AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

LEGISLATION RELATED TO TRADE WITH CHINA

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

AUGUST 2, 2007

Serial No. 110–52

Printed for the use of the Committee on Ways and Means

U.S. GOVERNMENT PRINTING OFFICE

49–994 WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON WAYS AND MEANS

CHARLES B. RANGEL, New York, *Chairman*

FORTNEY PETE STARK, California
SANDER M. LEVIN, Michigan
JIM MCKDERMOTT, Washington
JOHN LEWIS, Georgia
RICHARD E. NEAL, Massachusetts
MICHAEL R. MCKNULTY, New York
JOHN S. TANNER, Tennessee
XAVIER BECERRA, California
LLOYD DOGGETT, Texas
EARL POMEROY, North Dakota
STEPHANIE TUBBS JONES, Ohio
MIKE THOMPSON, California
JOHN B. LARSON, Connecticut
RAHM EMANUEL, Illinois
EARL BLUMENAUER, Oregon
RON KIND, Wisconsin
BILL PASCRELL, JR., New Jersey
SHELLEY BERKLEY, Nevada
JOSEPH CROWLEY, New York
CHRIS VAN HOLLEN, Maryland
KENDRICK MEEK, Florida
ALLYSON Y. SCHWARTZ, Pennsylvania
ARTUR DAVIS, Alabama

JIM MCKCRERY, Louisiana
WALLY HERGER, California
DAVE CAMP, Michigan
JIM RAMSTAD, Minnesota
SAM JOHNSON, Texas
PHIL ENGLISH, Pennsylvania
JERRY WELLER, Illinois
KENNY HULSHOF, Missouri
RON LEWIS, Kentucky
KEVIN BRADY, Texas
THOMAS M. REYNOLDS, New York
PAUL RYAN, Wisconsin
ERIC CANTOR, Virginia
JOHN LINDER, Georgia
DEVIN NUNES, California
PAT TIBERI, Ohio
JON PORTER, Nevada

JANICE MAYS, *Chief Counsel and Staff Director*
BRETT LOPER, *Minority Staff Director*

SUBCOMMITTEE ON TRADE

SANDER M. LEVIN, Michigan, *Chairman*

JOHN S. TANNER, Tennessee
JOHN B. LARSON, Connecticut
EARL BLUMENAUER, Oregon
BILL PASCRELL, JR., New Jersey
SHELLEY BERKLEY, Nevada
JOSEPH CROWLEY, New York
CHRIS VAN HOLLEN, Maryland
KENDRICK MEEK, Florida

WALLY HERGER, California
JERRY WELLER, Illinois
RON LEWIS, Kentucky
KEVIN BRADY, Texas
THOMAS M. REYNOLDS, New York
KENNY HULSHOF, Missouri

Pursuant to clause 2(e)(4) of Rule XI of the Rules of the House, public hearing records of the Committee on Ways and Means are also published in electronic form. **The printed hearing record remains the official version.** Because electronic submissions are used to prepare both printed and electronic versions of the hearing record, the process of converting between various electronic formats may introduce unintentional errors or omissions. Such occurrences are inherent in the current publication process and should diminish as the process is further refined.

CONTENTS

Page

WITNESSES

The Honorable Debbie Stabenow, U.S. Senator from the State of Michigan 9
The Honorable Artur Davis, Representative in Congress from the State of Alabama 12
The Honorable Ralph Regula, Representative in Congress from the State of Ohio 21
The Honorable David Dreier, Representative in Congress from the State of California 15
The Honorable Duncan Hunter, Representative in Congress from the State of California 7
The Honorable Pete Visclosky, Representative in Congress from the State of Indiana 19
The Honorable Joseph Knollenberg, Representative in Congress from the State of Michigan 23
The Honorable Bart Stupak, Representative in Congress from the State of Michigan 29
The Honorable Tim Ryan, Representative in Congress from the State of Ohio 35
The Honorable Michael Arcuri, Representative in Congress from the State of New York 26
The Honorable Bruce Braley, Representative in Congress from the State of Iowa 33

The Honorable David M. Spooner, Assistant Secretary for Import Administration, International Trade Administration, Department of Commerce 43
The Honorable Mark Sobel, Deputy Assistant Secretary for International Monetary and Financial Policy, U.S. Department of Treasury 48
The Honorable Daniel Brinza, Assistant U.S. Trade Representative for Monitoring and Enforcement, Office of the U.S. Trade Representative 56
The Honorable Daniel Baldwin, Assistant Commissioner, Office of International Trade, U.S. Customs and Border Protection, Department of Homeland Security 61

John A. Williams, Executive Director, Southern Shrimp Alliance, Tarpon Springs, Florida 75
Skip West, President, MAXSA, Innovations, on behalf of Consumer Electronics Association, Fairfax Station, Virginia 81
Skip Hartquist, Partner, Kelley Drye & Warren LLP, on behalf of the China Currency Coalition 84
Lewis E. Leibowitz, Partner, Hogan & Hartson LLP, on behalf of Consuming Industries Trade Action Coalition 91
Robert E. Lighthizer, Partner, Skadden Arps Slate Meagher & Flom LLP 103

SUBMISSIONS FOR THE RECORD

Congressman Alan B. Mollohan, statement 123
American Apparel & Footwear Association, statement 123
American Iron and Steel Institute, statement 127
American Manufacturing Trade Action Coalition, statement 130
Congressman J. Gresham Barrett, statement 133
Congresswoman Jan Schakowsky, statement 134
Consumers for World Trade, statement 135
Emergency Committee for American Trade, statement 136
Law Offices of Stewart and Stewart, letter 143

Page
National Pork Producers Council, statement 147
North American Association of Food Equipment Manufacturers 152
Precision Metalforming Association, statement 152
Retail Industry Leaders Association, statement 154
Robert S. Nichols, statement 159
Schottenstein Stores Corporation, statement 165
Securities Industry and Financial Markets Association, statement 166
The Ranchers-Cattlemen Action Legal Fund—United Stockgrowers of America, letter 171
U.S.–China Business Council, statement 177
Virgil H. Goode, statement 180

HEARING ON LEGISLATION RELATED TO TRADE WITH CHINA

THURSDAY, AUGUST 2, 2007

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:04 a.m., in room 1100, Longworth House Office Building, Hon. Sander M. Levin (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
July 26, 2007
TR–5

CONTACT: (202) 225–1721

Levin Announces a Hearing on Legislation Related to Trade with China

Congressman Sander M. Levin (D–MI), Chairman of the Subcommittee on Trade, today announced that the Subcommittee will hold a hearing on legislative proposals relating to trade with China. **The hearing will take place on Thursday, August 2, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 9:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

FOCUS OF THE HEARING:

The hearing will focus on legislation relating to trade with China. The legislation to be examined includes bills to address trade-distorting currency practices, as well as legislation to modify U.S. trade remedy laws. In addition, the hearing will address the safety of food imports into the United States and issues related to the application of sanitary and phytosanitary measures overseas and the consistency of those measures with World Trade Organization (WTO) rules.

BACKGROUND:

Trade flows between the United States and China are substantial, growing, and heavily imbalanced. U.S. exports to China in 2006 were $55.2 billion, up from $41.9 billion in 2005, and $19.2 billion in 2001, the year China acceded to the WTO. U.S. imports from China in 2006 were $287.8 billion, up from $243.5 billion in 2005, and $102.3 billion in 2001. The result is a large and growing U.S. goods trade deficit with China: $232.6 billion in 2006—the largest trade deficit in U.S. history. (The United States had a services trade surplus with China of $2.6 billion in 2005, up from $1.8 billion in 2004 and $2.0 billion in 2001.) In the first five months of 2007, the U.S. trade deficit with China was higher than in the first five months of 2006. In 2006, China accounted for roughly 12 percent of total U.S. trade and 30 percent of the total U.S. goods trade deficit with the world.

Currency Practices. Economists generally consider that the Chinese renminbi (also called the "yuan") is undervalued relative to the U.S. dollar, with estimates ranging from 9.5% to 54%. China holds more than $1.3 trillion in foreign exchange reserves—reserves that help to keep the value of its currency relatively low and China's exports to the United States relatively less expensive, in U.S. dollar terms, than they otherwise would be. The currency issue was the subject of a tripartite hearing (between the Trade Subcommittee, and the relevant subcommittees of the Financial Services Committee and the Energy and Commerce Committee) on May 9.

A number of bills have been introduced to address the problem of persistent and substantial currency misalignment. The bills take varying approaches. For example, some would provide for the imposition of antidumping and countervailing duties to address the fundamental misalignment of a currency in certain circumstances, and require the Treasury Department to consult with countries that are found to have

fundamentally misaligned currencies. Others would apply across-the-board duties on all imports from China, so long as China is manipulating its currency.

Modifications to Trade Remedy Laws. Existing U.S. trade remedy laws include the antidumping law, the countervailing duty law (to address subsidized imports), and the law to provide relief from "market disruption" caused by imports from China (section 421 of the Trade Act of 1974, as amended). Increasingly, China is a major source of dumped and injurious imports, with nearly 85% of imports subject to new antidumping orders since 2004 originating from China, and it has many subsidy programs that could distort trade between the United States and China.

A wide variety of bills has been introduced in the 110th Congress to modify each of these three laws. One bill would: (1) defer U.S. compliance with decisions by the WTO Appellate Body (regarding a ruling that the United States is required to offset dumped sales with non-dumped sales) until the Administration clarifies U.S. rights and obligations within WTO multilateral negotiations and (2) overrule a U.S. Federal Circuit opinion requiring the U.S. International Trade Commission to undertake an additional analytic step before making an affirmative injury determination in certain cases. Another bill would amend U.S. trade remedy laws so that U.S. manufacturers that use products subject to countervailing or antidumping duty proceedings or use domestic like products (industrial users) can participate in such proceedings. There is also legislation that would clarify that U.S. countervailing duty law applies to nonmarket economy countries. Finally, there is a bill pending that would remove the President's discretion not to impose Chinese safeguard relief to the extent that imposing such relief would have an adverse impact on the U.S. economy clearly greater than the benefits of such action.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS*:*

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov*, select "110th Congress" from the menu entitled, "Committee Hearings" (*http://waysandmeans.house.gov/Hearings.asp?congress=18*). Select the hearing for which you would like to submit, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, completing all informational forms and clicking "submit" on the final page, an email will be sent to the address which you supply confirming your interest in providing a submission for the record. You ***MUST REPLY*** to the email and ***ATTACH*** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business **Thursday, August 16, 2007**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–1721.

FORMATTING REQUIREMENTS*:*

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word or WordPerfect format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://waysandmeans.house.gov*.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman LEVIN. We are going to break the rules and start on time. Our colleagues will be joining us. Mr. Herger and I have discussed the procedure for today. As we know, we hope this is going to be the second to last day before the recess, we hope. It is uncertain about voting patterns, and also we have the problem that we are going to have to exit this hearing room at 1:00 or so because of the memorial for our late colleague, our beloved colleague, Guy Vanderjagt, who used to sit two or three chairs down when I was a junior Member here. So, Mr. Herger and I have agreed what we will do is to have first the first panel of Members and that we won't ask questions and we will ask you questions on the floor. We may have to go over to the Senate to do that.

Then the second panel, which consists of representatives of the Administration, we agreed that we will ask questions and try very much to limit that panel to an hour and a half and we will go by seniority. But if anyone did not have a chance among our colleagues to ask questions of the second panel, they will be first to ask questions of the third panel, which are people from the private sector.

So, here we go and we are glad all of you can be here. I think what we will do first is have an opening statement from myself and then from Mr. Herger, and any other Member who wishes to present an opening statement will have it printed in the record. I will start by indicating that my full statement will be printed in the record, and I will simply give part of it.

China has quickly become a major force in the global economy. When China entered the WTO some years ago, we expected that it would change the dynamics within the WTO system of trade and that that system would change China. The changes have been even more profound than we expected, in part because of China's size, its natural and human resources and its major combination of individual enterprise and state involvement in its economy.

This hearing, and I want to emphasize this, represents an effort in an open, candid House consideration of our huge economic and trade relationship with China, its major benefits and its major problems. The nature and extent of these problems mandate that we go beyond the automatic polarization that often grips discussions of trade issues.

One of the issues being discussed today is the impact of a major imbalance in the currencies of the U.S. and China.

Yesterday after two Senate Committees acted on this issue, Secretaries Paulson and Gutierrez and Ambassador Schwab wrote a letter to Majority Leader Reid and the others in the Senate opposing their currency bills. After extolling the benefits of open trade, the letter urged that when another nation has policies less open, now I quote, "There is a temptation to respond by raising barriers to trade. That is the wrong approach. Protection is an economic isolationism that undermines our ability to promote reform abroad and weaken our economy at home."

In my judgment evoking such rhetoric is totally misguided. It undermines the chance of bridging differences among people who have worked actively to expand trade, including the leadership of this Committee. There are legitimate differences as to whether and how to address our economic relationship with China, but invoking "protectionism" or "economic isolationism" and the ghosts of Smoot-Hawley only jeopardizes intelligent discussion and effective decisions.

So, I hope today's hearing is a further step in serious Congressional consideration of our relationship with China. When PNTR to China and its succession to the WTO was approved 7 years ago, and I remember so vividly the consideration in this Committee, there were expectations that the U.S. would take an active role in ensuring the full implementation and enforcement of China's WTO commitments, that the U.S. would exercise its rights and enforce and defend its trade remedy laws and ultimately that China would honor the commitments it made. Unfortunately, these expectations have not been realized under this administration.

This increases the relevance of a common thread in the issues in this hearing, the extent to which Congress should delegate to the Executive the power to decide for itself and by itself, whether and how to take actions, to address serious and legitimate concerns over the government of China's trade distorting practices. For example, on currency, should Congress grant the President the authority to waive action necessary to address foreign government intervention in the currency markets? Under U.S. anti-dumping laws should Congress continue to let the Administration decide for itself if and when a country such as China should graduate from the status of a nonmarket economy to a market economy or does the bill introduced by Representatives Davis and English provide a better approach?

Third, under the special China safeguard mechanism, section 421, which by the way was inserted into the WTO accession agreement to the implementation language in this Committee, should Congress continue to allow the President to deny relief envisaged under WTO rules to a U.S. industry that is materially injured by a surge in China's imports or has Senator Rockefeller offered a better approach?

Fourthly, should Congress allow the Administration to acquiesce in the way dumping margins have been calculated for more than 80 years as the U.S. faces recent WTO appellate body decisions that the Administration itself describes, in quotes, "as devoid of legal merit" or should it consider the bill sponsored by Representatives Barrett, Neal, Regula and Spratt?

I conclude with these thoughts. The rest of my statement will be in the record.

Recently the Administration has indicated that many trade bills to address China's trade distorting practices, including the pending currency legislation, are WTO inconsistent. I am often skeptical of those claims because they are often used without much thought or analysis whenever someone simply doesn't like a particular proposal. I would welcome, and I think my colleagues would, the opportunity to work with the Administration to ensure the passage of strong and WTO consistent legislation to address our heavily imbalanced relationship with China. The Administration has shown no interest in such legislation. Indeed, as I have already explained, the Administration has sometimes been part of the problem.

There are several reasons for the insecurity felt by hardworking people in businesses in our Nation. One reason for this, it is only one, but it is one, is that for years too often there has been a hands-off approach to trade policy, while some of our trading partners have taken a gloves-off approach, intervening in markets to give their producers an unfair advantage over ours. This must change. It requires addressing the government of China's trade distorting policies which have contributed to the growing imbalance in our trade relationship with China.

It is now my pleasure to yield time to my colleague, the Ranking Member, Mr. Herger.

Mr. HERGER. Thank you, Chairman Levin.

In February, March, and again in May, this Subcommittee held hearings on China. At all of them I stressed the need to achieve a balance, that we look at our economy as a whole and accommodate the interest of import sensitive industries as well as those of U.S. industries that need imports to stay competitive.

I thought my message had been consistent, it won't change today. To me the issue is basic fairness. Let us treat all U.S. manufacturers equally. I am therefore here to discuss H.R. 1127, a bipartisan bill that will allow U.S. manufacturers, like the auto industry that rely on imports, subject to AD or CVD orders, to participate meaningfully in trade proceedings before the Department of Commerce and International Trade Commission instead of being locked out of the process.

Much is at stake for these industrial users, particularly when it comes to China. There are 62 existing anti-dumping duty orders on Chinese goods, 62. Fifty percent of the pending anti-dumping and countervailing duty investigations are on Chinese products. Based on these statistics, it appears that our China trade enforcers have been pretty busy, especially when you also consider that USTR has filed six different WTO cases against China since 2004, an unprecedented flurry of activity for the United States since the WTO agreements were up and running in 1995. There are several bills pending in the Congress that seek to rachet it up, not only attention toward, but duties on China imports.

There is one problem, however. All of these bills would have the United States run afoul of its international legal obligations and potentially face retaliation. Some proposals present unabashed violations like the bill that would require the U.S. not to comply with WTO appellate body decisions prohibiting the practice of zeroing an

investigation. I just don't see how we can expect China to comply with WTO rulings when we thumb our nose at the adverse decisions we don't like.

Other proposals are a bit more subtle, like the bill that would apply the CVD law to nonmarket economies like China, which I support, but the bill mandates that commerce measures the subsidy benefit irresponsibly and leave it powerless to address instances of double counting. I haven't even mentioned the China currency bills. The USTR, Commerce and Treasury seem to have removed all doubt there. However, as they recently informed lawmakers that this legislative approach appears to raise serious concerns under international trade remedy rules and could invite WTO sanctioned retaliation against U.S. goods and services. It would also substantially weaken the position of the United States in our ongoing efforts to achieve essential economic reforms in China and around the world while jeopardizing our rapidly growing exports. I would like to put this important letter in the record.

Retaliation would come through mere legislation that would increase duties on our exports and through withdrawal of trade concessions like intellectual property protection. Either way it would hit our exporters hard.

In the first quarter 2007, U.S. exports to China were up 15 percent from the first quarter of 2006. Last year U.S. exports to China grew at a faster rate than imports from China did. But even before we start talking about retaliation, we ought to recognize that increasing duties on Chinese imports to unfairly and artificially high levels hurts globally integrated companies that rely on imports to stay competitive. Not only does it hurt them, it harms the U.S. economy.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, this will be entered in the record.

[The information follows:]

Chairman LEVIN. By the way, let me indicate that the Democratic Caucus started at 9:00 so some of my Democratic colleagues will be joining us later. So, we have the first panel of Members of this Congress. The Honorable Debbie Stabenow, a U.S. Senator from Michigan. Artur Davis, my colleague from Alabama. Duncan Hunter, we welcome you, a veteran Member of this House, as well as Pete Visclosky, our colleague from Indiana.

Mr. HERGER. When you finish could I interject?

Chairman LEVIN. Go ahead.

Mr. HERGER. Mr. Dreier is unable to testify today because he is managing time on a rule on the floor, and I would ask unanimous consent to insert his statement into the record.

Chairman LEVIN. Without objection.

[The prepared statement of Mr. Dreier follows:]

Statement of The Honorable David Dreier,
Representative in Congress from the State of California

As the world's largest country and the world's fastest-growing trade juggernaut, it is not surprising that China would get the most scrutiny. But if we put aside the hyperbole and misinformation that generally characterize the China trade debate and actually scrutinize the facts, what we find is tremendous progress and even greater potential.

Since China joined the WTO in 2001 and willingly bound itself to an international system of rules-based trade, it has become our fastest-growing major trading part-

ner. While the economies of our trading partners in Western Europe have stagnated under the weight of increasingly managed economies, China has represented the one major opportunity for export growth for American producers. From 2001 to 2006, U.S. goods exports to China grew 188 percent—nearly five times our growth in exports overall.

No other top ten trading partner comes close to matching this growth. Forty-one percent growth for Canada.

Twenty-two percent for France. Less than 4 percent for Japan. Without China, the U.S. would have had no opportunity for significant export growth over the last half decade. Because of our engagement, China has grown to be our 2nd largest trading partner and 4th largest export market. And this significant export growth has been widespread throughout the entire U.S. For 49 of the 50 states, export growth to China has far outpaced their overall growth in exports.

The brisk pace of growth has been a boon to American producers and workers, particularly in the high-tech and heavy manufacturing sectors, which constitute our top exporting industries to China. There has been perhaps no better example of the importance of trade with China to our economy than Peoria, IL-based Caterpillar, Inc. In recent years, Caterpillar has expanded its presence in China significantly and has doubled its Chinese workforce.

By being on the ground and engaging directly with the Chinese, it has increased demand for its American-produced machinery, resulting in an increase of exports to China by 40 percent.

This tremendous export growth has enabled them to create 5,000 new jobs here in the U.S.—jobs that couldn't be supported without a trading relationship with China. In total, Caterpillar employs 48,000 Americans here at home in high-paying, high-quality jobs. With 95 percent of the world's consumers outside of the U.S.—and 20 percent of them in China—U.S. companies, and the workers they employ, cannot afford to disengage from our fastest growing major trade relationship. The Caterpillar example demonstrates not only that the U.S. wins by trading with China, but that it is not a zero-sum game. Increased growth in China leads to greater growth in the U.S. And jobs created in China lead to jobs created here at home.

Furthermore, by drawing China into a rules-based system, we have been able to effectively demand that substantive economic reforms be made. A tremendous amount of work remains. Protection of intellectual property and reforming the banking sector to allow for a floating currency are the most prominent challenges. We must be vigilant in our efforts to hold them to their commitments, and take legal action through the WTO when appropriate. The U.S. led the first attempt to subject China to WTO dispute settlement, and we were successful in forcing Chinese concession in that case. In a rules-based trading system, the good actors have the carrot and the stick at their disposal. If we cede our role as the global trade leader, we forfeit both the carrot and the stick. There is no denying that trade with China, like all trade, disperses benefits to all, while presenting challenges to some. A strong, growing, globally engaged economy is extremely dynamic, with tremendous opportunity on one hand and uncertainty on the other.

But the benefits not only far outweigh the challenges; they create the means to address those challenges. Our strong economic growth enables us to invest in innovation, improve the quality of education at all levels and ensure that workers are constantly learning the skills they need to succeed. The consequences of our disengaging would be disastrous—for us and the Chinese. We would lose our fastest growing export market. We would lose access to the low-cost goods that help working families make ends meet. And perhaps most important, we would lose our leverage and our authority to hold China accountable and ensure continued reform.

Mr. HERGER. Thank you.

Chairman LEVIN. We will start with Senator Stabenow. I did receive a phone call from another Senator last night saying that I should respect the U.S. Senate.

Ms. STABENOW. I won't ask you who that is, Mr. Chairman.

Chairman LEVIN. So, we are glad you are here, please continue.

STATEMENT OF THE HON. DEBBIE STABENOW, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator Stabenow. Thank you, Mr. Chairman, to all the Committee Members. It is wonderful to see you, and I very much appreciate the opportunity to talk with you today about something that I know, Mr. Chairman, you have been involved with, issues like currency manipulation long before we knew what the phrase was, so I thank you very much. I am very pleased also that Congressman Bart Stupak, Congressman Joe Knollenberg are here. We care deeply as a Michigan delegation without regard to partisanship to our great State, the people, the jobs, the businesses, and we come together I know with one voice.

I also want to thank Congressman Hunter, Congressman Ryan for introducing very important legislation relating to countervailing duties and am pleased to join in a bipartisan basis with Senator Jim Bunning to introduce that bill in the Senate. We are hopeful that working together we will be able to make that a part of comprehensive legislation related to currency manipulation.

In the Senate as a Member of the Senate Finance Committee, I am the one Member that represents the manufacturing Midwest. So, I feel a particular responsibility to speak to what is happening to manufacturing in our State and in the country. I am particularly concerned today, I appreciate being asked to speak about currency manipulation, not just with China, although we certainly speak of China for good reason, but I also must add to that Japan and other countries that are doing the same and in fact Japan as it relates to the auto industry, as the Chairman knows, is a serious, serious issue.

Michigan has lost one-quarter of our manufacturing workforce, over 250,000 good paying jobs, middle class jobs, and we have seen our unemployment rate go from 3.7 percent to 7.2 percent, an alarming rate, the highest in the country. We know that this is part of what is happening nationally where we have lost over 3 million manufacturing jobs nationwide and the real median wage has actually decreased.

I know trade is not the only issue, we know that, Mr. Chairman, we know there are other challenges addressing healthcare costs and investing in education and innovation, but it is an irrefutable fact that trade violations are a very big negative impact on manufacturing and it costs us jobs.

I know we have had for years this debate about open trade versus protectionism. But I think that is a very old debate, Mr. Chairman. I think we are well beyond that. My cell phone, my BlackBerry, my computer can jump any wall anyone would put up. The issue in front of us is whether or not we will have a level playing field, and whether or not we in the United States will be smart about what we do in this global economy to make sure our businesses have an equal chance, and we all know that if they do they will compete and they will win.

We know that countries like China and Japan are cheating, creating artificially low prices for their goods by manipulating currency as well as other unfair trade practices. In real world terms it is simple, the said goods made with the same materials will cost

up to 40 percent less when made in China, solely because of currency misalignment. That is wrong.

The choice many business people confront is to lay off workers in the United States or move the production to China or other offending countries to neutralize the price disadvantage. Neither one of those is good for America. Either way our economy loses.

Last week the Senate Finance Committee approved a bill that is a step in the right direction, and I urge your consideration as it comes to you. I want to commend Senator Baucus, Senator Grassley, Senator Schumer, Lindsey Graham for working together on that bill. The bill's most important provision allows the International Trade Commission to factor in misalignment when calculating anti-dumping cases.

I think this is a very important step, but I also believe we can do more. I believe we must provide the additional tool of countervailing duties which go directly after the subsidies foreign governments provide their exporters. By making currency misalignment a countervailing duty subsidy, we will put pressure on governments like China and Japan to change their policies. Having both anti-dumping and countervailing duties I believe is important, not only because countries have misaligned currencies, but because they could maneuver around just one remedy possibly.

They also need to know that countervailing duties is an option because for some businesses that may be their only option. In fact, once a country's currency has been shown to be misaligned, and used as an illegal subsidy, which it is, these facts can be easily applied to multiple cases, which also addresses reducing the cost for other businesses. It saves time and it saves money, both of which our companies need.

Additionally, a currency manipulation is deemed an illegal subsidy. There is no easy way for countries to skip the penalties. It is not enough, however, just to have these remedies on the books. As we know, time and time again the Administration has waived penalties. As a former member of the Senate Banking Committee, I listened to the Treasury Secretary repeatedly refuse to say the obvious, that China manipulates its currency. Therefore, we must limit the Administration's discretion when it is time to take action.

Finally, I would like to address two frequent criticisms of including both anti-dumping and countervailing duties in the same bill or companion bills. First, there is a debate about WTO compliance of countervailing duties. Frankly, no one knows, no one knows how the WTO will rule. But as you will hear from Members of the third panel, there are many experts who believe countervailing duties are consistent with our WTO obligations.

There is also no reason to believe that the U.S. would have to strike both remedies if one of the remedies was ruled as noncompliant. I am currently working on language that would clarify this issue so that if one action would be ruled out of compliance, the other remedy would remain valid and intact, and that is eminently doable for us.

Second, some have raised the issue of double counting, that you can't penalize a country for the same action twice. I believe this argument is flawed. Under U.S. law when both an anti-dumping order and a countervailing duty order are in effect on the same

good, the amount of the countervailing duty is added to the exporter's price. That reduces the dumping margin and prevents any double counting.

Mr. Chairman, in summary, by limiting Administration discretion and by including anti-dumping and countervailing duties in our enforcement toolbox, I believe we will give our affected companies, both large and small, the necessary tools to fight currency misalignment.

I am very pleased the Senate Finance Committee and Senate Banking Committee have acted to address this issue, which is a critical jobs issue for us, as you know. I am absolutely convinced if we work together we can create the toughest laws possible to support American businesses and American workers. They are looking to us and we owe them no less. I thank you again for giving me the opportunity to share my thoughts.

[The prepared statement of Senator Stabenow follows:]

Statement of The Honorable Debbie Stabenow,
U.S. Senator from the State of Michigan

Michigan has lost one-quarter of its manufacturing workforce since 2000 and our unemployment rate has grown from 3.7% to an alarming 7.2%. The highest in the Nation.

Additionally, we have lost over 3 million manufacturing jobs nation-wide and the real median wage has actually decreased.

I know that trade issues alone do not solve the manufacturing challenges in this country. There are other issues that need to be addressed, such as healthcare costs and investing in innovation.

But, it is an irrefutable fact that trade violations are having a huge negative impact on manufacturing and costing us jobs.

We know that countries like China and Japan are cheating, creating artificially lower prices for their goods by manipulating their currency.

In real world terms, it is simple—the same good, made with the same materials, will cost up to 40% less when made in China solely because of currency misalignment.

The choice many business people confront is to either layoff workers ***or*** move production to China or other offending countries to neutralize the price disadvantage.

Either way, our American economy loses.

Last week, the Senate Finance Committee approved a bill that is a step in the right direction.

And, I want to commend Senator Baucus, Senator Grassley, Senator Schumer, and Senator Graham for their leadership on this legislation.

The bill's most important provision allows the International Trade Commission to factor in currency misalignment when calculating anti-dumping cases.

While I believe this is a key step, I believe we can do even more.

I believe we must provide the additional tool of countervailing duties, which go *directly* after the subsidies foreign governments provide their exporters.

By making currency misalignment a countervailable subsidy, we will put pressure on governments like China and Japan to change their policies.

Having both anti-dumping and countervailing duties is important not only because countries with misaligned currencies could try to maneuver around just one remedy, but also because countervailing duties may be the only option for some businesses.

In fact, once a country's currency has been shown to be misaligned and used as an illegal subsidy, those facts can be easily applied in multiple cases. This saves time and money, both of which our companies need.

Additionally, if currency manipulation is deemed an illegal subsidy, there is no easy way for countries to escape penalties.

It is not enough, however, just to have these remedies on the books.

Time and time again the Administration has waived penalties.

As a former member of the Senate Banking Committee, I listened to the Treasury Secretary repeatedly refuse to say the obvious—that China manipulates its currency. Therefore, we must limit the Administration's discretion when its time to take action.

Finally, I'd like to address two frequent criticisms of including both anti-dumping and countervailing duties in the same bill or companion bills.

First, there is a debate about WTO compliance of countervailing duties.

Frankly, no one knows how the WTO will rule, but as you will hear from members of the third panel, there are many experts who believe countervailing duties are consistent with our WTO obligations.

There is also no reason to believe that the U.S. would have to strike both remedies if one of the remedies was ruled as non-compliant.

I am currently working on language that will clarify this issue—if one action is ruled out of compliance, the other remedy will remain valid and intact.

Second, some have raised the issue of double counting—that you can't penalize a country for the same action twice. This argument is flawed.

Under U.S. law, when both an anti-dumping order and a countervailing duty order are in effect on the same good, the amount of the countervailing duty is added to the exporter's price. That reduces the dumping margin and prevents any double counting.

In summary, by limiting Administration discretion and including both anti-dumping and countervailing duties in our enforcement toolbox, we will give all our affected companies—both large and small—the necessary tools to fight currency misalignment.

I'm very pleased that both the Senate Finance and Senate Banking Committees have acted to address this critical jobs issue.

I know that by working together we will create the toughest possible laws to support American businesses and American workers.

We owe them nothing less.

Chairman LEVIN. Thank you very, very, much.

STATEMENT OF THE HON. ARTUR DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. DAVIS. Mr. Chairman, thank you.

Chairman LEVIN. Whenever you want, we know you have other things to do. Mr. Davis, take over.

Mr. DAVIS. Thank you, Mr. Chairman. It is always good to follow a Senator, we don't get to do that a lot around here.

Chairman, let me thank you, number one, for your engagement on this issue. You and I have had a number of conversations on the floor, off the floor, and of course I know of the acute concern you have as a Member of the Michigan delegation, but you have certainly gone above and beyond that and I certainly thank you for giving me the honor as a colleague of yours of the Committee on Ways and Means to come and testify before you today. It certainly is good to see you as well.

I have the honor of being the first House Member today. A number of us will join Senator Stabenow in talking about the impacts of globalization on this economy; a number of us will join Senator Stabenow in talking about the importance of mutual obligation responsibility in this modern economy. There is not one of us who will testify today from the Member side who would like to repeal the last 40 years of expanded bilateral trade around the world. There is not one of us who will testify today who wants to retreat from the obligations we have under the World Trade Organization. To the contrary, we want to strengthen trade, we want to reinforce our obligations, but I think all of us believe this: We believe that to do those things requires a fair, level playing field.

The system is, candidly, breaking down because one of our major trading competitors around the world, People's Republic of China,

has engaged in a multi-decade campaign of extensive, unparalleled subsidies of its industries.

Just to single out the steel industry, just in the last 6 years, $52.6 billion of subsidies, interest free loans, other direct transfers to parts of the economy that participate in the steel industry, you see all across the board. It is inconceivable in the United States that that could occur.

What my bill, 1229, proposes to do is to give the Commerce Department some ability to counter this aggressive practice of subsidization. We would allow for the first time countervailing duties to be applied to nonmarket economies. Let me put that in plain English.

Right now our Commerce Department has the ability to impose countervailing duties against virtually all of our bilateral trading partners around the world, virtually every trading partner that we have. The only exceptions are the small class of economies that we currently classify as nonmarket economies. It so happens that China is in that category. At this point, the only other major country in that category is Vietnam.

I can think of no reason why we can apply countervailing duty sanctions against the French, against at this point the Russians, against the Germans, against the Japanese and a variety of other countries who may engage in subsidies, but we can't do it against the most aggressive subsidized in the world, the People's Republic of China. It makes no sense.

The WTO outlaws and bans subsidies. China fought aggressively to join the WTO and knew what the rules were. It came voluntarily into a regime that prohibited subsidies. All we are saying is that China should now be bound by the rules.

Let me pick up on a famous Chairman that you put on the table and that our colleague from Michigan Senator Stabenow also referenced. There is another school of thought and you see it in the editorial pages of the Wall Street Journal, even sometimes in the New York Times and the Washington Post, and it goes something like this. It says that we should simply trust in the open, unfettered trade competition around the world, we should simply trust in these things working out over the long run in the interest of our manufacturers, our employees.

I would be content to trust, Mr. Chairman, if we had fair rules. Trust requires norms and standards, trust is not about the law of the jungle. Trust is not about survival of the fittest, trust is about relationships governed by enforceable legal standards.

All that I seek to do is to make sure that those standards apply across the board, and we can make this work. We have a web of trade relationships around the world that strengthen our economy and strength the economy of our competitors. We can have a web of trade relationships that liberalize underdeveloped economies around the world. We can have a web of trade relationships that help draw us closer together as strategic partners or we can continue the path we have been on for the last several decades.

So, I thank you for your interest and your engagement and look forward to answering questions.

[The prepared statement of Mr. Davis follows:]

Statement of The Honorable Artur Davis,
Representative in Congress from the State of Alabama

Mr. Chairman, Ranking Member Herger and fellow Members of the Ways and Means Committee, I appreciate the opportunity to testify today on H.R. 1229, the Nonmarket Economy Trade Remedy Act of 2007. This Subcommittee has actively investigated the issue of subsidies in nonmarket economies this Congress—holding a hearing on February 15 on "Trade with China" and a hearing on March 15 on "the Nonmarket Economy Trade Remedy Act of 2007."

The Nonmarket Economy Trade Remedy Act of 2007 is a bipartisan attempt to fix a longstanding inequity in U.S. trade law and expand American employers' ability to obtain trade relief. The legislation requires application of countervailing duty (CVD) law to both market and nonmarket economies, including China. In the 108th and 109th Congress, I proudly served as the lead Democrat on legislation to apply CVDs to nonmarket economies sponsored by the lead Republican on H.R. 1229, Representative Phil English (PA–03).

On March 30, 2007, the U.S. Commerce Department announced its' plan to extend countervailing duties to coated free-sheet paper imported from China in a preliminary decision. The decision marks the first time in 23 years a CVD case against a non-market economy has been initiated as a remedy for unfair domestic subsidies. But enactment of H.R. 1229 is still necessary to ensure that CVDs are a reliable enforcement tool for the Commerce Department.

The Nonmarket Economy Trade Remedy Act of 2007 would amend Title VII of the Tariff Act of 1930 to explicitly require Commerce to accept CVD cases against nonmarket economies. In addition, H.R. 1229 would create a new mechanism through which congressional approval would be required to implement a decision by Commerce to "graduate" a country to market economy status. Finally, the measure would direct the International Trade Commission (ITC) to conduct an annual study of Chinese government intervention to promote investment, employment and exports. The ITC would be directed to submit its findings to Congress every year through 2017.

A study released earlier this week by the American Iron and Steel Institute (AISI) claims that China's steel capacity grew another 20 percent in 2006 with total capacity reaching 600 million metric tons by year-end 2007 due, in no small part, to the aide of RMB 393 billion (US$ 52 billion) in government sponsored subsidies granted to Chinese steel producers. In 1990, China produced 66 million metric tons of steel, or less than production the United States, the European Union or Japan.

Subsidies in nonmarket economies exist in numerous forms, none of which can constitute a basis for CVDs under current law. Examples include, but are not limited to: state ownership, nonperforming loans, price coordination, banking and finance assistance, infrastructure development, research and development assistance, restraints on imports and exports and countless others.

This week, U.S. and Chinese officials are meeting here in Washington, D.C. to conduct a steel industry dialogue. At the same time, Treasury Secretary Paulson is currently visiting China to discuss many of the issues we are considering today with Chinese government officials. It is imperative that we as a Congress stress the deep concern we have with illegal subsidies that directly injure American manufacturers.

A discussion of fair trade must go beyond opening up new markets and ensuring enhanced labor protections. Fair trade must not exempt any of our trading partners from our trade laws. If a country is unfairly subsidizing its manufacturers to the detriment of our domestic industries and workers, we must have all the tools available to combat injurious behavior. Countries like China and Vietnam should not be allowed to skirt U.S. fair trade laws simply because of its nonmarket economy status.

Right now China, Vietnam and the other nonmarket economies get to have it both ways. They are dramatically underpricing their products and selling them in the United States while limiting our ability to gain a larger market share for certain products in their country. Now is the time to work towards a trade policy that is based on trust, fairness, and future prosperity for both countries. H.R. 1229 gets us closer to that goal.

Chairman LEVIN. Thank you very much. Mr. Hunter, welcome.

STATEMENT OF THE HON. DUNCAN HUNTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HUNTER. Thank you, Mr. Chairman. I am pleased to join my colleagues today, particularly to join my colleague Mr. Ryan, who is my coauthor of this legislation and really the driving force behind it, and I want to compliment him for the insight that he developed last year about the importance of saving what I call the arsenal of democracy which I think is at some risk. That is our ability to manufacture products that we use in a time of peace for domestic purposes, but that we use at time of war to defend this Nation. The bill that we have offered, this currency manipulation bill, H.R. 2942, which is formally called the Currency Reform for Fair Trade Act.

I think, Mr. Chairman, and Members of the Committee, Mr. Herger, this is a very important step toward assuring that this country has requisite security balance over the next 5 to 10 to 15 years. Let me talk about the security implications of our relationship with China.

Mr. Chairman, China is clearly cheating on trade and they are using American trade dollars as a massive surplus that they now enjoy over us on an annual basis to buy ships, planes, missiles and other military equipment, some of which may at some point face American soldiers, sailors, airmen, Marines on the battlefield over the next 5, 10 to 20 years.

Now, it is clear that China is cheating on trade by devaluing its currency some 40 percent and I know when Mr. Ryan, my good colleague, talks about that, he will lay that out in some detail, but clearly they are cheating on trade by devaluing their currency by some 40 percent. That is undercutting American products not only on showroom floors in the United States but around the world.

The result is that American industry, which comprises a good part of what I call the arsenal of democracy—in fact, I think that term was coined by FDR before the start of World War II when he said, we are going to turn this magnificent industrial machine into making warfighting equipment, but now that arsenal of democracy is being threatened. You know, Mr. Chairman, I can remember a couple of years ago when roadside bombs started to hurt our trips in Iraq and we sent out from the Armed Services Committee, we sent out our industrial teams to try and find an American steel company that could still make high grade armor steel plate to put on the sides of our HUMVEEs. We found one company left in this country that could make it. When the Swiss cut us off from the tiny crystal component that goes in perhaps our most important system, the JDAM, that is our smart bomb, we found only one company left in the country that could make that component. As we looked across the array of military disciplines and industrial base items that we need to keep this military strong, we saw that more and more of them were being pushed offshore.

It is clear now that China is an army and they are buying ships, planes, missiles, they now have the F–10 high end fighter aircraft, that they are developing with this new found barrel of cash they are receiving from the United States. They have a coproduction program with the Russians for the Su-27, similarly a high end tactical fighter aircraft. They are building more than 100 short range

ballistics missiles each year, have several long range ICBMs, some of which will be targeted on American cities now being rolled out for initial deployment. They have a lot of submarines under construction, some of them nuclear attack submarines.

I think a lot of the Members of the House know they blew a satellite out of space on January 11th and that signified I think a new era of military competition between the United States and China in space whether we like it or not.

So, as we see the American industrial base fracture and move offshore, largely to China, I think that we have to understand that there will be security ramifications which will follow as a result of that.

For example, China now has a massive shipbuilding capability utilized mainly for production of domestic ships. If they turn or translate that domestic shipbuilding capability into the manufacture of warships, we will see them in a position to outstrip the United States at a very rapid rate, building ships for roughly $.30 on the dollar compared to what it would cost in the United States and being able to outstrip us by a very large degree in terms of quantity.

So, Mr. Chairman, I am also taken by the recent reports that have just come out in the press that show that China is moving weapons through Iran to insurgents who are fighting the United States in Iraq and Afghanistan, that presumably we complained to the Chinese government about this movement of weapons, some of which will be used to kill Americans on the battlefield, and I think we should understand that China's foreign policy goals are not always friendly nor consistent with the United States.

This acquiescence on our part in terms of allowing them to take large pieces of our industrial base that we may need at a later time for national security is I think one of the most egregious policy errors that we have made in 15, 20 years. So, I think this bill that we put together—largely I want to compliment my great colleague, Mr. Ryan, who sits on the Armed Services Committee, has been a longstanding Member of the Armed Services Committee, and I know cares about national security, for really being the driving force behind putting this legislation together. I think it is excellent legislation and very simply calls it like it is: Massive devaluation of your currency is a species of government subsidy, and this legislation would put real teeth into the ability of American industry and the American government to countervail that illegal activity by China and clearly Mr. Bernanke himself said that this currency manipulation is a specie of subsidy and that we therefore have license, legitimate license, under existing world trade rules to act against it, and that is what our bill does.

I thank you for letting me put my two cents in, and I know Mr. Ryan and my colleague will expand.

[The prepared statement of Mr. Hunter follows:]

Statement of The Honorable Duncan Hunter,
Representative in Congress from the State of California

Mr. Chairman and Ranking Member, I would like to thank you for holding this hearing on an issue of utmost importance to U.S. manufactures, the future of our domestic industrial base and, ultimately, our national security. I welcome this opportunity to join my friend and colleague Tim Ryan in testifying on behalf of our

legislation, H.R. 2942, the Currency Reform for Fair Trade Act, which will end the illegal practice by some of our trading partners, particularly China, of manipulating their currency in order to gain a competitive advantage against U.S. products.

First, I would like to share my perspective on our current trade policy with China; the implications for the U.S. defense industrial base; and how China is using American greenbacks to modernize its military.

This issue is complex. There are folks, like myself, who see a near-peer economic and military competitor and then there are those on the other end who see China as a vast economic opportunity.

Those who share my view have watched China expand the pace and scope of its economic and military modernization efforts, have focused on China's near and longer-term strategic aspirations in the region and around the world, and have likely made the following observations:

First, China's rapid economic growth, its devaluation of the yuan, and its military modernization efforts are "gouging" the American defense industrial base.

