlight the depth of or trading partners mistrust in China's trade regime and its commitment to be a fair dealer in the world trading system?**

Answer 4:

The draft text contains a proposed product-specific selective safeguard as well as a general safeguard mechanism. The Chinese accept the concept of a product selective safeguard, although the details have yet-to-be completed in this vitally important area. The general safeguard mechanism is somewhat different and has been included in a number of protocols for countries that were in the process of adopting market-oriented trade regimes. During the period of transition such a safeguard is appropriate, and should not be read as an indication of mistrust. It is there as "safety valve," as it has been in other protocols of accession.

**Question 5:**

**Will Jackson-Vanik restrictions limit U.S. ability to apply WTO rules to China so that we can extend only conditional most-favored-nation treatment to China. Will you ask that the law be amended?**

Answer 5:

Under the terms of Jackson-Vanik, the United States will not be in a position to grant China unconditional MFN treatment in line with Article I of the GATT 1994 and we will take appropriate steps to reflect this situation in the WTO when the accession negotiations are completed. The Administration does not currently have any legislative proposal to revise these provisions with respect to China.

**Question 6:**

**How does the uncertainty in the leadership situation in China impact on accession talks, the willingness of the Chinese to meet our demands, and the move toward a market-oriented economy?**

Answer 6:

Clearly, the Chinese leadership can make important decisions and, while they may deadlock on a particular issue, they have demonstrated repeatedly in past months that they have the ability to make decisions. In the context of the accession talks, the leadership must make decisions that will also have a long-term impact on the development and orientation of their own domestic economy. For any leadership, whether under a strong leader like Deng Xiaoping or under any other leader, such decisions are very difficult and require a complex balancing of different, and very powerful interest groups. That suggests that the leadership will likely move slowly to resolve difficult accession issues, but it does not mean that they cannot move, if they choose to do so. The current state of the Chinese economy -- high inflation, poor monetary and fiscal controls, highly inefficient state and other enterprises -- and the everpresent, and justified, fear of instability make long-term economic development decisions -- and therefore WTO accession decisions -- even more difficult.

The Chinese have decided, at a political level, that their goal is a market-oriented economy. They have not decided precisely what a market-oriented economy entails, and likely will continue to react to developments in their economy and not take a strongly proactive or dramatic approach to reform.

**Question 7:**

**Does China provide for prompt and adequate administrative and judicial review overall trade-related matters covered by the WTO? Are the appropriate institutions in place, or is reform needed? Will measures related to services trade and intellectual property be covered by judicial review?**

Answer 7:

The draft text we have been negotiating from does contain provisions on judicial review. These provisions have not yet been agreed. The issues outstanding are the scope of the review -- we take the position that it should include all WTO-related areas -- and assurance of an independent review body.

**Question 8:**

**Isn't the huge size of China's state-run sector, even though it has been radically reduced in recent years, an overwhelming bar to China's ability to meet WTO obligations? How will this issue be addressed.**

Answer 8:

The role of the state in China's economy is a major issue in the negotiations and it touches on nearly all the commitments that China must make to adhere to its trade regime. State trading, price controls, subsidies and procurement are all areas that we seek to address in the negotiations. This issue makes the exercise more challenging but we do not believe that the issues are insurmountable if we move through the protocol issue by issue we should be able to address the unique features of China's economy and its transition to a market-based regime.

**Question 9:**

**What is the effect on accession of ongoing bilateral market access negotiations between the United States and China? How are those negotiations proceeding? When is the next round of negotiations and what are the prospects for progress in your view? What about sectors of particular interest to the U.S. such as computers, auto parts, chemicals, pharmaceuticals and paper? Will you press the Chinese for progress in the services sector?**

Answer 9:

China's implementation of the market access Agreement has a direct bearing on accession to the WTO. The market access commitments that China has made in the Agreement are all commitments that China must make in the accession context. If China does not fulfill its obligations in the Agreement, it is difficult to see how China will fulfill such obligations in the larger WTO context.