Second, China's is using proceeds from its growing wealth and gains from trade with the United States to develop military power projection, anti-access and aerial denial capabilities.

Third, the United States has exported critical defense components and technologies to China, which increases our dependency on China for our own defense needs.

Lastly, by moving defense factories and businesses abroad to nations such as China, we have jeopardized America's domestic capability to rapidly increase defense production during a time of war.

China is cheating on trade by devaluing its currency

From 1994 to 2006, China's trade surplus rose from $30 billion to $232 billion—almost an eight-fold increase—and is expected to increase this year. This trading deficit is now larger than that with any other U.S. trading partner. One element that contributes to this trade deficit—China is cheating. China's currency—the yuan—is significantly undervalued by at least 40%, making it difficult for American manufacturers to compete fairly in the global market. It is this uneven playing field that undercuts American markets and wipes American products off the world's shelves. The result is we've lost high-paying manufacturing jobs in the U.S. to China.

In some cases, this currency manipulation results in Chinese imports costing less on American shelves than the cost of the inputs going into the product. It was this exact situation that led Federal Reserve Chairman Ben Bernanke to call China's currency manipulation an "implicit subsidy" in the written version of his speech before the Chinese Academy of Social Sciences in Beijing, China on December 15, 2006.

It is for these reasons that Congressman Tim Ryan and I introduced H.R. 2942, the Currency Reform for Fair Trade Act of 2007. Our bill is a WTO consistent remedy to this pervasive problem of currency manipulation. Specifically, H.R. 2942 will:

- Stipulate that countervailing duty trade cases targeting government subsidies can be brought against nonmarket economies such as China.
- Defines currency misalignment.
- States that currency misalignment by any country is a countervailable government subsidy.
- Allows currency misalignment to be taken into account in antidumping cases, which has directly impacted the competitiveness of U.S. products.
- Requires the Treasury Department to take more aggressive actions to deal with currency misalignment than is the case under current law and enhances Congressional oversight of Treasury Department actions.

The Currency Reform for Fair Trade Act of 2007 will level the playing field for American companies and end the one-way street advantage held by many of our trading partners, and particularly China. Urgent action on this bill is necessary and I strongly encourage you, Mr. Chairman, to move forward aggressively to pass this legislation and provide much needed relief to American manufacturers and their employees. Their viability and future success depends on it.

In addition, I would like to take this opportunity to highlight another aspect of how this currency manipulation is harming the American people. The Chinese are taking U.S. trade dollars and drastically modernizing their military.

China is using American "greenbacks" to fund its military modernization efforts

China is using billions of American trade dollars to modernize its military force—from purchasing foreign weapons systems and technologies to indigenously building its own ships, planes, and missiles. China's economic growth has enabled it to sustain a trend of double-digit increases in defense spending. In March 2007, China announced that it would increase its annual defense budget by 17.8% over the previous year to $45 billion.

This figure is widely accepted as a low estimate of China's defense spending. The recent Department of Defense's *Annual Report on The Military Power of the People's Republic of China* estimated that China's total military-related defense spending is more likely in the range of $85 to $125 billion.

What is China buying? Here is a short shopping list of how China is spending its U.S. trade dollars: Russian-made SOVREMENNY II guided missile destroyers fitted with anti-ship cruise missiles—providing China with a capability to challenge American aircraft carriers; submarines, such as the KILO-class diesel submarine; a battalion of S–300PMU–2 surface-to-air missile systems with an intercept range of 200 kilometers; AWACS aircraft with air-to-air refueling capability; and sophisticated communications equipment.

On the other side of the military modernization equation—American trade dollars are facilitating China's ability to mature their domestic defense industrial base. During a June 2007 House Armed Services Committee hearing, I shared my concerns with Deputy Under Secretary of Defense Richard Lawless regarding China's maturing and massive commercial industrial capability, especially in the area of its ship construction capacity which could likely be translated into a warship construction capability and could threaten our ability to maintain a naval dominance in the Pacific region. In response, Secretary Lawless noted that countries such as Japan and the Republic of Korea, currently the world's leaders in shipbuilding capacity and capability, are now readjusting their projections from a belief that China will be a top-rank shipbuilding competitor in the next six years rather than the fifteen originally projected. It is clear that China's economic growth is fueling its capacity to purchase foreign weapons and technology while improving its indigenous capacity for a self-sufficient defense industrial base.

The erosion of the U.S. Arsenal of Democracy

A large portion of America's industrial base is now moving to China, including part of the industrial base that we rely on for the American security apparatus. This Nation is at war and our brave military men and women are conducting missions around the world. But today we defend freedom in the absence of a robust U.S. "arsenal of democracy". Beginning with my father's generation through the Cold War—we depended on an American manufacturing base to produce the tanks, armored vehicles, and rounds of ammunition to equip our troops, and depended on American research and development (R&D) to ensure our military technologies kept our forces on the cutting edge. Today, if you want to find where critical elements of our arsenal of democracy have gone, you must look beyond America's shores to places like China.

Conclusion

Passage of the Currency Reform for Fair Trade Act represents a critical and necessary step towards ensuring U.S. manufacturers are competing on a level playing field while, at the same time, preventing any further erosion of our domestic manufacturing base. H.R. 2942 is a bipartisan, widely supported legislative response to our disproportionate trade relationships and the clear advantage gained through currency manipulation. As I have articulated, non-action will have consequences as more of our Nation's arsenal of democracy moves overseas in order to promote the economic interests of our trading partners. This is not only an economic crisis for so many of our domestic manufacturers, their employees and the communities where they are based, it is also a national security threat that we ignore at our own peril. The time has come to act.

Thank you again for giving me this opportunity to address the Committee and I look forward to working with you over the coming weeks.

Chairman LEVIN. Thank you. I have been informed we may have votes within 10 or 15 minutes. So, if each of our colleagues could try to do it in 5 minutes or less.

I guess, Mr. Visclosky, you are the first to feel that pressure, but we welcome you very, very much. This is not your first time here. Please carry on.

STATEMENT OF THE HON. PETE VISCLOSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. VISCLOSKY. Mr. Chairman, I want to thank you and Mr. Herger as well as all the Members of the Subcommittee for inviting me to testify today. I last testified before you on March 15th. I am always shocked that people ask me back. I applaud your efforts to continue this discussion and place priority on your agenda for Chinese trade legislation. We have a myriad of problems involving a large number of countries, but I would want to also focus my remarks on the country of China and trade and steel.

I find it no coincidence that today the Administration remains enthralled by an enchanting dialogue with the Chinese to discuss trade between our countries. When I last testified before you, I enumerated repeated Administration references to said dialogue. As Ulysses overcame the songs of the Sirens, we must resist China's song of dialogue and add comprehensive trade legislation that will prevent our economy from being crushed upon the rocks.

My appearance here today as Chairman of the Congressional Steel Caucus, a bipartisan group of 110 Members of Congress, should stress the importance and support for trade legislation to address the entire problem today. As the Administration continues its dialogue with the Chinese, Chinese crude steel production has more than quadrupled. China has built an equivalent of three entire American steel industries in just 10 years.

During this time, China has exceeded their own demand for steel and is now a net exporter. These increases in steel production have come during periods of immense government subsidization of China's steel industry. Reports, some from the China government itself, detail preferential loans, debt forgiveness, raw material market subsidies, energy subsidies and direct government ownership of steel companies.

Two days ago I testified before the International Trade Commission as they reviewed current anti-dumping and countervailing duty orders on hot-rolled steel against 11 countries, including China. The public report shows that imports of hot-rolled steel from China have remained low for the past 5 years because of the anti-dumping orders. Additionally, the Department of Commerce has determined that China would again dump its products if current orders were removed.

I am very encouraged by the legislation that has been introduced. When the price is fair, the imports aren't there from China. Chinese producers don't want to compete at a fair price. Chinese producers can't compete at a fair price. Chinese producers should not be allowed to compete at unfair prices.

I do appreciate the legislation, H.R. 1229, introduced by Representatives Davis and English, as well as H.R. 2942, the Currency Reform for Fair Trade Act introduced by Representatives Ryan and Hunter. I am a proud cosponsor of these measures and believe that they are essential.

As the Subcommittee knows, H.R. 1229 would improve the tools available to U.S. manufacturers in order to defend against illegal imports. Further, H.R. 2942 would help to eliminate the unfair advantage that Chinese producers have gained due to their government's manipulation of their currency.

We must ensure anti-dumping and countervailing duties are explicitly applicable to China and other nonmarket economies, and I would encourage the Subcommittee to report strong legislation to deal with currency manipulation, treating it as a subsidy and making adjustments in dumping cases to account for such unfair practices. We must ensure there are no unnecessary hurdles to prove U.S. industries and workers are injured by unfair trade.

Again, I thank you very much for this opportunity to testify today.

[The prepared statement of Mr. Visclosky follows:]

Statement of The Honorable Pete Visclosky,
Representative in Congress from the State of Indiana

Thank you Chairman Levin, Ranking Member Herger, and Members of the Subcommittee for the opportunity to testify before you with respect to this critical hearing that I hope will result in comprehensive Chinese trade law reform. I was last here on March 15, 2007, when you were discussing H.R. 1229, the Nonmarket Economy Trade Remedy Act of 2007. During that testimony, I stated that that H.R. 1229 was an essential first step, but more was needed. I further went to lengths to stress how China was adversely affecting the U.S. steel industry and manufacturing generally. I applaud your efforts to continue this discussion and place priority on your agenda for Chinese trade legislation.

I find it no coincidence that today, the Administration is holding enchanting "Dialogue" with the Chinese to discuss trade between our two countries. I have been consistently discouraged with how the Administration takes no action against China's blatant actions to subsidize their steel industry and manipulate their currency. To continue the analogy from my previous testimony, Ulysses overcame the songs of the Sirens by having his crew stuff their ears with wax and tying himself to the mast of his ship as they sailed on. We must resist China's songs of "Dialogue" and enact comprehensive trade legislation that will prevent our economy from being crashed upon the rocks.

My appearance here today as the Chairman of the Congressional Steel Caucus, a bipartisan group of 110 Members of Congress, should stress the importance and support for trade legislation to address the entire problem of today. If we are to maintain a manufacturing base in the United States, we must have zero tolerance for unfair and illegal trade. We need to address the imminent challenges facing the steel industry. Words are not enough.

As the Administration continues to "Dialogue," Chinese crude steel production has more than quadrupled, growing from an estimated 100 million Metric Tons (MT) in 1996 to approximately 500 million MT in 2006. In other words, China has built the equivalent of three entire American steel industries in just ten years. China's share of world steel production, which was estimated to be one-eighth in 1996, mushroomed to over one-third in 2006. This industrial growth is unprecedented in history. During this time, China has exceeded their own demand for steel and became a net exporter of steel in 2006.

It is no coincidence that these increases in steel production have come during periods of immense government subsidization of China's steel industry. This issue is perhaps the most crucial problem facing the global steel industry, as well as many other industries, today. Reports, some from the Chinese government itself, detail preferential loans, debt forgiveness, raw material market subsidies, energy subsidies, and direct government ownership of steel companies.

There is currently a trade deficit of more than $200 billion with China. Our country has lost more than 3 million manufacturing jobs. We must act now to prevent any further violations of international trading laws.

Two days ago, I testified before the International Trade Commission as they reviewed current antidumping and countervailing duty orders on hot-rolled steel against several countries, including China. The public report shows that imports of hot-rolled steel from China have remained low the past five years because of the

antidumping orders. But, imports of other steel products from China not subject to any orders have surged. Additionally, our own Department of Commerce has already determined that China would again trade unfairly if they had the chance.

From 2005 to 2006 Chinese steel imports have increased almost 3 million net tons, with drastic increases in corrosion-resistant steel and cold rolled steel. Specifically, from 2005 to 2006, U.S. imports of Chinese corrosion-resistant steel increased from 154,000 net tons to 803,000 net tons, a difference of 649,000 net tons. In the same time frame, U.S. imports of Chinese cold-rolled steel increased from 86,000 net tons to 250,000 net tons, a difference of 164,000 net tons. By contrast, the U.S. imported less than 7,000 net tons of hot-rolled steel from China last year. These numbers do not lie. When the price is fair, the imports aren't there. Chinese producers don't want to compete at a fair price. Chinese producers can't compete at a fair price. Chinese producers should not be allowed to compete at unfair prices.

I am very encouraged by the legislation introduced by Rep. Artur Davis and Rep. English, H.R. 1229, as well as the legislation introduced by Rep. Tim Ryan and Rep. Hunter, H.R. 2942, the Currency Reform for Fair Trade Act of 2007. I am a proud cosponsor of these two measures, and believe that they are two of the most important proposals for the steel industry in recent years.

As this Subcommittee knows, H.R. 1229 would improve the tools available to U.S. manufactures in order to defend against illegal imports. The most important of these tools is the application of countervailing duties to nonmarket economies. This would provide for the assessment of import duties in an amount equivalent to the amount of the subsidy received on that imported product. As this Subcommittee was made aware during its previous hearings, there are very clear reasons for this attention.

Further, H.R. 2942, the Currency Reform for Fair Trade Act of 2007, would help to eliminate the unfair advantage that Chinese producers have gained due to their government's daily manipulation of their currency. This problem has grown to be so massive that economists, such as Dr. Peter Morici of the University of Maryland, believe the Yuan could be undervalued by 30 to 50 percent. The opportunity is before you to address this problem of currency manipulation, which acts as a weight around the neck of every American manufacturer.

China is the single biggest violator of fair trade laws. It is estimated that more than 80 percent of imports subject to new antidumping orders since 2004 have involved China. We must ensure that antidumping and countervailing duty laws are explicitly applicable to China and other nonmarket economies. We must enact strong legislation to deal with currency manipulation, treating it as a subsidy and making adjustments in dumping cases to account for such unfair practices. We must censure World Trade Organization decisions that apply the "zeroing" antidumping methodology. The U.S. should not be implementing these over-reaching decisions that threaten to eviscerate our unfair trade laws. Finally, we must ensure that there are no unnecessary hurdles to prove that U.S. industries and workers are "injured" by unfair trade.

China deserves no special treatment. It is our responsibility as Members of Congress to ensure that American workers and manufacturing industries have the strongest possible trade legislation to compete on a level playing field.

I know that the U.S. has the most efficient, productive, and skilled steel industry in the world. But even with that edge, our producers cannot prevail in a contest where only they have to play by the rules. If our companies cannot count on a level playing field, then U.S. manufacturing has no long-term future. Now is the time to strengthen our trade laws. Our workers are counting on us. All the American people are counting on us. Thank you again for the opportunity to appear before this Subcommittee today.

Chairman LEVIN. Thank you very much. Mr. Regula, welcome.

STATEMENT OF THE HON. RALPH S. REGULA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. REGULA. Thank you, Mr. Chairman. I want to say I am not here on behalf of Smoot-Hawley. I'm here on behalf of fairness. What is happening is WTO is adopting a practice similar to if you were stopped for speeding and were going 45 miles per hour in a 35 mile per hour zone. You would say, well, I was only doing 35

10 minutes ago, therefore you have to average it, and therefore you can't tell me that 45 is speeding. That is in essence what is happening, and this bill is designed to say in effect that the Department of Commerce should insist with the WTO that for purposes of determining if there is dumping that you do it on the incident involved. Are they selling for less than 100 percent of cost? I think that is just a matter of fairness.

You obviously have China today, and for many decades we required 100 percent of duties to equal 100 percent of what it should cost. I think it is very important that we say to the WTO, you have to use that practice. It is only a matter of being fair. You don't get credit because you didn't dump last week, you have to deal with the situation as it is. I think it is very important that we legislatively say that.

I would like unanimous consent to submit my full testimony. I know you are under time constraints.

What is happening is that the WTO is undermining our trade laws by what I might call averaging and saying, okay, you haven't been dumping for a month now, so we will not charge you for dumping today. I think every incident of dumping has to stand on its own merits or demerits, whichever way you want to put it. Therefore I would urge that your legislative package include that it is U.S. policy that each dumping case has to be evaluated by WTO on its merits and that issue and not using an averaging way to achieve that objective.

[The prepared statement of Mr. Regula follows:]

Statement of The Honorable Ralph Regula,
Representative in Congress from the State of Ohio

Mr. Chairman:

Thank you for the opportunity to provide testimony before the Committee today. I appreciate your leadership on trade issues and am here to express my support for a strong bipartisan trade bill that levels the playing field with China and gives American manufacturers and workers a fair chance to compete.

While the purpose of this hearing is to review a number of important issues related to China, I would like to focus my comments on the issue of zeroing and its impact upon U.S. industry, specifically, a bill which I have cosponsored, H.R. 2714.

Through a series of decisions, the World Trade Organization (WTO) Appellate Body is attempting to undermine U.S. antidumping duty law by forcing the U.S. to collect less than 100 percent of dumping duties owed. Instead, they claim that there must be a reduction in the amount of actual dumping found by "crediting" for or deducting "non-dumped" amounts. This would mean, dumped sales would be masked by non-dumped sales. This change would significantly weaken the law and ensure that no effective remedy would be available in situations of widespread dumping.

For decades, the U.S. has required the collection of duties equal to 100 percent of the dumping found once orders are in place. U.S. law specifically requires the exclusion of offsets for non-dumped sales when calculating margins based on an average to average comparison. The Appellate Body decisions mandating a lower level of protection is inconsistent with U.S. policy and ignores U.S. law which has been in place for 85 years, long before the establishment of the WTO Appellate body. Congress has expressed concerns about dispute decision-making in the WTO in the trade remedy area where decisions have created obligations the U.S. never agreed to in negotiations. This sentiment is reflected in the directives contained in the Trade Act of 2002.

As the Committee seeks to strengthen our trade laws to better address China's unfair trade practices, it is essential that any legislation it considers include measures to address these harmful decisions from the World Trade Organization. That is why I urge the Committee to act upon H.R. 2714. This bill is designed to remedy a series of adverse WTO decisions that have gone beyond the mandate of that organization and if fully implemented and enforced by the Department of Commerce will

chip away at America's ability to restore a fair trade relationship with China. Furthermore, this bill supports United States Trade Representative (USTR) policy to reverse these problematic decisions and restore the rights and obligations that the U.S. negotiated at the WTO and that Congress established in U.S. law. Simply put, this legislation would correct violations by China regarding our zeroing practices through negotiations within the WTO in order to clarify U.S. rights.

If not addressed, this issue will seriously undermine our trade laws. Manufacturers in 45 of our 50 states will be affected by the recent WTO decision on the practice of zeroing and the proposed administrative fix by the Department of Commerce in terminating the practice. In Ohio alone, the following industries will be negatively impacted:

- Antifriction Bearings
- Cased Pencils
- Corrosion-Resistant Carbon Steel Flat Products
- Hot-Rolled Carbon Steel Flat Products
- Oil Country Tubular Goods, Other Than Drill Pipe
- Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe
- Stainless Steel Sheet and Strip in Coils
- Steel Concrete Reinforcing Bars

My district in Ohio has 4,500 bearing jobs directly affected by this issue, and statewide approximately 6,200 jobs.

Ohio is proud to be home to thousands of workers employed in the manufacturing industry. Without a remedy against illegal Chinese trade practices the jobs of Ohioans and many others across the country are at risk. I look forward to working with you to include the provisions of H.R. 2714 in any larger China legislation that moves through this Committee.

Chairman LEVIN. Thank you very much and thank you to all of you.

The next grouping of our colleagues, will you join us and let us launch right in. We will start with you while your names are being placed in front of us so we will know you. We will just start. We are not sure when the vote will occur.

There is new news. I am now told the vote will not be at 9:45, but 10:45, hopefully it will be 11:45. I am not sure what the order is. Let us go from left to right, we start with seniority.

Mr. Knollenberg.

STATEMENT OF THE HON. JOSEPH KNOLLENBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. KNOLLENBERG. We will start from the right to left, but that is great.

Chairman LEVIN. No comment on that.

Mr. KNOLLENBERG. Thank you very much. I want to thank you for allowing us to come in today. I particularly want to thank the Ranking Member and all the Subcommittee Members who are here today. I thank you for the opportunity because this legislation affecting trade with China and specifically my bill, H.R. 1127, the American Manufacturing Competitive Act, is one thing that I think should get a greater hearing.

As this panel moves forward with drafting China trade legislation, it should include provisions that promote American manufacturing. As Chairman Levin knows very well, our home State of Michigan isn't a one State recession. Even though neighboring manufacturing States have seen some modest programs, Michigan's economy remains stagnant. Much of that can be attributed to the

struggles of the auto industry on which our economy is primarily dependent.

Auto manufacturers and their suppliers are struggling to compete in the global market. Despite their struggles, our flawed trade policies have actually hurt U.S. auto makers and manufacturers from locking them out from key decisions in trade policy, particularly regarding the price of steel. Our trade policies prevent the domestic auto industry from weighing in on how our trade policies affect them.

Before I discuss my bill, let me provide some perspective between the domestic auto industry and the domestic steel industry. There are more than 9 million people employed in U.S. industries that consume steel and 1.3 million people work in the automotive industry alone as compared to roughly between 100 and 150,000 workers in the steel industry. The U.S. auto and auto parts industry has lost approximately 250,000 jobs since 1999. That is more than the entire steel producing industry.

When the U.S. International Trade Commission reviews an anti-dumping or countervailing duty, they actually ignore domestic users such as Ford, General Motors, Chrysler and their suppliers.

I do want the Chairman and the Committee to know that I do not oppose anti-dumping and countervailing duty orders in general and believe that many of them serve a very, very important purpose, but too many are outdated and the process allows them to become a kind of protectionist mechanism.

There are now over 150 different import restrictions covering over 20 steel products from over 30 nations. Some of these have been in effect since the 1980s. Further, between 1998 and 2000, commerce lifted tariffs in only 2 of 314 cases it reviewed.

The system for reviewing duties and tariffs should be designed to be fair and equitable. Both domestic producers and domestic users should have a seat at the table, both opinions should be taken into account. That is why I introduced H.R. 1127, the American Manufacturing Competitiveness Act. These are two fundamental fairness components within the bill.

First, the bill promotes the simple fact that commerce and the ITC should at the very least listen to how duties affect their businesses. We are not trying to give consumers an advantage at the hearing and throughout the process, but we are trying to level the playing field. To that end the bill simply gives domestic manufacturers standing at ITC hearings.

The second issue that the AMCA Act extends is sound economic policy. Shouldn't our trade policies affect the entire U.S. trade economy as a whole, instead of favoring specific narrow industries? That is why the American Manufacturing Competitiveness Act instills an economic impact test. It simply requires Commerce and the ITC to consider a trade remedies affect on domestic manufacturers and the overall economy compared to the benefits to the producing industry.

If a negative impact on the domestic manufacturing industry or the overall economy is greater than the positive impact to the producers, then no trade remedy would be necessary, would be granted either. Adding an economic impact test would prevent situations

where trade remedy protection for one segment of the economy produces severe negative impacts to others.

In drafting trade legislation, this Congress and Subcommittee should promote provisions that support domestic manufacturers. In fact, I would argue that we couldn't do more to help the U.S. auto industry than to stop Japanese currency manipulation that provides a 4,000 to 15,000 cost advantage to Japanese vehicles exported to the United States.

However, considering the question at hand, inclusion of the American Manufacturing Competitiveness Act into upcoming China trade legislation is a good first step at leveling the playing field and helping domestic manufacturers.

I want to thank you, Mr. Chairman, again for allowing us here today and thank the panel for this opportunity, and I will look forward to any questions you may have.

[The prepared statement of Mr. Knollenberg follows:]

Statement of The Honorable Joseph Knollenberg, Representative in Congress from the State of Michigan

Mr. Chairman, Committee members, thank you for the opportunity to testify today on legislation affecting trade with China, and specifically my bill, H.R. 1127, the American Manufacturing Competitiveness Act. As this panel moves forward with drafting China trade legislation, it should include provisions that promote American manufacturing.

As Chairman Levin knows, our home state of Michigan is in a one-state recession. Even though neighboring manufacturing states have seen some modest progress, Michigan's economy remains stagnant. Much of that can be attributed to the struggles of the auto industry, on which our economy is primarily dependent. Auto manufacturers and their suppliers are struggling to compete in the global market.

Despite their struggles, our flawed trade policies have actually hurt U.S. automakers and manufacturers by locking them out from key decisions in trade policy. Particularly regarding the price of steel, our trade policies prevent the domestic auto industry from weighing in on how our trade policies affect them.

Before I discuss my bill, let me provide some perspective between the domestic auto industry and the domestic steel industry. There are more than nine million people employed in U.S. industries that consume steel, and 1.3 million people work in the automotive industry alone. That's compared to roughly 100,000–150,000 workers in the steel industry. The U.S. auto and auto parts industry has lost approximately 250,000 jobs since 1999, more than the entire steel industry.

When the U.S. International Trade Commission reviews an antidumping or countervailing duty, they actually ignore domestic users, such as Ford, General Motors, and Chrysler and their suppliers. A few years ago, during one of the ITC's sunset reviews of a steel duty, several American manufacturers that use steel wanted to testify on the duties. Because of the way the system is set up, they were not allowed any time. Instead, they had to go to foreign steel producers and ask for their time to testify why the duties were having a negative impact on domestic manufacturers and the American economy.

Furthermore, myself and several other members of Congress testified on the impact the duties were having on companies in their districts. Along with the steel consumers that testified, the ITC received ample input from those that thought the steel duties should be lifted. However, when the ITC's report came out, there was absolutely no mention of the views conveyed by steel consumers. It was as if the domestic manufacturers and their supporters had never testified.

I do want the Chairman and Committee to know I do not oppose antidumping and countervailing duty orders in general, and believe many of them serve an important purpose. But too many are outdated and the process allows them to become a kind of protectionist mechanism. There are now over 150 different import restrictions covering over twenty steel products from over thirty nations. Some of these have been in effect since the 1980s. Further, between 1998 and 2000, Commerce lifted tariffs in only two of the 314 cases it reviewed.

The system for reviewing duties and tariffs should be designed to be fair and equitable. Both domestic producers and domestic users should have a seat at the table. Both opinions should be taken into account.

That is why I introduced H.R. 1127, the American Manufacturing Competitiveness Act. There are two fundamental fairness components within this bill. First, the bill promotes the simple fact that Commerce and the ITC should at the very least listen to how duties affect their businesses. We are not trying to give consumers an advantage at the hearings and throughout the process, but we are trying to level the playing field. To that end, the bill simply gives domestic manufacturers standing at ITC hearings.

The second issue the American Manufacturing Competitiveness Act extends is sound economic policy. Shouldn't our trade policies reflect the entire U.S. economy as a whole, instead of favoring specific narrow industries? That's why the American Manufacturing Competitiveness Act instills an economic impact test. It simply requires Commerce and the ITC to consider a trade remedy's effect on domestic manufacturers and the overall economy compared to the benefits to the producing industry. If the negative impact on the domestic manufacturing industries or the overall economy is greater than the positive impact to the producers, then no trade remedy would be granted. Adding an economic impact test would prevent situations where trade remedy protection for one segment of the economy produces severe negative impacts to others.

In drafting trade legislation, this Congress and Subcommittee should promote provisions that support domestic manufacturers. In fact, I would argue that we couldn't do more to help the U.S. auto industry than to stop Japanese currency manipulation that provides a $4,000 to $15,000 cost advantage to Japanese vehicles exported to the United States. However, considering the question at hand, inclusion of the American Manufacturing Competitiveness Act into upcoming China trade legislation is a good first step at leveling the playing field and helping domestic manufacturers.

I thank the Chairman and the panel for this opportunity.

Chairman LEVIN. Thank you. Mr. Arcuri, we welcome you, your first appearance I am sure before the Committee on Ways and Means. Welcome.

STATEMENT OF THE HON. MICHAEL ARCURI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. ARCURI. Thank you, Mr. Chairman, and I thank you and Ranking Member and all the Members for the opportunity to be here today.

Since 2001, our country lost over 3 million manufacturing jobs, including 200,000 in New York State alone, while the trade deficit has grown to $759 billion. I refuse to accept that the loss of manufacturing jobs is inevitable as some have suggested. That is defeatist and wholly the wrong approach for any of us to embrace.

A significant cause of this job hemorrhaging is due to many of the unfair trade practices utilized by China, including currency manipulation, foreign government subsidies, theft of intellectual property, and dumping of goods in our market at below cost.

While my congressional district has fallen victim to significant manufacturing job loss over 30 years, a handful of companies have defied the odds and still remain open. I am convinced that many of these companies have chosen to stay in upstate New York in large part because of their loyalty to the community, but how long can we depend on that loyalty? At the end of the day, businesses are in the business of selling a product and making a profit.

Many will argue that previous trade agreements like NAFTA are the cause of our economic woes, and that may be true, but that ship has sailed, that time has passed. Our domestic manufacturing sector faces a new threat and that threat is China. Without substantive action we face the possibility of losing thousands of more fair wage manufacturing jobs. For example, in my district alone the

580 jobs at Revere Copper, the 350 jobs at Nucor Steel, the 360 jobs at Shape Metal Alloys, and the hundreds of jobs at Special Metals, to name only a handful, are all in jeopardy if we do not address unfair Chinese trade practices.

I believe our Nation's trade laws are the last line of defense for U.S. companies and workers competing against unfair foreign trade practices. These laws are based on principles that the international community has long agreed on. If we do not enforce them vigorously, we will be sending the world a signal that the rules do not matter and they can violate them at will, without repercussions.

In light of increasing unfair trade from China and other foreign competitors, it is evident now more than ever that our laws must be updated and strengthened.

There are a number of thoughtful and important proposals from the House and Senate which seek to address unfair trade practices.

Based on meetings and conversations I have had with businesses in my district, it has become overwhelmingly clear to me that we need to strengthen our trade laws to ensure predictably when industries have been injured and seek a remedy. Unfortunately, predictability has been nonexistent under the current Administration.

This Administration has used its discretion in all four special safeguard cases to deny any relief, even when the U.S. International Trade Commission determined that surging Chinese imports had caused significant market disruptions. Furthermore, over the past 13 years, the Treasury Department has used its discretion 25 consecutive times to avoid citing a single country for currently manipulation, often taking cover behind technical excuses.

While I am realistic that there is no silver bullet solution to resolve these issues, one piece of legislation stands above the rest and ensures the predictability our domestic manufacturers deserve: The Currency Reform for Fair Trade Act, introduced by Mr. Ryan of Ohio and Hunter of California. As I am sure each Member of this Committee knows, the Ryan-Hunter bill would remove political discretion by applying countervailing laws to nonmarket economies like China, make an undervalued currency a factor in determining countervailing duties, and require the Treasury Department to identify fundamentally misaligned currencies.

I agree that the Ryan-Hunter bill on its own will not solve the problem, but I would urge the Committee, as it moves forward, to include Ryan-Hunter language in legislation as it makes its way through the process.

In addition to strong trade remedy laws, our trade policy must underscore the tenet of reciprocity, which has been a fundamental principle in U.S. trade policy beginning with the Reciprocity Act of 1815 and formed the basis of our global trading system. Reciprocity is a very simple concept reminiscent of the golden rule: You eliminate barriers to our goods and services, and we will eliminate barriers to yours. When countries do not honor this rule and seek to gain unfair advantage, the benefits of the trade system are undermined. As one of the most open economies in the world we must insist that our openness is reciprocated by other trade partners.

Mr. Chairman and Members of the Committee, vigorous enforcement and strengthening of trade laws and agreements coupled with

reciprocal treatment by our foreign partners is critical to building public support for expanding international trade.

Together we can level the playing field for our domestic manufacturers; we can restore faith in the world trade system, we can defend the integrity of the U.S. trade laws and agreements and, most importantly, we can deliver the fairness in international trade that our citizens have a right to expect.

The task before you is monumental, but under the leadership of Chairmen Rangel and Levin, I am confident you can address unfair trade practices in a way that maintains our international relationships while at the same time bolstering our Nation's manufacturing sector.

I appreciate the opportunity to be here today to testify before this Committee. Thank you very much.

[The prepared statement of Mr. Arcuri follows:]

Statement of The Honorable Michael Arcuri,
Representative in Congress from the State of New York

Mr. Chairman and Members of the Committee, thank you for allowing me the opportunity to appear before you today.

While I may be a new Member of Congress, it is overwhelmingly clear to me that this Committee, under the leadership of Chairmen Rangel and Levin, is dedicated to addressing the many unfair Chinese trade practices, which are responsible for eroding our Nation's manufacturing sector.

Since 2001, our country has lost over three million manufacturing jobs, including 200,000 in New York State alone, while the trade deficit has grown to $759 billion. I refuse to accept that the loss of manufacturing jobs is "inevitable," as some have suggested. That is defeatist, and wholly the wrong approach for any of us to embrace.

A significant cause of this job hemorrhaging is due to many of the unfair trade practices utilized by China, including currency manipulation, foreign government subsidies, theft of intellectual property, and dumping of goods in our market at below-cost.

While my congressional district has fallen victim to significant manufacturing job loss over the last 30-years, a handful of companies have defied the odds and still remain. I am convinced that many of these companies have chosen to stay in Upstate New York, in large part, because of their loyalty to the community. But how long can we depend on loyalty? At the end of the day businesses are in the business of selling a product and making a profit.

Many will argue that previous trade agreements like NAFTA are the cause of our economic woes, and that may be true, but that ship has sailed—that time has passed. Our domestic manufacturing sector faces a new threat—and that threat is China. Without substantive action we face the possibility of losing thousands of more fair-wage manufacturing jobs. For example, in my district alone, the 580 jobs at Revere Copper, the 350 jobs at Nucor Steel, the 360 jobs at Shape Metal Alloys and the hundreds of jobs at Special Metals, to name only a handful—are all in jeopardy if we do not address unfair Chinese trade practices.

I believe our Nation's trade laws are the last line of defense for U.S. companies and workers competing against unfair foreign trade practices. These laws are based on principles that the international community has long agreed on. If we do not enforce them vigorously, we will be sending the world a signal that the rules do not matter, and that they can violate them at will, without repercussions.

In light of increasing unfair trade from China and other foreign competitors—its evident—now more than ever—that our laws must be updated and strengthened.

There are a number of thoughtful and important legislative proposals from both the House and the Senate which seek to address unfair trade practices.

Based on meetings and conversations I've had with businesses in my district—it's become overwhelming clear to me that we need to strengthen our trade laws to ensure predictably when industries have been injured and seek a remedy. Unfortunately, predictability has been non-existent under the current Administration.

This Administration has used its discretion in all four special safeguard cases to deny any relief, even when the U.S. International Trade Commission determined that surging Chinese imports had caused significant market disruptions. Further-

more, over the past 13-years, the Treasury Department has used its discretion 25 consecutive times to avoid citing a single country for currency manipulation, often taking cover behind "technical" excuses.

While I am realistic that there is no silver bullet solution to resolve these issues, one piece of legislation stands above the rest and ensures the predictability our domestic manufacturers deserve. The Currency Reform for Fair Trade Act, introduced by Mr. Ryan of Ohio and Mr. Hunter of California. As I'm sure each member of this Committee knows, the Ryan-Hunter bill would remove political discretion by apply countervailing laws to non-market economies like China, make an undervalued currency a factor in determining countervailing duties, and require the Treasury Department to identify fundamentally misaligned currencies.

I agree that the Ryan-Hunter bill on its own will not solve the problem, but I would urge this Committee, as it moves forward, to include Ryan-Hunter language in legislation that makes its way through the process.

In addition to strong trade remedy laws, our trade policy must underscore the tenet of reciprocity, which has been a fundamental principle in U.S. trade policy beginning with the Reciprocity Act of 1815 and formed the basis of our global trading system. Reciprocity is a very simple concept reminiscent of the golden rule—you eliminate barriers to our goods and services, and we'll eliminate barriers to yours. When countries do not honor this rule and seek to gain unfair advantage, the benefits of the trade system are undermined. As one of the most open economies in the world, we must insist that our openness is reciprocated by our trade partners.

Mr. Chairman and Members of the Committee, vigorous enforcement and strengthening of trade laws and agreements, coupled with reciprocal treatment by our foreign partners, is critical to building public support for expanding international trade.

Together, we can level the playing field for our domestic manufacturers; we can restore faith in the world trade system; we can defend the integrity of U.S. trade laws and agreements; and most importantly, we can deliver the fairness in international trade that our citizens have a right to expect.

The task before you is monumental, but under the leadership of Chairmen Rangel and Levin, I am confident you can address unfair trade practices in a way that maintains our international relationships while at the same time bolstering our Nation's manufacturing sector.

I appreciate the opportunity to appear today and testify before this Committee. Thank you.

Chairman LEVIN. Mr. Stupak, welcome.

STATEMENT OF THE HON. BART STUPAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. STUPAK. Thank you, Mr. Chairman, and Members of the Subcommittee, thank you for having me here today. I ask unanimous consent that my full statement be made part of the record.

Chairman LEVIN. No objection.

Mr. STUPAK. I would like to comment just on a couple of statements that have been made and expand in an area of food safety that we don't pay enough attention to.

Mr. STUPAK. Mr. Chairman, you and Senator Stabenow and Mr. Knollenberg have outlined the plight we face in Michigan with the loss of our manufacturing jobs because of unfair trade practices from China in particular. But let me elaborate a little more on something Mr. Hunter said about the arsenal of democracy and the need for specialty steel, that we had really only one company that could make it until the main ingredients they needed was not made available to our country.

Back when we were fighting for the steel industry to survive, we asked the Department of Congress to look at the steel industry, and is it not one of those critical industries we need to maintain our security in this country. After the Department of Commerce did

their investigation, they said, no, we don't need a U.S. steel market because we can always import our steel. They were wrong then, and they remain wrong. I think we have to look at, as Mr. Hunter said, our steel industry as part of our National security issues.

Currency manipulation, I know the Chairman is familiar with the NewPage Corporation, the papermill up in my district that does high—highly gloss paper for all the trade sanctions against, or sought trade sanctions against China for illegal dumping. They talked a lot about currency manipulation. While they won that case recently, and in May they issued a ruling saying, yes, China did illegally dump, and they temporarily put a tariff on, they failed to address—the ITC and others failed to address the currency manipulation which was part of that petition. It was just completely ignored. So, currency manipulation we have to really look at closely with China.

I want to highlight the ongoing investigation my Committee, Oversight and Investigation, is doing on the Energy and Commerce Committee on food safety. Mr. Davis probably said it best: There is nothing wrong with trade as long as there is trust in rules. Today we learn that more toys are being recalled from China because they are coated with lead paint, and that was just news here this morning.

If you take a look at it, on April 24 we had our first hearing on food safety in response to melamine. Then we had another hearing on July 17, approximately 80 days. In that 80 days we have had 39 new or revised import food safety alerts, import food safety alerts, these are import alerts now, with the instruction, detention without physical examination. So, you would think the food being imported into our country is being detained. It is not. Detained without physical examination means the importer finds a private lab to test the food and the concerns that we may have in this country, and the private lab usually gives the importer the results they want. It is then cleared, and it is allowed in our mainstream market, and later it is probably tested, hopefully, by FDA or somebody.

Our Subcommittee shows that private laboratory testing, because there are no standards, they are not certified by anybody, is basically a sham. So, we have in 80 days 39 import food alerts; that is 1 every 2 days. We don't detain the food that is coming in this country from other countries, especially China, and they have a private lab contract out, and they say the food is safe, and they are into our mainstream commerce, and by the time we realize it is a problem, it is too late.

You know, we take a look at the FDA in response to this. What we found, especially the seafood that comes from the Far East, and China in particular, treated with carbon monoxide, they should go through the Port of San Francisco, which are a leading FDA lab. But they are smart. They figure out that they will be inspected there, so they send the food instead to Las Vegas, the seafood, and then it is shipped back, Again treated with carbon monoxide. It looks fresh, it looks wholesome, when, in fact, 20 percent of the seafood was rotted. It was already rotten by the time it ever got to grocery stores. So, they find ways to get around it.

Look at our food safety, and I only bring up the terrorist concerns about our food, but the food safety with imports is critically important. If you want to worry about terrorism, or you just want to worry about Americans dying every year from contaminated food, we must put forth standards in rules, as Mr. Davis said. Why can't we insist upon food coming in this country, it is developed, handled, grown, inspected, processed under the same standards we have in this country? Why do we allow them to bring into 360 some ports in this country when we have 90 FDA inspectors? Why don't we use inspection fees to develop a system so you have the resources?

Subpoena power. When we had the melamine problem, we couldn't get into China, nor could we get any records because there is not subpoena power. Last but not least, the FDA doesn't even have any recall. When they say we are recalling food, like they are doing today in Manitowoc, Wisconsin, on some beans, that had no recall. It is the company that has to voluntarily do it. The FDA doesn't have any power to recall. They do not have subpoena power.

There is so many things we should do, especially in the import area, with food and food safety, especially since more and more of our food is coming from China, and every 5 years our food imports double in this country.

With that, Mr. Chairman, my time is up. I look forward to the rest of the time. Thank you.

Chairman LEVIN. Thank you very much, Mr. Stupak.

[The prepared statement of Mr. Stupak follows:]

Statement of The Honorable Bart Stupak,
Representative in Congress from the State of Michigan

Thank you Chairman Levin and Ranking Member Herger for allowing me to testify before the Subcommittee today to the growing concerns surrounding China's currency manipulation and food safety issues.

The growth of China's economy and its trade practices are some of the most significant challenges facing the United States in the 21st Century, especially in areas with a large manufacturing base, such as Michigan. In 2006, the United States had a $232.6 billion trade deficit with China. This is the largest trade deficit in American history.

China's unfair trade practice of undervaluing its currency has helped create this imbalance and has put U.S. workers and manufacturers at a competitive disadvantage. In 2004, the $162 billion trade deficit with China represented roughly 1.8 million payroll jobs. For my district and the entire State of Michigan this has had a dramatic effect on jobs. Since 2000, unemployment has risen from 3.7 percent to 7.2 percent in Michigan. During this same time frame, over 250,000 people in Michigan lost jobs in manufacturing industries.

While estimates vary, the Yuan is said to be undervalued by between 20 to 40 percent relative to the U.S. dollar. This means a Chinese product will cost 40 percent less solely because of currency misalignment.

Despite adopting some minor reforms in 2005, the Chinese Yuan has only increased about three percent in relation to the U.S. dollar. The Chinese government continues to protect the Yuan from the free-floating market and is in violation of the currency manipulation provisions within the World Trade Organization's General Agreement on Tariffs and Trade.

It is well past time that America sends a strong message to China. Unfortunately, the Bush Administration has failed to engage China on this matter. The NewPage Corporation, a paper company which operates a high end coated paper mill in Escanaba, MI, has experienced first hand the Department of Commerce's unwillingness to address currency manipulation. In a countervailing duty and dumping case brought against China, Korea, and Indonesia, NewPage included currency manipu-

lation within its petition. However, the Department of Commerce chose not to address or even investigate these charges.

To help America's workers, farmers, businesses, and to sustain America's long-term economic security, Congress must engage in a full debate on how to take decisive action to bring about fair trade with China. The Currency Reform for Fair Trade Act is a step in the right direction of leveling the playing field with China and I urge the full Committee to take action on this legislation as soon as possible.

I also want to highlight an ongoing investigation on the safety of the America's food supply in my Committee the Oversight and Investigations Subcommittee of the Energy and Commerce Committee. During this investigation, my Subcommittee has extensively examined the safety of food imports and other products coming from China.

Our investigation began in March when it was discovered that wheat gluten contaminated with melamine from China was the source of the pet food contamination. This episode highlighted the deficiencies in the U.S. Food and Drug Administration's (FDA) system and showed that FDA's system is insufficient to protect the American people from unsafe and dangerous food.

One area that is deeply concerning is FDA's Import Alert Rules. The Import Alert that was issued on April 27, 2007, regarding vegetable proteins from China (wheat gluten, etc.) presumably stated that all Chinese vegetable proteins would be detained until tested by FDA. However, in Import Alerts, the instruction "Detention Without Physical Examination" does not mean that FDA actually detains the product. Instead, FDA allows delivery of the product to the importer. The importer then hires a private laboratory to test the product. Our Subcommittee investigation uncovered that many of the tests conducted by these private laboratories are incorrect. Further, it now appears that FDA intends to contract out testing of all food imports, even surveillance samples that may identify problems, to private, for profit laboratories that work for the importers.

At a time when the volume of food imports doubles every five years and when the American public appears to be exposed to an increasing amount of unsafe, contaminated food, the FDA has proposed a drastic reorganization of its field staff. As part of this reorganization proposal, FDA plans to close seven of its 13 laboratories. If this plan is implemented, laboratories with unique capabilities to analyze dangerous, imported food will be lost. For example, the San Francisco District Laboratory, which is slated for closure, has expertise dealing with unsafe food imports, especially from the Far East. This laboratory has been a significant force in the prohibition of problematic imported seafood. The lab's effectiveness is so well-known that many unscrupulous importers of seafood are now sending their questionable products through Las Vegas, to avoid the scrutiny that the seafood would face in San Francisco.

The Kansas City District Laboratory is also slated for closure. This laboratory, along with another FDA laboratory, was responsible for detecting the melamine contamination in wheat gluten. The Denver District Laboratory develops methods to detect animal drug residues in animal and seafood tissues and in products such as milk and honey. In the past 15 years, the Denver lab has developed methods for detecting over 30 drug residues in fish and shellfish. In fact, the Denver lab recently developed the method for detecting melamine in fish tissue. All of these important functions, and many others, will be lost if the FDA closes seven of its 13 field laboratories.

Further, as part of its reorganization plan, FDA plans to consolidate its entry review function into six locations. This is among the most dangerous of the proposed changes. This consolidation would remove entry review from ports where inspectors and analysts have spent their careers identifying problematic products and bad actors. All decisions concerning import inspections will be removed from the field personnel who are closest to the problem. When FDA only inspects 1% of all imports, it makes no sense to have food safety decisions made in Washington, D.C.

During the August recess, Chairman Dingell and I are sending investigators to China and India to determine the extent to which the Chinese are willing and able to control the quality of food exports to the United States.

There is no question the FDA needs a continuing presence in China in both the food and drug areas and that this presence will require an increase in funding. This will be the focus of legislation being drafted by Chairman Dingell. The investigation I am conducting will continue until we can assure our constituents that the food supply of this country is safe.

Thank you again Chairman Levin and Ranking Member Herger for holding today's hearing and for giving me the opportunity to testify.

Chairman LEVIN. Mr. Braley, welcome. Glad to see you here.

STATEMENT OF THE HON. BRUCE BRALEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. BRALEY. Thank you, Mr. Chairman, and thanks to all the Members of the Committee for allowing me the opportunity to testify here today. I would ask unanimous consent that my written statement be included as part of the record.

Chairman LEVIN. It will be.

Mr. BRALEY. Mr. Chairman, you represent an area that is known as the automotive capital of the world. I represent an area that is known as the tractor capital of the world; Waterloo, Iowa. Back in 1948, when the NBA was founded, there was a franchise in Waterloo called the Waterloo Hawks. One of the players on that team was someone you know, Johnny Orr, who used to coach at the University of Michigan and later at Iowa State. At that time there was an NBA franchise in Fort Wayne, Indiana, called the Fort Wayne Zollner Pistons.

Chairman LEVIN. I have heard of them.

Mr. BRALEY. Back in the 1948, in the postwar era, manufacturing was much different than it is in this country. The reason why the NBA changed, and the reason why there aren't franchises in Fort Wayne or Waterloo anymore is because the rules of the game changed. When China was admitted to the WTO, the rules were supposed to change for them in terms of how they conducted their trade policies.

One of the things I would like to start with is this summary I put together showing the trade imbalance with China that was taken from the foreign trade statistics of the U.S. Census Bureau. Mr. Kind, I believe if you look at this summary, it pretty much tracks your history in Congress in terms of your tenure, and it shows how from 1997, our trade deficits skyrocketed from $49 billion to last year when it was $232 billion. One of the things that happened as a result of this burgeoning trade imbalance is that the U.S.-China Economic and Security Review Commission was established to monitor that trade imbalance and report back to Congress.

Some alarming things have happened in the last 3 years that have been noted by that Commission. On January 11 of 2005, they released a study that documented the negative impact of our U.S. trade deficit with China, and they noted in that report that 1.5 million jobs were lost to lower-wage Chinese competition between 1989 and 2003. During that time our trade deficit grew twenty fold.

They also noted that the assumptions we built our trade relationship with China on have proven to be a house of cards. Last year during its annual report to Congress, the 2006 report, the same Commission talked about the U.S.-China trade relationship and noted the problems, including currency manipulation, accounting integrity, dispute resolution problems and fair trade, and the need for criminal penalties for intellectual property rights violations.

More importantly, in chapter 4 there was a case study of the automotive industry that illustrated the challenges to U.S. manufacturing and the U.S. defense industrial base. We recommended that all U.S. Department of Defense be required to trace the supply

chains of components of critical weapons systems in its recommendations to Congress.

Just this year on June 1 in its 2007 report to Congress, the U.S.-China Economic and Security Review Commission noted that five of the eight factors that are major drivers of China's competitive advantage are considered unfair trading practices, including undervalued currency; counterfeiting and piracy; export industry subsidies; and lax health, safety and environmental regulations. That clearly violates China's WTO commitments regarding workers' rights, market access, currency manipulation, subsidies and protection of U.S. intellectual property rights.

The reason I am here is to voice my strong support for the two bills we have been talking about, H.R. 1229, which I was proud to cosponsor, and H.R. 2942, which I was also proud to cosponsor. It is time for us to level the playing field and bring China into compliance with its international trading obligations, and require our Administration officials to do their job to provide a level playing field by insisting upon enforcement of the rules of the game.

Thank you for allowing me to be here.

Chairman LEVIN. Thank you very much.

[The prepared statement of Mr. Braley follows:]

Statement of The Honorable Bruce Braley,
Representative in Congress from the State of Iowa

Chairman Levin and Members of the Committee, thank you for the opportunity to testify today at this important hearing on trade issues related to China. As you well know, China has very quickly become a dominant player in the global trade community, and I am very glad that you are holding this hearing today to address this issue that is so critical to American industries and workers.

I am troubled by our growing trade deficit with China, and by the detrimental effect this growing deficit has had on American jobs. We cannot afford to take a laissez-faire approach regarding China and trade, because the fact is that the Chinese government has taken a very *activist* approach to making China a major global economic force by illegally subsidizing their producers, by illegally dumping goods into the U.S. market, and by significantly undervaluing their currency. How we as a country respond to China's growing dominance will have dramatic effects on our economy as a whole, and on literally millions of American businesses, workers, and families.

American workers and farmers are the best in the world, but we cannot expect them to compete with Chinese producers benefiting from unfair trade practices. We in the Congress need to be sure that we enact the most effective laws we can to defend against unfair trade from China and all of our trading partners, and to ensure that our workers can compete on a level playing field. The United States has already lost far too many quality jobs to flawed trade policies, and we owe this action to American workers and their families.

Of course, the Congress is only one part of the equation that equals fair trade and the preservation of good jobs for American workers. The laws that we pass in this body are meaningless if the Administration is unwilling to enforce them. However, if Congress enacts effective trade remedies *and* if the Executive Branch enforces those laws strongly, our manufacturing and agricultural industries will have a far better opportunity to thrive.

I am pleased that there have been a number of bills introduced in the 110th Congress that would strengthen our trade laws and ensure that the Executive Branch enforces them. In the limited time we have this morning, I cannot fully address each of these. I would, however, like to comment on a few measures that I believe should be adopted by your Committee and the full House.

First, H.R. 1229, the "Non-market Economy Trade Remedy Act of 2007," introduced by two members of the Ways and Means Committee, Mr. Davis and Mr. English, would make several important changes to the trade laws as they relate to non-market economies, including China. I am proud to be a co-sponsor of this legislation, which would clarify that countervailing duty law can be applied against subsidies granted by such non-market economies. I understand that this Subcommittee

had a hearing on this important legislation earlier this year and that John Comrie, the Director of Trade Policy and Communications at Ipsco Enterprises, a steel and steel pipe producer with significant operations in my state, testified in support of this legislation. Ipsco employs about 250 workers at its Camanche, Iowa pipe mill in the First District of Iowa, which I represent, and about 100 people who work in the Ipsco steel mill in Montpelier, Iowa also live in my District.

The significant undervaluation of China's currency also poses a unique and complex problem for U.S. companies and workers. I am concerned that while the Administration has criticized China's currency misalignment, it has not taken the necessary action to provide American industry with relief, and that while international organizations like the International Monetary Fund and the G–8 have acknowledged that exchange rate misalignment can cause instability in the international trading system, they also have not taken adequate action to correct these misalignments and imbalances.

That is why I am proud to be a co-sponsor of H.R. 2942, the "Currency Reform for Fair Trade Act of 2007," introduced by Mr. Ryan and Mr. Hunter, who are also testifying here today. This bill would take significant and necessary steps to help ensure that American workers and industries get the relief they deserve from unfairly misaligned currencies. Particularly, the ability to apply countervailing duty law and anti-dumping law to imports that have unfairly benefited from a foreign government's intervention through currency undervaluation is an important tool for our domestic industries to have available to them. In addition, I am pleased that this bill includes important provisions which would require the Executive Branch to take action against countries which maintain fundamentally misaligned currencies, ensuring that these countries are held accountable for this unfair trade practice.

I wish I could stay here for the remainder of the hearing, because I know that you will also be addressing other important and relevant legislation, but unfortunately I have to attend a mark-up in the Committee on Oversight and Government Reform at this time. Again, thank you for the opportunity to testify in front of you today, for your attention to these important bills, and for your leadership on this critical issue.

Chairman LEVIN. Mr. Ryan.

STATEMENT OF THE HON. TIM RYAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. RYAN. Mr. Chairman and Ranking Member Herger, thank you very much; Mr. Chairman, you especially for just being an absolute bulldog on this issue. As you have known, I have spent a significant amount of time and staff resources since I got to Congress to try to educate Members and the public on this issue and craft legislation that many believe will go a long way to leveling the playing field with our relationship in China.

Let me begin by saying that I believe that free and fair trade relationships are critical to our Nation in today's global economy. The United States must continue to develop strong trade relationships to ensure that our industries can compete in the global marketplace and provide jobs and economic growth for our local communities. However, U.S. trade law must provide a level playing field, as Mr. Davis articulated quite well earlier, and must not unfairly cripple U.S. industries at the hands of foreign governments by their illegal practices.

Currency exchange rates are an essential element of the global trade process, and significantly misaligned or artificially undervalued currencies have a devastating impact on domestic manufacturing and create an unacceptable trade relationship. There is ample evidence from both conservative and liberal think tanks and scholars that various foreign governments undertake practices that

result in their currencies' artificial undervaluation relative to the U.S. dollar, and the United States cannot allow our trading partners to continue this illegal practice without providing remedies for injured industries.

As you know, and as Representative Hunter stated earlier, we recently introduced the Currency Reform for Fair Trade Act of 2007. This bill is an updated version of the Fair Currency Act of 2007, which had 112 bipartisan cosponsors. Mr. Hunter and I believe this new bill, H.R. 2942, is a stronger piece of legislation that provides greater, necessary relief for U.S. industries being harmed by unfair currency practices. As such, we believe this legislation will appeal to an even greater number of Members.

Let me quickly review some of the features of our bill. The bill applies countervailing duty law to currency undervaluation and defines "fundamental and actionable misalignment" as an undervaluation that exceeds 5 percent on an average for an 18-month period prior to the date of determination. This bill continues to require the use of public data to compute the extent of currency undervaluation, but adds a specific approach for determining the level of undervaluation based on the simple average of three standard economic methodologies.

This bill also continues the application of the antidumping law to currency undervaluation by amending the current antidumping law requiring the Commerce Department to adjust the price of an import from a country whose currency is found to be fundamentally misaligned in order to achieve a fair comparison.

This bill also applies countervailing duty law to nonmarket economy countries, Mr. Davis also mentioned that, while describing methodologies to construct a nonmarket economy price. This bill holds countries accountable if they maintain a misaligned currency by requiring certain monetary and trade steps by the Secretary of Treasury, including commencement of dispute settlement at the WTO and consideration of remedial intervention when a country fails to eliminate its currency misalignment.

Finally, this bill creates an Advisory Committee on International Exchange Rate Policy to advise the Secretary of Treasury and the President on international exchange rates and financial policies. This panel is to be made up of nongovernment appointees appointed by the House, Senate and President.

It is essential, Mr. Chairman, that this Congress pass strong legislation to ensure action is taken on the part of U.S. industries, and that each of these elements of our legislation is critical to ensuring a fair trade environment.

As you know, the Senate has also been recently engaged in the issue of currency misalignment. Yesterday S. 1677 was marked up and passed out of the Senate Banking Committee. Last week S. 1607 was marked up and passed out of the Senate Finance Committee. I will take just a moment to point out some of the key differences between our bill and S. 1607, the Bachus-Grassley-Schumer-Graham bill.

First of all, while the Senate bill 1607 addresses antidumping laws in relation to currency, it does not allow for the application of countervailing duty laws to undervalued currency. This will not provide sufficient relief for our industries.

Second, this bill provides far too much flexibility to the Treasury Department in determining when a petition can be filed under the antidumping statute at the Commerce Department and the U.S. International Trade Commission, only allowing petitioners to seek antidumping relief after Treasury has made a determination of misalignment and designated the currency for priority action. This approach makes Treasury a strong gatekeeper and provides far too great a barrier to U.S. industries in need of relief. Under our bill U.S. industries can directly petition the Commerce Department and the U.S. International Trade Commission under existing trade law without waiting for Treasury determinations. Blocking this ability to directly petition their government on currency matters is a step backward in the process and is not acceptable.

Finally, the Senate bill is too vague in its definition of fundamental misalignment. As I previously stated, our bill requires the use of standard economic methodologies to determine whether a specific level of misalignment has occurred for a specific period of time. The Senate bill 1607 defines misalignment as significant and sustained without providing any guidance as to what constitutes significant or sustained. Again, this provides far too much leeway and will lead to continued inaction. We don't have the time to get bogged down with weak legislation. Small- and medium-sized American manufacturers need our help now.

While I applaud the efforts of this Committee and of the Senate to address the critical issue of currency misalignment, I believe that any action taken must be strong and end this devastating practice that threatens to destroy our industrial base. Passage of a weak bill will only lead to many more years of inaction by the Administration, loss of jobs, loss of critical U.S. manufacturing capability and the continued demise of our defense industrial base.

Mr. Chairman, I can't thank you enough for having this hearing and the support. Obviously we can see, not only of the Ryan-Hunter bill, which Mr. Hunter calls the Hunter-Ryan bill in South Carolina and Nevada, New Hampshire and Iowa, but this is something that has bipartisan support, people who support trade agreements, people who do not support trade agreements, Democrats, Republicans from all over the country. I appreciate you giving us such an opportunity to look at this and look forward to working with you and the Committee in the future. Thank you.

[The prepared statement of Mr. Ryan follows:]

Statement of The Honorable Tim Ryan,
Representative in Congress from the State of Ohio

Testimony of Congressman Tim Ryan
Committee on Ways and Means, Subcommittee on Trade
Hearing on Legislation Related to Trade with China
August 2nd, 2007

Good Morning. I would like to thank Chairman Levin and Ranking Member Herger for holding this important hearing and for allowing me to provide this testimony. As you know, I have expended significant time and staff resources over the last several years to educate members and the public on this issue, and craft legislation that many believe will go a long way to leveling the playing field.

Let me begin by saying that I believe that free and fair trade relationships are critical to our nation in today's global economy. The United States must continue to develop strong trade relationships to ensure that our industries can compete in the global marketplace and provide jobs and economic growth for our local communities. However, U.S. trade law must provide a level playing field and must not unfairly cripple U.S. industries at the hands of foreign governments by their illegal practices.

Currency exchange-rates are a central element of the global trade process, and significantly misaligned or artificially undervalued currencies have a devastating impact on domestic manufacturing and create an unacceptable trade relationship. There is ample evidence that various foreign governments undertake practices that result in their currencies' artificial undervaluation relative to the U.S. dollar, and the United States

cannot allow our trading partners to continue this illegal practice without providing remedies for injured industries.

As you know, Representative Duncan Hunter and I have recently introduced the Currency Reform for Fair Trade Act of 2007. This bill is an updated version of the Fair Currency Act of 2007, which attracted 112 bipartisan cosponsors. Mr. Hunter and I believe this new bill, H.R. 2942, is a stronger piece of legislation that provides greater, necessary relief for U.S. industries being harmed by unfair currency practices. As such, we believe this legislation will appeal to an even greater number of members. Let me quickly review some of the key features of H.R. 2942:

The bill applies countervailing duty law to currency undervaluation, and defines "fundamental and actionable misalignment" as an undervaluation that exceeds 5 percent on average for an 18-month period prior to the date of determination.

This bill continues to require the use of public data to compute the extent of currency undervaluation, but adds a specific approach for determining the level of undervaluation, based on the simple average of three standard economic methodologies.

This bill also contains the application of the anti-dumping law to currency undervaluation by amending the current antidumping law, requiring the Commerce Department to adjust the price of an import from a country whose currency is found to be fundamentally misaligned, in order to achieve a "fair comparison."

This bill also applies countervailing duty law to non-market economy countries, while describing methodologies to construct the non-market economy price.

This bill holds countries accountable if they maintain a misaligned currency by requiring certain monetary and trade steps by the Secretary of the Treasury, including commencement of dispute settlement at the World Trade Organization and consideration of remedial intervention, when a country fails to eliminate its currency's misalignment.

Finally, this bill creates an 'Advisory Committee on International Exchange Rate Policy' to advise the Secretary of Treasury and the President on international exchange rates and financial policies. This panel is to be made up of non-government employees appointed by the House, Senate, and President.

It is essential that this Congress pass strong legislation to ensure action is taken on the part of the U.S. industries, and that each of these elements of our legislation is critical to ensuring a fair trade environment. As you know, the Senate has also been recently engaged in the issue of currency misalignment. Yesterday, S.1677 was marked-up and passed out of the Senate Banking Committee and, last week, S.1607 was marked-up and passed out of the Senate Finance Committee. I will take just a moment to point out some of the key differences between H.R. 2942 and S.1607, the Baucus-Grassley-Schumer-Graham bill.

First of all, while the Senate bill S. 1607 addresses anti-dumping laws in relation to currency, it does not allow for the application of countervailing duty laws to undervalued currency. This will not provide sufficient relief.

Second, this bill provides far too much flexibility to the Treasury Department in determining when a petition can be filed under the antidumping statute at the Commerce Department and the U.S. International Trade Commission, only allowing petitioners to seek antidumping relief after Treasury has made a determination of misalignment and designated the currency for priority action. This approach makes Treasury a strong gatekeeper and provides far too great a barrier to industries in need of relief. Under H.R. 2942, U.S. industries can directly petition the Commerce Department and the U.S. International Trade Commission, as they can under existing trade law, without waiting for Treasury determinations. Blocking this ability to directly petition their government on currency matters is a step backwards in the process and is not acceptable.

Finally, the Senate bill is too vague in its definition of "fundamental misalignment." As I previously stated, H.R. 2942 requires the use of standard economic methodologies to determine whether a specific level of misalignment has occurred for a specific period of time. S. 1607 defines misalignment as "significant and sustained" without providing any guidance as to what constitutes significant or sustained. Again, this provides far too much leeway and will lead to continued inaction. We don't have the time to get bogged down with weak legislation. Small and medium sized American manufacturers need help now.

While I applaud the efforts of this Committee and of the Senate to address the critical issue of currency misalignment, I believe that any action taken must be strong and end this devastating practice that threatens to destroy our industrial base. Passage of a weak bill will only lead to many more years of inaction by the administration, loss of jobs, and loss of critical U.S. manufacturing capability. We need legislation that will lead to action.

The American workforce and the manufacturing industry have as much ingenuity, know-how, and spirit to be competitive with any nation in today's global economy, but they cannot compete with the central banks of foreign governments. Again, I want to thank the Chairman and Ranking Member for this opportunity and I hope that as you move forward in your efforts to address the currency issues, you will consider the Ryan-Hunter bill as part of the solution critical to U.S. industries.

5

Chairman LEVIN. Well, we appreciate your coming in, all of you, and joining us. We will now go to the second panel; Secretary

Spooner, Sobel, USTR Assistant Rep. Brinza and the Assistant Commissioner Baldwin. Thank you again to all of our colleagues for coming.

Welcome. We very much welcome all of you. I am not—I looked twice last night at the list to try to figure out the protocol, and I must confess I wasn't quite sure. So, if you don't mind, we will go in the order that you are seated; is that okay? If you could, if possible, limit your presentations to 5 minutes to give us time. Your full statements will be in the record. Just proceed as you want to. We have looked forward to this back-and-forth. We would like to have it as fully open as possible. So, let us go. We will start, I guess, with Secretary Spooner, and then we will just go down the row.

STATEMENT OF DAVID M. SPOONER, ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION, INTERNATIONAL TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. SPOONER. Thank you, Chairman Levin, and Ranking Member Herger and Members of the Subcommittee, for inviting me to appear before you today to discuss the Administration's views on the legislative proposals relating to trade with the People's Republic of China.

Our trading relationship with China in general is a positive one with important benefits to the U.S. economy. However, at the same time we recognize that U.S. companies face a number of challenges as they try to compete in the China market, as well as with Chinese companies in the U.S. and with other markets. These challenges include market barriers, intellectual property issues and unfair trade practices.

The Administration is strongly committed to free trade and to securing the benefits of open markets around the world, which is why we are firmly committed to ensuring that such trade be conducted according to international norms of fair trade, and be as free as possible from government intervention and distortion. We understand and support the proposition that maintaining public support for open trade means preserving the ability of the United States to enforce rigorously our trade remedy laws.

The U.S. clearly derives benefits from trading with China. It is our fastest-growing market, and now our fourth largest overall export market. U.S. exports to China totaled $55 billion in 2006, up 32 percent from the previous year. To put this in perspective, U.S. exports to China were greater than U.S. exports to India, Brazil and France combined. According to U.S. surveys, U.S. companies in China are generally successful and report solid sales in the China market, and our companies and consumers derive benefits from imports from China as well.

The benefits derived by the United States trade with China are bolstered by a framework that requires China to abide by its international obligations. For the last 35 years, it has been the policy of the United States to engage China as it moves toward market economics. This policy culminated with China's accession to the WTO in 2001, so that China now has both rights and responsibilities that come with Membership in the international trading system.

But as China's economy has evolved over the years, so has the range of tools available to make sure that China abides by these rights and responsibilities. Earlier this year Commerce preliminarily modified a 23-year-old government policy by applying the antisubsidy law to China. From 1984 until March of this year, Commerce had a practice of not applying the CVD law to the nonmarket economy countries, including China, and the antidumping law was a commonly used instrument to address unfair trade practices on the part of Chinese exporters and producers.

In our countervailing duty investigation on glossy paper from China, Commerce preliminarily determined on March 30 that the current nature of China's economy does not create the obstacles to applying the antisubsidy law that were present in the mid-eighties in the Soviet-style economies at issue 20 years ago. China of 2007 is not the Soviet bloc 1984. There is no legal bar to Commerce's application of the CVD law to nonmarket economies, including China. In the case of China, we will continue to investigate properly alleged subsidy allegations and will countervail subsidies when there is sufficient evidence that warrants application of the law.

Indeed, I was just in China 2 weeks ago for an on-the-ground investigation of subsidies to China's paper industry. Additionally, my agency is now investigating subsidies to several industries, including steel and tires. Our CVD investigations are among the most transparent in the world, and all interested parties will have ample opportunity to provide comments for the record in each of these ongoing proceedings. We will make our final determination in the glossy paper case in October.

Our preliminary decision to apply the countervailing duty law to China in no way reverses our decision, reaffirmed last August in the context of an antidumping investigation, to treat China as a nonmarket economy under our antidumping law.

The Department of Commerce is committed to identifying and addressing trade-distortive and injurious subsidies in all countries, including China. It is a top priority for us. Commerce has always maintained, and we believe the courts have agreed with us, that we have the statutory authority to apply the CVD law to NME countries. However, if Congress would like to affirm Congress' authority, we would welcome the opportunity to work with you, Mr. Chairman, and with this Committee.

I should note that because of the complexity of this issue, it is important for the language of any bill to be crafted with appropriate precision not only to ensure consistency with our international obligations, but also to avoid unintended consequences for existing provisions of U.S. CVD and antidumping law.

Beyond that issue I must make clear that the Department of Commerce is deeply concerned that the other legislative proposals that have been advanced to date raise serious issues under the international trade remedy rules and could invite WTO sanction retaliation against U.S. goods and services, as well as foreign mirror legislation, and trigger a global cycle of protectionist legislation.

Before concluding, please allow me to comment on one other important issue that is under review in today's hearing, the question of whether dump sales should be offset by nondump sales in an antidumping analysis; zeroing. It is an extremely important issue,

and the Administration finds the WTO appellate body's rulings on zeroing to be very troubling. However, we place significant importance on respecting the dispute settlement system and addressing these findings whether we agree with them or not through the appropriate mechanisms. We are committed to consulting closely with Congress as to the appropriate way to move forward in response to the appellate body's findings on zeroing. We will continue to use the rules negotiations in the WTO as a form to educate other WTO Members on the troubling implications of the appellate body's findings, particularly with respect to their own antidumping systems. We firmly believe that the zeroing issue is one that must be addressed through negotiation, and we will continue to work closely with USTR on such efforts.

Thank you, Mr. Chairman, for giving me this opportunity to testify, and I am happy to take any questions.

Chairman LEVIN. Thank you.

[The prepared statement of Mr. Spooner follows:]

Statement of The Honorable David M. Spooner,
Assistant Secretary for Import Administration,
International Trade Administration, Department of Commerce

The Honorable David Spooner
Assistant Secretary of Commerce for Import Administration
Testimony before the
Committee on Ways and Means, Subcommittee on Trade
U.S. House of Representatives
"Legislation Related to Trade with China"
August 2, 2007

Thank you Chairman Levin, Ranking Member Herger, and Members of the Subcommittee for inviting me to appear before you today to discuss the Administration's views on the legislative proposals relating to trade with the People's Republic of China.

Our trading relationship with China in general is a positive one, with important benefits to the U.S. economy. However, at the same time, we recognize that U.S. companies face a number of challenges as they try to compete in the China market, as well as with Chinese companies in the U.S. and other markets. These challenges include market barriers, intellectual property issues, and unfair trade practices. The Administration is strongly committed to free trade and to securing the benefits of open markets around the world, which is why we are firmly committed to ensuring that such trade be conducted according to international norms of fair trade and be as free as possible from government intervention and distortion. We understand and support the proposition that maintaining public support for open trade means preserving the ability of the United States to enforce rigorously our trade remedy laws.

The U.S. clearly benefits from trading with China; it is our fastest-growing market and is now our fourth-largest export market. U.S. exports to China totaled $55 billion in 2006, up 32 percent from the previous year. To put this in perspective, U.S. exports to China were greater than U.S. exports to India, Brazil, and France combined. According to industry surveys, U.S. companies in China are generally successful and report solid sales in the China market. And, our companies and consumers derive benefits from imports from China as well.

The benefits derived by the United States' trade with China are bolstered by a framework that requires China to abide by its international obligations. For the last 35 years, it has been the policy of the United States to engage China as it moves toward market economics. This policy culminated with China's accession to the WTO in 2001, so that China now has both the rights and responsibilities that come with membership in the international trading system.

Just as China's economy has evolved over the years, so has the range of tools available to make sure that China abides by these rights and responsibilities. Earlier this year, Commerce preliminarily modified a 23-year-old government policy by applying the anti-subsidy law to China. The basis for the recently reversed policy was the 1984 Georgetown Steel decision, in which the Court of Appeals for the Federal Circuit affirmed that the Department of Commerce has the discretion to decide whether to apply the countervailing duty law to non-market economy countries. In the circumstances presented by that case, though, Commerce reasoned that non-market economy firms were

not independent, profit-driven allocators of resources and, therefore, could not take into account the impact of government subsidies when making pricing decisions. From then until March of this year, Commerce had a practice of not applying the CVD law to NME countries, including China, and the antidumping law was a commonly used instrument to address unfair trade practices on the part of Chinese producers and exporters. We currently have 62 antidumping orders against China. Since 2001, we have issued 31 antidumping orders against China, compared to the 24 orders put into place between 1993 and 2000.

In our countervailing duty investigation of coated free sheet paper from China, initiated on November 20, 2006, Commerce preliminarily determined on March 30, 2007, that the current nature of China's economy does not create the obstacles to applying the anti-subsidy law that were present in the "Soviet-style economies" at issue when we originally developed our policy more than 20 years ago. China of 2007 is not the Soviet Bloc of 1984. There is no legal bar to Commerce's application of the CVD law to non-market economies, including China. In the case of China, we will continue to investigate properly alleged subsidy allegations and will countervail subsidies where there is sufficient evidence that warrants such application.

Indeed, I was just in China two weeks ago for an on-the-ground investigation of subsidies to China's paper industry. Additionally, my agency is now investigating subsidies to several industries, including steel and tires. Our CVD investigations are among the most transparent in the world and all interested parties will have ample opportunity to provide comments for the record in each of these ongoing subsidies proceedings. Commerce will make its final determination in the glossy paper case in October.

Our preliminary decision to apply the countervailing duty law to China in no way reverses our decision, reaffirmed last August in the context of the antidumping investigation of imports of lined paper from China, to treat China as a non-market economy country under the antidumping law.

The Department of Commerce is committed to identifying and addressing trade-distortive and injurious subsidies in all countries, including China. That is a top priority for us. Commerce has always maintained, and we believe the courts have agreed with us, that we have the statutory authority to apply the CVD law to NME countries. However, if Congress would like to affirm Commerce's authority, we would welcome the opportunity to work with you, Mr. Chairman, and with this Committee. I should note that, because of the complexity of this issue, it is important for the language of any bill to be crafted with appropriate precision, not only to ensure consistency with our international trade obligations but also to avoid unintended consequences for existing provisions of U.S. countervailing and antidumping duty laws. Beyond that issue, I must make clear that the Department of Commerce is deeply concerned that the other legislative proposals that have been advanced to date raise serious concerns under international trade remedy rules and could invite WTO-sanctioned retaliation against U.S. goods and services, as well as foreign "mirror legislation" and trigger a global cycle of protectionist legislation.

Before concluding, please allow me to comment on another important issue that is under review in today's hearing – the question of whether dumped sales should be offset by non-dumped sales in an antidumping analysis. This issue, also known as "zeroing," is an extremely important issue, and the Administration finds that the WTO Appellate Body's findings on zeroing are very troubling. However, we place significant importance on respecting the dispute settlement system and addressing the findings, whether we agree with them or not, through the appropriate mechanisms. We are committed to consulting closely with Congress as to the appropriate way to move forward in response to the Appellate Body's findings on zeroing. We will continue to use the Rules negotiations as a forum to educate other WTO Members on the troubling implications of the Appellate Body's findings, particularly with respect to their own antidumping systems. We firmly believe that this zeroing issue is one that must be addressed through negotiation, and we will continue to work closely with USTR on such efforts.

Thank you for giving me this opportunity to testify. I am happy to take your questions.

Chairman LEVIN. Secretary Sobel.

STATEMENT OF MARK SOBEL, DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL MONETARY AND FINANCIAL POLICY, U.S. DEPARTMENT OF THE TREASURY

Mr. SOBEL. Thank you, Chairman Levin, Representative Herger and Members of the Subcommittee.

Congress is currently considering proposed legislation to counter perceived unfair currency practices against the background of legitimate concerns over Chinese exchange rate management. Let me share with you our perspectives.

Secretary Paulson is engaging China forcefully through the Strategic Economic Dialogue. He returned last night from China where he saw President Hu and China's financial leaders. He conveyed a strong message about the need for more vigorous action to correct the undervaluation of the RMB, lift its value, and achieve far greater currency flexibility.

Our discussions with China and the SED focus on the importance of China rebalancing its economy away from excess saving toward more consumption. RMB undervaluation encourages Chinese production of exports at the expense of domestic goods. The Chinese exchange rate regime is creating risks for China, including that of a renewed boom-bust cycle, which would harm not only China, but the world economy.

We are not satisfied with the pace of change in China. There has been important progress, however, including nearly 10 percent RMB appreciation in the last 2 years. We strongly share Congress' frustrations with the slow pace of Chinese reform. However, direct, robust engagement with China is the best means of achieving progress. We do not believe that legislation will strengthen our hand in promoting faster reform of the Chinese economy. Indeed, legislation could be counterproductive and lead to unintended consequences.

While strong bilateral engagement is a vital part of U.S. financial diplomacy, experience shows the best way to accomplish our objectives is through multilateralism. That is why we have worked

to enhance global understanding of the adverse impact of China's currency's practices and to build a multilateral consensus to persuade China to alter its exchange rate regime. We have done so with the G–7 and many other countries.

The United States has also worked hard to strengthen the IMF's focus on currency surveillance. In June the IMF modernized its rules for carrying out this responsibility. Under the new decision, the IMF will scrutinize much harder our country's currency policies and their impact on the world economy. Critically the new decision sends a strong message that the IMF has put exchange rate surveillance back at the core of its duties.

If the United States adopts currency legislation that is perceived as unilateralist, it could dampen investor's confidence in the openness of our economy and our financial system. We also must be mindful of the risk that we will create a precedent that others might use, including against the United States.

Many of the proposals under consideration mandate determination of whether currencies are in fundamental misalignment as a basis for remedial measures. Fundamental misalignment is a useful concept. The IMF included it as a foundation of its new currency surveillance decision. Economists rely on statistical models to assess currency misalignment. There are many types of models, and each depends on many assumptions. Depending on the assumptions, a wide range of results is yielded. One study on China found that estimates of RMB undervaluation ranged from 0 to 50 percent.

It is difficult for models to fully describe all the features of a modern economy relevant to exchange rate determination. For example, most models do not take into account the world's enormous private financial markets and their impact on currency evaluations. This is a serious omission that can result in currencies whose exchange rates are wholly market-determined being assessed as fundamentally misaligned. Most approaches focus on multilateral real exchange rates.

Economists view bilateral equilibrium agreement exchange rates as a less robust concept. Practically speaking, computing a bilateral equilibrium exchange rates implies one knows the appropriate amounts of bilateral trade, investment and other financial activity with another country. On balance, equilibrium exchange rate analysis generates valuable information, but there is no precise or reliable method for estimating a currency's proper value. Using the concept of fundamental misalignment to drive bilateral exchange rate calculations for the purpose of imposing trade remedies goes well beyond the IMF's approach to fundamental misalignment.

Some of the bills include provisions requiring the Treasury to oppose any change in governance at the international financial institutions if a country with a currency designated for action were to receive a higher voting share. Such provisions, we feel, are detrimental to U.S. interests in reforming the IMF, whose governing structure is out of touch with today's world and the growing role of emerging market economies. Such provisions would prevent many emerging markets from obtaining a higher quota share in the IMF, while having little influence on Chinese behavior.

Other proposals to consider remedial intervention in the foreign exchange market are ill-advised, in our view. It would be enormously difficult to intervene in a currency that is not traded internationally, as is the case of the RMB. It would detract from our efforts to work with China to correct the RMB's undervaluation.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much.

[The prepared statement of Mr. Sobel follows:]

**Statement of The Honorable Mark Sobel,
Deputy Assistant Secretary for International Monetary and
Financial Policy, U.S. Department of Treasury**

U.S. TREASURY DEPARTMENT OFFICE OF PUBLIC AFFAIRS

EMBARGOED UNTIL DELIVERY August 2, 2007
CONTACT Molly Millerwise, (202) 622-2960

TESTIMONY OF TREASURY DEPUTY ASSISTANT SECRETARY MARK SOBEL BEFORE THE COMMITTEE ON WAYS & MEANS, SUBCOMMITTEE ON TRADE HEARING ON LEGISLATION RELATED TO TRADE WITH CHINA

Washington, D.C.--Chairman Levin, Representative Herger, and members of the Sub-committee on Trade, thank you for the opportunity to appear before the subcommittee to speak to you on our views on legislation related to international currency issues.

The Congress is currently considering legislation to counter perceived unfair currency practices. While the bills are wide-ranging, many focus on the concept of "fundamental misalignment" against the background of very legitimate concerns over China's exchange rate management. Let me share with you our perspectives on these proposals and their implications for U.S. international monetary policy.

Engagement with China

Secretary Paulson is engaging China forcefully through the Strategic Economic Dialogue (SED). He frequently observes that, given China's economic size and importance, ensuring a productive U.S.-Chinese relationship is essential to managing the challenges of the 21st Century.

Last night, Secretary Paulson returned from a trip to China, where he saw President Hu and China's financial officials. He conveyed a strong message about the need for far more vigorous action by China to correct the undervaluation of the renminbi (RMB), take immediate action to lift the RMB's value, and achieve far greater currency flexibility.

Our discussions with China in the SED focus on the imperative for China to rebalance its economy away from exports and investment toward more consumption, to promote better balanced and more sustainable growth and to reduce the country's enormous and excessive external surpluses. A more effective monetary policy, made possible by greater currency flexibility, is also key. It would enable China to better control domestic inflation, dampen swings in the investment cycle, liberalize interest rates and improve credit allocation.

In contrast, heavy foreign exchange market intervention by China's central bank to manage the currency is leading to excess reserve accumulation and rapid increases in domestic liquidity. This heightens the risk of overheating, a build-up of non-performing loans leading to further banking sector stress, and asset bubbles. RMB undervaluation encourages production of exports at the expense of domestic consumption of goods and services. These trends increase the risk of a renewed boom-bust cycle, which would significantly harm first and foremost China, but also the world economy. Chinese currency adjustment is a matter of international responsibility, with significant implications for the smooth functioning of the international monetary and trading systems.

RMB appreciation also would to some extent reduce the U.S. bilateral trade deficit with China. But Chinese and U.S. global imbalances are rooted in the structures of our economies. That is why the SED process is focused not only on increasing currency flexibility but also more broadly on the overall rebalancing of the sources of growth of the Chinese economy.

While we are not satisfied with the pace of change in China, there has been important progress. China's currency is no longer fixed; it has appreciated by nearly 10 percent against the dollar in the last two years and the rate of appreciation has accelerated lately. China also is taking steps to reform its financial sector and to improve market access for U.S. and other foreign firms. Yet, there is still a long way to go.

We must continue to work hard for greater progress in our engagement. We appreciate the frustrations of Congress with the slow pace of Chinese reform. Indeed, we strongly share those frustrations. Yet, we continue to believe that direct, robust engagement with China is the best means of achieving progress. We do not believe that legislation would strengthen the United States' hand in achieving the goal, which the Administration and Congress share, of promoting faster Chinese economic reform. Indeed, we believe legislation would be counterproductive and could lead to unintended adverse consequences.

Multilateral Engagement

While strong bilateral engagement is a vital part of U.S. financial diplomacy, experience has taught us that multilateralism is essential to accomplish our objectives. Experience also teaches us that China responds defensively to bilateral pressure and is more open to multilateral engagement. Through multilateralism, the United States can win the high ground. But perceived unilateral actions would run the risk of weakening our effectiveness and fostering unwarranted perceptions that we are an isolationist nation.

That is precisely why we have worked through both diplomacy and multilateral fora to enhance global understanding of the adverse impact of China's currency practices and build a multilateral consensus to persuade China to alter its exchange rate regime. The G7 has repeatedly called for greater currency flexibility in China. The President of the European Central Bank recently reaffirmed this position. French President Sarkozy, soon after assuming office, spoke out about Chinese currency practices. Brazil's Finance Minister also recently made similar comments, as have many in Southeast Asia.

The United States has also worked hard to strengthen the IMF's focus on currency surveillance. Last month, the IMF – the only multilateral institution with a mandate for exchange rate surveillance – modernized its thirty-year old operational rules for carrying out this responsibility. Under the new Executive Board decision, the IMF will scrutinize much more closely countries' currency policies and their impact on the stability of the country and the world economy. This decision was adopted by an overwhelming consensus of the IMF's membership. Twenty-two of the twenty-four IMF Board chairs, accounting for 94 percent of the IMF's voting power, supported the decision. Only China and the Iranian-led chair opposed.

Critically, the new decision sends a strong and welcome message that the IMF is putting exchange rate surveillance back at the core of its duties.

U.S. Economy

The performance of the global economy in recent years has been the strongest in three decades. Much of this owes to the soundness of our economy. But China's unparalleled growth has also been a hugely positive factor. The United States and China together account for over 40 percent of global growth over the past five years.

The global economic landscape is changing rapidly. Technological innovation, trade and globalization are potent drivers of change. The United States benefits enormously from openness. Change, however, creates uncomfortable dislocations and angst, and we have sympathy for American workers affected by these powerful forces. China has become the face on the poster of rapid global economic change, and the RMB its symbol. China needs to play by the rules of the game. But neither RMB appreciation nor currency legislation will alter the underlying forces of globalization and technological change.

If the United States adopts currency legislation that is perceived abroad as unilateralist, investors' confidence in the openness of our economy could be dampened, diminishing capital inflows into the United States, and potentially putting upward pressure on interest rates and prices. Further, if we adopt legislation targeted at one country, we must be mindful of the risk that we will create a retaliatory precedent that others might use, including against the United States. This could have serious adverse effects for the smooth functioning of the international monetary system.

Currency Misalignment

Many of the proposals under consideration mandate determination of whether currencies are in "fundamental misalignment" as a basis for remedial measures. Fundamental misalignment is a useful concept. Indeed, the IMF included "fundamental misalignment" as a foundation of its new currency surveillance decision, stressing that it must be thoroughly analyzed and reviewed in IMF surveillance work.

In assessing currency misalignment, economists typically rely on models first to compute "real equilibrium exchange rates" and then to compute misalignment -- or the over- or under-valuation -- as deviations from these computed real equilibrium exchange rates. There are many approaches to these calculations – some rely on a "macroeconomic balance" approach, others on "behavioral equilibrium exchange rate models", and others simply on "purchasing power parity" calculations, to name a few.

The models make various assumptions. Among others, should a sustainable external position mean a country has a balanced trade account, or is a deficit of a given size consistent with external sustainability? What is the underlying saving and investment balance in a country? Should one assume trading partners are growing at potential, and if so, what is that potential? How do trade balances respond to exchange rate changes? What price index should be used in deflating nominal prices? What is the proper goods basket for measuring purchasing power? What are the key variables influencing the behavior of exchange rates and their proper weights?

Depending on the answers to these questions, a wide range of results is yielded. One study on China, collating academic research, found an extremely large range of estimates, from as little as zero to as much as 50 percent undervaluation of the renminbi. The GAO echoed this finding in an April 2005 report.

It is difficult for models to describe fully and accurately all the features of a modern economy relevant to exchange rate determination. In particular, most models do not take into account the world's enormous private financial markets and their impact on currency valuations. Yet, the volume of global foreign exchange transactions in one week exceeds all trade transactions that take place over an entire year. Currencies can be substantially "under-valued" as defined by a model, yet this undervaluation may result from purely market phenomena. This is especially the case for Japan and Switzerland, countries with floating currencies integrated into the global financial system, yet experiencing large capital outflows in view of very low domestic interest rates. Failure to take financial market effects into account could result in currencies whose exchange rates are wholly market determined being assessed as fundamentally misaligned.