The next round of market access negotiations is scheduled for March 28-29. By and large, China's implementation of the agreement has been good, but some major areas are still outstanding. China lifted its suspension of the market access Agreement during Ambassador Kantor's March visit to China. China has taken important steps forward in opening its markets to U.S. companies, eliminating import restrictions on more than 800 products, and making access easier for many additional machinery and electronics products. We expect to see China's purchases of U.S. equipment in these areas, many of which involve government procurement, rise dramatically.

In agriculture, Chinese phytosanitary barriers have unfairly blocked market access for U.S. agricultural products, including wheat, citrus fruit, grapes, and leaf tobacco, for many years. China now permits entry for apples from Washington State and limited access for wheat infested with TCK Smut but continues to bar other products. We are asking China to base agricultural standards on sound science, and to open its agricultural markets.

On March 11, during Ambassador Kantor's visit, USDA signed a Letter of Intent with the Chinese Ministry of Agriculture that takes an important step forward toward possible market access for key U.S. agricultural products. In particular, China has agreed to expand access for apples and cherries, and for live animal products.

On a bilateral basis, we have been discussing market access for services for the past year and a half. Limited progress has been achieved to date. During Ambassador Kantor's visit, the Chinese agreed to hold services discussions on value-added telecom services and insurance. In addition, we expect to pursue other services issues -- including advertising, travel services and business services issues.

In the WTO accession context, we are discussing the full range of services -- in particular including financial and banking services. We expect to achieve a services schedule that will lead to substantial market opening over time.

**Question 10:**

**China's restrictions on the right of enterprises to engage in trade are among the most significant limitations on secure access to the Chinese market. How has China responded to this concern? Will it eliminate such restrictions and replace them with objective and generally applicable criteria for the granting of trading rights. If these limitations are removed, will certain products remain within the exclusive domain of designated foreign trade enterprises? What does this mean for U.S. business wishing to do business in China?**

Answer 10:

A satisfactory resolution to the question of "trading rights" will be key to the completion of the accession negotiations. The lack of trading rights by foreigners and, in some instances, Chinese, severely limits access to China's domestic market. This remains a major issue in the negotiations and we are hopeful that China will respond to our concerns. China has already indicated that it will, over time, eliminate the designated rights of companies to trade in certain products. However, the details and the new situation to be created require further information form China.

**Question 11:**

**How will China regulate the trade activities of subnational governments? How will it assure that subnational government authorities will not impose measures in a non-transparent, discretionary, and discriminatory basis. In what areas are U.S. companies most vulnerable to such measures? Does China have the authority to undo measure taken by subnational governments that are inconsistent with international obligations?**

Answer 11:

China has stated that it is prepared to assure that subnational authorities adhere to China's WTO commitments. Part of our work in drafting the protocol and working party report has concentrated on receiving the needed commitments and assurances from China that only WTO-consistent rules will be enforced and that if there is a problem, prompt action will be taken. This has been a matter of general concern to U.S. business rather than an issue raised by one industry. China's central authorities are authorized to assure China's compliance with its international obligations.

QUESTION SUBMITTED BY CONGRESSMAN THOMAS

**Question:**

**China is impeding exports of California grapes and cherries because of alleged phytosanitary problems which California industry believes can easily be resolved. Are you planning to ask China to address these issues when discussing China's accession to the World Trade Organization?**

Answer:

Yes. During my recent trip to Beijing, officials of the U.S. Department of Agriculture and I continued our efforts to resolve these and other outstanding sanitary and phytosanitary (S&P) issues. We achieved some progress with respect to implementation of the 1992 Market Access MOU pertaining to S&P measures which will help establish a positive environment in which accession negotiations can resume. However, we still have substantial work ahead of us in negotiating the detailed and specific commitments of China's protocol package for accession.

Key among the outstanding issues will be agriculture and S&P concerns. The S&P process was advanced during the recent meetings in Beijing. On March 10 and 11, representatives of USDA's Foreign Agricultural Service met with Chinese plant quarantine officials and signed a letter of intent on agricultural technical issues. In the letter, China agreed to conduct Pesk Risk Analyses (PRA) on a commodity basis. This is important as the PRA precedes a protocol for import. The letter of intent also contained a specific Chinese commitment to conduct a PRA on grapes. USDA will be meeting with their Chinese counterparts in April and June to see if we can make further progress on these S&P issues.

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