Most approaches focus on **multilateral** real exchange rates – or indexes of a country's currency valuation against its trading partners adjusted for relative price differences and trade shares of each partner. Economists view **bilateral** equilibrium exchange rates as a less robust concept. Practically speaking, computing a bilateral equilibrium exchange rate implies that one knows the appropriate amounts of bilateral trade, investment, and other financial activity with another country. To be sure, many financial institutions compute such bilateral rates, but they are interested in assessing the direction in which a currency may move for the purpose of maximizing trading profits.

Equilibrium exchange rate analysis is a worthwhile undertaking. If many multilateral exchange rate models yield similar directional conclusions and project a broadly similar range of misalignment, that is valuable information. But while exchange rate models yield valuable insights, there is no reliable or precise method for estimating the proper value of an economy's foreign exchange rate or measuring accurately a currency's undervaluation. As Sam Cross, one of the distinguished architects of U.S. post-Bretton Woods financial diplomacy put it: "Most of the approaches to exchange rate determination tell only part of the story – like the several blindfolded men touching different parts of the elephant's body."

Using the concept of fundamental misalignment to drive a bilateral exchange rate calculation for the purpose of imposing trade penalties goes well beyond the IMF approach to fundamental misalignment. On matters pertaining to the WTO, the Treasury defers to colleagues at USTR and Commerce. But using currency calculations that admittedly lack precision and reliability to determine trade remedies, which appear to raise serious concerns with respect to U.S. compliance with WTO rules, underscores the weakness of some of the legislative approaches.

Other Issues

Some of the bills include provisions requiring the Treasury to oppose any change in International Financial Institution governance arrangements if a country with a currency designated for action were to receive a higher voting share. Such provisions are detrimental to U.S. interests. The IMF's current voting structure is out of touch with today's global economy and the growing weight of many emerging market economies. IMF members are currently discussing governance reforms aimed at shifting voting power from over-represented countries to under-represented, dynamic emerging market economies. The United States has led this modernization process, seeking to keep emerging market economies from drifting away from the multilateral system from which we strongly benefit.

Such legislative provisions could prevent many emerging markets from increasing their weight in the IMF, presumably in order to keep China from seeing an increase in its share. Yet even if China's voting share will rise as a result of governance reform, given the current state of discussions, it will likely still be at a level far less than China's true weight in the world economy. China already has its own Board seat in the IMF. On balance, this provision would likely be ineffective in influencing Chinese behavior,

but harm U.S. relations with many fast-growing emerging market countries around the world and thwart highly necessary modernization of the IMF.

Proposals to consider "remedial intervention" in the foreign exchange markets as a counter-weight to currency misalignment are ill-advised. It would be enormously difficult to intervene in a currency that is not traded internationally, as in the case of the RMB, which is traded only in China. Even if we could intervene in the Chinese market by buying RMB, China at the same time might be in its own market selling RMB. In the final analysis, the proposal could detract from our efforts to work with China to correct the RMB's undervaluation, immediately raise the RMB's value and achieve far greater flexibility in the currency regime.

Thank you.

-30-

5

Chairman LEVIN. Next, Assistant U.S. Trade Rep. Daniel Brinza. Welcome.

STATEMENT OF DANIEL BRINZA, ASSISTANT U.S. TRADE REPRESENTATIVE FOR MONITORING AND ENFORCEMENT, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. BRINZA. Thank you, Mr. Chairman, and Ranking Member Herger and Members of the Subcommittee on Trade. I am pleased to participate in today's hearing. I understand that today's hearing is focused principally on China currency and trade issues, including possible legislation relating to those issues.

Within the Administration, the Treasury Department is charged with responsibility for currency and exchange rate matters, while the Office of the U.S. Trade Representative is responsible for developing and coordinating U.S. international trade and investment policy. Our view aims at increasing exports; securing a level playing field for American workers, farmers and businesses; and ensuring fair treatment for U.S. investment abroad. We seek to resolve trade problems using a wide variety of tools, including bilateral discussions, negotiations and formal dispute settlement proceedings.

Our work depends at its core on the commitment of the United States Government, including the Congress, to uphold our international trade agreements. Accordingly, one key barometer that we apply in considering all potential trade legislation is World Trade Organization consistency. It is important to avoid enactment of WTO inconsistent legislation. Not only would it likely be challenged in WTO dispute settlement, potentially resulting in the imposition of sanctions or other measures against U.S. exports, service providers or intellectual property, it would undermine U.S. credibility as we seek to promote compliance by our trading partners with their international trade obligations. For example, legislation has been introduced in this Congress in response to China's currency practices which appears to raise serious concerns under international trade remedies rules and could invite WTO sanction retaliation against U.S. goods and services as well as foreign mirror legislation and trigger a global cycle of protectionist legislation.

Taken together, the Administration's engagement in the international economic realm uses the best tools available to us to serve the American people's interest in building strong, mutually beneficial economic relations with our global trading partners, including China.

To provide a more concrete perspective on our work, I will give you a brief overview of USTR's recent engagement with China, touching on the mechanisms USTR uses to address key trade concerns. Since succeeding to the WTO 5 years ago, China has taken significant steps in an effort to bring its trading system into compliance with WTO rules. U.S. businesses, workers, farmers, service providers and consumers have benefited significantly from these steps and continue to do so as U.S.-China trade grows. Indeed, last year U.S. exports to China climbed by 32 percent, while China's exports to the United States increased by 18 percent.

China today has become our fourth largest export market and the fastest-growing major export market for the United States in the world. It is helping to support thousands of American jobs today and will support even more in the future. Despite this progress, China's record in implementing its WTO obligations is mixed. In our engagement with China, we follow a dual-track ap-

proach; a bilateral dialogue together with a full willingness to use WTO's dispute settlement where appropriate.

Considering bilateral dialogues, the United States has achieved some important successes. For example, China made several commitments related to IPR protection and enforcement, to eliminate duplicative testing and certification requirements applicable to imported medical devices, and to make adjustments to its registered capital requirements for telecommunication service providers. China also reaffirmed past commitments to technology neutrality for 3G telecommunication standards, and to ensure that new rules in the postal area would not negatively affect foreign express couriers.

To date we have turned to formal WTO dispute settlement in five instances. With respect to semiconductors, it has filed a WTO dispute against China challenging value-added tax rebates that discriminate against imported semiconductors. As a result, the United States and China resolved the matter, ensuring fair access for manufacturers and workers to a market worth over $2 billion.

Auto parts, the U.S. acted together with the European Communities and Canada, launched a WTO dispute settlement case challenging China rules that provide for prohibited local content requirements in the auto sector through discriminatory charges on imported auto parts. This case is now before a WTO panel with a decision expected in January 2008.

Industrial subsidies. The U.S., later joined by Mexico, filed a WTO challenge against several Chinese subsidy programs that appear to be prohibited under WTO rules, either as export or import substitution subsidies. We have now asked the WTO to establish an arbitral panel to hear our case.

Intellectual property and market access. The U.S. initiated WTO's free settlement proceedings on Chinese market access restrictions in copyright-intensive industries, books, newspapers and periodicals, and audio and video products. We have held initial consultations, and additional consultations are under way.

Intellectual property protection. The U.S. has launched a WTO challenge to various deficiencies in China's legal regime for protecting and enforcing copyrights and trademarks that affect a wide range of products. Consultations have recently taken place.

One area we have not yet reached a satisfactory conclusion is in the area of beef trade. Working closely with the Department of Agriculture, we have been in contact with China to seek a full reopening of the beef market consistent with international standards.

In summary, USTR is committed to ensuring that we are using the most effective tools at our disposal to pursue an open and fair trade relationship with China. This effort ties into broader Administration engagement on international economic issues, including work by Treasury and Commerce and with Members of Congress to achieve a more flexible market-based exchange rate for China's currency and a level playing field for American businesses, workers and farmers.

Thank you again for the opportunity to testify. I will be happy to take any questions.

Chairman LEVIN. Thank you very much.

[The prepared statement of Mr. Brinza follows:]

Statement of The Honorable Daniel Brinza, Assistant U.S. Trade Representative for Monitoring and Enforcement, Office of the U.S. Trade Representative

WRITTEN TESTIMONY OF DANIEL BRINZA, DEPUTY GENERAL COUNSEL AND ASSISTANT U.S. TRADE REPRESENTATIVE FOR MONITORING AND ENFORCEMENT, BEFORE THE HOUSE WAYS AND MEANS SUBCOMMITTEE ON TRADE

August 2, 2007

Introduction

Chairman Levin, Ranking Member Herger, and distinguished members of the Ways and Means Subcommittee on Trade, I am pleased to participate in today's hearing.

I understand that today's hearing is focused principally on China currency and trade issues, including possible legislation relating to those issues.

Within the Administration, the Treasury Department is charged with responsibility for currency and exchange rate matters, while the Office of the U.S. Trade Representative (USTR) is responsible for developing and coordinating U.S. international trade and investment policy. Our work aims at increasing exports by expanding market access for American goods and services abroad, securing a level playing field for American workers, farmers and businesses in overseas markets, and ensuring fair treatment for U.S. investment abroad. USTR oversees negotiations with other countries on these matters. In addition, we seek to resolve trade problems using a wide variety of tools, including bilateral discussions, negotiations, and formal dispute settlement proceedings.

The work of the USTR to open markets and resolve trade disputes depends, at its core, on the commitment of the United States Government, including the Congress, to upholding our international trade agreements. Accordingly, one key barometer that we apply in considering all potential trade legislation is World Trade Organization (WTO) consistency. It is important to avoid enactment of WTO inconsistent legislation. Not only would it likely be challenged in WTO dispute settlement, potentially resulting in the imposition of sanctions or other measures against U.S. exports, service providers or intellectual property, it would undermine U.S. credibility as we seek to promote compliance by our trading partners with their international trade obligations. For example, legislation has been introduced in this Congress in response to China's currency practices, which appears to raise serious concerns under international trade remedies rules and could invite WTO-sanctioned retaliation against U.S. goods and services, as well as foreign "mirror legislation," and trigger a global cycle of protectionist legislation.

USTR's efforts to achieve market-driven, market opening trade policies abroad fit into a larger economic policy picture, of course. They support Treasury's efforts to get results on currency and other matters in the financial realm as well as the Commerce Department's work on global competitiveness, export promotion and its administration of domestic trade remedy laws. Taken together, the Administration's engagement in the international economic realm uses the best tools available to us to serve the American people's interest in building strong, mutually beneficial economic relations with our global trading partners, including China.

To provide more concrete perspective on our work, I will give you a brief overview of USTR's recent engagement with China, touching on the mechanisms USTR uses to address key trade concerns.

Key China Trade Efforts

China's accession to the WTO marked a critical step forward toward China's integration into the international rules based system. Since acceding to the WTO five years ago, China has taken significant steps in an effort to bring its trading system into basic compliance with WTO rules. These steps have helped to deepen and strengthen economic reforms that China began 20 years ago. U.S. businesses, workers, farmers, service providers and consumers have benefited significantly from these steps and continue to do so as U.S.-China trade grows. Indeed, last year U.S. exports to China climbed by 32 percent (while China's exports to the United States increased by 18 percent). These data suggest that the Chinese market is becoming more accessible for American companies and that Chinese consumers are developing an appetite for America's highly competitive goods and services. China today has become our fourth largest export market and the fastest growing major export market for the United States in the world. It is helping to support thousands of American jobs today and will support even more in the future.

Despite this progress, China's record in implementing its WTO obligations is mixed. While China has fully implemented many of its WTO obligations, there are a number of areas where it still has work to do as it continues to transition from a centrally planned economy to a free-market economy governed by the rule of law.

In our engagement with China, the United States follows a dual-track approach to resolving its WTO concerns – bilateral dialogue to try to achieve practical solutions where possible together with a full willingness to use WTO dispute settlement where appropriate to resolve problems.

The United States remains committed to seeking cooperative and pragmatic resolutions through bilateral dialogue with China, and the United States has achieved some important successes. For example, through our recent bilateral dialogues, China made several commitments related to IPR protection and enforcement. It also committed to eliminate duplicative testing and certification requirements applicable to imported medical devices, and to make adjustments to its registered capital requirements for telecommunications service providers. China also reaffirmed past commitments to technology neutrality for 3G telecommunications standards and to ensuring that new rules in the postal area would not negatively affect foreign express couriers. In addition, China committed to commence, by no later than December 31, 2007, formal negotiations to join the WTO's Government Procurement Agreement. The United States has been working with China to make sure that it implements all of these commitments.

However, we have been unable to resolve other important issues through bilateral discussions, despite extensive effort, and to date we have turned to formal WTO dispute settlement in five instances:

- **Semiconductors** (Mar. 2004) – The United States filed a WTO dispute against China challenging value-added tax rebates that discriminated against imported semiconductors. As a result, the United States and China resolved the matter, ensuring fair access for U.S. manufacturers and workers to a market worth over $2 billion.
- **Auto Parts** (Mar. 2006) – The United States, acting in coordination with the European Communities and Canada, launched a WTO dispute settlement case challenging Chinese rules that provide for prohibited local content requirements in the auto sector through discriminatory charges on imported auto parts. This case is now before a WTO panel, with a decision expected in January 2008.

- **Industrial Subsidies** (Feb. 2007) – The United States, later joined by Mexico, filed a WTO challenge against several Chinese subsidy programs that appear to be prohibited under WTO rules, either as export or import substitution subsidies. These widely available subsidies offer significant benefits, and the export subsidies alone potentially benefit nearly 60 percent of China's exports of manufactured goods. The parties held consultations in March 2007 and June 2007. In July 2007, the United States and Mexico formally requested the establishment of a WTO arbitral panel.
- **Intellectual Property/Market Access** (Apr. 2007) – The United States initiated WTO dispute settlement proceedings on Chinese market access restrictions in copyright-intensive industries (*i.e.*, books, newspapers and periodicals) and audio and video products (*e.g.*, movies, CDs, DVDs, and video games). The United States held initial consultations with China in June 2007, and additional consultations are underway.
- **Intellectual Property Protection** (Apr. 2007) - The United States has launched a WTO challenge to various deficiencies in China's legal regime for protecting and enforcing copyrights and trademarks that affect a wide range of products. Consultations took place in June 2007.

USTR provides a detailed discussion of the efforts the United States has made to address these and other areas of concern, using bilateral dialogue and WTO dispute settlement, in the "2006 USTR Report to Congress on China's WTO Compliance," issued on December 11, 2006. The report is available on the USTR website (www.ustr.gov).

One area where we have not yet reached a satisfactory conclusion is in the area of beef trade. Working closely with the Department of Agriculture, we have been in contact with China to seek a full re-opening of the beef market consistent with international standards.

In summary, USTR is committed to ensuring that we are using the most effective tools at our disposal to pursue an open and fair trade relationship with China. This effort ties into broader Administration engagement on international economic issues, including work by Treasury and Commerce, and with Members of Congress to achieve our common goals: a more flexible, market-based exchange rate for China's currency and a level playing field for American businesses, workers, and farmers.

Thank you for the opportunity to testify. I will be happy to take your questions.

Chairman LEVIN. At last Commissioner Baldwin. We look forward to your testimony.

STATEMENT OF DANIEL BALDWIN, ASSISTANT COMMISSIONER, OFFICE OF INTERNATIONAL TRADE, U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY

Mr. BALDWIN. Thank you, Mr. Chairman, Members of the Subcommittee. I am pleased to appear before you today to discuss the actions we are taking at Customs and Border Protection to enforce our trade laws and ensure the safety of our imported food products.

My name is Dan Baldwin. I am the Assistant Commissioner with our newly created Office of International Trade. My office holds the responsibility of formulating CBP's trade policy and enforcing U.S. import laws. As the value and complexity of our trade continues to grow, CBP recognizes the challenges we face to maintain a safe and secure food supply chain.

Since 9/11, CBP's priority mission has been to secure the Nation's borders from terrorists and terrorist weapons while facilitating the flow of legitimate travel and trade. In support of this mission, CBP has designed strategies to manage the risk of agriculture and other trade products to ensure that no contamination and no harm comes to our Nation.

As the guardian of our Nation's borders, CBP has broad authority to interdict food imports and other trade goods at the ports of entry. We frequently interact with various government agencies, including these here at the table, but also including Food Safety Inspection Service and FDA, on questions related to enforcement actions, as those agencies house subject matter experts on many trade policy and trade safety issues. Thus, CBP is able to rely on statutory authority of the Federal agencies with specific mandates to enforcing our trade laws and our food safety regulations to finalize our enforcement actions.

As with our approach to antiterrorism, CBP has taken a multilayer approach to protect the safety of the American trade system. In my testimony today I would like to highlight three key aspects that CBP has focused on primarily in the food safety arena, as was mentioned at the earlier panel that food and import safety is taking on new importance, and CBP is at the forefront of that. First I would like to highlight CBP's national trade strategy; second, CBP targeting efforts; and finally, CBP personnel dedicated to the fight. After briefly discussing these three topics, I can highlight some of our experiences with these operations.

First, pursuant to our twin goals of fostering legitimate trade and travel while securing our borders, CBP has developed a national trade strategy to help our agency successfully fulfill our trade facilitation and trade enforcement mandate. Our national trade strategy is based on six priority trade initiatives. Agriculture is among them, but they also include textiles and wearing apparel enforcement, antidumping and countervailing duty enforcement, intellectual property rights enforcement, and revenue protection.

Under the terms of our trade prioritization strategy, we focus our resources and efforts to address areas of key trade importance. Our goals are to detect and interdict agro and bioterrorism in the food safety arena and prevent the unintentional introduction of pests, diseases and unsafe agriculture and food products. This enables

CBP to promote our Nation's economic security through enforcement of our regulatory trade laws.

Second, CBP uses various targeting mechanisms to ensure the compliance and safety of food and agriculture products imported into the United States and thereby work to achieve CBP goals that I have just listed for you.

CBP, in coordination with FSIS and FDA, utilizes the following mechanisms to ensure safety of the American food supply. Our Automated Targeting System is based on algorithims and rules of a flexible, constantly evolving targeting system that integrates enforcement and commercial databases. ATS is essential to CBP's ability to target high-risk cargo entering the United States based upon advanced manifest information.

CBP also uses the Automated Manifest System, or AMS, which provides us with advanced cargo information to be used for targeting screening of all imported merchandise. We utilize this system to assure appropriate coordination with other regulatory agencies.

The Automated Commercial System, or ACS, CBP's automated system of record for entry processing and cargo clearance, allows us to screen for additional food and agriculture risks as well as the vast majority of our trade issues. The majority of our trade-targeting criteria present in this system are intended to prevent the introduction of contamination, pests or diseases. Approximately 87 percent of our current criteria in ACS are agriculture-related.

In addition to these systems, CBP maintains the National Targeting Center. The NTC is the state-of-the-art facility in which personnel from several separate government agencies are co-located to review advanced cargo information on all inbound shipments.

In addition to sophisticated targeting systems and coordination between agencies, CBP maintains a diverse workforce that is specifically trained to detect and prevent imports that may be harmful to the American public.

CBP personnel receive specific training on agro and bioterror incidents. We currently have the ability to rapidly deploy more than 18,000 CBP officers, 2,000 agriculture specialists and 1,000 import specialists in response to a threat to our agriculture and food supply. Furthermore, CBP's Laboratory and Scientific Services (LSS) maintains eight separate laboratories around the country with a 24/7 technical reach-back center.

With these resources CBP has responded to the increased need for focus on food safety particularly from China. Overall Chinese food imports represent about 1–1/2 percent of total imports from China by value. While they may seem small, this sector is experiencing recent significant growth. In 2006, Chinese food imports increased 25 percent just from the previous year, the second fastest growth rate compared to the top five Chinese trade sectors. In addition, 75 percent of the overall 1 million Chinese food producers are small operations. These two factors result in an increased risk to the food supply from China.

Food defense and food safety concerns will only increase as world trade in food and agriculture and other trade issues continue to grow and diversify. CBP will continue to focus on the issue and

partner with other Federal agencies to ensure the prevention of contaminated products from entering the United States.

I thank the Chairman, the Ranking Member and other Members of the Subcommittee for the opportunity to testify today and am happy to answer any of your questions.

[The prepared statement of Mr. Baldwin follows:]

Statement of The Honorable Daniel Baldwin,
Assistant Commissioner, Office of International Trade,
U.S. Customs and Border Protection, Department of Homeland Security

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before you today to discuss the actions we are taking at Customs and Border Protection (CBP) to ensure the safety of imported food. My name is Dan Baldwin and I am the Assistant Commissioner in the Office of International Trade at U.S. Customs and Border Protection. My office holds the responsibility of formulating CBP's trade policy, developing programs, and enforcing U.S. import laws. The food and agriculture industry contributes significantly to the United States economy. As the value and complexity of our food imports continues to grow, CBP recognizes the challenges we face to maintain a safe and secure food supply. To meet this challenge, OMB and the relevant food safety agencies are collaborating on ways to most effectively address issues raised in GAO's designation of Federal Oversight of Food Safety as a high-risk item in February 2007.

CBP has taken great strides toward securing America's borders, including the protection of our food supply and the economic health of American agriculture. Since September 11, 2001, CBP's priority mission has been to secure the Nation's borders from terrorists and terrorist weapons while facilitating the flow of legitimate travel and trade. In support of this mission, CBP has designed strategies to manage the risk of an agricultural product contamination that may cause harm to the American public or damage to the Nation's economy.

CBP has worked extensively to coordinate activities and enforcement actions with USDA and HHS, and in particular the FDA. As the guardian of our Nation's borders, CBP has broad authority to interdict imports of food and agricultural products at the Port of Entry. We frequently interact with USDA and FDA on questions regarding enforcement action, as those departments house the subject matter expertise on food and agriculture admissibility standards. CBP is able to rely on the statutory authority of other federal agencies with the specific mandate of enforcing food safety regulations to finalize enforcement actions on food safety issues.

CBP'S CURRENT ENFORCEMENT STRATEGY

As with our approach to anti-terrorism, CBP has taken a multi-layered approach to protect the safety of America's food imports. In my testimony today, I would like to highlight the three key aspects that CBP has utilized in its efforts to date: CBP's National Trade Strategy, CBP Targeting, and CBP Personnel. After briefly discussing these three topics, I will discuss our experience with food safety operations.

NATIONAL TRADE STRATEGY: AGRICULTURE ESTABLISHED AS PRIORITY TRADE INITIATIVE

Pursuant to our twin goals of fostering legitimate trade and travel while securing America's borders, CBP has developed a National Trade Strategy to help our agency successfully fulfill our trade facilitation and trade enforcement mandate. Our National Trade Strategy is based upon six Priority Trade Initiatives (PTI), these PTI's are: Antidumping and Countervailing Duty, Intellectual Property Rights, Textiles and Wearing Apparel, Revenue, Agriculture, and Penalties. Under the terms of our trade prioritization strategy we focus CBP resources in our efforts to address areas of key trade importance. I would like the Committee to note that Agriculture is one of our six PTI's.

The goals of the agriculture trade strategy include:

1) The detection and prevention of agro-terrorism and bio-terrorism, i.e., the intentional contamination of an agricultural product or food, or the intentional introduction of diseases or pests intended to cause harm to the American public, American agriculture, or the Nation's economy.

2) The detection and prevention of the unintentional introduction into the United States of pests or diseases that would cause harm to the American public, American agriculture, or the Nation's economy.

3) The detection and prevention of the unintentional introduction of adulterated, contaminated, or unsafe agricultural and food products into the United States that

would cause harm to the American public, American agriculture, or the Nation's economy.

4) The promotion of our Nation's economic security through the facilitation of lawful international trade and enforcement of regulatory trade laws.

TARGETING

CBP uses various targeting mechanisms to ensure the compliance and safety of food and agricultural products imported into the U.S. These mechanisms are specifically designed to incorporate the food safety concerns of USDA and HHS.

One of the systems used is our Automated Targeting System (ATS). ATS, which is based on algorithms and rules, is a flexible, constantly evolving system that integrates enforcement and commercial databases. ATS is essential to CBP's ability to target high-risk cargo entering the United States. ATS is the system through which we process advance manifest information to detect anomalies and "red flags," and determine which cargo is "high risk" and should be scrutinized at the port of arrival.

Another system CBP uses is the Automated Manifest System, which provides us with advanced cargo information to be used for targeting and screening of all imported merchandise. This advance information allows CBP to identify shipments of interest in advance of arrival. By identifying shipments in advance, CBP is better able to focus resources on those shipments which may be of concern, prevent their introduction into the commerce, and ensure appropriate coordination with other regulatory agencies.

The Automated Commercial System (ACS), CBP's automated system of record for entry processing and cargo clearance, allows us to screen for additional food and agricultural risks. The majority of the targeting criteria present in this system are used to prevent the introduction of contamination, pests, or diseases. Approximately 87% of the cargo criteria in ACS are agriculture related.

In addition to these CBP automated systems, CBP maintains the National Targeting Center (NTC). The NTC is the facility at which personnel from several separate government agencies are co-located to review advanced cargo information on all inbound shipments. At the NTC, CBP personnel are able to quickly coordinate with personnel from other federal agencies such as the FDA, Food Safety and Inspection Service (FSIS), and Animal Plant Health Inspection Service (APHIS) to target high risk food shipments

Furthermore, the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (BTA) authorized FDA to receive prior information to target shipments of food for human or animal consumption prior to arrival. The BTA gave CBP the opportunity to assist FDA with the prior notice requirements. CBP worked in concert with FDA to augment an existing automated interface to institute a prior-notice reporting requirement with minimal disruption to the trade. In addition, under the BTA, we worked with FDA to commission over 8,000 CBP officers to take action on behalf of the FDA. This commissioning allows FDA to assert a 24/7 presence to enforce the Act at all ports.

PERSONNEL

In addition to sophisticated targeting systems and coordination between agencies, CBP maintains a diverse workforce that is specially trained to detect and prevent imports that may be harmful to the health of the American public. CBP Officers and CBP Agriculture Specialists receive specific training on ag/bio-terror incidents. We currently have the ability to deploy more than 18,000 CBP Officers, 2,000 Agricultural Specialists, and 1,000 Import Specialists in response to emerging threats to our agriculture and food supply. Furthermore, CBP's Laboratory and Scientific Services (LSS) maintains seven separate laboratories around the country, with a 24/7 technical reach back center. LSS employs approximately 220 chemists, biologists, engineers, and forensic scientists.

Our diverse workforce enables CBP to mount rapid and effective responses to protect U.S. agricultural resources by utilizing the specialized training of CBP Officers, Agriculture Specialists, Import Specialists, International Trade Specialists, and Laboratory Technicians. Each of these CBP occupations works together to gather intelligence, establish target criteria, gather and test samples, and analyze and report results. Because of their specialized training in the use of personal protective equipment for handling potentially hazardous or infectious materials, CBP Agriculture Specialists play a vital role during food safety operations.

FOOD SAFETY OPERATIONS

Trade analysis and targeting methodologies designed to ensure the safety of the food supply allow CBP to proactively identify shipments containing possible food contamination prior to its arrival. This targeting allows us to fulfill our mission while allowing us to facilitate legitimate trade.

While food safety has recently grown in importance in the public eye, CBP has been involved in food safety related initiatives for the past several years.

In 2006, CBP was involved in the detection of numerous incidents of food contamination or smuggling of prohibited food products from China. A significant number of shipments of Chinese poultry products were seized including 45 containers smuggling prohibited product. CBP developed a food safety operation to combat the smuggling by targeting known smugglers of prohibited poultry products.

In April 2007, it was discovered that food from China was contaminated with melamine potentially harmful to animals as well as humans. CBP initiated a special operation to determine the scope of the potential problem. The nature of the operation was to augment FDA's focus with the intention to assess the risk of contamination from countries worldwide and to identify possible transshipment of Chinese product. CBP sampled and conducted laboratory analysis, the results of which were coordinated with FDA.

In this most recent action, CBP targeted and detained 928 entries (shipments) over a four-week period. Samples were pulled on 202 entries, comprising over 400 separate production lot samples, and sent to CBP's laboratories for analysis. All samples tested negative for the presence of melamine. As a result of the operation, CBP tested samples of product from 23 countries and shipped by suppliers/producers that account for over 59% of the imported volume of the merchandise in the previous 12-month period. This scientific data gives the Government and the public assurance that the melamine issue relating to imports was in fact isolated to a few Chinese suppliers, and not a widespread, global problem. In coordination with FDA, CBP developed a follow-up monitoring program that uses a computer-generated statistical sample to measure ongoing compliance.

This high profile enforcement effort has helped CBP refine its methodology to conduct future food safety operations and enhance our working relationship with other federal agencies. In response, CBP has developed a Concept of Operations Document for food safety to institutionalize our communication and cooperation as well as the methods, processes, and procedures. Additionally, this food safety incident has brought to the forefront the need to maximize the power of the government to respond to future food safety issues.

As you are well aware, there have been further contamination issues, for example, with imported toothpaste and selected seafood. Based on lessons learned from the melamine incident, we are coordinating with FDA to develop an appropriate action plan commensurate with the threat.

CONCLUSION

Food defense and food safety concerns will only increase as world trade in food and agriculture continues to grow and diversify. One of the methods CBP will use to ensure the safety of the food supply is to use statistical sampling to monitor for compliance. CBP will continue to approach this as a challenge worthy of a combined government effort. We will continue to partner with other federal agencies in order to refine our targeting skills and ensure the prevention of contaminated products from entering the U.S.

Chairman LEVIN. All right. Now we will start our back-and-forth, and each of us will be limited to 5 minutes, including the Chairman and the Ranking Member. We have an order here, and, as we said at the beginning, if we run out of time with you, if anyone on the Committee did not have a chance to question you, they will start with the third panel. So, let me just begin.

There is no doubt about the complexity of these issues, the importance of these issues. I think for us to proceed effectively, we need to be forthright about what the facts are and not try to tilt them one way or the other. Mr. Spooner, for example, and we have heard this from USTR, a reference to the level of exports, but in order for you to connect with us, you also have to talk about the level of imports, because our constituents, they encounter both.

You mentioned that, to put this in perspective, U.S. exports to China were greater than U.S. exports to India, Brazil and France combined. To put this in full perspective, the imports from Brazil,

France and India were less than one-third of the imports from China. So, I just urge you, and I have said this to our distinguished Ambassador at USTR, let us talk about both. The total imports in 2006 from those three countries was $85 billion. From China it was $287 billion.

I also want to say to USTR, I did react to this sentence in this letter that Mr. Herger referred to, and I did earlier, that was signed by your boss Ambassador Schwab: The best way to achieve results on our goals that we share with the Members of Congress is not through the legislation currently being considered, but through continued direct, robust engagement with China's senior leaders. But let us remember USTR also talks about how it has filed cases against China in the WTO. So, essentially you are doing both. You are talking with leaders, but often at the behest of Congress you are filing cases. So just to pose the issue as legislation versus discussions really misses the point that we are also in some cases, I think, not enough taking action that goes beyond talk.

So, therefore, Mr. Sobel, let us, you and I, chat for a minute. It is interesting, your language that Congress is currently considering legislation to counter perceived unfair currency practices. Forget for a moment the issue of manipulation. Do you have any doubt that Chinese, that China, the Chinese government is engaging in unfair currency practices? I mean, forget for a moment the issue of whether or not it is something that meets the standard the Treasury has to deal with. Is there any doubt that these currency practices are unfair?

Mr. SOBEL. Thank you, Congressman.

Chairman LEVIN. I am not sure you want to thank me. Really, aren't they intervening directly in the market?

Mr. SOBEL. As I noted in the opening of my testimony, Congressman, I thank you because you are raising a very legitimate question and point.

Chairman LEVIN. What is the answer?

Mr. SOBEL. As you know, we think that for China it is not just a question of currency. China faces the transformation of its whole economy from a command to a market system. It goes well, well beyond currency issues; it's about the entire structure of the economy.

Now, when it comes to currency issues, we said very clearly in our reports and in testimony today that the Chinese currency is undervalued. We have said that China relies far too much, in our view, on exports. I frankly think that not only do we know it, but I think the Chinese know it.

Chairman LEVIN. But doesn't that add up to an unfair policy?

Mr. SOBEL. On the question of is it fair or unfair, I can only tell you I find such terms highly subjective. I find the question of fairness in the eye of the beholder. What I find is crystal clear is that the Chinese are on a path of trying to reform, but they are doing it gradually. My feeling is that by being so gradual, they are running major risks for themselves as well as for the world economy.

Chairman LEVIN. For the U.S.

Mr. SOBEL. I think China and the U.S. are all part of the global economy. I had a statistic in my testimony that U.S. and Chinese

growth over the last 5 years accounted for 40 percent of the world in total. So, obviously China's growth affects the global economy.

I think in the final analysis we need to stay continuously engaged with China. We need to push forward the relationship across a broad economic front. Most importantly what I am focused on and what my job is, is to advise the Secretary to help get that job done and to help work with China to fix its problems rapidly.

Chairman LEVIN. My time is up. I hope others will pursue the question, including you are opposed to any legislation even if it is WTO-consistent, right, you are? If you could, yes or no?

Mr. SOBEL. Again, we think that robust, high-level engagement is the best path forward. We don't think that legislation will strengthen our hand in reforming the Chinese economy or enhance our engagement with China.

Chairman LEVIN. Okay. Mr. Herger, your turn.

Mr. HERGER. Thank you, Mr. Chairman.

Mr. Brinza, I understand that USTR has numerous concerns with the bill we are examining today, not just whether they would accomplish the goals that they set out to do, but also whether they are consistent with our WTO obligations and would invite harmful retaliation against us, against our U.S. companies. I don't want to put you in a position today of having to lay out in a public setting exactly what legal WTO inconsistencies are. After all, there is no need to give our trading partners a legal road map to use against us. However, I am pleased that the USTR briefed the staff in detail before this hearing about all the problems you see.

According to the Census Bureau, since China joined the WTO, U.S. exports to China have increased at a faster pace than U.S. imports from China. I am still trying to figure out why we should put the exports of our manufacturers' high-tech, ag and financial services companies at risk by moving WTO-inconsistent legislation.

Mr. Brinza, could you elaborate on the risk of retaliation these companies face, and also on the prospect that our trading partners may put in place copycat legislation intended to close their markets to our goods?

Mr. BRINZA. Thank you, Mr. Herger. As you mentioned, we did express concerns with respect to the legislations being considered, including the concern that you mentioned with respect to the potential for retaliation and the potential for copycat and mirror-image legislation. As you pointed out, we don't want to go into a public detailing of the basis for those concerns. We have briefed the staff on that. But we would say that we have seen that requests for authorization has just been concessions. The WTO in the past have covered both goods, services and intellectual property. Those are the types of requests that we would be able to anticipate seeing from trade partners in the future if they were to have a finding that the U.S. had acted in a WTO-inconsistent manner. Thank you.

Mr. HERGER. Thank you.

Mr. Spooner, I wonder if the USTR has submitted a proposal as part of the Doha Round to seek clarification of U.S. rights and obligations with respect to the practice of zeroing. But the rules haven't been changed yet, and no one can say for sure whether they will change. In the meantime there are outstanding WTO appellate body rulings that limit our use of the practice. If legislation

forced the Department to revert to its prior practice, wouldn't the United States necessarily be out of compliance with our obligations and in turn expose our exports to retaliation?

Mr. SPOONER. Thank you, sir. The answer is similar to the answer Mr. Brinza gave. I would hesitate a bit to be definitive should the legislation pass, but the appellate body has been fairly clear on zeroing. If we were to pass legislation that put us out of compliance with our WTO obligations, our trading partners would obtain the ability to take retaliatory action or withdraw concessions against our exports and our services. So, yes, you are right, and it may take years to resolve this in the WTO rules negotiations. So, we could potentially subject ourselves to years of retaliatory action.

Mr. HERGER. I thank you. This is really a tightrope we are walking. We, the United States, many times we are not—people aren't aware, our citizens, that we as the United States are the number one trading nation in the world bar no other. Certainly the district I represent, a heavy agricultural area, cannot eat all the specialty crops, rice, that we grow. We are dependent on exporting. Therefore, we need to be very cautious that we not go down the same road that we did in the thirties where we could get a tit-for-tat type of situation where we begin to close down the great trading ability that we have and opportunities out there.

Anyway, I thank you very much, a very important hearing today, and I thank each of you.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you.

Mr. Pascrell.

Mr. PASCRELL. Thank you.

Before I get to my points and questions, I would just like to respond to what I have just heard, if I may. The words as spoken by the Trade Representative is more evidence to me, I think, and to others of how we can play with figures.

Your warning to us, Mr. Spooner, that we should depend more on dialogue rather than legislation is an essential departure from what is going on in the Congress right now. Under Article I, section 8, the Congress of the United States, this present Congress, will exert itself on both sides of the aisle, in a cautious fashion perhaps, but not in any manner, shape or form relinquishing our responsibilities. We have a responsibility in the Congress, as well as the Administration and the Trade Representative. We will exhibit our responsibilities, and we will fulfill our responsibilities. The Congress has set sail with a very different compass in the ocean of trade. It will never be the same. We are able to see clearly, and we will remove the pirates from the scene.

In addition to addressing trade-distorting currency practices, I believe that this Committee also must address the disadvantage to U.S. producers and service providers caused by the imposition in rebating foreign-border adjusted taxes, mostly in the form of value-added taxes. When identifying the causes of the uneven playing field in its massive U.S. trade deficit and manufacturing job losses, border-adjusted tax schemes stand out as one of the very worst offenders. In 2005, the imposition in rebating border-adjusted taxes disadvantaged U.S. producers and service providers, Mr. Chair-

man, by an estimated $379 billion. U.S. trade with China in goods alone accounted for an estimated $48 billion of that disadvantage.

China levies VAT taxes, like many other countries, on imports from the United States and generally rebates any VAT paid by producers in China on exports to the United States. As China's VAT rate in 2005 was 17 percent, these impositions and rebates have a significant impact on the price of goods and services. In contrast, the United States, which does not have a VAT, but instead utilizes a direct tax on property, on income, levies no similar taxes on the border on Chinese imports, as well as on the other 137 countries that we trade with. So, producers in China selling in the United States pay neither the U.S. income tax, pay neither the payroll tax nor their own VAT. As a result, this severely tilts the playing field and places United States domestic manufacturing at a great competitive disadvantage.

My question to the panel is this: I would like to hear from the panel their views on the fact that most imports into the United States are subsidized by foreign VAT rebates, value-added tax rebates, and all U.S. exports are not. To what degree do you feel this is unfair? How does it affect America workers? What solutions would you suggest to the Congress of the United States?

Chairman LEVIN. All in 1 minute, who wants to try that.

Mr. SPOONER. I will try to be brief. First of all, Congressman, I hope and believe that I didn't say that we should disregard enforcement at the expense of dialogue, we should use all the tools in our tool box, including enforcement. For that reason, we just reversed 23 years of precedent and applied our anti-subsidy law to China, which opens a tremendous avenue for U.S. manufacturers to address unfair trade in China. Also, we have 27 percent of our dumping orders affect Chinese exports, a higher percentage than any other country.

Under our international obligations, in order for us to countervail at that rebate or any other subsidy, we have to show there was a financial contribution by the government that conferred a benefit that was specific. There are also separate VAT rebate provisions in the WTO, which perhaps USTR can speak to it a little better than I, but we wouldn't hesitate to countervail that program or any other program as long as we receive a petition that jumps over the legal hurdles and that meets our international and domestic requirements for countervailable subsidy.

Chairman LEVIN. I think to follow our rule and cut this off, maybe we can come back to it at another hearing. I want to be fair to all of our colleagues. We have a wonderful array of the Subcommittee here.

Mr. PASCRELL. Mr. Chairman, I have introduced the legislation, the border tax equity. It has bipartisan support, H.R. 2600, that would stop the charade and force countries, including China, to abandon these distortions. China is not the problem. We are the problem. Unless we face up to the problems that you have heard on both sides of that desk today, unless we address those problems, these are not going to go away, so I am not throwing caution to the wind, what I am saying is, we will live up to our responsibilities, that is all I am asking.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you.

Mr. Lewis.

Mr. LEWIS. Thank you, Mr. Chairman.

Mr. Sobel, I understand the concern about the value of China's currency. Can you discuss all the effects of the valuation? Has it had an impact on inflation or U.S. interest rates? How would these proposals to coerce China to increase the value of currency impact U.S. inflation and the interest rates?

Mr. SOBEL. Thank you, Congressman. I think that to be sure if we are importing goods from another country and the other country's currency is rising in value, that would mechanically feed into raising U.S. import prices to some degree. But obviously, imports are only so much of our country's total consumption basket. In addition, imports from a given country, China, is a small portion of that. So, it would put pressure on import prices that, to the extent that the country's exporters didn't absorbed the higher prices in their profit margins, could have some modest upward pressure on U.S. prices.

In terms of what effect diminished demand by foreigners for U.S. financial assets would have had on us, we have a very, very deep capital market and there is a lot of confidence in our market. There are marginal buyers for marginal sellers. Diminished demand for our assets could put some upward pressure on interest rates and you are right in this regard. But still, it is very, very difficult to answer these things with any precision, but you raise legitimate issues that are worthy of analysis and exploration.

Mr. LEWIS. Also a columnist has said, 60 percent of the growth in Chinese exports over the past decade was from foreign invested enterprises, not Chinese domestic companies. As we in Congress approach these issues, I think we need to recognize the U.S. entities have a footprint in China, and any action to redress the problems would have effects on these interests.

How can we ensure that we are taking these interests into account as we move forward?

Mr. Sobel.

Mr. SOBEL. You are very right about the large foreign presence in China and the impact on us. I think I've even seen, I am sure the Chairman knows far better than I do, that some of the U.S. auto makers have arrangements with the Chinese and that their production is quite strong.

I think that the best way to deal with these issues, Congressman, is through the path of engagement with China and to get China to do a far better job in playing by the international rules of the game. That is something that we have to work through very hard with them and intensively.

Mr. LEWIS. Thank you, I yield back.

Chairman LEVIN. Thank you very much.

Mr. Meek?

Not here. He will be back.

So, next, would be Mr. Crowley. We are going in the order of your arrival.

Ms. BERKLEY. I will try to be earlier next time.

Chairman LEVIN. Look, we know this is a particularly busy time, and I think it shows the level of interest that we are all here.

We may not be able to stay every minute, but everybody should know that that signifies the seriousness on both sides; both Republicans and Democrats have to go various places. So, we know you tried to be here as quickly as possible.

Mr. Crowley, you came next.

Mr. CROWLEY. Thank you, Mr. Chairman. I will certainly stay within the 5-minute rule. I was just perusing an article in today's CQ magazine as to what the Senate is also doing as it pertains to currency fluctuation, and what I would like to see done in terms of manipulation in term of China.

My first question is for the Treasury, I would like to ask Secretary Sobel, it is my observation we can focus on currency manipulation and penalties, but if the Treasury decides to not name a country as a currency manipulator with what we are doing right now could be irrelevant.

Does Treasury plan on changing its position on who will be named as a manipulator in the future?

Mr. SOBEL. Congressman, under the statute that we have, we are required to find whether a country manipulates its currency for the purpose of preventing effective balance of payments adjustment or gaining an unfair competitive advantage in international trade, that is the statute under which we have written our reports.

Now, I know that there are many who disagree with the designation findings the Treasury has reached, under our reports, and so I frequently am asked—if China isn't manipulating its currency for these purposes, what is it doing?

My view is that the reason China is conducting the policy that it has right now is that for many years, like many emerging markets in less developed countries, it had a rigid exchange rate arrangement. There is nothing inconsistent about exchange rate pegs with the IMF articles. In fact the entire Britain Woods System was kind of a pegged system. One of things that all countries have found is that exiting from an exchange rate peg and moving to a floating exchange rate system, which is exactly where we think China needs to move—a floating exchange rate system with an independent monetary policy—is a very difficult transition. We saw all these exchange rate pegs blow up in the Asia crisis a decade ago. So, I think that is one reason the Chinese are being, in our view, overly gradual. They are worried about a weak banking system and its ability to cope with massive inflows and outflows. They are worried about what currency factors might do to rural stability.

So, under the law, we are supposed to assess intent: is it for the purposes of gaining unfair competitive advantage international trade? Is it for preventing effective balance payment adjustment? In our view, these are some of the factors above that are motivating the Chinese. Just to say, we talk to the Chinese all the time about currency issues. We miss no opportunity to raise it with them and to tell them to move much faster. We tell them we are dissatisfied with the rate of progress.

Mr. CROWLEY. I appreciate that. Just to answer the question again, does the Treasury plan on changing its position on who will be named the manipulator in the future? Just more direct, whether or not you believe there will be any adjustment to that? We are running out of the time.

Mr. SOBEL. Under the current law, we continue interpreting the current law as we do and continue applying it.

Mr. CROWLEY. Okay, so that's a no.

Let me just move on. Speaker Pelosi recently appointed me the chair of the parliamentary exchange between the People's Congress, in the U.S. House of Representatives. I am very grateful for that. I have been having preliminary discussions with those legislators on the other side the world.

How much of an impact on our trade deficit will any of the legislation before us have on the trade deficit as you see it?

Mr. SOBEL. Congressman, I haven't assessed that, I think it is very difficult to judge. Obviously, the legislation before you hasn't been enacted, but I do think that—and the bills are quite wide ranging——

Mr. CROWLEY. Do you believe that broadening to markets in China is an important aspect of what we are trying it accomplish here?

Mr. SOBEL. Do—absolutely.

Mr. CROWLEY. What are we doing to support that?

Mr. SOBEL. The Secretary spends tons of time working on these issues as do all of the Members of the Cabinet. On the financial sector alone, which is something that is in the Treasury's lane, we have pressed the Chinese incredibly hard to open up their access to foreign financial service providers. We have seen improvements lately. For example, they raised something called the Qualified Foreign Institution Investor limits, which will allow in the next few months, U.S. access to the stock market to increase $20 billion, a small amount, but it is a concrete example and something that is very important to our financial firms.

Mr. CROWLEY. I thank the Chairman.

Mr. Chairman, if I could just state, the Members are imposed to stick to 5 minutes in terms of questions and answers. I would ask for the panelists if they could shorten their answers possibly to enable Members to have an opportunity to ask more questions. Thank you.

Chairman LEVIN. Mr. Crowley, you have still a further dilemma; we have four votes, and that is supposed to be 25 minutes; right?

Mr. MEEK. 30.

Chairman LEVIN. The three votes, but—it's 30 minutes. You are right, but it won't be more than 30. Is that available? All right, we could go to B–318. Here is the problem: This wonderful room has to become available, now they are saying at 12:30 because of security purposes, for the Vanderjagt reception. I was told—lets adjourn to 318. So, do you mind staying, or is that possible? We will spend another 15 minutes with you and then go to the third panel.

Is that what you would like to do, Ms. Schwartz?

Ms. SCHWARTZ. Thank you, Mr. Chairman.

I am not a Member of the Subcommittee. I don't have a comment on your question, it sounds like a good plan to me.

What I was hoping is that I might be able to submit a question that you might be able to submit to the panel. I was particularly concerned, as I know you are, about the Administration not acting on any of the ITC recommendations on section 421, so I wanted to

ask about that. If I could submit that for the record, that would be great.

Chairman LEVIN. I leave it to Mr. Meek and Mr. Reynolds. Should we start with the third panel when we return? Is that agreeable to you or not?

Mr. REYNOLDS. If I may just make a comment.

Chairman LEVIN. Go ahead, do that. Mr. Meek, we have 8 minutes, so make a comment if you would, Mr. Reynolds.

Mr. Meek, you will have a couple minutes and then we will recess. Go ahead.

Mr. REYNOLDS. I thank you, Chairman. As I listen carefully to this panel, my records should be very clear that I am considered a free trader and support fair trade throughout the globe, but I want to caution the panelists from the Administration today that, whether it be my district where I still face challenges of a third and fourth generation company called Eastman with intellectual property challenges in China by a knock-off called Westman, looks identical to that, and they have testified before this very Committee, or Chinese dumping that we faced with apple juice concentrate and the challenges we had in having a fair day for our farmers, apple growers, both in New York and in the State of Washington or Corning, which is the signature U.S. company that in my region with market access.

My point I think is when we look at the currency issues, I am frustrated, I have listened very carefully to Secretary Paulson and others as to realities and have accepted that it may not come as fast as I'd like, but there needs to be a focus on an accelerated pace in the type of changes that the currency manipulation, as I believe is occurring in China, begins to move. There is a bipartisan concern on this from not only those who may be considered protectionists in the eyes of some, but from those of us who are on the free trade, fair trade equation. You can't ignore a vote in Senate Finance yesterday of 20–1 or the Senate Banking Committee, 17–4; that is a bipartisan message to both our own country but also to the world. So when we continue to look today, another company in my region, Fisher-Price, finds themselves with a disclosure of 83 lines of toys, a million toys, plastic toys having to be recalled that puts us into the mix of product and food safety, as all our colleagues testify.

I want representatives of the Administration to clearly understand here that, when it is said that maybe the Chairman—we don't need legislation, I must just say that there needs to be a fair warning to everyone that the legislation that is beginning to get developed in the Congress may not be totally to anyone's complete liking, but there is now a route for a message of action. I just want you to know that the Administration thinking that legislation is not needed, when you look at the bipartisan message coming out of both Houses, be ready, the fact that there is a boiling point in the Congress coming from the people of America saying, we need to do better than what is happening so far.

I thank you, Mr. Chairman.

Chairman LEVIN. Thank you, I am glad I recognized you. I mean that seriously, the reference to the Senate.

Mr. Meek, why don't you take a couple of minutes?

Mr. MEEK. Mr. Chairman, I am going to have a bill on the floor after this round of votes, but I would for my good friend from New York, I would almost say ditto, that actually took from my talking points of what happened in Senate. He probably saw them in the back room or something, but I can tell you, Mr. Chairman, not only this panel, but I look forward to the third panel. I will be in and out, but the Members who came before us today in their testimony that it is a mounting concern. I think that we should—I know we are getting the evidence. We are setting the Committee testimony, but I believe for us to really tackle this issue and get the attention of China, that we are going to hopefully have to mark up something pretty soon in this area. I look forward to working with the Committee and taking the input from this panel.

I think that this is so very, very important, especially in my area. I have Perry Ellis. I have a number of other companies that are there that are affected by the very issue that we are talking about now, and I look forward and am ready. So, I will leave my comments for the third panel. Hopefully, I will be a part of that.

Chairman LEVIN. We will come back here. I think we can do it. So, therefore, you can return to your 8:00 a.m. to midnight jobs. Thank you very much for coming. We are in recess, and we are going to start the minute Mr. Herger and I return. We will scoot right back for the panel. Thank you again. We are in recess.

[Recess.]

Chairman LEVIN. So, I don't have to apologize for the disruption, and we have another vote in an hour, so I think we will proceed and wait just for a second. I will introduce you I think in the order that is on this script here: Mr. Williams, who is the executive director of the Southern Shrimp Alliance from Florida; Skip West, who is the president of MAXSA Innovations on behalf of the Consumer Electronics Association; Skip Hartquist who is a partner in Kelley, Drye & Warren LLP; Lewis Leibowitz, welcome to you, a partner at Hogan & Hartson LLP; and Robert Lighthizer.

So, let us just wait a couple of minutes. I talked to a lot of my colleagues on the floor and many of them said they had to do other things in these last 36 hours presumably, but I can assure you, I think you saw from the participation here, there is immense interest, and we will make doubly sure that your testimony is not only entered into the record but is widely circulated. My guess is this won't be the only time that we are discussing the issues that you are going to touch on today. So, we will wait just a second, and then we will begin.

All of your testimonies will be entered into the record, as you know. You heard the testimony, I think all of you have been here from the beginning, right? So, you heard the back and forth and so don't hesitate since your testimony will be in the record if you would like to comment on the testimony you heard. In some ways, that makes it all doubly effective.

Mr. Herger has used modern technology and e-mailed the chief of staff of the minority—you arrived before your e-mail. Congratulations, you have invented something new; that is terrific.

I introduced the five final panelists, so, Mr. Williams, if you would start and the rest of you just go ahead.

STATEMENT OF JOHN A. WILLIAMS, EXECUTIVE DIRECTOR, SOUTHERN SHRIMP ALLIANCE, TARPON SPRINGS, FLORIDA

Mr. WILLIAMS. Mr. Chairman and Members of the Committee, my name is John Williams, and I am the executive director of the Southern Shrimp Alliance, and I appreciate the opportunity to testify in support of congressional actions to preserve the integrity of our Nation's trade remedy laws.

While the U.S. shrimp industry produces the highest quality shrimp at competitive prices, our way of life is currently under attack to by unfairly traded imports from China and other countries.

I understand the Committee is considering trade legislation that would hold nonmarket economy countries to the same level of accountability as the rest of our Nation's trading partners. I strongly support that bill, H.R. 1229, as introduced by Representative Arthur Davis and Phil English, but fair and effective trade laws do not stop with just nonmarket economy countries. As part of the domestic industry that has been devastated by unfair imports from both nonmarket economy countries and market economy countries, I have firsthand knowledge of the need for comprehensive trade reform legislation. That is why I believe H.R. 1229 would benefit from the inclusion of two other vital provisions that would apply to all unfairly traded imports.

These provisions, as included in H.R. 2714, would correct the flawed decision of the WTO, Commerce and U.S. judges regarding offsets, often referred to as zeroing, and the appropriate method for determining injury to a domestic industry. H.R. 2714 would ensure the trade laws are not weakened by these erroneous decisions. H.R. 2714 could delay the implementation of the WTO offset rulings until the United States has reached a negotiated solution and would require Commerce to reverse its decision to adopt offsets. To implement these decisions would be like a death knell for domestic industry injured by unfair trade, especially the United States shrimp industry, as dumping margins would no longer accurately reflect the true measure of dumping.

This is certainly what has happened in the current anti-dumping case on shrimp imports from Ecuador. Just last week, Commerce determined that it is abandoning its long standing practice of zeroing in the Ecuador proceeding. We provided a Commerce with several alternative calculation methodologies that are WTO compliant and would have kept the Ecuador order in place. Commerce refused to adopt any of these methodologies. Its decision will result in the termination of critical trade relief on dumping Ecuadorian shrimp imports unless the USTR decides not to implement Commerce's decision.

I want to make clear to the Committee that revocation of the order is not based on any changes in the behavior of Ecuadorian exporters but because Commerce decided not to defend trade relief. U.S. law has not mandated the termination of the Ecuador order; Commerce is not even required to use a particular method to calculate dumping margins.

What is particularly troubling is this outcome, in the face of viable alternatives, strongly suggests that reports of an agreement between Ecuador and the United States that the order be terminated in fact are accurate, not withstanding denial by U.S. officials.

H.R. 2714 would also ensure that the requirements imposed by the Bratsk decision would never be put in place. In Bratsk, the court held that the ITC must determine whether imports from countries not under investigation would replace the investigated imports. The ITC would have no data on which they could base their decision. Essentially the Bratsk decision asked the ITC to channel psychic abilities to see into the future of the U.S. market and the future performance of foreign producers, not even subject to the investigation.

Congress has never required the ITC to consider any of these factors. The standard of the law is clear, and the ITC does not and should not play in the hypothetical. In conclusion, I want to return to the zeroing issue because it is the issue that is most urgent to our industry. While I am not a trade attorney, I do know something about right from wrong. In my opinion, what is happening with the WTO, the Commerce Department and zeroing is wrong. How can a country be violating the trade laws by dumping their product into this Nation one day and not the next when the only thing that has changed is a ruling by the WTO that our own government keeps telling us is wrong and must be changed? Commerce's decision will be devastating to the domestic shrimp industry and would leave thousands of U.S. workers and business owners defenseless against unfair trade.

What is really disappointing and perplexing is the fact that the Commerce Department has alternative calculation methodologies that are WTO compliant that would preserve the order, but they chose not to consider them. Given the fact had Commerce chose a method that is most harmful to the domestic industry, it is understandable that so many U.S. businesses and workers have lost confidence that Commerce will enforce the law to defend U.S. industry by unfair trade as Congress intended.

How do I go back and tell the tens of thousands of folks throughout the eight States associated with the domestic shrimp industry that the WTO has just effectively eliminated any chance for our recovery without giving the USTR an opportunity to address this issue. What I would like to tell these folks is that we have a Committee on Ways and Means that they be proud of and that this Committee has taken our concerns seriously and will work together across party lines to ensure that our industry is not placed in a position where foreign companies can dump their product into the U.S. with impunity.

I am speaking today about fairness, the domestic shrimp industry, at one time the most valuable fishing industry in the United States, has been brought to its knees these past 4 years due to trade law violations and natural disasters, but even as down as we are, we can still compete with any foreign competitors, as long as everyone plays by the rules.

One thing I would also add is that when Congress speaks about free trade agreements, I wish they would strike that word free from that term and replace it with the word fair and work toward that goal. Some U.S. industry always suffers in this kind of an agreement. If you don't think the folks out there are hurting because of these trade agreements, just ask them; they will tell you.

In closing, we are rapidly becoming a nation of consumers and not producers, and that is frightening going into the future. To counter this trend, we must have effective trade laws with a strong enforcement mentality from the Administration. That is why I'm here today urging you to enact these essential trade agreement amendments. Thank you.

[The prepared statement of Mr. Williams follows:]

Statement of John A. Williams, Executive Director, Southern Shrimp Alliance, Tarpon Springs, Florida

Mr. Chairman and Members of the Committee on Ways and Means Subcommittee on Trade, my name is John Williams and I am the Executive Director of the Southern Shrimp Alliance. I appreciate the opportunity to testify in support of legislation and other congressional action that would preserve the integrity of our Nation's trade remedy laws. While the U.S. shrimp industry produces the highest quality shrimp at competitive prices, our way of life is currently under attack by unfairly traded imports from China and other countries. The hearing today is focused on the trade laws and China. Our concerns and recommendations relate to unfair trade from China and other countries that abuse the U.S. open market policy.

Unfortunately, attacks do not come just from foreign producers. The U.S. shrimp industry—and I believe all domestic industries—are being undermined by recent decisions issued by the WTO Appellate Body, the U.S. Department of Commerce ("Commerce") and U.S. courts.

Most recently, we have been hit the hardest by the Department of Commerce. Just last week, Commerce issued a determination in our case on shrimp imports from Ecuador that so heavily skews in favor of unfair trade that the entire antidumping order may well be terminated.[1] Without any change in their behavior, Ecuadorian shrimp exporters were given a free pass by Commerce to continue dumping in our market. The Commerce Department refused to consider alternative calculation methodologies that are fully consistent with the WTO decisions but that would have retained the dumping order on Ecuador. Let me be clear, by adopting the *least* desirable method of implementing the WTO decision, rather than the *most* desirable method as is required by the law, the Department of Commerce proposes to terminate the order on Ecuadorian shrimp.

We have tried to resolve the problem of unfair trade ourselves by appealing to Commerce with facts and reason, but it has fallen on deaf ears. It is time for Congress to step in and reestablish the effectiveness of our Nation's fair trade laws. What is particularly troubling is that this outcome, in the face of viable alternatives, strongly suggests that reports of an agreement between Ecuador and the United States that the order would be terminated are in fact accurate, notwithstanding denials by U.S. officials.

I understand the Committee is currently considering trade legislation that would hold non-market economy ("NME") countries, especially China, to the same level of accountability as the rest of our Nation's trading partners. I strongly support that bill as introduced by Representatives Artur Davis and Phil English, H.R. 1229, the "Nonmarket Economy Trade Remedy Act of 2007."

But fair and effective trade laws do not stop with just NME countries. As part of a domestic industry that has been devastated by unfair imports from both NME countries, including China and Vietnam, and market economy countries, including Brazil, Ecuador, India and Thailand, I have first-hand knowledge of the need for comprehensive trade reform legislation.

That is why I believe H.R. 1229 would benefit from the inclusion of two other vital provisions that would apply to all unfairly traded imports, whether from China, other NME countries or market-economy countries. Those provisions, as introduced by Representatives Barrett, Neal, Spratt and Regula in H.R. 2714, would correct the flawed decisions of the WTO Appellate Body, Commerce and U.S. judges regarding offsets and the appropriate method for determining injury to a domestic industry. I thank these Representatives for standing up for fair trade and domestic producers. They truly understand that our trade system lives and dies by the letter of the law, as enacted by Congress and as the United States has agreed to with its trading

[1] The SSA, through a Subcommittee, the Ad Hoc Shrimp Trade Action Committee, filed six antidumping petitions in 2003 resulting in antidumping duty orders against shrimp imported from China, Brazil, India, Thailand, Vietnam, and Ecuador.

partners. We cannot allow WTO panels and activist judges to rewrite our Nation's fair trade laws.

In addition, I strongly urge the Committee to reign in Commerce's illegitimate actions through your role in consultations with the U.S. Trade Representative ("USTR") on whether or not to implement Commerce's flawed decision to terminate the antidumping order on Ecuadorian shrimp imports. We are all aware of the United States' strong opposition to the decisions regarding offsets and it is not appropriate for Commerce to implement these decisions in a way that is most forgiving of proven unfair traders.

I share my concerns with you today as a proud member of the domestic shrimp industry. I have been a shrimp fishermen for over 40 years and, together with my wife Kathleen, own three shrimp boats in Tarpon Springs, Florida. Like the rest of my industry, shrimping is more than a business to me, it is a way of life. Shrimping is a proud tradition that has defined and sustained entire seaside communities throughout the Gulf Coast and Southeastern Seaboard.

But our way of life is threatened by unfair trade. U.S. shrimpers and processors are no longer able to make ends meet because the U.S. market has been flooded by unfairly traded imports. As a result, our families, local businesses and the communities that depend on shrimping are also facing serious financial difficulties.

Confronted by unfair trade, our industry chose to unite to stop the injury caused by dumped imports. The Southern Shrimp Alliance ("SSA"), founded in 2002, is a non-profit alliance of the hard-working men and women of the U.S. shrimp industry. As the national voice for shrimp fishermen and processors in eight states—Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas—we are committed to preventing the continued deterioration of America's domestic shrimp industry. The SSA is developing marketing plans for domestic shrimp, lobbying for more stringent controls and testing of banned chemicals, fighting to continue the antidumping duties imposed on shrimp, and working with our government on issues that affect the U.S. shrimp industry.

Shrimp is the top-selling seafood in the United States. Wild-caught American shrimp is premium-quality seafood caught by American shrimpers and delivered fresh to local docks. People who eat wild-caught American shrimp can be assured that their shrimp meets the standards for U.S. quality and consistency. Wild-caught American shrimp mature at a natural pace, flourishing in nutrient-rich marshes and estuaries before naturally migrating to the Atlantic Ocean or Gulf of Mexico.

With imported shrimp, Americans cannot be sure what it is they are eating. Farm-raised in crowded and dirty ponds, with almost no quality control, imported shrimp often contains pesticides, filth and banned antibiotics.

The quality of American shrimp is unbeatable, but before we were able to obtain trade relief, the U.S. shrimp industry was driven to the edge of collapse by unfairly traded shrimp imports. We are talking about thousands of jobs, life-time investments, and entire fishing communities being wiped out by unfair trade. Average hard-working shrimp fishermen in our communities throughout the entire Gulf Coast and Southeastern Seaboard saw their livelihood destroyed by foreign producers who are just not playing by the rules.

By the time the domestic shrimp industry filed for trade relief, aggregate shrimp imports had increased significantly from 2000 to 2002, while import prices plunged. Shrimp imports from large exporting countries exploded during this time: Vietnamese imports increased 169 percent, Chinese imports increased 73 percent, Indian imports went up 74 percent, and imports from Brazil increased 210 percent. As a result, the market share held by U.S. producers fell significantly.

The effect of this import surge was devastating. The International Trade Commission ("ITC") found that vast majority of shrimp fishermen incurred net losses in 2004, while a minority of fishermen had posted losses in 2001. Not surprisingly, employment in the industry declined sharply from 2001 to 2004. I was lucky enough to have made it through this time, but we all made sacrifices. I had to dock two of my boats even though there was plenty of shrimp to catch because it was just too expensive to maintain and operate them. Many of my fellow shrimpers had their boats tied up too, waiting for prices to increase to pre-dumped levels.

Trade relief came not a moment too soon in 2005 when the ITC found that the domestic shrimp industry was materially injured by dumped imports and Commerce issued final antidumping duty orders.

The antidumping duties have provided some measure of trade relief for our industry, enough for us to begin the recovery process. In 2006, the SSA secured the distribution of over $102 million of Byrd Amendment funds to aid in their recovery efforts. More than anything else, fair trade relief has given us hope, and hope is a good thing. It has allowed the domestic industry to look forward to the future and plan for better things.

We do not want to stop free trade nor do we want special treatment, we just want a fair deal. In a level playing field, there is no stopping the hard-work and dedication of U.S. shrimp fishermen. What we cannot effectively compete against is the blatant disregard of fair trade principles. American shrimpers are being consistently undermined by foreign producers who have targeted the United States as a literal dumping ground for shrimp imports. A number of countries that export shrimp to the United States have national policies that encourage and subsidize production, far in excess of local or international demand. This overestimated production further encourages dumping on the United States. By strong-arming their way into the U.S. market, foreign shrimp producers have sacrificed the environment, workers' rights and the food safety of imported shrimp for artificially low prices.

The recovery efforts of the U.S. shrimp industry are just one example of how fair and effective trade laws are an essential last line of defense against the harm caused by unfair trade. H.R. 2714 would ensure that these laws are not weakened by the erroneous opinions of the WTO Appellate Body, Commerce, and U.S. judges. Two provisions of the bill are vitally important to domestic industries, especially the U.S. shrimp industry: (1) H.R. 2714 would delay the implementation of the WTO offset rulings until the United States has reached a negotiated solution and would require Commerce to reverse its decision to adopt offsets; and (2) H.R. 2714 would correct the Federal Circuit's flawed ruling in *Bratsk Aluminum Smelter v. United States*. I strongly urge the inclusion of these provisions in trade legislation currently being considered by the Committee.

First, H.R. 2714 would delay the United States' implementation of WTO decisions that have found the United States' long-standing practice of not offsetting dumped sales with non-dumped sales to be inconsistent with the WTO Antidumping Agreement. The United States and many other WTO Members do not use offsets because it provides the most accurate measure of the margin of dumping. To require offsets would be like a death knell for domestic industries injured by unfair trade—especially the U.S. shrimp industry—as dumping margins would no longer accurately reflect the true measure of dumping.

This is exactly what has happened in the current antidumping case on shrimp imports from Ecuador. Just last week, Commerce determined that it is abandoning the long-standing practice of not offsetting dumped sales with non-dumped sales in the Ecuador proceeding. This rash and unreasoned decision may result in the complete revocation of the antidumping order on Ecuadorian shrimp imports unless the USTR decides not to implement Commerce's decision.

I want to make clear to the Committee that revocation of the Ecuador order is not based on any change in the behavior of Ecuadorian exporters, but because Commerce decided to not defend the trade relief. Commerce's tunnel-vision response to the WTO offset rulings is completely unwarranted and irresponsible. U.S. law has not mandated the termination of the Ecuador order; Commerce is not even required to use a particular method to calculate dumping margins.

We provided Commerce with several alternative calculation methodologies that are WTO-compliant and would have kept the Ecuador order in place, including suspension of the case until the issue of offsets has been resolved by the United States. Commerce, however, dismissed our arguments without consideration of its obligation to use "the most desirable method of implementing the findings" of the WTO and to "determine dumping margins as accurately as possible." While many options have been presented to Commerce, there is no denying that Commerce chose the *least* desirable method to implement the WTO offset rulings: termination of the existing antidumping order on Ecuadorian shrimp imports in response to an action by the WTO that the USTR has called illegitimate.

There is little doubt that Ecuadorian shrimp producers are still dumping. Commerce issued preliminary results in the first administrative review six months ago, confirming that Ecuadorian exporters continue to dump shrimp into our country. The volume of imports from Ecuador has nearly doubled since 2003 while the average unit sales values of these imports have declined significantly.

Not only is Commerce's knee-jerk reaction devastating to the domestic industry, it completely defies the United States' stance that not offsetting is a legitimate and lawful practice.

The USTR has maintained that the WTO offset rulings "did not result from the negotiated text of the agreement." During the Uruguay Round negotiations, a proposal to expressly require offsets was defeated. The current WTO Antidumping Agreement closely adheres to the language of prior agreements on the calculation of dumping margins and again makes no mention of a requirement to offset.

The WTO offset rulings simply have no legal basis. When domestic industries like mine depend on the fair and accurate provision of trade relief, it is wrong for the WTO to prohibit long-standing trade remedy practices that are allowed under both

the text of the WTO Antidumping Agreement and the common understanding of the WTO Members. As the USTR stated, a "prohibition of zeroing, or a requirement to provide offsets for non-dumped transactions, simply cannot be found in the text of the AD Agreement."

Just a few weeks ago, the United States again emphasized the illegitimacy of the WTO's offset rulings. The USTR stressed to the other WTO Members that the United States would not agree to the WTO Doha Round negotiations unless the issue of offsets was addressed. Given the U.S. position that the WTO offset rulings should be overturned by the WTO Members, the USTR would be making an inconsistent and irresponsible decision to direct Commerce to revoke the antidumping order on Ecuadorian shrimp. In your consultations with the USTR regarding this case, I urge the Committee to make clear to the USTR that such inconsistencies will not be allowed.

Until and unless the United States reaches a negotiated solution to offsets, H.R. 2714 will ensure that Commerce will not be able to implement the WTO's erroneous offset rulings. In the meantime, if the USTR tries to speed up the implementation of Commerce's flawed decision or tries to dodge its statutory obligation to consult meaningfully with Congress, the Committee should strongly oppose the termination of the Ecuador order. I urge Congress to provide the trade relief due to domestic shrimp fishermen that Commerce has wrongfully refused to grant.

Second, H.R. 2714 will ensure that the requirements imposed by the *Bratsk* decision will never be put in place. In *Bratsk*, the Federal Circuit held that the ITC must determine whether non-subject imports would replace the investigated imports and whether a potential order would actually provide relief for the domestic industry. Essentially, the *Bratsk* decision asks the ITC to channel its psychic abilities to see into the future of the U.S. market and the future performance of foreign producers not even subject to the investigation. The ITC would have no data on which they could base their decision.

The Federal Circuit's requirements create an impossible hurdle for the ITC to determine injury. The court has so confused the purpose and language of our Nation's trade remedy laws that only the intervention of Congress will be able to rectify this wrong. The purpose of our Nation's fair trade laws is to ensure a level playing field, not to drive out imports. The antidumping duties imposed on certain shrimp imports have not caused those foreign producers to exit the U.S. market. In fact, in the Ecuador case, Ecuadorian shrimp imports have increased significantly since antidumping duties were levied. The Federal Circuit was just plain wrong to force the ITC to determine whether there would be a void to fill when duties are levied on subject imports.

Congress has never required the ITC to consider any of the factors identified by the Federal Circuit. The court strayed from the letter of the law and inserted new requirements that would be devastating for domestic industries trying to prove that they have been injured by unfairly traded imports. The standard of the law is clear and the ITC does not—and should not—play in the hypothetical. H.R. 2714 would ensure that the additional requirements imposed by the Federal Circuit are disregarded.

Finally, I would like to point your attention to S. 364, the "Strengthening America's Trade Laws Act of 2007," a bill that was introduced by Senator Rockefeller. I strongly support Senator Rockefeller's efforts to further strengthen our Nation's fair trade laws and would especially like to discuss the provision of S. 364, which would require Congressional approval of regulatory action relating to adverse WTO rulings. The bill would require Congress to pre-approve any proposed changes to U.S. laws and long-standing practices that are meant to comply with WTO decisions. I understand that the requirement is retroactive for cases such as the WTO offset rulings.

If our elected representatives had veto power over Commerce's decision to change its long-standing practice of not offsetting dumped sales with non-dumped sales, I believe that there is no way that the antidumping order on Ecuadorian shrimp imports would be revoked. Having respect for our Nation's fair trade laws, Congress would ensure that prior practice be allowed to continue until a negotiated solution is reached and that domestic industries be provided with the trade relief they deserve.

The trade legislation currently being considered by the Committee would only benefit from the inclusion of the provisions of H.R. 2714 and S. 364.

Thank you for inviting me to testify today. I am happy to respond to any questions the Members of the Committee may have.

Chairman LEVIN. Thank you very much. Mr. West.

STATEMENT OF SKIP WEST, PRESIDENT, MAXSA INNOVATIONS, ON BEHALF OF CONSUMER ELECTRONICS ASSOCIATION, FAIRFAX STATION, VIRGINIA

Mr. WEST. Good morning, Mr. Chairman, Members of Subcommittee. I am not a lawyer or a trade policy expert. My name is Skip West, and I am president of MAXSA Innovations, a small Virginia-based company that develops and markets a diverse range of technology products. These products include solar-powered outdoor security lights and other solar-powered products, electronic candles, specialized lights and heated travel blankets to name just a few.

MAXSA Innovations is one of more than 2,100 corporate Members of the Consumer Electronics Association, the preeminent trade association from my industry. Together, CEA Member firms account for $140 billion in annual sales.

Thank you for the opportunity to share my perspective to this valuable debate. I hope any observation will be useful to the Subcommittee as you consider legislation that could significantly affect the U.S.-China trading relationship and, therefore, the health of my industry. I recognize that there are concerns about certain aspects of this trading relationship; it is large, complex and bound to cause some friction. But there are also important benefits from U.S.-China trade to my industry and to the American consumers who buy our products.

The U.S. consumer electronics industry is subject to unusual pressures. It is intensely competitive and subject to extraordinary price sensitivity. While we must continually find new ways of controlling costs, the American consumer gets constant innovation, an ever-widening selection of products and the best prices possible. In other words, constantly improving products with more functionality and often with lower prices. Trade with China is a key ingredient in bringing those benefits to the U.S. consumers, but it is not just the American consumer who benefits from this trade with China; U.S. workers do as well.

The U.S. Consumer Electronics Industry is part of a global network of production that actually allows many U.S. electronic companies to keep a strong manufacturing presence in the United States. The global network allows U.S. producers to concentrate on the higher value, higher technology products where American industry retains a competitive advantage. Indeed, for U.S. firms to be competitive in the global economy, they must remain at the top of the value chain.

While production with lower-wage and lesser-skilled employees may be shifting overseas, the United States continues to be the leader in design, R&D, marketing and high-technology production. This shift to higher-value production in the U.S. supports high-skilled and well-paid jobs here. In fact, consumer electronics manufacturing wages in the United States average 50 percent higher than manufacturing wages overall. Many of these valuable U.S. jobs depend on exports.

Further, consumer electronic imports from China directly support thousands of good jobs across the United States, including jobs

in R&D, marketing, distribution and after-sale support. Research shows that every single U.S. State and even the District of Columbia is affected positively in terms of the net employment resulting from importation of Chinese-origin consumer electronics.

In addition, the substantial volume of employer consumer electronics products and components is in large part a reflection of U.S. investment abroad and foreign assembly of U.S. made and designed high-value components. CEA has played a major role in promoting these global relationships to the benefit of our U.S. companies. For example, CEA is a producer of the International Consumer Electronic Show, the largest annual consumer technology trade show. Notably, participation of Chinese attendees has increased with each successive show. Moreover CEA is the exclusive U.S. sponsor of the China International Consumer Electronic show, CEA China's largest exhibition of consumer electronics. Our involvement in CEA provides exhibitors and attendees with new international business opportunities and allows CEA to promote our flag ship trade show to an international CEA to an international audience.

Finally, I want to express a personal concern as an owner of a small consumer electronics firm; the imposition of anti-dumping or countervailing duties on finished products or components could render these products uncompetitive even in the absence of anti-dumping or countervailing duties, we are experiencing higher costs for our Chinese imports as China's currency appreciates in value, and China removes export incentives.

My other fear is that if legislation passes that is inconsistent with our international trade obligations under the WTO, the result may be retaliatory measures by China or other countries against our exports. Also, if such legislation is passed, it is the U.S. consumer who will suffer higher prices, less innovation and potential supply chain disruption and the flow of goods. Thank you again for your time today and allowing us to share our perspective.

[The prepared statement of Mr. West follows:]

Statement of Skip West, President, MAXSA, Innovations, on behalf of Consumer Electronics Association, Fairfax Station, Virginia

Good morning Mr. Chairman and Members of the Subcommittee. My name is Skip West, and I am the President of MAXSA Innovations, a small Virginia-based company that develops and markets a diverse range of consumer electronics products. These products include solar-powered outdoor security lights and other solar-powered products, electronic candles, specialized lights, and heated travel blankets, to name just a few. MAXSA Innovations is one of more than 2,100 corporate members of the Consumer Electronics Association, the preeminent trade association for my industry. Together, CEA member firms account for $140 billion in annual sales.

Today, I would like to share with you my perspective about the critical role of U.S.-China trade in ensuring the continued growth of a vibrant *U.S.* consumer electronics manufacturing sector.

I hope my observations will be useful to the Subcommittee as you consider legislation that could significantly affect the U.S.-China trading relationship—and therefore the health of my industry. I recognize that there are concerns about certain aspects of this trading relationship; it is large and complex, and bound to cause some friction. But there are also important benefits from U.S.-China trade to my industry, which accrue to our workers and the consumers who buy our products. These benefits are often overlooked in the trade debate.

The U.S. consumer electronics industry is subject to unusual pressures: it is intensively competitive, and subject to extraordinary price sensitivity. In addition, we face ever-shortening product life cycles, heightened time-to-market expectations, and the need to maintain strong brand awareness and company reputations. These factors are challenges for our industry, but bring incredible benefits to our customers.

While we must continually find new ways of controlling costs, the American consumer gets constant innovation, an ever-widening selection of products, and the best prices possible—in other words, constantly improving products with more functionality, and often with lower prices. Trade with China is a key ingredient in bringing these benefits to the U.S. consumer.

But it's not just the American consumer who benefits from this trade with China. U.S. workers do as well. I'd like to share a few findings from a recent Consumer Electronics Association study to show why this is so.

First, the U.S. consumer electronics industry is part of a global network of production that actually allows many U.S. electronics companies to keep a strong manufacturing presence in the United States. This global network allows U.S. producers to concentrate on the higher-value, high-technology products where the American industry retains a competitive advantage. Indeed, for U.S. firms to remain competitive in the global economy, they must remain at the top of the value chain. While production with lower-wage and lesser-skilled employees may be shifting overseas, the United States continues to be the leader in design, R&D, marketing, and high-technology production. This is evident in several sectors, such as the market for computers, peripherals, and parts. U.S. production of these products totaled $88.7 billion in 2005.

This shift to higher value production in the United States supports high-skilled- and well-paid-jobs here at home. In fact, consumer electronics manufacturing wages in the United States average fifty percent higher than manufacturing wages overall. Many of these valuable U.S. jobs depend on exports, and trade with China helps drive this trend.

Further, consumer electronics imports from China directly support thousands of good jobs across the United States—including jobs in R&D, marketing, distribution, and after-sales support. Research shows that every single U.S. state—and even the District of Columbia—is affected positively in terms of the net employment resulting from the importation of Chinese-origin consumer electronics.

In addition, the substantial volume of imported consumer electronics products and components is in large part a reflection of U.S. investment abroad and foreign assembly of U.S.-made and designed, high-value components. This is particularly evident in the semiconductor industry, in which the U.S. remains a global leader. Trade statistics alone do not capture these complex global relationships, which are vital to the U.S. consumer electronics industry. In fact, CEA has played a major role in promoting these global relationships, to the benefit of our U.S. companies. For example, CEA is the producer of the International Consumer Electronics Show, the largest annual consumer technology trade show. Notably, participation of Chinese attendees has increased with each successive show. Moreover, CEA is also the exclusive U.S. sponsor of the China International Consumer Electronics Show—"SINOCES," China's largest exhibition of consumer electronics. Our involvement in SINOCES provides exhibitors and attendees with new international business opportunities and allows CEA to promote our flagship tradeshow, the International CES, to an international audience.

These points are discussed in great detail in the Consumer Electronics Association's recent study, "Role of China in Competitiveness of the U.S. Consumer Electronics Industry." I believe this study would be a valuable tool for the Subcommittee to use as it weighs the China trade bills before it.

Finally, I want to express a personal concern as the owner of a small consumer electronics firm. While U.S. trade remedy laws play an important role in redressing unfair trade practices like dumping and illegal subsidies, such measures can also inadvertently punish U.S. manufacturers which resell foreign-sourced products or incorporate them into products manufactured in the United States. The imposition of antidumping or countervailing duties on finished products, semiconductors, batteries, or other components could render those products or downstream products produced or sold in the United States uncompetitive. From the perspective of my small company, even in the absence of antidumping or countervailing duties, we are experiencing higher costs for our Chinese imports as China's currency appreciates in value and China removes export incentives.

My other fear is that, if legislation passes that is inconsistent with our international trade obligations under the WTO, the result may be retaliatory measures by China or other countries against our exports. U.S. exports of consumer electronics goods, including to China, are currently *increasing*. On a global basis, CEA member company exports rose from just over $3 billion in 2004 to nearly $4 billion in 2006. Our hope is that this bright spot in the U.S. trade balance will not be offset by the passage of new U.S. trade laws that end up chilling high-value U.S. electronics exports. More importantly, if such legislation is passed, it is the U.S. con-

sumer who will suffer higher prices, less innovation, and potential supply chain disruption in the flow of goods.

Thank you for your time today. I would welcome any questions from the Subcommittee.

Chairman LEVIN. Thank you. Mr. Hartquist.

Two Skips sitting next to each other.

STATEMENT OF DAVID A. HARTQUIST, KELLEY DRYE & WARREN LLP, ON BEHALF OF THE CHINA CURRENCY COALITION

Mr. HARTQUIST. Thank you, Mr. Chairman, for allowing me to speak today on behalf of the China Currency Coalition about an issue that we have been working on for about 3 years. We are just delighted that the issue has reached this level of interest in the Committee and on the Senate side as well. Mr. Hunter and Mr. Ryan laid out in their testimony the substantive issues related to their legislation. My job is to present the case that the Ryan-Hunter bill is WTO legal.

I would like to make three main points. First, the health of the international trading system is intertwined and dependent upon orderly exchange rates and freedom and exchange transactions. In other words, tariff and non-tariff barriers cannot effectively be lowered and successfully facilitate international trade if companies engage in destabilizing competitive currency depreciation. This lesson was hammered home during the period between the two wars in the last century. The framers of the IMF and the GATT recognized that international trade and investment are badly damaged when countries engage in undervaluation of their currencies and similar mercantilist exchange measures.

Second, as my written statement indicates in more detail, both the IMF's Article of Agreement and the GATT contain a number of provisions designed to shore up the monetary base that is essential for international trade and investment. These sections recognize that currency action is hybrid in nature—that is a term I will use repeatedly—hybrid in nature, with both monetary and trade aspects and is to be dealt with as such in a complimentary fashion by the IMF and World Trade Organization.

More particularly, under Article 6 of the GATT, governmental practices that directly or indirectly depreciate a country's currency can be offset by countervailing duties or as a form of dumping that may be offset by dumping duties. The proprietary of these trade actions is reinforced by the definition in the WTO subsidy agreement, the Agreement on Subsidy and Countervailing Measures—the criteria for export subsidies and by the requirement in the WTO's anti-dumping agreement that dumping be measured based upon a fair comparison between the foreign exporters' normal value and the U.S. price. While the issue would be one of first impression and dispute settlement in the WTO, there are solid grounds for the position that injurious imports whose U.S. prices are subsidized by an under-valued, fundamentally misaligned currency can be subject to countervailing or anti-dumping duties in a WTO-consistent matter.

Third and lastly, the right balance needs to be struck in addressing this hybrid problem. Under GATT Article 15, exchange action

is supposed not to frustrate the intent of the GATT, and trade action is not to frustrate the intent of the IMF Articles of Agreement. Depreciation of currencies is exchange action. Not only is it contrary to the IMF's Articles of Agreement, but it also runs counter to the GATT trade disciplines against subsidies and dumping.

Moreover, existing international monetary rules are too weak to compel any currency manipulator to change its policies before it wants to do so. We've seen that in spades with the IMF and China. The mercantilistic advantages are so powerful that countries are in no rush to give them it up.

On parallel tracks, the Treasury Department should pursue their negotiations, as they testified today, to encourage a country that is not upholding its international monetary obligations to reform its behavior. The Commerce Department should offset injurious imports that have been subsidized or dumped by means of governmental depreciation of the currency.

We think that H.R. 2942 strikes the right balance in this regard. In contrast, the Finance Committee's bill, S. 1607, which came out of markup very recently, we think does not strike the right balance. I have a slide that I was going to present, but I understand the equipment was moved to the other room very efficiently, Mr. Chairman. But you have copies of it which shows hurdles substantive and time hurdles that must be approved, must be passed under the Senate bill in order for relief to be provided. In short, we think those hurdles should be lowered or removed, and we much prefer the approach the Ryan-Hunter bill has taken.

Thank you for the opportunity to testify before you today.

[The prepared statement of Mr. Hartquist follows:]

Chairman LEVIN. Thank you very much.

Statement of Skip Hartquist, Partner, Kelley Drye & Warren LLP, on behalf of the China Currency Coalition

Good morning. Thank you for inviting me to participate in this hearing as counsel to the China Currency Coalition ("CCC"). The CCC consists of U.S. industry, agriculture, and labor organizations, and its purpose is to support the economy and security of the United States by working toward and achieving as promptly as possible a commercially realistic revaluation of China's undervalued yuan. The China Currency Coalition estimates that the yuan continues to be undervalued *vis-à-vis* the dollar by 40 percent or more.

As requested, I will focus my comments today on the question of whether a currency that is fundamentally misaligned is actionable as a trade measure under the agreements of the World Trade Organization ("WTO"). The CCC believes that it is actionable. More specifically, in the CCC's view undervaluation of a fundamentally misaligned currency constitutes a countervailable prohibited export subsidy within the meaning of the General Agreement on Tariffs and Trade ("GATT") and the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). Further, a currency's fundamental misalignment is a factor for which an adjustment should be made in the calculation of dumping margins under the GATT and the WTO's Antidumping Agreement.

In addressing these matters, I wish to submit for consideration two basic points with reference to H.R. 2942, The Currency Reform for Fair Trade Act of 2007, which has been cosponsored by Congressmen Tim Ryan and Duncan Hunter. The CCC very much appreciates their bipartisan leadership on this issue over the last several years.

The centerpiece of H.R. 2942 provides that injurious imports into the United States from any country of products that are undervalued due to the exporting country's fundamental and actionable misalignment of its currency can have that unfair price advantage offset by means of either countervailing or antidumping duties. While no one can know with certainty what the outcome of dispute settlement at the WTO would be on these matters of first impression, the China Currency Coali-

tion believes that reliance upon these remedies and imposition of these duties should be found to be consistent with the WTO's relevant provisions.

I. Fundamental and Actionable Misalignment of Currencies Is Both a Monetary Action and a Trade Action and Was Recognized As Such By the Framers of the International Institutions and Rules That Were Created to Regulate the Post-World War II Global Monetary and Trading System

The first point I would like to raise is that, from the outset of the drafting of the GATT and the Articles of Agreement of the International Monetary Fund ("IMF") during and immediately after World War II, the international community was acutely aware that exchange action can distort and damage international trade. In reviewing the important issue of undervalued currencies, therefore, it is helpful to recall the perspective of those who were involved in crafting the post-war international monetary and trading system. Weighing very much on their minds were the ordeal of the Great Depression in the 1930s, the disruption to international trade caused by competitive currency depreciation and exchange controls, and the need for orderly exchange arrangements to restore and facilitate international trade.

The integral nature and relationship of monetary matters and international trade were perhaps best captured by Harry Dexter White, the primary architect for the United States of the International Monetary Fund along with John Maynard Keynes for Great Britain. Writing in an article for "Foreign Affairs" in the 1944–45 issue, White observed that the lowering of barriers to international trade, ". . . cannot be done until there is assurance of orderly exchange rates and freedom in exchange transactions for trade purposes A depreciation in exchange rates is an alternative method of increasing tariff rates; and exchange restriction is an alternative method of applying import quotas." H.D. White, "The Monetary Fund: Some Criticisms Examined," 23 *Foreign Affairs* 195, 208 (1944–45).

Expanding on this central bond between international trade and stable and strong exchange rates, as opposed to rigid and brittle exchange rates, White remarked,

The world needs assurance that whatever changes are made in exchange rates will be made solely for the purpose of correcting a balance of payments which cannot be satisfactorily adjusted in any other way. The world needs assurance that exchange depreciation will not be used as a device for obtaining competitive advantage in international trade; for such exchange depreciation is never a real remedy. It inevitably leads to counter measures, and the ultimate effect is to reduce the aggregate volume of trade. This is precisely what happened in the period of the 1930's when competitive exchange depreciation brought wider use of import quotas, exchange controls and similar restrictive devices.

H.D. White, "The Monetary Fund: Some Criticisms Examined," 23 *Foreign Affairs* 195, 199 (1944–45).

While White wrote at a time when the world was still on the gold standard and international flows of private capital were restricted, the critical interrelationship of which he spoke remains just as vital today as then and, if anything, is more so. Unless exchange rates reflect the market's fundamentals of supply and demand, mutually acceptable reductions in tariff and non-tariff barriers will likely not be successfully negotiated and, even if agreed to by the parties, will be undercut and negated to the extent that governmental actions insulate the setting of exchange rates from market forces and result in currencies that are fundamentally misaligned. It is consequently of the utmost importance to the international trading system that exchange rates be orderly and market-oriented.

With this hybrid nature of exchange rates in mind, the IMF's Articles of Agreement considered the monetary side of this issue in various sections, including Article I(iii) (noting that the IMF's purposes include promotion of exchange stability, maintenance of orderly exchange arrangements among members, and avoidance of competitive exchange depreciation), Article IV(1)(ii) (stressing that each member of the IMF is obligated to promote stability by fostering orderly economic and financial conditions and a monetary system that does not tend to produce erratic disruptions), and Article IV(1)(iii) (obligating each member of the IMF to avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members).

As turned to next, the drafters of the GATT also addressed the hybrid nature of exchange rates from the trade side of things.

II. Under the WTO's Agreements, Fundamental and Actionable Misalignment of An Undervalued Currency Can Be Treated Either As a Prohibited Export Subsidy or As a Form of Dumping

The second point I would like to emphasize today is that consideration of an undervalued currency's misalignment likewise has a long history as an actionable trade action under the GATT. In July 1947, the Australian delegate in Geneva voiced concern that multiple currency practices in certain circumstances could constitute an export subsidy and alternatively could amount to a partial depreciation of a country's currency that should be dealt with as a dumping measure. *See Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Verbatim Report*, E/PC/T/A/PV/32 at 2–3 (July 23, 1947).

Article VI of the GATT accordingly was amended. GATT Ad Article VI at paragraphs 2 and 3, item 2 reads,

Multiple currency practices can in certain circumstances constitute a subsidy to exports which may be met by countervailing duties under paragraph 3 [of GATT Article VI regarding countervailing duties and subsidies] or can constitute a form of dumping by means of a partial depreciation of a country's currency which may be met by action under paragraph 2 [of GATT Article VI regarding antidumping duties and dumping]. By "multiple currency practices" is meant practices by governments or sanctioned by governments.

(Bracketed material added.) As is evident from this account, undervalued misalignment of a currency has been seen from the earliest days of the GATT as a trade measure that can be countered either as an export subsidy or as dumping. This conclusion is reinforced by subsequent developments.

A. Fundamental Misalignment As a Prohibited Export Subsidy

In both the Annex at items (b) and (j) in the GATT's 1979 Subsidies Code and, as carried forward in Annex I(b) and (j) of the WTO's 1994 SCM Agreement, the illustrative list of export subsidies identified explicitly designates as export subsidies "{c}urrency retention schemes or any similar practices which involve a bonus on exports" and the provision by governments directly or indirectly of exchange risk programs at premium rates that are manifestly inadequate to cover the long-term operating costs and losses of such programs.

Further, the 1994 SCM Agreement at Articles 1, 2, and 3, for the first time defined the term "subsidy" expressly to require (a) a governmental financial contribution and (b) a benefit conferred thereby upon the recipient of that contribution, and then added that such a subsidy is countervailable only if it is (c) "specific" (as relevant, contingency of the subsidy upon exportation in law or in fact), as the three criteria that must be shown to establish the existence of a prohibited countervailable export subsidy. Previously, in footnote 4 of the 1979 Subsidies Agreement, only the term "countervailing duty" was defined as meaning "a special duty levied for the purpose of off-setting any bounty or subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise, as provided for in Article VI:3 of the General Agreement."

It is important to note at this juncture that the WTO's agreements and relevant provisions treating an undervalued, fundamentally misaligned currency as an export subsidy are unlike the IMF's sections with respect to currency manipulation in at least one significant regard. Whereas a finding of currency manipulation by the IMF arguably depends in part upon the foreign government having the intent by means of its currency's undervaluation to gain an unfair competitive advantage or to prevent effective balance of payment adjustments, there is no element or showing required of intent in the WTO's agreements on prohibited export subsidies. In particular, as long as a prohibited export subsidy exists under Articles 1, 2, and 3 of the WTO's SCM Agreement, and as long as a U.S. domestic industry can demonstrate that it is being materially injured or threatened by material injury by reason of subsidized imports, relief is warranted in the form of countervailing duties on subsidized imports entering the United States to offset the amount of subsidization.

The question, then, is whether a currency's fundamental and actionable misalignment as defined in H.R. 2942 is a countervailable prohibited export subsidy. As noted above, under Articles 1, 2, and 3 of the SCM Agreement, a measure must satisfy three criteria in order to be considered a prohibited export subsidy. In essence, there must be a governmental financial contribution (Article 1.1(a)(1)), a benefit must thereby be conferred upon the recipient (Article 1.1(b)), and such a subsidy must be specific by virtue of being contingent in law or in fact upon export performance (Articles 1.2, 2.3, and 3.1(a)). In the judgment of the China Currency Coalition, the yuan's enforced undervaluation by the Chinese government meets each of these criteria.

In a normal export transaction, having been paid for goods sold to a customer in the United States, the exporter in China must transfer most of the U.S. dollars received to the Chinese government in return for yuan at the undervalued exchange rate in effect. This requirement is reflected in Article 9 of a Circular dated February 17, 2000, by the People's Bank of China and the State Administration of Foreign Exchange. Article 9 indicates that Chinese exporters typically must exchange for yuan 85 percent of the foreign currency earned on exports, but that "Honorable Enterprises for Collection of Export Receipts of Foreign Exchange" may retain 30 percent of the earned foreign currency while exchanging for yuan the balance of 70 percent of the foreign currency received in payment for their exports. Furthermore, Article 7 of the Regulations of the People's Republic of China on Foreign Exchange Control, which were issued by the State Council on January 26, 1996, and were amended on January 14, 1997, mandates that "{f}oreign currency is prohibited for circulation and shall not be quoted for pricing or settlement in the territory of the People's Republic of China."

In the sequence of the conversion into yuan of foreign exchange earned from exports, the Chinese government first provides a financial contribution to the exporter by means of a direct transfer of funds within the meaning of Article 1.1(a)(1)(i) of the SCM Agreement. For each U.S. dollar exchanged at the current rate, the Chinese exporter receives in return approximately 7.5 yuan. This money is no less a direct transfer of funds than an outright governmental grant would be.

Second, a benefit is conferred by this governmental financial contribution upon the recipient that is equal to the difference between what the yuan would be worth if its value were set by the market and its artificially low value as the result of China's undervaluation of the yuan. With the yuan undervalued by approximately forty percent, therefore, for each U.S. dollar earned by the sale of goods to the United States the Chinese exporter will receive approximately 7.5 yuan at the current rate rather than the 4.5 yuan that the CCC believes would be the market-driven rate of exchange. As this illustration demonstrates, the exporter in China is substantially "better off" as the result of being given more yuan than if there were no undervaluation.

Third, and lastly, this subsidy is contingent upon export performance. Only after the exporter has been paid in U.S. dollars for the goods that have been exported to the United States is the exporter required and able to convert those proceeds into yuan.

The setting forth in these straightforward terms of why the yuan's undervaluation should be seen as a countervailable prohibited export subsidy is not intended to overlook various underlying and, in some instances, arguably contrary points that add complexity to the analysis. At least a few should be mentioned at this stage, therefore, and there are perhaps others that might be advanced. Also importantly, due to incomplete transparency by China, not all facts and details are known about exactly how China's system functions. At the same time, however, in the China Currency Coalition's opinion the evidence that is available is more than adequate to support the conclusion that the yuan's enforced undervaluation is a countervailable prohibited export subsidy as noted in GATT Ad Article VI, at paragraphs 2 and 3, item 2, and in Articles 1, 2, and 3 and Annex I(b) and (j) of the SCM Agreement.

For instance, with respect to the criterion that there be a governmental financial contribution under Article 1.1(a)(1) of the SCM Agreement, such a finding can rest on one or more of several grounds. As suggested above, the Chinese government's exchange of yuan in return for U.S. dollars can properly be viewed as "a government practice {that} involves a direct transfer of funds," in line with Article 1.1(a)(1)(i). The yuan's undervaluation might also be considered a governmental provision of services under Article 1.1(a)(1)(iii), inasmuch as the Chinese government both exchanges the yuan for U.S. dollars and then "sterilizes" the issued yuan in order to avoid inflation and loss of value by the yuan within China. These services by China are financial contributions integral to the yuan's undervaluation relative to the dollar. Further, to the extent that the Chinese government entrusts or directs private bodies to conduct the exchanges and "sterilizations" of yuan, those activities likewise can reasonably be seen as governmental financial contributions under Article 1.1(a)(1)(iv).

Also on the criterion of a governmental financial contribution, there are some who urge that a government's undervaluation of its currency constitutes a general infrastructural measure that cannot properly be deemed a subsidy. As the U.S. Department of Commerce indicated in its final rule in 1998 implementing the countervailing duty sections of the Uruguay Round Agreements Act, however, governmental financial contributions to the general infrastructure include the provision of such services and items as highways and bridges, schools, healthcare facilities, sewage systems, port facilities, libraries, and police protection that are for the public good

and broad social welfare of a country, region, state, or municipality and that are available to all citizens or to all members of the public. As a macroeconomic policy, exchange-rate misalignment is a governmental financial contribution that does not directly build up a community's basic, functional features of the kinds just recounted, and is accessible to just those persons who are in a position to deal with foreign currencies.

Similarly as to the requirement that there must be a governmental financial contribution for a subsidy to exist, the question might arise as to whether such a contribution can occur if the government does not bear some cost. There are, however, costs to China's government due to its undervaluation of the yuan, including the costs of printing all of the yuan required for the conversion of the U.S. dollars and other foreign currencies generated by the exports from China and also the costs incurred by China's government in sterilizing those yuan.

In any event, "An evaluation of the existence of a financial contribution involves consideration of the nature of the transaction through which something of economic value is transferred by a government. A wide range of transactions falls within the meaning of 'financial contribution' in Article 1.1(a)(1) [of the SCM Agreement]." *United States—Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, para. 52 (Jan. 19, 2004). Moreover, a governmental transfer of economic resources, to be a financial contribution, does not have to involve a cost to the government or a charge on the public account. *United States—Measures Treating Exports Restraints as Subsidies*, WT/DS194/R, para. 8.73 and n.167 (June 29, 2001).

With respect to the SCM Agreement's second prerequisite for a subsidy at Article 1.1(b) that there must be a benefit conferred by the governmental financial contribution before a subsidy can be established, there is a widespread, although not unanimous, consensus that the yuan is undervalued, but opinions vary as to how to measure the undervaluation. To the extent there is no private exchange market in China that can serve as a trustworthy benchmark to determine the amount of the yuan's undervaluation, the CCC believes that a methodology should be employed for this purpose that is objective and consistent with widely recognized macroeconomic theory and that incorporates governmentally published and other publicly available and reliable data.

Toward this end, H.R. 2942 sets forth a methodology that in the CCC's judgment is balanced and fairly reflects conventional economic thinking. More specifically, H.R. 2942 directs that a simple average be taken of the results of three different methodologies—first, the macroeconomic-balance approach, second, the reduced-form-real-exchange-rate approach, and third, the purchasing-power-parity approach. These well-recognized methodologies are the standard methodologies used by economists, and by taking the simple average of them H.R. 2942 should achieve as reasonable a computation as is possible of whether fundamental and actionable misalignment exists and, if so, to what extent.

In addition, H.R. 2942 reasonably defines "fundamental and actionable misalignment" as a differential between the prevailing real effective exchange rate and the equilibrium real effective exchange rate that has exceeded 5 percent on average for the eighteen months preceding the measurement of such misalignment. In this fashion, H.R. 2942 in effect is reasonably implementing in U.S. domestic law the governing international law of the WTO's provisions such that only significant misalignment would be actionable. Put otherwise, any currency that is out of alignment from its equilibrium real effective exchange rate to that extent and for that extended period of time is almost certainly insulated from market forces due to governmental controls.

While this means of measurement seems very reasonable on balance, a benchmark arrived at in this unprecedented fashion to determine the amount of the yuan's undervaluation admittedly would be open to challenge at the WTO. In cases involving Korean DRAMS and Canadian softwood lumber, however, the United States has been upheld in the past at the WTO on other first-time interpretations of the SCM Agreement. In the case of Korean DRAMS, the U.S. Department of Commerce was affirmed by the WTO in finding indirect governmental financial contributions through the Korean government's entrustment to private Korean banks of preferential loans, equity investment, and debt forgiveness for a Korean producer of DRAMS. *United States—Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea*, WT/DS296/AB/R (June 27, 2005).

In addition, in the case of Canadian softwood lumber, the agency was upheld at the WTO in its reliance upon benchmarks outside the subsidizing government's territory to measure the benefit from undervalued Canadian stumpage rights. *United*

States—Final Countervailing Duty Determination With Respect to Certain Softwood Lumber from Canada, WT/DS257/AB/R (Jan. 19, 2004).

In the CCC's judgment, measurement of fundamental misalignment of the yuan by H.R. 2942's responsible methodology could similarly be defended and affirmed on very solid grounds in dispute settlement at the WTO.

As noted earlier, the SCM Agreement's third and final criterion deals with whether the subsidy due to the yuan's undervaluation is contingent, in law or in fact, upon export performance, and so is "specific" under Articles 1.2, 2.3, and 3.1(a) of the SCM Agreement and countervailable. In the CCC's opinion, it is evident that this subsidy is contingent upon and tied to actual or anticipated exportation or export earnings within the meaning of the SCM Agreement's Article 3.1(a) and n.4. Certainly the Chinese law and regulations mentioned previously suggest that the subsidy of the yuan's undervaluation is contingent upon exportation. In fact, also, it is evident that without exportation and payment in U.S. dollars, the Chinese company will not realize the subsidy.

Another aspect as to whether this subsidy is specific and export-contingent concerns its availability as well to persons and entities in China that have obtained U.S. dollars by means other than through the export of goods or services to the United States. On at least two occasions, however, in dispute settlement at the WTO (*United States—Subsidies on Upland Cotton*, WT/DS267/AB/R (Mar. 3, 2005), and *United States—Tax Treatment for "Foreign Sales Corporations" (Art. 21.5*), WT/DS108/AB/RW (Jan. 14, 2002), the WTO's Appellate Body has recognized that the granting of a subsidy under conditions apart from exportation does not undercut the *de facto* export-contingent nature of the subsidy when the grant is tied to exportation. As long as it can be established, therefore, that there is a clear distinction between the eligible domestic recipients and the eligible exporters and there are different conditions required for each group to receive the subsidy, the prerequisite of specificity for a countervailable prohibited export subsidy should be met. Without doubt, the vast bulk of subsidies paid through the yuan's undervaluation is made to exporters from China.

In summary, there is ample cause to conclude that H.R. 2942's provision that undervalued fundamental misalignment of a foreign currency very reasonably and appropriately can be viewed as a legitimate implementation in U.S. domestic law of the WTO's SCM Agreement and Ad Article VI of the GATT.

B. Fundamental Misalignment As a Dumping Adjustment

More briefly, I will touch on why H.R. 2942's provision that fundamental misalignment of a foreign currency can be taken into account in antidumping calculations is justified under the WTO's Antidumping Agreement and Ad Article VI of the GATT.

The basic points here are that since the origins of the GATT in 1947, currency depreciation has been recognized in Ad GATT Article VI at paragraphs 2 and 3, item 2 as a form of dumping that can be met by antidumping duties, and, consistent with this view, Article 2.4 of the WTO's Antidumping Agreement imposes the fundamental condition that dumping calculations reflect "a fair comparison" between export price and normal value. This requirement has been interpreted broadly in dispute settlements at the WTO, including in the context of challenges to the practice of zeroing by the United States and other countries, and likely would be taken to mean that undervaluation or overvaluation of a fundamentally misaligned currency should be adjusted for by reducing or raising U.S. price, respectively, in the interest of achieving "a fair comparison." These adjustments are what H.R. 2942 contemplates and should be fully consistent with the obligations of the United States at the WTO.

Thank you for inviting me to appear before you today. I will be glad to answer any questions that you have.

Attachment

Members of the

China Currency Coalition

- The IUC AFL–CIO
- American Iron and Steel Institute
- Chicagoland Circuit Association
- The Committee on Pipe and Tube Imports
- The Copper & Brass Fabricators Council, Inc.
- EXEL Industrial

- Forging Industry Association
- Graphics Communications International Union (GCIU)
- The Industrial Union Council (composed of Bakery, Confectionary, Tobacco Workers and Grain Millers International Union (BCTGM))
- International Union of Electrical Workers/Communication Workers of America (IUE/CWA)
- International Association of Machinists (IAM)
- International Brotherhood of Boilermakers (IBB)
- International Brotherhood of Electrical Workers (IBEW)
- International Brotherhood of Teamsters (IBT)
- Paper Allied-Industrial Chemical & Energy Workers International Union (PACE)
- Manufacturers for Fair Trade
- Metal Treating Institute
- Metals Service Center Institute
- National Council of Textile Organizations
- National Tooling and Machining Association
- Nucor Corporation
- Precision Machined Products Association
- Precision Metalforming Association
- Rescue American Jobs
- Sheet Metal Workers International Association
- Society of the Plastics Industry
- Specialty Steel Industry of North America
- Spring Manufacturers Institute
- Steel Dynamics
- Steel Manufacturers Association
- Tooling & Manufacturing Association
- U.S. Business and Industry Council
- United Automobile Workers (UAW)
- United Food and Commercial Workers (UFCW)
- United Mine Workers of America (UMWA)
- United States Business & Industry Council
- United Steelworkers of America (USWA)
- Union of Needletrades Industrial and Textile Employees (UNITE)
- Vanadium Producers & Reclaimers Association
- Wood Machinery Manufacturers of America

Mr. Leibowitz.

STATEMENT OF LEWIS E. LEIBOWITZ, PARTNER, HOGAN & HARTSON LLP, ON BEHALF OF CONSUMING INDUSTRIES TRADE ACTION COALITION

Mr. LEIBOWITZ. Thank you very much for the opportunity to appear before you today. I am Lewis Leibowitz, a partner at the law firm of Hogan & Hartson in Washington and general counsel of the Consuming Industries Trade Action Coalition or CITAC. I truly appreciate the opportunity to participate in today's very important hearing.

On behalf of consuming industry, consuming industries are manufacturers, distributors and retailers that use globally traded products in their businesses. Most are small- or medium-sized companies. They usually can't afford to file trade cases. There are exceptions, of course, including the gentleman to my right, but that is a general rule. Collectively, they employ millions of workers in the United States. In steel, for example, the ratio of workers in steel-consuming manufacturing companies to steel-producing workers is over 60–1. Every State has a massive surplus of steel-using manufacturing workers to steelworkers.

America's consuming industries care about anti-dumping and countervailing duty laws and generally support them, but these laws, which benefit a few, tax the vast majority of U.S. manufacturers. These laws are currently unfair to consuming industries because these industries are excluded from meaningful participation in trade-remedy proceedings. As Mr. Knollenberg stated this morning very eloquently, this is not the American way.

For consuming industries, industrial user standing, an end of the practice of zeroing, and reform of the retrospective duty collective system, which hurts down stream industries, are essential changes to address the unfairness in these laws.

Concerning China trade, which is the main subject of today's hearing, we ask the Subcommittee first to do no harm, but the trade remedy changes proposed in some of these bills before you would do harm to the majority of American manufacturing companies and workers. Therefore, consuming industries oppose provisions that would mandate controversial and we believe WTO-inconsistent actions, including the perpetuation of zeroing and nonmarket economy treatment, principally for China and Vietnam, using artificial exchange rates in anti-dumping cases, declaring currency misalignment, erroneously, in our view, a countervailable subsidy, forbidding the ITC from considering alternative causes of injury, that's the Bratsk decision and doubt counting duties against imports from nonmarket economy countries, these will all lead to excessive tax increases on U.S. manufactures, and we have to get the tax right.

We need trade remedy laws that consider the interest of the entire U.S. economy, including consumers, let me say right here, the zeroing decision that the Commerce Department issued last week did reverse the anti-dumping order with zeroing achieved spectacular margins of 2 to 4 percent on Ecuadorian shrimp exporters, and when zeroing was eliminated those margins fell to zero. It is hard to argue that is a catastrophic outcome. However, it does remove the order, and we can talk about that during the question period if there is time.

Also, obviously, there are those who disagree with Mr. Hartquist's analysis of the countervailability of currency manipulation so-called as a subsidy under WTO rules, we should talk about that, too.

We need these trade remedy laws, but we need to them to consider the interest of everyone, including consumers and consuming businesses. The duties imposed have to be accurate. They have to be determined promptly and not lead to uncertainty. Our current laws fail these tests. It is not acceptable to us to load up these laws with all these new ideas, which will not have the effect that I think we all want them to have until these fundamental inequities are changed.

I would like to work with all of you to resolve these questions for the benefit of all Americans. I am very glad again to have had the opportunity to appear before you today. I look forward to a dialogue with you and any questions or comments you may have. Thank you very much.

[The prepared statement of Mr. Leibowitz follows:]

Statement of Lewis E. Leibowitz, Partner, Hogan & Hartson LLP, on behalf of Consuming Industries Trade Action Coalition

Testimony of
Lewis E. Leibowitz
Partner, Hogan & Hartson LLP
General Counsel
Consuming Industries Trade Action Coalition

Trade Subcommittee
House Ways and Means Committee
August 2, 2007

Good morning. I am Lewis Leibowitz, a partner at the law firm of Hogan & Hartson and General Counsel of the Consuming Industries Trade Action Coalition (CITAC), a coalition of industries that rely on open channels of trade to be globally competitive. I am pleased and privileged to appear before the Subcommittee today to talk about trade remedy (antidumping and countervailing duty) provisions in legislation pending before the Ways and Means Committee. We note for the record that Mr. David Phelps, a CITAC Board member, testified before the Subcommittee on March 15, 2007, with respect to H.R. 1229.

For the record, Mr. Chairman and Members of the Subcommittee, let me state clearly that CITAC supports trade remedy laws that are fairly administered. CITAC does not support and never has supported elimination of the trade remedy laws. CITAC does, however, strongly support the idea that the trade remedy laws should consider the interests of *all* Americans, including those in consuming industries.

In line with this theme, I will address five issues in my testimony this morning: (1) industrial user standing in trade remedy proceedings; (2) zeroing in Department of Commerce antidumping proceedings; (3) the retrospective system of antidumping and

countervailing duty collection; (4) limiting the imposition of antidumping and countervailing duties to situations where they will provide real benefits to domestic industries; and (5) trade remedy issues and the U.S.-China trade relationship.

All of these issues focus on what should be the Subcommittee's goal in our view: imposing the correct amount of taxes, because that is what antidumping and countervailing duties are. Excessive taxation of imports hurts United States industries employing millions of workers that depend on import competition to keep American business globally competitive.

Industrial User Standing

CITAC strongly supports H.R. 1127, the "American Manufacturing Competitiveness Act," which would redress a serious shortcoming in our trade remedy laws: the exclusion of industrial users from meaningful participation in antidumping and countervailing duty cases. The bill would provide industrial users of subject products with full standing to participate in investigations and reviews of imports of this merchandise.

Consuming industries are unable to participate fully in trade remedy cases. They cannot present their views to the Department of Commerce and the International Trade Commission (ITC) based on the industries' review of the full record, nor can they appeal decisions that injure them and are contrary to law. This is fundamentally unfair. Just this week, steel consumers had to borrow time from foreign producers to state their views to the ITC in the five-year "sunset" review hearing for hot-rolled steel. The failure of the trade remedy law to recognize the important voice of consuming industries ignores an important part of the United States economy in the process and is not good policy.

While this fundamental inequity persists, the expansion of trade remedy laws to cover new and legally dubious situations carries too great a risk that the level of taxation will be too

high, or, equally damaging, arbitrary and uncertain. The threat of high taxes deters imports, whether fairly traded or not, and undermines the competitive position of thousands of U.S. businesses and millions of U.S. workers who count on globally priced raw materials to keep their competitive edge.

"Zeroing"

Another fundamental barrier to fair taxation is the practice of "zeroing." My testimony proceeds from the assumption that the Subcommittee is familiar with the concept of zeroing. Consuming industries oppose zeroing as practiced by the Department of Commerce because zeroing imposes an excessive tax on downstream users of products subject to antidumping investigations and orders. The World Trade Organization (WTO) has ruled that zeroing is not permitted under the relevant WTO Agreements (the Antidumping Agreement and the GATT 1994), and the United States courts have ruled that Congress has not required, nor prohibited, the practice. This suggests two important conclusions: (1) that zeroing can be eliminated by the Department of Commerce without amending the statute; and (2) that zeroing, since it is optional under U.S. law, is not essential to the effectiveness of the antidumping law.

CITAC opposes legislation that would require the Department of Commerce to re-establish zeroing in antidumping investigations (it has been eliminated in these proceedings since February 2007 for most cases) and to maintain zeroing in other antidumping proceedings, including administrative reviews, sunset reviews, and changed circumstances reviews. Even if this ill-considered practice were to be agreed to by the other 150 Members of the WTO organization, which is highly unlikely, zeroing is not worth saving because it is bad policy. Indeed, the United States has committed to implementing the WTO Appellate Body's decision in

the zeroing case brought by Japan by December 24, 2007. We strongly urge the Administration to follow through on this commitment.

For consuming industries, ensuring that the right amount of tax is collected in the administration of trade remedy laws is vitally important. Antidumping duties are intended to offset the unfair economic effects of subject imports and should not exceed that amount. Zeroing fails to accomplish this objective because the practice overstates the economic effect of subject imports (those imports subject to antidumping investigations and orders) in the U.S. market. Import selling prices above "normal value" are as relevant to measuring that effect as import selling prices below "normal value." Domestic producers are entitled to no more protection than the difference between normal value and import prices *in the aggregate*. An amount based only upon those transactions below normal value (frequently a small minority of total transactions) overstates the impact of dumping on the domestic producing industry and therefore overtaxes consuming industries.

CITAC has reviewed the statements by the U.S. delegation in Geneva criticizing the WTO Appellate Body decisions. It is clear that these statements do not address the correct policy with respect to calculation of antidumping duties. Rather, they criticize the Appellate Body's judicial reasoning. CITAC disagrees with USTR: we think that the Appellate Body decisions are soundly based and correct on the law. But even if the WTO Agreements permitted zeroing, that would not provide adequate justification for the United States to adopt a bad policy.

Retrospective Collection of Antidumping and Countervailing Duties

The U.S. retrospective system of collection of antidumping and countervailing duties is very unusual; indeed it may be unique in the world in this era of the "global economy." This system is detrimental to consuming industries, because it deters fairly traded imports more

frequently than a prospective system would. The reason is simple: the importer, at the time of importation, is unsure of the amount of duty that will be finally assessed on the imported shipment. Even if the deposit rate on a product subject to an antidumping or countervailing duty investigation or order is zero, the importer may face additional duties long after the product has been sold. In this situation, the importer will not import goods into the United States if there are less risky alternatives in other markets. Therefore, for products for which there is a robust world market, shipments of imported material to the United States will decline, even if duty deposit rates are low.

A prospective collection system would balance the interests of producers and consumers more effectively, because imports would be assessed definitive antidumping and countervailing duties at the time of importation. Such a system would not significantly affect the accuracy of the assessment over time, nor would it prevent assessed duties from being adjusted to reflect new shipment realities. A prospective collection system simply would make the imposition of duties more predictable.

Material Injury and Causation – the *Bratsk* Decision

The 2006 Federal Circuit ("CAFC") decision in *Bratsk* ensures that the impact of trade remedy decisions on consuming industries is considered alongside the interests of the producing industry. *Bratsk* requires that whenever an injury investigation is centered on a "commodity" product market with significant non-subject (fairly traded) imports, the ITC must explain "why the elimination of subject imports would benefit the domestic industry." [1]

This decision accurately reflects today's global marketplace. Consuming industries should not be required to pay antidumping or countervailing duties on products that are not

---

[1] *Bratsk Aluminium Smelter v. United States*, 444 F.3d 1369, 1373 (Fed. Cir. 2006).

harming the producing industry in the United States. If such excessive duties are imposed, consuming industries and individual consumers are overtaxed, and the United States economy is less globally competitive. CITAC therefore opposes legislation that would *preclude* the ITC from considering whether import competition would decline if duties were imposed.

Trade Remedies and China

Legislation pending before Congress also proposes to address the "problem" of Chinese exports through the trade remedy laws. The current U.S. trade deficit with China provides ample reason for concern, but does not provide justification for ill-considered actions that are destined to fail in their attempts to change China's conduct, yet are likely to injure American consuming industries.

Trade, including trade with China, greatly benefits the vast majority of Americans. Many organizations speak eloquently about the export opportunities provided to U. S. businesses by expanding global trade, but CITAC focuses on the benefits of a healthy flow of imported goods for industrial use by American consuming industries. These small and medium-sized businesses need the ability to choose domestic or imported products, based on quality, availability and globally competitive pricing, in order to be successful in the global economy from their U.S. manufacturing base. If trade is unfair due to dumping or subsidies, a tax to equalize the effects of those practices is appropriate. However, as I have said before, the amount of the tax must be correct, and consuming industries should know the true price of the imported goods at the time of purchase. Unfortunately, our current antidumping and countervailing duty system does not pass these crucial tests.

Against this background, legislative proposals that would modify U.S. trade remedy laws as a mechanism to address trade imbalances with China are dangerous because they run the risk of causing more harm than good to the U.S. economy, particularly to consuming industries.

Two pending bills in the House, H.R. 2942 (the Ryan-Hunter bill) and H.R. 1229 (the Davis-English bill) illustrate this danger. First, these bills would impose countervailing duties on Chinese exports, despite the continuing status of China as a "non-market economy" (NME) for the purpose of Department of Commerce antidumping proceedings. Ryan-Hunter also would designate a "fundamentally misaligned" currency as a countervailable subsidy. In addition, both bills would require the Department of Commerce to use a non-"misaligned" exchange rate in calculating antidumping duties if the subject country did not revalue its currency within a specified period.

While CITAC does not favor misaligned exchange rates, the proposed remedies in Ryan-Hunter and Davis-English are objectionable. First, they would impose excessive taxes on U.S. consuming industries by increasing import prices and reducing the availability of imports beyond the level necessary to offset the actual effects of dumping and subsidization. Coupled with the fundamental unfairness of the trade remedy laws as currently structured (zeroing, no industrial user standing, retrospective collection, and the NME antidumping provisions), these new proposals would practically ensure that allegedly unfair trade practices would be subject to double counting under the antidumping and countervailing duty laws. Double counting is bad tax policy.

Second, the proposed amendments to the countervailing and antidumping duty law contained in the Ryan-Hunter bill are likely to be ruled WTO inconsistent. Under WTO rules, a "subsidy" requires: (1) a financial contribution by a government; (2) conferring a benefit upon a

domestic industry or enterprise; and (3) for a non-prohibited subsidy, that the subsidy be specific to an enterprise or industry or group of enterprises or industries. Currency "misalignment" does not appear to meet the definition of a subsidy. While H.R. 2942 would simply declare that currency misalignment is a "financial contribution," that does not make it so.

Similarly, the proposed antidumping amendments in the Ryan-Hunter legislation are WTO inconsistent because they would mandate (subject to a possible presidential waiver) an artificial downward adjustment to the export price in the calculation of antidumping duties imposed on imports from countries with "fundamentally misaligned" currencies. The effect of this adjustment would be to increase antidumping duties on imports from these countries, based on "adjusting" the applicable exchange rate. The better rule from our point of view is that real prices and costs should be used to calculate antidumping duties.

Third, these provisions will neither protect the U.S. market from unfairly traded imports, nor induce a change in behavior by Chinese exporters, the bills' apparent goals.

The first goal is unrealistic. Consuming industries have experienced first-hand the misguided policy of protecting a narrow subset of domestic producer industries without regard to the impact on other important segments of the American economy: many downstream consuming industries have been injured to a far greater extent than those few that have been helped. Quite simply, industry protection, as a goal of U.S. trade policy, does not work.

The second goal also is unlikely to be achieved through the use of the trade remedy laws. For example, if steel products are afforded protection by the imposition of trade remedies, we can expect increased shipments of upstream, higher value-added products containing steel that will not be subject to antidumping duties. Industrial users have seen this movie time and time again, and they do not like the ending. Indeed, the most recent round of U.S. pressure on China

to reduce exports may be causing a shift toward Chinese production and exports of value-added products that ultimately will compete directly with American manufacturers.

Fourth, as CITAC indicated in its testimony before the Subcommittee four months ago, Davis-English would require the use of competitive benchmarks outside of the exporting country, an unreliable and WTO-inconsistent methodology. Congress should not compel the Department of Commerce to resort to such suspect comparisons to impose trade remedies.

Finally, the Davis-English bill would require a joint resolution of Congress before the Department of Commerce could determine that a non-market economy such as China or Vietnam has successfully transitioned to a "market economy." This would give Congress a veto over a decision that has long been within the purview of the Executive Branch. The responsibility for determining whether market-economy criteria have been met should remain with the Administration.

In summary, we believe it is inappropriate to use U.S. trade remedy laws in an attempt to achieve a reduction in the trade deficit with China. The trade deficit with China is due to many factors aside from dumping or subsidization, and the trade relationship between the United States and China will not be fundamentally altered by the imposition of excessive antidumping and countervailing duties on Chinese exports to the United States.

Conclusion

In today's globally competitive environment, U.S. consuming industries face intense and growing pressure from products that are made abroad and that compete with U.S.-made products. These pressures cannot be relieved by protection through the trade remedy laws. If taxes are to be imposed on the raw materials and components that consuming industries require at globally competitive prices, then those taxes should reflect the actual impact of imports on the United

States market. We respectfully ask the Subcommittee and the Administration to consider our concerns in designing proposals for change. The danger of excess taxation on American manufacturers is real, particularly given the fact that our current law unfairly and unwisely bars effective participation by consuming industries.

As major users of trade remedy laws, the United States lags in paying attention to the concerns of consuming industries. Attachment 1 to my testimony demonstrates that our current system is the least consumer friendly among five countries that extensively use antidumping and countervailing duty remedies.

Finally, let me repeat that CITAC does not support the elimination of trade remedy laws, nor does it support ignoring the effects of unfair trade. We do strongly support the idea that the trade remedy laws should serve the interests of *all* Americans, including those who work in consuming industries. We join you today in seeking effective answers to how to address our global trade problems and look forward to working with all of you to improve American manufacturing and to ensure that high-paying, value-added jobs remain here in the United States.

Thank you for the opportunity to state our views. I look forward to any questions you may have.

CITAC Testimony
August 2, 2007
Attachment 1

CONSUMER-FRIENDLY PROVISIONS IN MAJOR ANTIDUMPING/COUNTERVAILING DUTY LAWS OF TRADING NATIONS OF THE WORLD (July 2007 revision)
United States Has the Least Consumer-Friendly Trade Remedy Law of Any Major Trading Nation

PROVISION	PRO-CONSUMER ANSWER	UNITED STATES	CHINA	EUROPEAN UNION	CANADA	MEXICO
Industrial User/Consumer standing (full party)	Yes	No	No	No	No	Yes
Public Interest Test[1]	Yes	No	No	Yes	Yes	Yes
Lesser Duty Rule[2]	Yes	No	No	Yes	Yes	Yes
Suspension of Duties in Short Supply Conditions[3]	Yes	No	Yes	Yes	Yes	Yes
Zeroing—Investigations	No	No[4]	No	No	No	No
Zeroing—Reviews	No	Yes	Yes[5]	Yes[5]	No	No
Prospective Collection of Duties[7]	Yes	No	Yes	Yes	Yes	Yes
Duties Distributed to Petitioning Private Parties	No	Yes.[8]	No	No	No	No
Antidumping Duties Deducted from Export Price[9]	No	No	Yes	Yes	No	No
Consumer-Friendly Score	5	2	4	6	8	9

[1] Refers to consideration by the authorities of impact of AD/CVD remedy on economy as a whole or downstream industries. Imposing restrictions without considering their impact harms consuming industries.

[2] Refers to imposition of duties at a lower rate than calculated, if a lesser duty is sufficient to remedy injury to the domestic industry. WTO agreements encourage countries to do this, but it is not required. Imposing higher duties than necessary to remedy industry harms consuming industries without furthering purpose of antidumping/countervailing duty remedy.

[3] Refers to history of such actions – CITAC believes the US authorities may lawfully suspend duties, but have never done so.

[4] Zeroing in investigations using the typical average to average comparison method eliminated effective February 22, 2007. *See* 71 Fed. Reg. 77722 (December 27, 2006); 72 Fed. Reg. 3783 (January 26, 2007).

[5] Only in circumstances where "targeted dumping" is alleged.

[6] Only in circumstances where "targeted dumping" is alleged.

[7] Refers to system where amount of AD/CVD duties is known at the time goods are imported. Uncertainty is damaging to consumers because the uncertainty of the amount acts as a deterrent to imports, whether dumped or not.

[8] Continued Dumping and Subsidy Offset Act ("Byrd Amendment") repealed by PL. 109-171, § 7601 (February 8, 2006). Distributions continue for entries prior to October 1, 2007.

[9] Commonly referred to as "duty as a cost," this provision has the effect of inflating antidumping and countervailing duties. Inflated duty levels harm consuming industries by raising barriers to trade.

Chairman LEVIN. Thank you very much.

Mr. Lighthizer.

STATEMENT OF ROBERT E. LIGHTHIZER, PARTNER, SKADDEN ARPS SLATE MEAGHER & FLOM LLP

Mr. LIGHTHIZER. Good afternoon, Mr. Chairman and Members of the Committee. I also appreciate the opportunity to be here today. The crisis we are currently facing in manufacturing is, in my view, one of the most significant economic challenges this country has ever faced. Not only do trade deficits threaten the stability of the U.S. and global economies, but we are on a path that could very well lead to the loss of entire industries and core industrial capabilities, the very capabilities that are essential to our security and our economic leadership. Much of this crisis is the result of foreign, unfair trading practices, cheating, for lack of a better word.

Our fair trade laws, including our anti-dumping and countervailing duty laws are not the most exciting topic. What they are, however, is often the only recourse against practices that would otherwise destroy U.S. industries. They are also an essential component of addressing the manufacturing crisis. Whatever else you do in terms of red tape, regulatory burden, tax or healthcare or other challenges facing manufacturing, it will all be for naught if we cannot ensure our workers and businesses will have a fair chance to compete in our own market. Unfortunately, we dangerously close to a situation where our fair trade rules will be affected.

Let me briefly address some of the priority issues. First proposals to legislatively require application of the CVD laws to nonmarket economies as contained in the Davis-English bill makes a lot of sense and would codify the Department of Commerce's recent change in policy, but it is critical to enact a clean version of the legislation. Some of the proposal such as lowering anti-dumping duties by the amount of any countervailing duties imposed could actually make the legislation worse than current law and lead to less discipline on Chinese unfair trade. If these types of amendments are part of deal it would be better not to act at all.

Second, it is important that you go further if you want to have a real impact on Chinese and other unfair trade. The situation with Chinese currency manipulation for example has become unsustainable. In my view, the so-called dialogue as a way to solve this problem has long ago lost any credibility.

Third, we critically need to address WTO decisions that have baselessly gutted fair trade laws and disciplines. The first most important place to start is the so-called zeroing methodology, a vital and integral part of our anti-dumping laws that was struck down by the WTO, no area of WTO jurisprudence has received more widespread criticism or ridicule and deservedly so.

The Administration itself has been harshly critical of the decisions, calling them devoid of legal merit and suggesting that the appellate body is trying to infer the intent of WTO Members without the benefit of textual basis in the agreements.

I appreciate that this is a highly technical matter, but I ask, why is the U.S. rushing to implement WTO decisions that the Administration and many practitioners, even some of those representing mostly foreign producers have called completely baseless?

When U.S. agreed to the Uruguay rounds supporters of the agreement loudly and repeatedly emphasized that WTO panels could not force us to change our laws or dictate economic decisions to the U.S. Congress, but is this really true if we feel obligated to implement every decision no matter how long or unjustifiable particularly where those decisions go to the very heart of the effectiveness of our trade laws. Congress should absolutely direct that these decisions not be implemented and that the Administration instead seek a negotiated solution at the WTO.

Finally, I would say time is running out, more and more U.S. companies are placing their bets on the other side, thinking that with the current skewed rules, production abroad is the only viable option. More and more U.S. businesses are looking to benefit from unfair trade by sourcing inputs from abroad and attacking U.S. laws. If we don't act soon, we will reach a tipping point where it will be impossible to recover.

Thank you, again, for the opportunity to be here.

[The prepared statement of Mr. Lighthizer follows:]

Statement of Robert E. Lighthizer, Partner, Skadden Arps Slate Meagher & Flom LLP

Good morning. It is a pleasure to be here today and to have the chance to testify regarding our trade laws and the challenges of unfair trade, including from China and many other nations.

In my view, the question of unfair trade cannot be separated from the larger crisis we face in terms of American manufacturing and competitiveness. To be sure, the

manufacturing crisis stems from numerous causes and presents many considerations and challenges for policy makers. But if we cannot ensure that our companies and workers are competing in a market free from dumping, subsidies, and unfair trade, we will ultimately not be successful in restoring health to this vital sector. In other words, assurance of a fair market is a necessary condition for addressing the manufacturing crisis.

Our trade laws play a vital role in ensuring that the market works—that the gains from trade go to those who make the best products, compete the hardest and play by the rules, as opposed to those who benefit from the most government largesse or other market distortions. These laws are critical to well-functioning markets, but they also help preserve the gains from trade in another crucial way—namely by helping to maintain support for open markets and the global system. Over the long run, Americans will not support a trading system that they feel is rigged against them or that permits foreign companies to violate the rules with impunity.

It is up to Congress to establish rules that ensure fair trade and thereby preserve the viability and attractiveness of production and manufacturing in this country. It is up to Congress to ensure that those rules are enforced as intended and operate to truly discipline unfair practices. And it is up to Congress to ensure that our companies are not given incentives to move production abroad where the rules of the game are distorted to bestow unfair advantages.

As discussed below, we are not doing the job needed to make sure these imperatives are met. Our laws are not as strong as they should be, they are daily being weakened by an international system that is out of control, and even the rules we have are not being enforced as strongly as they should be. I sincerely hope that this hearing and the renewed interest in Congress in these issues will help reverse this tide and reestablish a true commitment to fair trade in this country. Time is short and the time for real action is long overdue.

II. THE U.S. MANUFACTURING CRISIS AND THE TRADE LAWS

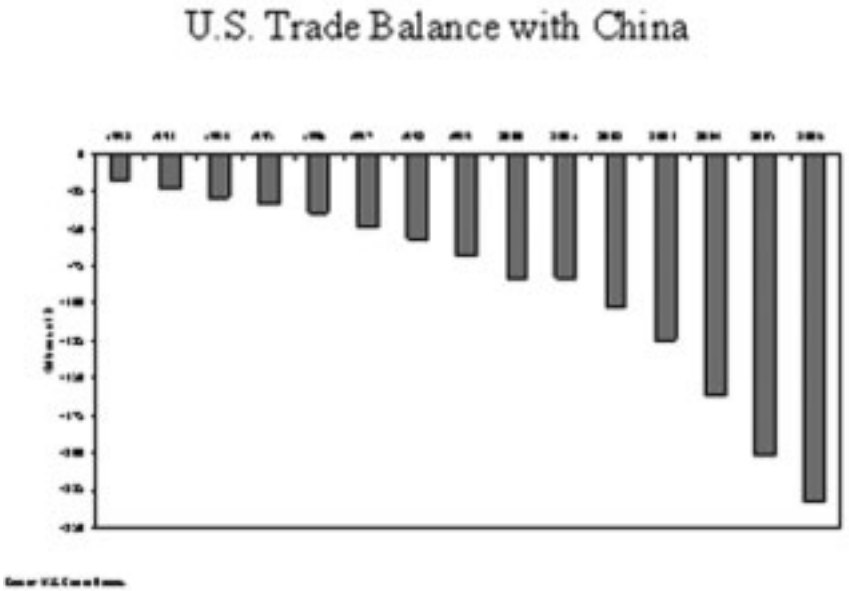
To understand the magnitude of the crisis facing U.S. manufacturers—and the vital role of our fair trade disciplines—it is worth taking a quick look at the basic data.

Our enormous current account deficit (Figure 1) is of course widely acknowledged, but the actual magnitude of the problem—and the amount by which it is still growing—is not always appreciated. Not long ago, in the early 1990's, our deficit was considered a major problem when it was less than $100 billion. It now stands at more than eight times that level with no real improvement in sight.

Figure 1

China alone maintains a surplus with the United States more than twice the entire current account deficit in 1991. (Figure 2) The growth is just staggering.

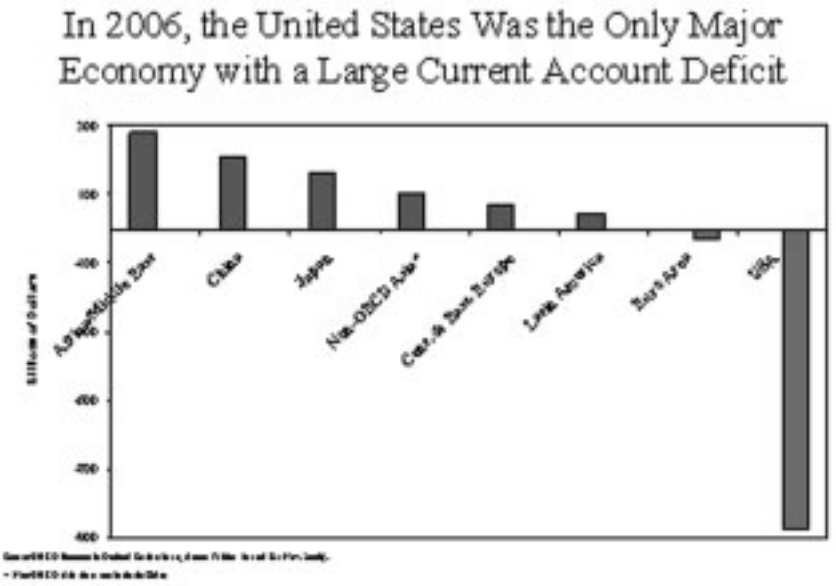
Figure 2



Significantly, as shown by Figure 3 below, the United States is the *only* major economy that is running a large current account deficit. We are in effect propping

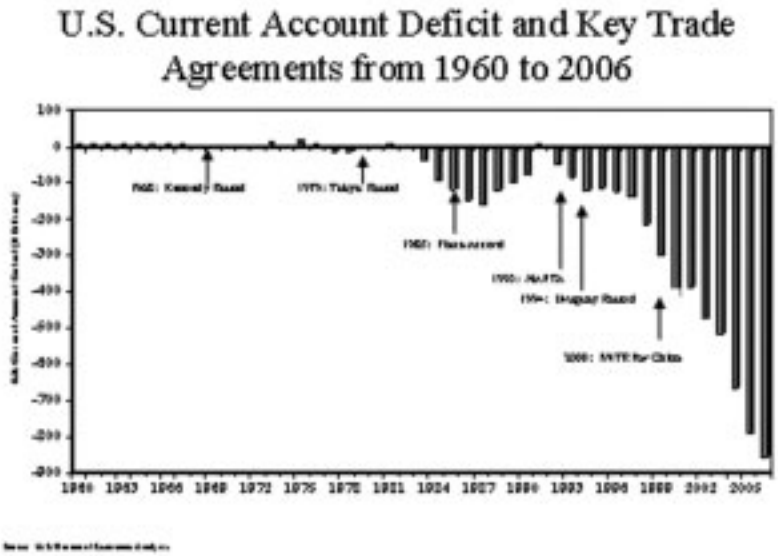
up the global economy and manufacturers in the rest of the world, while placing our own manufacturers at a major disadvantage.

Figure 3



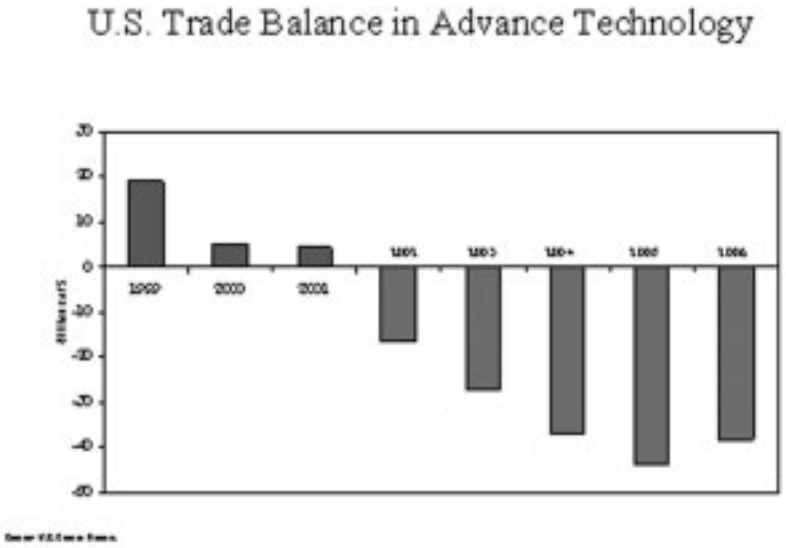
This next figure simply graphs the current account deficit against major trade agreements since 1960. (Figure 4) One thing is clear: these agreements, and the general direction of our trade policy, have done nothing to ameliorate the trade deficits we are facing.

Figure 4



This is not a story about U.S. manufacturers shifting from lower-valued products to more advanced products. In fact, as shown by Figure 5, we have actually gone from a significant surplus position with regard to advanced technology, to a significant deficit today. Given the current skewed playing field, we are not competing successfully at any end of the spectrum.

Figure 5



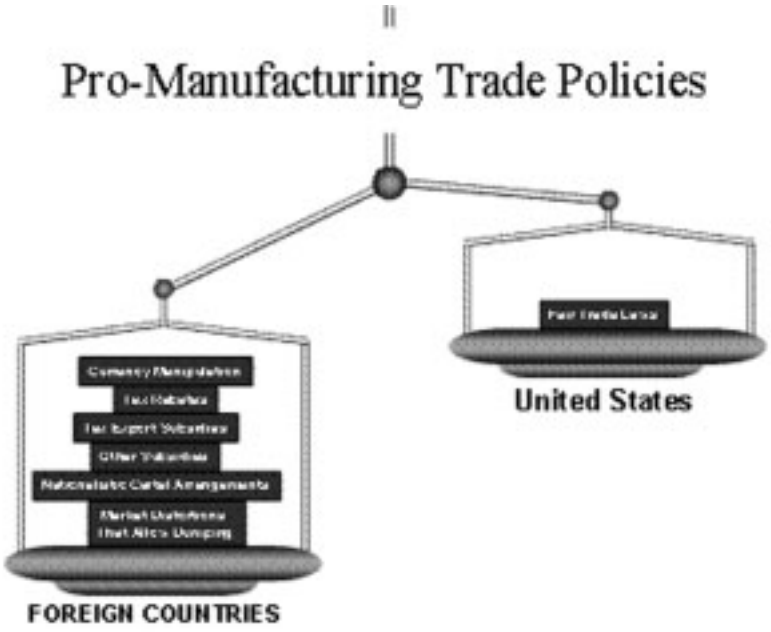
The effects on the workforce have been staggering. While the number of American employed in manufacturing stabilized after the recession of the early 1980's and remained fairly steady for 20 years, we have now lost 3 million manufacturing jobs since 2000—jobs that have not returned despite years of economic growth. (Figure 6)

Figure 6

While the problems facing our manufacturing sector have a number of causes, one of the most significant is the role of foreign unfair trade practices and the ways in which the rules are rigged against American workers and companies.

The ways in which foreign governments effectively prop up their industries (Figure 7) are numerous—ranging from blatant currency manipulation in places like China and Japan, international and foreign tax rules that grossly disadvantage U.S. producers, massive subsidies provided by foreign governments, fixed markets abroad, cartel arrangements, and a host of other practices that lead to dumping on world markets.

Figure 7



In many ways, the United States relies upon only one policy in response: namely, our fair trade laws. The ability to address injurious import surges that result from foreign market distortions has been critical to many core U.S. industries in the past (ranging from steel to semiconductors to numerous agricultural products), and has become increasingly important with the advent of greater and greater international trade flows—along with the proliferation of foreign practices that undermine market outcomes.

III. THE IMPORTANCE OF FAIR TRADE LAWS

Disciplines against injurious dumping and subsidies have of course been embodied in international agreements since the inception of the General Agreement on Tariffs and Trade ("GATT") and elaborated in subsequent agreements.

These rules have been widely-accepted for decades because of the understanding that dumped and subsidized imports distort markets, disrupt normal trade patterns, and prevent optimal outcomes in terms of efficiency and gains from trade.[2]

In this regard, foreign government subsidies not only provide an unfair advantage to foreign producers and create an artificial disadvantage for non-subsidized producers and workers—they also serve to disrupt the efficient allocation of resources in global markets. Subsidized companies produce more output than the market would otherwise demand, and taxpayers in subsidizing jurisdictions are burdened with providing the resources to support this artificial incentive. Subsidies also create incentives for other countries to follow suit in an effort to remain competitive in an increasingly distorted market. Our countervailing duty ("CVD") law is the principal mechanism to respond to unfair and injurious foreign subsidies.

Dumping has similar adverse consequences and is remedied through our antidumping ("AD") law. In this regard, improper price discrimination between markets and below-cost dumping result from numerous forms of market distortion, including: (i) protected home markets that allow foreign companies to achieve artificial profits and monopoly rents, and help finance dumped sales in other markets; (ii) the desire to find an outlet for surplus production, increase market share, and lower costs through economies of scale; (iii) the desire to achieve social goals, such as high employment, development of perceived "key" industries, etc.; (iv) the type of government intervention and control of economic decisions that occurs in non-market

[2] *See generally* Greg Mastel, *Antidumping Laws and the U.S. Economy* at 17–27 (1998)

economies like China—which often incentives noneconomic production and capacity decisions.

In markets targeted by dumped and subsidized imports, the results are often severe. These include idling of production facilities, bankruptcies, loss of employment, and indeed complete loss of certain productive capabilities—with ripple effects for other local businesses and indeed national economies. The bottom line is that no private company—no matter how cost-competitive or efficient—can compete against foreign governments or foreign producers propped up by foreign market distortions.

The adverse impact of dumped and subsidized imports from China has been particularly acute and has presented unique challenges for our fair trade laws. In recent years, Chinese imports of a wide variety of products have flooded the U.S. market. This flood in Chinese imports is being fueled, in large part, by mammoth government subsidies. The Administration has expressed strong concerns regarding such subsidization. Within the last month, the Administration requested the establishment of a dispute settlement panel at the World Trade Organization ("WTO") on 12 illegal export and import substitution subsidies granted by the Chinese government. While this action certainly is a welcome first step, we believe that the subsidies at issue in the WTO action are just the tip of the iceberg.

The government intervention in and control over economic decisions in China has also led to significant levels of dumping of Chinese products in the United States. In fact, because of the distortions in prices and costs in China resulting from the government's dominant role in the economy, it is necessary to use a special methodology to measure the true level of dumping on Chinese products. Not surprisingly, the recent surge in dumped and subsidized imports from China has resulted in China becoming a frequent target of trade remedy actions in the United States. Over the five-year period from 2002 to 2006, almost 25% of all trade remedy actions in the United States were filed against China. Thus far in 2007, that number has climbed to 50%. Strong and effective enforcement of our trade remedy laws is plainly essential to address the special problems posed by Chinese imports.

IV. CHALLENGES FACING U.S. TRADE LAWS

Notwithstanding their importance, U.S. trade remedy laws are not currently being enforced as effectively as they can or should be—and face concerted weakening efforts from a number of sources.

A. WTO Dispute Settlement

Clearly, one of the biggest threats to our trade laws is from the dispute settlement system at the WTO. The system is fundamentally flawed, and the decisions being issued by the WTO are gutting our trade laws.

The United States has suffered disproportionately from the problems with the WTO dispute settlement system, having been named as a defendant in far more cases than any other WTO member. The United States is also losing almost every case brought against it. In fact, the WTO has ruled against the United States in 40 of the 47 cases in which it has been the defendant. A number of these decisions have required or will require changes to U.S. law.

Rogue WTO panel and Appellate Body decisions have consistently exceeded their mandate by inventing new legal obligations that were never agreed to by the United States. As a result of this judicial activism, our trading partners have been able to achieve through litigation what they could never achieve through negotiation. The consequent loss of sovereignty for the United States in its ability to enact and enforce laws for the benefit of the American people has been staggering. The WTO has increasingly seen fit to sit in judgment of sovereign acts running the gamut from U.S. tax policy to environmental measures and public morals.

The problems with the WTO dispute settlement system are most painfully obvious in the trade remedies area. Our negotiators in the Uruguay Round established specific rules in this area and made clear that WTO dispute settlement panels should defer to national authorities like the U.S. Department of Commerce and the U.S. International Trade Commission ("ITC") where possible. However, the WTO has ignored this mandate and has instead engaged in an all-out assault on trade remedy measures. Indeed, the United States has lost an astounding 30 of the 33 WTO cases that have been brought against it in the trade remedies area. A few examples of the overreaching by the WTO in this area show just how horribly broken the dispute settlement system is.

- ***Zeroing.*** The WTO has now issued a series of decisions striking down the "zeroing" methodology employed by the Department of Commerce to calculate a company's dumping margin. The use of zeroing merely ensures that non-dumped sales are not improperly used to offset a foreign producer's dumping margins on merchandise that is not fairly traded. The WTO has ruled against

the use of zeroing despite the fact that there is no explicit or, for that matter, implicit prohibition of zeroing in the relevant WTO agreements. In other words, as both Congress and the Administration have repeatedly recognized, the WTO's zeroing decisions have created obligations to which the United States never agreed. In fact, the Administration has been harshly critical of the WTO's decisions on zeroing. The Administration has called the Appellate Body's latest decision on zeroing "devoid of legal merit" and commented that the Appellate Body "appears to be trying to infer the intent of Members with respect to the issue of 'zeroing' without the benefit of a textual basis." The Administration has also recently stated in no uncertain terms that "[a] prohibition of zeroing, or a requirement to provide offsets for non-dumped transactions, simply cannot be found in the text of the [WTO's] AD Agreement. Nevertheless, the Appellate Body concluded that authorities are required to offset non-dumped comparisons against dumped comparisons, even though this conclusion is at odds with longstanding practices implementing AD Agreement provisions . . . as well as with long-held views on the very concept of dumping itself. The issue of zeroing, on which Members [of the WTO] could not reach agreement in the Uruguay Round, should not be left to dispute settlement." The WTO's decisions on zeroing represent a clear example of WTO overreaching in the trade remedies area.

- ***Byrd Amendment.*** The WTO's decision striking down the Continued Dumping and Subsidy Offset Act of 2000—better known as the Byrd Amendment—is another vivid example of WTO overreaching. The WTO ruled in this case, without a shred of support in the relevant WTO agreements, that AD and CVD duties that are collected by the United States may not be distributed to injured U.S. producers. The Uruguay Round negotiators never even considered, much less agreed to, any restrictions on how WTO members may use collected AD and CVD duties.
- ***Failure to Abide by the Standard of Review.*** A problem extending throughout the WTO's decisions in trade remedy cases has been the failure to abide by the deferential standard of review. The United States expended enormous time and resources negotiating the standard of review for AD and CVD cases. However, WTO panels and the Appellate Body have systematically ignored this carefully negotiated standard of review in reaching decisions that show no deference to the findings of government agencies such as the Department of Commerce and the ITC or to the laws enacted by WTO members.

I am not alone in this stark assessment of the WTO dispute settlement system. Even ardent supporters of the WTO and legal experts hostile to the trade remedy laws have expressed amazement at the level to which WTO panels and the Appellate Body are creating new WTO obligations out of whole cloth. The threat that this poses to the trade remedy laws and, in fact, to the entire world trading system is immeasurable.

B. Enforcement Issues

No matter how strong our laws are written, they are only as good as the commitment to enforce them. This is a responsibility that obviously falls principally upon the executive branch, but is also highly relevant to Congress in terms of needed oversight and potential amendments to clarify the way in which our laws are intended to be implemented. Just to give a few examples where there are areas of concern:

- ***Application of CVD laws to non-market economies.*** The Administration, of course, has recently altered its longstanding policy of not applying the CVD law to China. This follows on decades, however, where this vital remedy was not applied to China or its vast subsidies. In addition, it remains to be seen whether this new policy will be fully and effectively enforced.
- ***China-specific safeguard.*** This remedy, provided under what are sometimes referred to as "section 421" actions, was adopted when China entered the WTO. Unfortunately, this law has never been enforced. Indeed, the ITC has on no fewer than four occasions found that the legal requirements for relief had been met, but the Administration refused to grant a remedy in any of these proceedings.
- ***Injury determinations.*** Proving "material injury"—defined under the law as any injury that is not inconsequential, immaterial or unimportant—is a prerequisite for relief in AD/CVD cases. While Congress made clear that this was not intended to be a high hurdle or difficult showing, certain members of the ITC have at times seemed to interpret the standard to effectively require a much higher demonstration of injury—something that has acted to deny relief in critically-needed circumstances.

- ***Funding for enforcement.*** There has been increasing concern among practitioners in the trade remedy areas with respect to the resources of critical agencies such as the Import Administration of the Department of Commerce ("IA") to fulfill its responsibilities under the law. Indeed, it is our understanding that IA's appropriation was cut from $68.2 million in fiscal year ("FY") 2004 to $59.8 million in FY 2007, a decline of 12.3 percent. Similarly, we understand that the number of employees at IA fell from 388 in FY 2005 to only 319 in FY 2007, a decline of 17.8 percent. In my view, cutting funding for trade enforcement is exactly the wrong policy at a time that we are facing increasing challenges from unfair trade.

C. The Doha Round, Free-Trade Agreements, and Other International Negotiations

U.S. trade remedy laws are subject to a continuing assault in the context of international negotiations—particularly the so-called "Rules" negotiations as part of the larger Doha Round talks. Foreign nations, including those who are the most frequent violators of fair trade rules, have engaged in an all-out effort to weaken international disciplines on dumping and subsidies—and by extension, to require weakening changes to U.S. laws. Given the pressure on the Administration to bow to such demands, clear guidance from Congress will be critical if weakening of U.S. trade laws is to be avoided.

Just as a matter of interest, Figure 8 shows the 2006 trade balances that the United States maintained with the key proponents of weakening U.S. trade laws—i.e., those countries that have been most active in the Doha Round in trying to gut rules against unfair trade. As can be seen, these countries make up the vast majority of our trade deficit. The basic dynamic in the Rules talks is that these countries would like to gut our trade laws and see these red bars become even bigger.

Figure 8

Similar challenges to U.S. laws exist in other international talks, including FTA negotiations (e.g., the U.S.-Korea FTA) and regional talks like the Free Trade Area for the Americas. Vigilant oversight by Congress is essential, along with a clear message that Congress will not adopt *any* international agreement that weakens U.S. trade remedy laws.

V. POTENTIAL ENHANCEMENTS TO U.S. TRADE LAWS

There have been a number of excellent proposals to strengthen U.S. trade laws and provide additional tools to ensure a level playing field for U.S. producers and workers. I would like to address a few priority issues that are likely to be considered by Congress.

A. Applying U.S. Anti-Subsidy Law to Non-Market Economies

Proposals to legislatively mandate that the CVD law be applied to non-market economies like China have received a great deal of attention and deservedly so. Legally, this is clearly a well-justified action, and as noted above the Administration has already announced a policy change to begin applying CVD measures to China.

Even with the Administration's policy change, legislative action is still critical—both to ensure that this policy change will withstand potential legal challenges and that the policy is properly implemented.

Having said that, it is very important that this law be adopted in a form that will actually fulfill its intent. In this regard, there have been a number of proposals to weaken the legislation in a way that could actually make the measure counterproductive—and potentially result in *less*, rather than more, discipline on unfair trade from China.

To make sure this legislation is effective, the Committee should recognize several key points:

- Application of CVD rules to China should not, and must not, have any impact on its treatment as a non-market economy for purposes of the AD law. These are logically distinct issues, and the evidence is clear that China does not qualify as a market economy. Treating it as such—or indeed, treating individual Chinese producers or sectors as "market oriented"—would not only effectively remove the benefit of applying the CVD law to China; it could actually result in weaker overall fair trade enforcement than existed before the policy change.
- Congress should be required to approve any decision to designate China as a market economy. This decision is simply too important to our economy and our laws for Congress not to have a say.
- Application of the CVD law should not result in weaker enforcement of AD measures against China. In this regard, there is no legal or logical basis for proposals to reduce AD margins by the amount of any countervailing duties imposed to offset domestic subsidies. The antidumping methodology used in non-market economy cases is not intended to, and does not, correct for or offset domestic subsidies, and there is as such no basis for the so-called "double counting" adjustments that have been proposed.

B. Zeroing

While explicitly codifying the application of CVD law to non-market economies is clearly a good idea, much more needs to be done if Congress is to meaningfully impact the effect of unfair trade from China and other foreign countries.

One area that I believe absolutely must be addressed relates to the antidumping methodology mentioned above and known as "zeroing." No decision of the WTO has received more strident, detailed and deserved criticism than the WTO jurisprudence with respect to this critical methodological practice. The decisions on zeroing have no basis in the relevant WTO agreements and represent a stark example of WTO overreaching. While this is a highly complex methodological issue, it goes to the core of the effectiveness of our trade laws in cases against China and others.

While some would say that we must abide by the WTO's ridiculous decisions in this area "for the good of the system," I believe that Congress should soundly reject this way of thinking. It is not good for the system to have the WTO's judicial bodies acting as policy makers and issuing decisions that completely circumvent the intent and understanding of negotiators. It is also not good to send the message to our citizens that we will abide by any WTO decision, no matter how clearly condemned and criticized by the range of knowledgeable observers. The assurances that we were not giving up our sovereignty by agreeing to the Uruguay Round will have little meaning if we adopt a policy of essentially automatically implementing flawed decisions.

The Administration has already started implementing the WTO decisions on zeroing by not using zeroing in certain antidumping proceedings, and this is causing enormous problems for U.S. producers. If the Doha Round negotiations do restart, they may well offer an opportunity to clarify this issue in any new agreement. In the meantime, it is imperative that Congress act to suspend implementation of the baseless WTO decisions on zeroing. This will add impetus for a negotiated solution in the Doha talks, and will prevent irreparable injury in terms of the application of our trade laws.

C. Currency Manipulation

Another area that has received enormous attention is foreign currency manipulation, and there is simply no reasonable or logical way to deny that this problem is having enormous effects on our manufacturers. I would respectfully suggest that the school of thought advocating more "dialogue" and talk on this issue has lost its credibility. At the pace these discussions are going, we will not see meaningful change while it can still make a difference. To paraphrase the economic quip, in the long run we—or at least all our manufacturers—will all be dead.

Currency manipulation seriously distorts markets and undermines the very foundation of free trade. It acts as a major subsidy for manufacturers in the manipulating country, because it makes their exports artificially competitive. It also acts as a tariff on U.S. shipments to the manipulating country, by making those shipments artificially expensive.

Our enormous trade deficit with China would normally cause the Chinese yuan to rise significantly vis-à-vis the dollar, but China prevents such a rise by exercising tight control over its exchange rates. Indeed, some experts believe that China's yuan is now undervalued by as much as 40 percent or more. China is not the only country to engage in currency manipulation. Japan and others have employed similar tactics.

There are a variety of sensible proposals out there—including the proposal to treat currency manipulation as a subsidy for purposes of U.S. CVD laws. Those initiatives should be considered and acted upon to spur real change in the context of a currently unsustainable situation.

D. Material injury methodology

As noted above, there are a number of concerns about the manner in which "material injury" has been determined in certain ITC proceedings. While that issue merits further consideration and possible legislative action, there is one area relating to the ITC's material injury determinations that should clearly be addressed legislatively at this point. That relates to a recent decision of the U.S. Court of Appeals for the Federal Circuit in the so-called *Bratsk* case.[3]

In *Bratsk*, the Federal Circuit held that in unfair trade investigations, the ITC was required to explain why non-subject imports (i.e., imports that were not subject to the proceeding) would not replace the subject imports and continue to cause material injury to the domestic industry. This requirement is nowhere found in the law and effectively engrafted onto the ITC's analysis of *present* material injury a new requirement regarding speculation as to the *future* impact of AD/CVD relief. Congress has made clear that a domestic industry is entitled to AD/CVD relief if it is *currently* injured by reason of subject imports. Under *Bratsk*, however, the ITC may be forced to deny relief to a domestic industry currently suffering material injury by reason of subject imports (which *is* the statutory standard), solely because of speculation about the future behavior of non-subject imports (a factor found *nowhere* in the statute).

This decision has given rise to a great deal of concern among practitioners and indeed by the agency itself. In addition to the improper alteration of the statutory standard, as discussed above, this case also poses innumerable practical and administrative difficulties. The fact is that the agency does not collect or have the ability to reasonably obtain accurate and sufficient information to determine the future behavior of parties that are not even before the Commission, and have no reason or incentive to participate. In short, the decision has no logical or statutory basis, and Congress should act to reverse it.

E. WTO Reform

Getting some handle on the problems brought about by judicial activism at the WTO—and reining in those abuses—is also a top priority. As noted, WTO overreaching has negatively impacted a vast range of core aspects of the trade remedy laws (not to mention other U.S. laws in the tax, foreign policy, environmental, and other areas), and is increasingly a threat to the legitimacy of the entire world trading system.

Several common sense actions should be pursued immediately:

First, Congress should establish an expert body to advise it on WTO dispute settlement decisions adversely impacting the United States, and in particular whether WTO decision makers are following the law and the relevant standard of review. This idea was first put forward shortly after the conclusion of the Uruguay Round. It was a good idea at the time, and every day we see more and more evidence of why such a body is needed.

---

[3] *Bratsk Aluminium Smelter v. United States*, 444 F.3d 1369 (Fed. Cir. 2006).

- *Second*, Congress should specifically provide for the participation in WTO dispute settlement proceedings of private parties who would bring special knowledge to a case and be in a position to assist in the U.S. Government's litigation efforts. In this regard, foreign governments already frequently make use of private (often U.S.) lawyers in prosecuting WTO actions, and there is no reason the United States should not similarly bring all supportive resources to bear in this increasingly vital litigation.
- *Third*, any proposed administrative action taken to comply with an adverse WTO decision should require specific approval by Congress. In a number of instances, the Administration has expressed strong disagreement with adverse WTO dispute settlement decisions, and yet felt the necessity to take administrative steps to comply with such judgments. Given the importance of these decisions to the U.S. economy and U.S. citizens—and the obvious sovereignty concerns at stake—Congress should have a direct say in whether there will be a change in U.S. law or practice to comply with the rulings of foreign bureaucrats.

These steps would not only improve the way we litigate cases at the WTO, but would hopefully provide a powerful incentive for reform at the WTO itself—given the recognition that Congress will be playing a more active role monitoring and responding to WTO decisions.

F. VAT Tax Inequities

Another issue of concern for American manufacturers involves the irrational penalty imposed by WTO rules on producers in countries (principally the United States) that rely on income tax systems, as opposed to producers in countries (most of the rest of the world) that rely upon value-added tax ("VAT") systems. For decades, Congress has repeatedly instructed our trade negotiators to correct this problem, and yet nothing has been done.

The problem is that under current rules, foreign countries may "adjust" their VAT taxes at the border—meaning that those taxes may be rebated on exports and imposed on imports. Meanwhile, income taxes may *not* be adjusted. Accordingly, producers in a country like the United States (which relies disproportionately on a corporate income tax), must bear *both* the U.S. income tax *and* foreign VATs on their export sales, while their foreign competitors may sell here largely tax free. (Figure 9 below shows how this system places U.S. producers at a significant disadvantage). Recent estimates suggest that this disparity likely impacts the U.S. trade balance by more than $130 billion per year. There is no economic justification for this practice; it is simply a gift to foreign producers.

Figure 9

Congress has regularly cited this disparity and made clear that eliminating it should be a top priority in international trade talks. Indeed, in 2004, the House of Representatives voted 423–1 in support of a resolution calling on the President to regularly report to Congress on progress in resolving this issue—and ending the disparate and unfair treatment of U.S. producers under WTO rules—through international agreement.[4] Unfortunately, nothing significant has been done to move the ball forward.

The time has come to demand that our trading partners agree to a fairer system. Again, there are a number of good proposals. One approach would be to demand that this problem be rectified in negotiations by a set period (e.g., 1–2 years)—after which period the United States would begin to treat foreign rebates of VAT taxes as a countervailable subsidy (just as rebates of income taxes are now treated). The point again is that action is urgently needed.

G. Funding for Trade Enforcement

Congress should make sure that our core enforcement agency—namely the Import Administration—is receiving adequate funds and manpower to do the job it is called upon to perform.

H. Congressional Oversight of Trade Negotiations

Finally, Congress needs to become more aggressive in overseeing U.S. trade negotiators. Our trading partners have made it a first priority to weaken these core disciplines, and without Congress' direct involvement and resolve, they are likely to succeed. Congress should make clear that it will oppose international agreements that serve—in whole or part—to weaken U.S. fair trade remedies.

VI. CONCLUSION

The crisis facing U.S. manufacturing—along with the increasing evidence that U.S. workers and businesses are facing an uneven playing field vis-à-vis their foreign competition—has given rise to a new level of concern in the country, and arguably a unique opportunity to pursue policy measures that will make a real difference. I hope that Congress will take advantage of this window to seek real change, and to avoid half measures or window dressing that will not have a real impact on the problem. I truly believe that the economic future and opportunity for our children and grandchildren are at stake, not to mention the strength and capabilities of our entire economy.

Thank you for the chance to be here today.

Chairman LEVIN. Thank you very much.

Under the procedure we agreed on, Mr. Weller would go first.

Mr. WELLER. Thank you, Mr. Chairman.

I regret I missed the beginning of this hearing, but am glad to be here. This is an important hearing today, and I have some questions I want to raise, but I don't want to miss this opportunity at a Subcommittee on Trade and let this pass without noting that our pending trade agreements with Peru, Colombia, Panama, Korea, currently stalled, and they were going home for the August recess without any movement forward when we have had plenty of time to have a hearing and move the trade agreement.

I just want you to know, Mr. Chairman, I believe this is disappointing, especially in light of preferential one way access into our markets that our Latin partners have. Opening agreements with Peru, Colombia and Panama would immediately provide benefits for U.S. manufacturers and farmers would have their taxes for exporting to these countries largely eliminated.

Again, China trade issue is important, but we can't forget we have opportunities immediately before us, including our most commercially significant trade agreement with Korea that are not

[4] H. Res. 705 (July 14, 2004).

being addressed and even been threatened to be rejected by the Democratic Majority Leadership.

I think we have a general consensus that China presents a trade challenge, some of the issues have been brought up in testimony, I have a few questions here that I would like to raise.

Mr. Leibowitz, you focused from a consuming standpoint on zeroing and, of course, the WTO implications. Could you further comment on how problematic zeroing is, particularly for the average consumer in America, what this would mean in terms a consumer would understand.

Mr. LEIBOWITZ. I will certainly do my best, I can't guarantee the understanding part, but I will do my best. Thank you for the question.

George Bernard Shaw once said that a government that robs Peter to pay Paul can always depend on the support of Paul. I think that those companies that benefit from the imposition of duties are obviously fighting very hard to keep the duties as high as possible. Zeroing keeps them high, because what it does is it ignores the impact of imports of subject merchandise, merchandise subject to these cases on the domestic economy; these are prices that are higher than so-called normal value. It is usually, the price overseas is the normal value. Many cases have a few transactions that are below normal value and many that are above normal value. It is hard to generalize it, but it is quite common in my experience.

Mr. WELLER. Give me an example of a particular product in a dollars and cents standpoint in simple terms?

Mr. LEIBOWITZ. For example, one case I studied quite carefully is a case I worked on involving stainless steel products from Italy, Mr. Hartquist here was my opponent in that case; 75 percent of the transactions reviewed by the Commerce Department were at above normal value; 25 percent were below. They ignore the 75 percent that were above. The important thing is zeroing is not a good policy idea because it sets the tax a rate that ignores the beneficial impact on the market of those transactions above normal value. It is as simple as that. If you want to set the tax at the right level, you look at the impact of the imports from that foreign producer, whether they are above or below normal value.

The WTO made a decision that I would be happy to defend. I think it is absolutely correct. They did analyze the text of the agreement. I disagree with a lot of people who say otherwise, but unfortunately, in this game, everybody who really is knowledgeable has an ax to grind. I certainly am not excluded from that equation.

Mr. WELLER. Thank you Mr. Leibowitz.

Mr. Lighthizer, in your testimony you discuss the issue of essentially border adjustability that particularly our European competition is able to take advantage of, allowing them to adjust their VAT taxes at the border, meaning that they can rebate the taxes and then impose the VAT on imports. Of course, that is a frustration for a lot of us, because under our income tax system there appears to be a bias on the WTO.

Can you elaborate further on what you discuss in your testimony, but also elaborate further on not only the consequences, but what

we should be doing to address that issue so that we are treated fairly in comparison with our competition?

Mr. LIGHTHIZER. Thank you, Congressman, for the opportunity to do that. When you called on me, I was hoping you were asking for an alternate view on the issue of zeroing, but I'll wait.

Mr. WELLER. I'm limited on time.

Mr. LIGHTHIZER. Am I also limited?

Mr. WELLER. You can go to that if you would like.

Mr. LIGHTHIZER. First of all, I am a Republican. I am a hawk on the trade deficit. If you asked what are the two most important things to me to get us on track that have nothing to do with protectionism, the first thing would be to do something about currency. By far the second most important thing is this value-added tax problem.

We have allowed a system to develop which makes absolutely no sense. It never made any sense. It is something that while I was in the Reagan Administration I fought about, and we have been fighting about it ever since.

Most of the world funds their government through a value-added tax. As a result of just a happenstance of history, we have allowed those people to rebate that tax, on their exports, and to give it to imports, essentially to have it as a barrier to imports and a subsidy for exports.

We in the United States—for a variety of reasons—have decided an income tax is a fairer, better way to tax, and I think you could make a good case that it is. Because we made that judgment as a society, we have put ourselves in a position where we now are letting everybody bring in their products essentially tax free, and we are exporting all of our products with a double tax. It is just the stupidest thing you can imagine.

Let me say this—I am already over your time, so I apologize for that. But I would say this. The Congress of the United States has passed fast track legislation six or seven times. Every single time you passed it, you told the Administration to deal with this issue, this is a critical issue. We have an economist from MIT that said this one little issue adds more than $140 billion a year to our trade deficit. This guy Jerry Houseman, who is this great economist, has made this calculation.

I will bet you that my answer to your question, the amount of time that I have spent talking about this is more than every Administration has spent talking about this issue with our trading partners in the entire seven rounds.

Mr. WELLER. Specifically, if you will humor me, Mr. Chairman, specifically what should we do to address this issue?

Mr. LIGHTHIZER. Well, that is a great question. We should tell our trading partners that if in the next 18 months this inequity, which has no economic justification at all, isn't corrected by an agreement, then we are going to start countervailing against countries who rebate their taxes when they ship to the United States. That is what I would do.

Now, some other people have said take that we should also take that money and subsidize our exports. All of this is creating a crisis. I think we have to create a crisis. The rest of the world has had it their way for more than 40 years. At the beginning it really

didn't matter because you know, if you look at the chart I put in there, we were basically doing okay in trade. It was a small part of everything. But when you get to an $800 billion trade deficit all this stuff matters.

So, I think what you have to do is precipitate a crisis. I think you have to pass a law that says, Administration, in 18 months we are going to start countervailing against these countries unfairly subsidized by rebating their taxes.

Chairman LEVIN. All right.

Mr. LIGHTHIZER. I'm sorry.

Mr. WELLER. Thank you for being generous with my time.

Chairman LEVIN. No, no, not at all.

Mr. Herger, I think we have a commitment to wrap up, but go ahead. I think if we extend a couple minutes. We do have a need to leave so that the room can be prepared, but go ahead.

Mr. HERGER. Thank you, Mr. Chairman.

Mr. West, I appreciated the point you raised in your testimony, particularly the real effects artificially high tariffs would have on your ability to compete. If these tariffs are inconsistent with WTO rules as USTR, Treasury and Commerce say they are, then there are further negative consequences.

Many people and many Members of Congress say, quote, "Who cares if we violate the WTO," closed quote. To them it is abstract, but to you it is very real. If we break the WTO rules, then other countries punish companies like yours by making it more difficult for you to export. I understand that 19,000 small- and medium-size businesses like yours export to China, accounting for $11.4 billion.

Are you concerned that products from your company and others in your association will be singled out for retaliation if these bills are enacted and are found to violate the WTO?

Mr. West. Congressman, thank you for the question. I am not an expert on all the trade policies, but I will tell you as a practical businessman we are always concerned about potential ramifications and issues and loss of intellectual property or other things that could occur in the environment out there.

So, one of the things that is very, very important for us is to always have as much free trade and unrestricted trade as possible. We are part of the world industry that has components manufactured here, products manufactured there, brought all across the world, and it is very very important to have unrestricted trade to all the products that we make. It is a very, very important part of the process.

Mr. HERGER. I thank you, Mr. West. I think this is a point that is very little understood by the American people. We tend to see the big companies, which I share the concern with, but we tend to not see all the thousands of small businesses that are exporting the tin but really catch it on the chin trade-wise if we are not prudent and balanced in conducting this.

Mr. Leibowitz, I am concerned that the proposed legislation is only going to benefit a few U.S. producers to the detriment of other U.S. producers, especially since the trade remedy provisions can be used against all our trading partners. For example, just last October, Ford, GM, and other automakers testified before the International Trade Commission that anti-dumping duty orders were se-

verely limiting their ability to obtain the steel they needed for their U.S. manufacturing operations. I understand that for every job in the steel-producing sector of our economy there are 40 jobs in the steel-consuming sector. What can we do to ensure that these bills won't result in the government picking and choosing winners among U.S. manufacturers?

Mr. LEIBOWITZ. Well, I think the single most important thing we can do is give consumers a meaningful role in these cases. That is something that CTAC strongly supports. We have been working with Mr. Knollenberg and others to achieve that.

Last year in the ITC we, the six major automobile companies in the U.S., the traditional Big Three, plus Toyota Honda, and Nissan, all joined together to urge that the orders on steel that used the most not be renewed. The steel industry didn't need the protection. They were making money at historically high rates. And 2006 was their best year ever. At the same time imports were higher than ever. So, imports go hand in hand with prosperity in many ways. It is counter-intuitive but it is true.

So, I think the single most important thing is to make sure that every stakeholder has a role. At the ITC we didn't, but these auto companies were noticed because they were an unusual appearance at those hearings. They had to borrow time from the foreign respondents in order to appear, which I think is unfair. We could talk about that for quite a while.

My most important point is that if we give everybody a meaningful role, we can get the tax right. Zeroing is not a fundamental part of a law. If it were, we would say something about it in the law. We say nothing about it. We got to get the tax right, we have to get the injury determinations right, we need to make sure that we consider everybody's interest. The way to do that is give everybody a seat at the table.

Mr. HERGER. Thank you very much. I think the point you are making is we have to get it right.

Mr. LEIBOWITZ. We have to get it right, because most people lose if we get it wrong.

Mr. HERGER. Thank you.

Chairman LEVIN. We are going to adjourn. In terms of getting it right, let me just as we close quote what the U.S. Government said about the zeroing decision. These are their words: Very troubling, fatally flawed, devoid of legal merit.

That is a little hard to think of something more criticized than that.

Mr. West, as we leave, I was just looking at the high-tech export figures for 2006. I think as we proceed we ought to be sure we look at the facts. The high-tech U.S. exports to China in 2006 were $14 million. The imports from China, this was to China, were $102 million. So, maybe we can correspond about that. But I think it is a misconception that trade is our shoes and our apparel, their shoes and their apparel and their toys, while ours is high-tech.

There is increasing amounts of what is classified as high-tech coming from China. Actually the major increase in 2006 in our exports to China was in semiconductors. But we will have more time to talk about it.

Thank you to all of you and thanks to everybody who came to listen to this. I think this has been, Mr. Herger, a very useful hearing and we now stand adjourned. Thanks again.

[Whereupon, at 12:40 p.m., the hearing was adjourned.]

[Submission for the Record:]

Statement of Honorary Alan B. Mollohan

Chairman Levin and Members of the Subcommittee, thank you for the opportunity to submit this testimony for the record. I appreciate very much that you are holding this hearing. I believe we are long overdue for legislation that helps strengthen our trade laws and that deals with the specific trade problems we are encountering with China. The United States has the most dedicated and efficient workforce in the world, but we cannot compete with foreign companies who benefit from government subsidies or who engage in dumping in order to build market share, all the while keeping their own borders closed to our exports. This lopsided approach to trade is evident in our $800 billion trade deficit, $200 billion of which is with China alone.

I recently testified before the International Trade Commission (ITC) during their sunset hearing on hot-rolled sheet steel. The ITC held hearings to consider whether the antidumping and countervailing duty orders on hot-rolled carbon steel flat products from eleven countries should be lifted. China was among the countries under consideration. China's record with regard to dumping steel and steel products in the U.S. is reprehensible. China has built large amounts of hot-rolled capacity in the past five years and should these orders be lifted China will, once again, flood our country with hot-rolled product. The largest steel producer in my district, Mittal (Weirton) Steel, in 2004 a company of over 3,000 employees, currently has approximately 1,200 employees. This is certainly due, in large part, to the failure of the current Administration to enforce U.S. trade laws and allow unchecked dumping of steel and steel products.

Manufacturers have been forced to shut down facilities in West Virginia and throughout the country due to competition from cheap, unfairly traded imports. For example, NewPage Corporation had to shut down a paper machine at its Luke, MD facility earlier this year because Asian imports had driven prices down to a level where that machine could no longer be operated profitably. The large number of antidumping cases filed against China in recent years demonstrates that China is the world's single biggest violator of fair trade rules. It is crucial that we strengthen our trade laws to make sure they are robust enough to address these unfair Chinese imports before even more hard-working Americans lose their jobs. It is also important that we remedy key instances in which courts and international organizations have attempted to weaken U.S. trade laws.

Two of the major ways China gains an unfair advantage over U.S. companies are by keeping its currency undervalued and providing large subsidies to many industries. The effect of both of these trade-distorting Chinese policies is that Chinese goods can be exported at an artificially low price, putting U.S. manufacturers at a massive disadvantage. The U.S. Government must find a way to pressure China into revaluing its currency so it reflects economic reality. Also, the countervailing duty law is a critical tool to combat subsidies in China and other non-market economies. There is no question it should continue to be applied to any countries providing illegal subsidies, whether or not they happen to be market economies.

Make no mistake, many more workers in numerous U.S. industries are in danger of losing their jobs as result of unfairly traded imports from China and other countries. We have a responsibility to our own constituents and the American people as a whole to address this serious problem by strengthening our trade laws before the trade deficit worsens and even more hardworking Americans lose their jobs. A number of pertinent legislative measures have been introduced that address some of these issues, including currency manipulation. I urge the Subcommittee to act on these measures expeditiously before the manufacturing sector of our Nation is eliminated entirely.

Statement of American Apparel & Footwear Association

The American Apparel & Footwear Association (AAFA) is the national trade association representing the apparel and footwear industries, and their suppliers. Our members produce and market apparel and footwear throughout the United States

and the world, including China. In short, our members make everywhere and sell everywhere.

I would like to take this opportunity to briefly describe the importance of China to the U.S. footwear and apparel industries and how our relationship with China benefits U.S. apparel and footwear firms, U.S. workers, U.S. consumers and, in turn, the U.S. economy. I will also discuss our concerns and hopes for this relationship in the future, particularly as it relates to the focus of this hearing—i.e. legislation related to trade with China.

Our Industry—Then & Now

But first, a little background on our industries. Our industries have historically been among the most protected industries in the United States—subject to decades of stiff protection in the form of high tariffs and restrictive quotas (for apparel). Even today, U.S. apparel and footwear imports from China are still subject to high tariffs and, in the case of apparel, quotas.

Yet, this incredible protection failed to do the very thing it was supposed to do, protect the U.S. apparel and footwear manufacturing base. Today, 99 percent of all footwear and 91 percent of all apparel sold in the United States is imported. For comparison, in 1980, only one-half of all footwear and less than one-third of all apparel sold in the United States was imported.

Today, less than 570,000 people work in the manufacturing of apparel, textiles and shoes in the United States—a loss of over 1.7 million jobs, or three-quarters of the entire U.S. footwear and apparel manufacturing workforce since 1974. One million of those jobs have been lost in the last decade alone.

Despite this seemingly bleak picture, the U.S. apparel and footwear market is booming. Americans like their clothes, and their shoes, and it shows. U.S. consumers spent a record $359 billion on apparel and footwear in 2006, or an average of $1200 for every man, woman and child in the United States. Even as energy prices skyrocketed here in the United States last year, retail sales at clothing and footwear stores were 4.9 percent higher in 2006 than in 2005. The bottom line is that despite whatever economic pressures face us, Americans still buy new things to wear. Americans, however, are picky about their shoes and clothes, they continually want an ever-wider variety of higher-quality shoes and clothes available at lower prices and made in a socially responsible manner and our industry has had to respond.

U.S. footwear and apparel firms have responded to these challenges by transforming themselves from manufacturers into brands. Today's U.S. apparel and footwear "brands" are more lean and more competitive than ever—their goal is to provide the American consumer with what they want—the best brands at the best prices made under socially responsible conditions, while still making a profit.

And the result of this is that U.S. apparel and footwear firms are thriving, with many achieving profits last year—profits that go directly back into the U.S. economy and ensure a competitive industry. Further, while the industry has lost over one million manufacturing jobs in the last decade, the industry has produced hundreds of thousands of good-paying new jobs for U.S. workers—not in manufacturing, but in such varied professions as design, research and development, marketing, distribution, sourcing, warehousing, management, administration and sales. Further, the industry directly supports another 1.5 million plus jobs at retail establishments throughout the United States.

The industry's transformation has directly benefited U.S. consumers—particularly hardworking lower- and middle-income American families—by lowering prices on one of the most basic staples every man, woman and child needs. As a result of the industry's transformation, apparel and footwear retail prices have declined some 11.9 percent and 5.8 percent, respectively since 1998, despite a more than 27 percent increase in overall retail prices during the same period—saving American families countless billions of dollars every year—money they pump back into the U.S. economy.

Thanks to these lower prices, American families today spend a smaller percentage of their income on shoes and clothes, a necessity for every American, and instead spend more elsewhere. According to the U.S. Department of Commerce's Bureau of Economic Analysis, the percentage of the average American family's Personal Consumption Expenditures (PCE) spent on clothes and shoes has dropped by almost one-half since 1977—from 6.6 percent of total PCE in 1977 to less than 3.9 percent today. With consumer spending driving over 2/3 of our Gross Domestic Product (GDP), the decline in U.S. apparel and footwear prices not only helped hardworking American families better afford two of life's most important staples, but has helped fuel the overall economy.

China 's Relationship with the U.S. Apparel & Footwear Industry

The U.S. footwear and apparel industry could not have succeeded in transforming into the success that it has become today without the existence of China. Working almost exclusively with foreign-owned and/or privately-held factories in China, U.S. apparel and footwear firms have been able to give American consumers what they want—an ever-wider variety of higher-quality shoes and clothes at lower prices—while ensuring that those clothes and shoes are made in a socially responsible manner.

Today, this relationship is stronger than ever. U.S. footwear and apparel firms imported over $30 billion worth of footwear and apparel from China in 2006. U.S. imports from China today account for over 86 percent of all shoes and over 27 percent of all clothes sold in the United States.

Opening the Chinese Market to U.S. Apparel and Footwear Brands

There Has Been Progress, but More Must be Done

U.S. footwear and apparel firms, however, recognize that 95 percent of the world's population lives outside the United States. Some of their fastest growing markets are no longer in the United States or Europe, but in China, or India or Brazil. U.S. apparel and footwear firms are now truly global—they buy and sell clothes and shoes all over the world. That is why AAFA's motto is—"We Dress the World."

Our industry was one of the biggest supporters of China entering the World Trade Organization (WTO), not just because of our relationship with China as a supplier to the U.S. market, but because we wanted to use WTO rules to open China—with the world's largest middle class of 200 million people and growing—to U.S. brands. Since China's WTO accession, our industry has worked closely with the U.S. Government and the rest of the U.S. business community to ensure that China lives up to its commitment in opening up its distribution and retail sectors. Thanks to our efforts, China has largely lived up to those commitments, opening the doors to U.S. brands to sell into the vast Chinese market.

While U.S. brands have had some success in China because of these efforts, significant restrictions still exist in our sectors. We hope the Chinese fully live up to their commitments in these areas.

China & The Currency Issue

On the issue of currency, we believe the best long term strategy is a freely convertible currency. Our concerns with some of the approaches being discussed—in addition to the concerns stated elsewhere about WTO compatibility—is that it is extremely difficult to identify the "right" exchange rate. Indeed, advocates for trade remedies often point to a "range" of currency misalignment in China of 15 to 40 percent. Such wide discrepancies make it difficult to identify and execute effective trade remedies. For example, advocates of a China currency bill last year arbitrarily picked 27.5 percent (half way between 15 and 40) for a trade remedy to counter China's currency levels. Moreover, since China allowed its currency to float on a limited basis, the renimbi has already risen about 10 percent, putting it in the neighborhood of the 15 to 40 percent range cited earlier. While we share the Committee's frustration that the path toward currency adjustment has not gone more quickly, we note that slow and deliberate change, rather then abrupt shifts, is the key to predictability to make sure business is not disrupted.

Intellectual Property Rights (IPR)

Moreover, we have been deeply disappointed with the progress made to date on China's efforts to improve its Intellectual Property Rights (IPR) enforcement. U.S. footwear and apparel brands have been subject to rampant counterfeiting in China, stalling our efforts to break into this important market. This problem even affects us in our home market—the United States. Every year, clothes and shoes top the list of counterfeit items seized by U.S. Customs. We estimate that these seizures represent only a small fraction of the total amount of counterfeit shoes and clothes entering the U.S. market. China must do more on IPR enforcement. Therefore, we strongly support the U.S. Government's actions in taking China to WTO dispute settlement over lax IPR enforcement. We hope that the combination of the WTO cases and ongoing dialogue will resolve an issue that is so critical to our industry.

Subsidies

We applaud the Bush Administration in initiating a case against China in the World Trade Organization (WTO) against China's continued use of WTO-Prohibited Subsidies. Such subsidies can truly distort trade in certain products and industries. Further, the arbitrary nature of such subsidies, where China has provided and then removed such subsidies without notice, creates immense uncertainty for our indus-

try. This uncertainty is endemic of the lack of transparency that still exists in China.

Product Safety

On the issue of product safety, I would again caution against making any major policy changes without thoughtful review. Our industries are at the forefront of the product safety issue, because our products come into contact with every man, woman and child in the United States 24 hours a day, seven days a week. Our industry is a pioneer when it comes to dealing with hazardous substances and chemicals coming into contact not only with the clothes and shoes we wear every day, but dealing with the substances that come into contact with the workers who make those shoes and clothes. On behalf of our industries, AAFA recently published the first-ever industry-wide restricted substances list (RSL). Further, the industry, in cooperation with the Government, has established strict standards when it comes to product safety for the clothes our children wear. Our members have long maintained strict quality control and environmental compliance mechanisms at the factory level, many of which are located in China, that ensure that these hazardous substances do not come into contact with the clothes and shoes we make or the workers who make them nor jeopardize the safety of the children who wear them. On the off chance unsafe products do enter the U.S. market, our industry, again in cooperation with the U.S. Government, has implemented effective mechanisms to quickly remove those unsafe products from the marketplace. These activities ensure that product safety is effectively maintained while not slowing the pace of commerce. While we recognize that improvements can always be made, we caution that changes to the current U.S. product safety system not be done in a way that creates major disruptions in commerce while failing the fix the very problem those changes were made to fix—improving product safety. We would be happy, however, to work with the Committee to craft any proposals that we believe would improve product safety while not substantially slowing commerce.

Next Steps—the U.S. Apparel and Footwear Industry View

As we noted, China still has a long way to go in meeting its international obligations—as both a major economic power and as a major market for U.S. brands and U.S. products. We fully support the current Administration's efforts to address these many issues through dialogue. As we also noted, however, our industry has and will continue to support further actions in specific instances where dialogue continues to produce less than desired results.

I would, however, caution those who would propose certain "remedies" for the purpose of resolving many of these issues. First, many of the proposed "solutions" clearly violate U.S. obligations under international trade rules. While many might not be concerned about this, this violation is of critical concern to our industry. As I mentioned previously, U.S. apparel and footwear firms make and sell everywhere around the world, including selling clothes and shoes made in China into major markets like Europe, Brazil and India. Any action taken by the United States against China that violates international trade rules would not only be closely watched by these countries but quickly replicated, closing these important markets to U.S. brands.

Second, many of these proposed "remedies" would impose significant penalties, in the form of punitive duties or other restrictions, on some or all U.S. imports from China. As I have already stated, virtually all clothes and shoes sold in the United States are imported, with a significant portion being imported from China. Similar situations exist for a multitude of other consumer products used every day by hardworking American families. If such "remedies" are imposed, those remedies would amount to a huge new tax on hardworking American families—at a time when many of these families can least afford it.

Finally, such actions could actually hurt the very U.S. manufacturing base these measures are supposedly trying to protect. Regrettably, recent history has repeatedly demonstrated this fact. Our members' products—U.S.-made apparel and footwear—figured prominently on foreign country retaliation lists in both the WTO dispute over Foreign Sales Corporations (FSC) and in the WTO dispute over the Byrd Amendment. These punitive measures severely crippled what remains of the U.S. apparel and footwear manufacturing industries as it essentially closed their primary export market to U.S.-made footwear and apparel—Europe. In this case, China is one of the largest and fastest growing markets for U.S. exports of all types—from yarn and fabric to machinery and high technology products and from cotton and soybeans to poultry.

The U.S. apparel and footwear industry recognizes that many important issues exist in the U.S.-China relationship—issues that directly affect U.S. apparel and

footwear firms. However, as in the case of our industry, the relationship between the United States and China is one that is critically important to and intimately intertwined with the U.S. economy. Therefore, I urge policymakers to carefully consider all aspects of this vital and complicated relationship before setting new policy.

Statement of American Iron and Steel Institute

The American Iron and Steel Institute (AISI), Committee on Pipe and Tube Imports (CPTI), Specialty Steel Industry of North America (SSINA) and Steel Manufacturers Association (SMA)—who together account for almost all of the carbon and specialty steel produced annually in the United States—are pleased to submit written comments to the House Ways and Means Committee on the urgent need to enact strong, effective China trade legislation this year.

The Case of Steel is One Example of How China Does Not Play by the Rules in Its Trade and Economic Policy

In recent years, as has been well documented, America's steel industry has dramatically enhanced its global competitiveness by virtually every account—be it labor productivity, energy intensity, environmental performance or cost. At the same time, there has been a considerable amount of market-driven consolidation in our steel industry. Unfortunately, we cannot count on market-driven factors, including consolidation, to save us from non-market behavior.

Trade-distorting practices and non-market behavior have to be countered because, if they are not, they will destroy even the most competitive U.S. industry.

On previous occasions, we have testified to the Committee on how the government of China has used a deliberate combination of administrative, legal, fiscal and other industrial policy tools to:

- Micromanage the future development of the Chinese steel industry;
- Maintain government ownership, control and direction of major steel producing companies;
- Support new and old steel capacity with massive subsidies;
- Target tax policy to promote exports of value-added steel products;
- Restrict exports of vital raw materials and steelmaking inputs;
- Limit foreign ownership of Chinese steel companies;
- Keep the yuan as the world's most undervalued major currency.

The end result is that that:

China today has by far the world's largest steel industry (nearly five times as large as the steel industry of the United States), with 19 of its top 20 steel producers still majority-owned by the government;

It has the world's most heavily subsidized steel industry (see attached new study, entitled Money for Metal: An Examination of Chinese Government Subsidies to its Steel Industry);

It has enormous overcapacity in steel (more excess capacity than the entire American steel industry), with huge amounts of obsolete, inefficient, heavily polluting steel capacity;

It has become the world's largest steel exporting nation, with a net shift of approximately 70 million metric tons (MT) in its steel trade position just since 2003;

Its surging steel exports, which include many high value products, are causing significantly injury in the United States and disrupting steel markets worldwide;

This same mercantilist development "model" is being consciously extended downstream not only to pipe and tube, fencing and other products made entirely of steel, but also to motor vehicles, auto parts, appliances and other steel-intensive manufactured goods.

Contrary to popular conception, China is not a low-cost producer in steel. It faces many challenges from the high cost of iron ore imports, to energy and water shortages, to infrastructure bottlenecks, to environmental concerns. However, it has one big artificial competitive advantage: its willingness to use subsidies and other tools of industrial policy to promote steel and other key sectors of the Chinese economy.

As many China watchers have observed, including the U.S.-China Security and Review Commission, this mercantilist approach to economic development has serious adverse implications for U.S. national security, food and product safety and the global environment.

For example, China today produces over 50 percent of the global steel industry's emissions of greenhouse gases, according to the head of the International Iron and Steel Institute (IISI). Yet, because many environmental regulations are not ade-

quately enforced or enforced at all in China, pollution itself is being used as an artificial "comparative advantage" in China, one that is not subject to WTO rules.

This same point can be applied to other manufacturing industries in China, and this is one more example of why—when we make efforts at "leveling the playing field" and addressing global issues that leave China out—we are making a huge mistake. China has to be included.

Domestic Manufacturing Flight

Against the backdrop of a record and unsustainable U.S. current account deficit (over $800 billion last year) and a record U.S.-China bilateral trade deficit (over $230 billion in 2007), we have lost more than 3 million good domestic manufacturing jobs since 2000, and America's manufacturing sector remains in crisis.

China has not become "the world's factory" by accident. In recent years, we have seen a trend of domestic steel industry customers moving their operations to China in part. Some may be moving because of the current artificial steel price differential that exists between China and the rest of the world. In addition, many are no doubt moving because of Chinese government subsidies (including currency misalignment).

Chinese government subsidies and China's use of industrial policy tools should not be the reason we are losing our domestic customers and jobs. Yet, this is exactly what has been happening in China, and it is also perhaps one of the reasons why the U.S. Administration has a pending World Trade Organization (WTO) action against China's prohibited subsidies. These particular types of industrial policy subsidy programs have been going largely to foreign-invested enterprises in that country.

Government subsidies and all of the other administrative, legal and fiscal tools that China employs, as part of industrial policy to build up the "strategic" sectors of its economy, are not only harming America's steel industry, they are also causing massive job losses and serious damage to our manufacturing base, our economy and our national security.

In what ought to be a disturbing trend to all U.S. policy makers, the United States has a skyrocketing "indirect" steel trade deficit with China (our bilateral trade deficit with China, expressed in tons of steel). The steel content of U.S. manufactured goods imported from China more than doubled between 2001 and 2006 and, today, over one-third of all U.S. imports of downstream products made entirely of steel come from China.

To us, it matters little whether the subsidized steel is distorting the market as a coil of corrosion-resistant steel or as a shipload of appliances. Neither the domestic steel producer nor its domestic manufacturing customer is ever going to be able to compete with Chinese government subsidies and mercantilist policies without the full and aggressive enforcement of U.S. trade laws.

We Need a New Trade Policy Model and All Available Tools to Address China's Trade-Distorting, Non-Market Behavior

The U.S.-China trade relationship is the single-most important trading relationship for the United States in the 21st century, and we had better get it right. As our annual bilateral trade deficit with China approaches the politically unsustainable figure of a quarter of a trillion dollars, America's steel industry believes that we need urgently to develop a new policy model of dealing with China trade problems.

We support, as initial first steps in the right direction, the recent U.S. government policy moves to apply countervailing duty (CVD) law to imports from China and to pursue WTO actions against China, including its continued use of prohibited, WTO-illegal subsidies. However, there are additional concrete actions that must be implemented this year if we are to avoid a worsening trade crisis with China. These include the need to:

Recognize that it is long past time to rebalance our vital trade remedy laws, which have been progressively weakened over the years by (1) over-reaching WTO Appellate Body rulings, (2) incorrect U.S. court decisions and (3) the failure of the Executive Branch to use effectively all of the tools (such as Section 421) that do exist;

Maintain, strengthen and enforce rules-based free trade;

Counter, under U.S. trade remedy laws, the pernicious practice of government interventions that result in fundamental currency misalignment, starting with China.

If we are to address China's continued failure to play by the rules in international trade, we will need all available tools—and the political will to use them.

What the Ways and Means Committee Should Do Now

America's steel industry urges the Committee to report out effective China trade legislation as soon as possible. As a first step, we recommend that the Committee report out legislation that addresses the following key issues:

Full and strict application of CVD law to imports from China and Congressional oversight of any change in China's status as a non-market economy—i.e., the Davis-English bill (H.R. 1229) as introduced. Notwithstanding the preliminary Department of Commerce (DOC) ruling to apply CVD law to imports from China, there is a clear need for the Congress to clarify that CVD law must be fully and strictly applied to China (no weakening amendments, regulations or approaches). In addition, by virtually any measure under the existing U.S. statutory criteria, China today remains a non-market economy (NME), so there must be no change in China's NME status under U.S. AD law until it is able to satisfy fully and consistently all statutory criteria.

Trade law rebalancing, starting with the vital Barrett bill (H.R. 2714), which corrects two over-reaching and erroneous trade law weakening rulings—one by the WTO Appellate Body on "zeroing" and one by the U.S. Court of Appeals for the Federal Circuit on International Trade Commission (ITC) injury considerations. First, the Barrett bill suspends the flawed WTO zeroing rulings that the U.S. Administration now says must be addressed before the United States would even accept an overall Doha Round agreement. These WTO rulings against the U.S. AD law practice of zeroing must be rejected, because they would reward dumping, harm U.S. producers and greatly reduce AD margins. Second, the bill removes an excessive burden placed on U.S. producers harmed by unfair trade by addressing the flawed "Bratsk" ruling by the U.S. Court of Appeals for the Federal Circuit. That ruling would require that the ITC speculate on the effects of "non-subject" imports on the remedy, which would greatly reduce the number of affirmative injury decisions.

Congressional oversight of Administration Section 421 decisions. When the Congress granted China Permanent Normal Trade Relations (PNTR) status, it expected the United States to have a useable special China "safeguard" provision to address market disruption caused by China import surges. Unfortunately, the record is now four affirmative ITC market disruption findings in Section 421 cases and zero remedy decisions by the President. It is now up to the Congress to ensure that Section 421, which is a critical trade remedy tool, is useable again.

Countering fundamental currency misalignment under U.S. AD/CVD law. The United States can no longer afford to sit back and allow China to continue—because of currency undervaluation alone—to apply a 40 percent subsidy on all of its exports and a 40 percent tax on all of its imports. The time for talk and patience is over. We need to enforce our rights under the WTO and address China's fundamental currency misalignment. The steel industry supports the Ryan Hunter bill (H.R. 2942) and any other effective means of addressing this serious problem under U.S. trade remedy law.

There are times when our government must "intervene" to defend and restore market forces. This is the purpose of our trade remedy laws. Government intervention to restore market forces is essential if we are to have any semblance of rules-based trade and a level playing field that will enable efficient U.S. companies to win out in the marketplace.

We know that legislation to address the specific trade law concerns cited above is just a start if we are to reverse the damaging trends of recent years. We urge the Committee to look carefully at all bills to reform and strengthen trade laws, including the provisions contained in Rep. English's Trade Law Reform Act (H.R. 708).

We also know that trade law strengthening is only a part of the solution, as the United States must also (1) get its own fiscal house in order, (2) reform its healthcare system which is in crisis and (3) address other major international inequities.

A good place to start would be to say "enough is enough" to the WTO's continued disparate treatment of direct vs. indirect taxes in terms of border-adjustability. The United States can no longer afford a world trading system in which the trade-related rules on taxation are rigged totally against us. Under this fundamental tax inequity, other major trading countries can rebate their indirect value-added taxes (VATs) on all of their exports and apply them to all of their imports, while the U.S. (which continues to rely mainly on corporate and other direct taxes, and does not use VATs) is prevented from adjusting its own taxes at the border.

The key point we would like the Committee to keep in mind is that, while other countries are continuing to use a full array of industrial policy measures to promote their manufacturing industries, U.S. manufacturers have only our trade remedy laws. These laws have been under constant attack for years by foreign governments, foreign producers and a WTO that has repeatedly exceeded and abused its authority

in trade case appeals. Therefore, as the Committee proceeds to mark up on China trade legislation, we urge that it send the strongest possible message on trade laws to China and other rules violators.

Conclusions

Steel has been a prime, but not the only, example of what is wrong in the U.S.-China trading relationship, including not just the government subsidies, but also a lack of transparency and an incomplete transition to the rule of law and a continuation of political influence to determine trade and market outcomes. The inescapable conclusion is that China remains a non-market economy and, if we are to address effectively China's non-market and trade distorting behavior, our Nation must have all available tools, including:

Applying CVD law fully and strictly to subsidized imports from China and other NMEs;

Treating China as an NME under our AD law;

Having an AD law that is not severely and unnecessarily weakened by over-reaching and erroneous rulings by the WTO or U.S. courts;

Applying Section 421 remedies to disruptive and harmful imports from China when appropriate;

Countering China's currency misalignment under AD/CVD law.

Steel and other industries that rely on trade remedy law to help level the playing field are convinced that—while strong and strictly enforced trade laws are not the sole or total solution they can and will make a significant difference in helping to correct our record bilateral trade imbalance with the People's Republic of China.

In our view, there is no alternative but to use and enforce the existing laws and to strengthen these laws up to their WTO allowable limits. Therefore, steel joins with other trade law-using U.S. industries in urging the Committee to report out a strong China trade bill that addresses the issues cited in this submission.

America's steel industry appreciates the opportunity to provide comments on this critical issue.

Statement of American Manufacturing Trade Action Coalition

AMTAC's mission is to preserve and create American manufacturing jobs through the establishment of trade policy and other measures necessary for the U.S. manufacturing sector to stabilize and grow. Right now, U.S. domestic manufacturing is destabilized and its prospects for long-term health and growth are gravely threatened. Consider the facts. The United States has lost more than three million manufacturing jobs since the beginning of 2001. Moreover, the United States is on pace to run a trade deficit with China is excess of $270 billion (more than $280 billion in manufactured goods) in 2007. It is urgent, therefore, that the U.S. Congress adopts a comprehensive policy response to combat China's unfair, mercantilist trade practices.

Parameters for Legislative Solutions to the China Trade Problem

In crafting a policy response to counter China's active threat to U.S. manufacturing, it is critical for the U.S. Congress to keep two key points in mind.

First, no one U.S. policy on trade caused the massive U.S. trade deficit and resultant U.S. manufacturing job losses; and no single policy response will undo the damage. A comprehensive policy approach, therefore, is necessary to level the playing field for U.S. manufacturing.

Second, the U.S. Congress must recognize that it cannot compel China's authoritarian government to take any policy action. Asking China to enact policy that it believes to be against its own interest is a prescription for failure, as China will never take any such action. Instead, the U.S. Congress should direct policy solutions toward what it can control. Given its authority under Article I, Section 8 of the U.S. Constitution to regulate foreign commerce, what the U.S. Congress can control is what foreign commerce can enter the United States, under what terms and conditions. Only by using its power to regulate imports from China, can the U.S. Congress exercise the necessary policy leverage to persuade China that its own interest lay in abiding by a level playing field in trading with the United States.

Noting these parameters, several bills lay before Congress within the scope of this hearing that would tie China's access to the U.S. market to China eliminating its unfair trade practices.

Legislative Solutions to Combat Fundamental Currency Misalignment

The damage caused by China's persistent fundamental misalignment of its currency is well known. Of all the bills introduced in Congress, the Currency Reform for Fair Trade Act of 2007, H.R. 2942 introduced by Congressmen Tim Ryan (D–OH) and Duncan Hunter (R–CA), offers the most comprehensive solution to combat China's fundamental currency misalignment—a misalignment that undervalues China's currency by as much as 77 percent when applying the standard Purchasing Power Parity (PPP) technique to official IMF statistics.

H.R. 2942 aims to remove subjectivity from currency valuation determinations by injecting transparency and objectivity into this important process. Under the bill, injured U.S. companies will be provided with key enforcement tools to fight back against foreign companies whose governments have sought to create an artificial competitive advantage through currency valuation controls:

- The bill makes clear that Countervailing Duties rules apply to non-market economy countries.
- The bill provides that "fundamental and actionable misalignment of a currency" may be considered as a prohibited export subsidy in determining if a duty should be imposed in a Countervailing Duty (CVD) case.
- If a company wins an anti-dumping order or is the beneficiary of an existing anti-dumping order in place, the amount of the prohibited export subsidy will be added to the dumping margin.
- The bill inserts objectivity into currency value determinations by building upon current law that requires the Treasury Department to report "currency manipulation" by also requiring semi-annual reporting on the existence of a "fundamental misalignment" of currencies. A finding of the existence of a fundamental misalignment is based on objective facts. It does not require the Treasury Department to guess a country's intent, as is the case with the current law requiring reporting on currency manipulation.
- The bill eliminates broad waiver loopholes that could be used by the Executive Branch to gut the enforcement mechanisms contained in the legislation.
- Finally, the legislation is WTO consistent because it applies to any country engaging in currency manipulation or misalignment.

The critical component of H.R. 2942's effectiveness is that it would allow U.S. manufacturers to file petitions asking for countervailing duties to penalize foreign manufacturers, like those from China and Japan, benefiting from currency misalignment.

If H.R. 2942 were to become law and one company or industry were to win a countervailing duty case (for example, winning a ruling that China's currency was 40 percent undervalued), it would set a precedent. More than likely, nearly every industry would follow with similar petitions against imports benefiting from the offending currency, knowing that a similar penalty would likely result against their foreign competitors benefiting from currency manipulation. With the certainty of the approval of dozens of CVD petitions imminent, the offending country's own exporting companies will demand that their government approach the United States to negotiate an orderly, incremental transition of that currency to float openly on the market.

The omission of a CVD trade remedy dramatically would decrease any potential effectiveness of anti-currency misalignment legislation. As such, AMTAC prefers anti-currency misalignment proposals like H.R. 2942 that contain CVD remedies over those that do not, assuming there are no other loopholes in the legislation.

Moreover, any anti-currency misalignment legislation must compel the Executive Branch to act when fundamental currency misalignment exists, as does H.R. 2942. Proposals that contain broad waiver authority will not be nearly as effective as those without a broad authority. Any waiver authority granted almost certainly will be exercised by the Executive Branch—especially considering its persistent refusal to make the prerequisite finding of intent necessary to cite a country as a currency manipulator under current law.

Legislative Solutions to Combat the Disadvantage Caused by China's VAT

In addition to addressing the currency issue, Congress also must address the disadvantage to U.S. producers and service providers caused by the imposition and rebating of foreign border-adjusted taxes, mostly in the form of value-added (VAT) taxes. When identifying the causes of the uneven playing field and its attendant massive U.S. trade deficit and manufacturing job losses, border-adjusted tax schemes stand out as one of the very worst offenders.

In 2005, the imposition and rebating of border-adjusted taxes disadvantaged U.S. producers and service providers by an estimated $379 billion. U.S. trade with China in goods alone accounted for an estimated $48 billion of that disadvantage.

China levies VAT taxes on imports from the United States and generally rebates any VAT paid by producers in China on exports to the United States. As China's VAT rate in 2005 was 17 percent, these impositions and rebates have a significant impact on a good's price.

In contrast, the United States levies no similar taxes at the border on Chinese imports. Producers in China selling in the United States pay neither U.S. income and payroll taxes nor their own VAT. As a result, this severely tilts the playing field and places U.S. domestic manufacturing at a great competitive disadvantage.

When the predecessor of the World Trade Organization (WTO) was set up in the late 1940s in the form of the General Agreement on Tariffs and Trade (GATT), one of its major policy purposes was to reduce the distortions to free trade flows inherent in import tariffs and export subsidies.

Over the years the use of border-adjusted taxes assessed on imports and rebated on exports has grown into a major violation of that core purpose. From one nation, France, with a relatively small level of such import taxes and export rebates, the system has grown out of control. Now, 150 nations, including China, use border-adjusted tax schemes to evade the GATT's original intent and inflict trade deficits on the United States.

Fortunately, a distinguished member of the Subcommittee on Trade, Congressman Bill Pascrell (D–NJ), along with Congressmen Duncan Hunter (R–CA), Mike Michaud (D–ME), and Walter Jones (R–NC) have introduced legislation, the Border Tax Equity Act (H.R. 2600), that would stop the charade and force other countries, including China, to abandon these distortions.

H.R. 2600 would direct the United States Trade Representative (USTR) to negotiate a remedy for the VAT inequity on *goods* and *services* within the World Trade Organization (WTO) by January 1, 2009; and,

If there is no negotiated solution by that specified date, the United States then (1) would charge an offsetting assessment at the U.S. border on imports of goods and services equal to the amount of VAT rebated to the exporters by the country with a VAT. In addition, (2) the United States would issue rebates equal to the amount of VAT taxes paid by U.S. exporters on goods that have VAT taxes imposed upon them by other countries.

As an early incentive to produce a negotiated remedy within the WTO, if USTR fails to certify that VAT disadvantage has been eliminated by January 1, 2008, the United States would issue rebates equal to the amount of VAT taxes paid by U.S. exporters on services slapped with VAT taxes when they reach the border of a country imposing VAT taxes. Because such export rebates on services are not prohibited under current WTO rules, imposition of this offsetting measure should not await revision of WTO rules.

Additional Legislation Needed to Combat Other Unfair Chinese Trade Practices

In addition to passing legislation to combat China's fundamental currency misalignment and unfair border taxation scheme, AMTAC supports congressional efforts to ensure: the safety of U.S. food and consumer product imports from China

that China adequately enforces the intellectual property rights of U.S. companies

that China abides by environmental standards

that China desists from using slave labor and engaging other abuses of worker rights.

Quick Facts on U.S. Manufacturing Employment, Deficit, and Markets

- According to the U.S. Bureau of Labor Statistics, seasonally-adjusted employment in U.S. manufacturing fell from 17.285 million to 14.047 million between January 2000 and June 2007—a loss of 3.238 million jobs.
- The U.S. Government also reported that the U.S. trade deficit reached an all-time high of $763.6 billion in 2006, smashing the previous record of $717 billion in 2005.
- With China, the U.S. trade deficit jumped from $202 billion in 2005 to $232.5 billion in 2006. The U.S. trade deficit with China is on pace to exceed $270 billion in 2007.
- For manufactured goods in 2006, the U.S. trade deficit jumped to $525.8 billion, up from $504 billion in 2005. With China, the U.S. trade deficit in manufactured goods was $238 billion in 2006, up from $205 billion in 2005.
- Since 1993, U.S. demand for Durable Goods and Non-Durable Goods has risen by 135 percent and 47 percent, respectively. Despite the healthy growth in de-

mand, imports (often heavily subsidized) have cut heavily into domestic market share as U.S. production of Durable Goods only grew by 68 percent and Non-Durable Goods grew by just 18 percent. Consequently, U.S. domestic manufacturing only has captured 51 percent of growth in demand for Durable Goods and a paltry 39 percent of growth in demand for Non-Durable Goods since 1993.

Conclusion

It is imperative to the immediate health and long-term survival of U.S. manufacturing that Congress adopts a comprehensive policy response to confront China's unfair trade practices. Quick passage of H.R. 2942 and H.R. 2600 would be one key step toward effectively implementing that response. Thank you for your consideration of our views on these important matters.

Statement of Congressman J. Gresham Barrett

Mr. Chairman, thank you for inviting me to testify today. Your knowledge of the range of China trade and trade remedy issues that I am about to testify on is unrivaled in the House. We all appreciate your leadership on these issues and hope that a strong trade bill that levels the playing field with China will pass out of the Ways and Means Committee and be ultimately enacted into law this fall.

As this Committee seeks to strengthen our trade laws to better address China's unfair trade practices, it is essential that any legislation it considers include measures to redress harmful decisions from the World Trade Organization (WTO that are already eroding the effectiveness of our fair trade laws. That's why I am going to focus my testimony on H.R. 2714, legislation that I introduced in June. H.R. 2714 is designed to remedy a series of adverse WTO decisions that have gone beyond the mandate of that organization and if fully implemented will undermine America's ability to restore a fair trade relationship with China. More specifically, this bill supports Bush Administration policy to reverse these problematic decisions and restore the rights and obligations that the U.S. negotiated at the WTO and that Congress created in U.S. law.

Several colleagues have been instrumental in the introduction of this bill. I salute and appreciate the work of my lead cosponsor, Congressman Richard Neal of this Committee. He is a strong support of using our trade remedy laws to address the unfair trading practices of our foreign competitors and I am glad to have him on board. We both understand that Congress must seize this opportunity to defend our trade laws from mis-guided and overreaching decisions from the WTO. America cannot add new tools to the toolbox, while at the same time we allow other tools to become rusty and useless.

It is important that we take this opportunity to bolster our trade remedy laws that already apply to China where they have been undermined by misguided decisions from international bodies.

In this testimony I will address two sets of decisions of particular concern. The first set of decisions, handed down by the WTO, will require the U.S. to give foreign producers credits against dumping and prevent us from measuring and redressing the full amount of dumping that harms our domestic industries and workers. These decisions have been roundly criticized for imposing obligations that the U.S. never agreed to in WTO negotiations. These so-called "zeroing" decisions are of particular concern regarding China, since Chinese imports have accounted for the majority of imports subject to antidumping investigations in the United States in the last three years, and nearly 85% of imports subject to new antidumping orders in that same time period have come from China. The second decision, the *Bratsk* decision from the Court of Appeals for the Federal Circuit, creates a new obstacle (with no basis in U.S. law) to industries that must show they have been injured by unfair foreign trade. I will address both of these decisions in more detail below.

When a court develops an interpretation of a law that departs from the original intent of Congress, the only way for Congress to fix the problem is to clarify its intent by passing new legislation. Similarly, if a WTO decision creates new obligations that countries did not agree to, WTO Members can negotiate with one another to clarify their rights and obligations. Congress, in the Trade Act of 2002, recognized this problem when it mandated that the problem of WTO decisions creating obligations never agreed to by the United States be addressed in multilateral negotiations. My colleagues and I are deeply concerned that these troubling decisions that will seriously undermine U.S. trade remedy laws unless Congress takes corrective action.

We urge you to include the provisions of H.R. 2714 in any China legislation that goes through this Committee in order to ensure that those legal tools that we already have to combat China's unfair trade practices remain as strong and effective as Congress originally intended.

Zeroing

For decades, the U.S. has followed a methodology that allows it to impose antidumping duties equal to 100% of the dumping occurring in our market. In WTO negotiations, the U.S. worked hard to preserve this methodology and rejected other countries' attempts to undermine it. The U.S. Congress voted to approve the WTO agreements with the understanding that they would not weaken this traditional practice under U.S. trade remedy laws.

Now, a series of recent WTO Appellate Body decisions require the U.S. to abandon this well-established methodology and to instead give "credits" to imports that are not dumped. Granting these "credits" will mask the full amount of dumping that is taking place and greatly reduce the effectiveness of our trade remedy laws.

The Administration has recognized that these adverse decisions impose obligations that our negotiators never agreed to at the WTO. The Administration has called the decisions "devoid of legal merit." While part of these decisions has been implemented, some aspects still await implementation by the U.S. In the meantime, in recognition of the serious harm these decisions will cause, the Administration has asked our trading partners to negotiate on this issue to clarify the original intent of the WTO agreements. Only when such clarification is achieved will all WTO parties be assured that they can use their trade laws to effectively remedy all of the unfair dumping injuring their domestic industries.

Our negotiators in Geneva need all of the leverage they can get to succeed in these negotiations. Our bill will would provide them with this leverage by mandating that the Administration seek clarification of its rights in the ongoing WTO negotiations before implementing any of these adverse decisions. By delaying implementation (and by rolling back implementation where it has already begun), the U.S. can safeguard our trade remedy laws and negotiate with our trading partners to ensure U.S. rights are clearly protected under WTO rules.

Bratsk

When an antidumping or countervailing duty case is brought, orders can only be imposed if it is found not only that unfair trade is occurring but also that such trade is injuring the domestic industry. In a 2006 decision, the Court of Appeals for the Federal Circuit created a new additional test that must be satisfied before orders can be imposed. Under its decision in *Bratsk*, the court decided that the domestic industry needs to show not only that the unfairly traded imports at issue are currently causing injury, but also that, if orders are imposed, the domestic industry will benefit from the orders and imports from countries not subject to the orders will not eliminate any such benefit. The decision imposes a new test that is not part of the law Congress enacted. The International Trade Commission has already had to reverse an affirmative determination in one case to comply with the test imposed by the Court. In its reversal, the Commission noted its strong disagreement with the *Bratsk* test, stating that it had no basis in the statute.

This Court decision creates a nearly insurmountable obstacle for U.S. producers seeking relief from unfairly traded imports and forces the International Trade Commission to undertake a costly and difficult new analysis before granting relief. Our bill would restore the original intent of Congress by clarifying the injury standard and reversing this erroneous decision.

Thank you for this opportunity to speak with you today on this very important matter.

Statement of Congresswoman Jan Schakowsky

The Energy and Commerce Committee has held numerous hearings concerning the safety of imported food, prescription drugs, children's products, toys, and other products from China. The Subcommittee on Oversight and Investigations has found that food imported from China poses a threat to American consumers. A flurry of press coverage earlier this year revealed that melamine-tainted wheat gluten from China contaminated pet food and animal feed. Similar stories recently have shown that fish raised on Chinese farms are fed dangerous quantities of antibiotics but are allowed to enter our markets. Despite these major public health dangers, we have found that the understaffed and poorly managed Food and Drug Administration screens only a tiny amount of the food we import and has not kept our food supply

safe. The same is true and even worse concerning the Consumer Product Safety Commission and products under its jurisdiction. I hope that we will be able to change this frightening reality to protect the American food, drug and product supply.

The Energy and Commerce Committee has also worked with the Ways and Means Committee to address the problem of Chinese trade imbalances and currency manipulation. As was asserted in the joint hearing on currency manipulation held on May 9, 2007, China artificially undervalues the renminbi (RMB) by 15 percent to 40 percent. The United States also has a large and growing trade deficit with China—$232.6 billion in 2006. Members of Congress and many prominent economists have sighted that trade imbalance and Chinese currency undervaluation as major problems for the United States economy. Even President Bush said in Toledo in 2004, "We expect countries like China to understand that trade imbalances mean trade is not balanced and fair. They have got to deal with their currency." The drastic undervaluation of the RMB keeps American export industries from competing fairly with their Chinese counterparts. This unfair trading advantage for China promotes the consumption of their exports, while suppressing the consumption of American imports.

In light of the overwhelming evidence that China's currency valuation is hurting the American economy and causing the loss of jobs, we must take immediate action. Unfortunately, despite protestation from Congress and well-respected economists, the Treasury Department refuses to cite China as a currency manipulator. Because of their inexcusable inaction, Congress must enact legislation that would require the Bush Administration to address unfair currency manipulation by China and other countries. I support the efforts of all of the members of Congress who have introduced legislation to combat currency undervaluation. I hope that we will be able to pass legislation this Congress that will force the Bush Administration to hold China accountable for its unfair trading practices.

Again, thank you for convening this important hearing on U.S.-China trade and Chinese currency undervaluation. I hope that the Energy and Commerce Committee and the Ways and Means Committee will continue to work together to develop effective ways to reform United States trade law.

Statement of Consumers for World Trade

On behalf of Consumers for World Trade (CWT), I am writing to express our concerns over apparent efforts to re-write our trade remedy laws that would pass on large costs to American consumers, including the neediest of American families, while also potentially exposing the U.S. to challenges before the World Trade Organization. Specifically, we are alarmed by legislation referred to the Committee on Ways and Means that would correct perceived currency manipulation, as well as call on the Department of Commerce to ignore the extent of fairly traded imports when calculating antidumping duties.

By way of background, CWT is a national, non-profit, non-partisan organization, established in 1978 to promote the consumer interest in international trade and to enhance the public's awareness of the benefits of an open, multilateral trading system to everyone's daily life. CWT is the only consumer group in America whose sole mission is to educate, advocate and mobilize consumers to support trade-opening legislation.

I. Currency Reform

Several pieces of legislation referred to the Committee specifically call on the Department of Commerce to calculate antidumping margins using exchange rates that are adjusted to take into account the extent of perceived currency "misalignment" or "manipulation" as determined by the Department of the Treasury. Provisions of these bills also call for the application of countervailing duty law against non-market economies such as China and Vietnam, and specifically define currency manipulation or "misalignment" as countervailable subsidies. Taken together, these provisions are likely to be found inconsistent with our international trade obligations. The bills we have seen impose these additional burdens on exports and American consumers without considering whether they are addressing "subsidies" or whether they are counting the benefit of a subsidy twice—through concurrent antidumping and countervailing duty cases on the same product. At a minimum, to protect American consumers from excessive taxation, the allowance of antidumping and countervailing duties on products of non-market economies must direct the administering authority to prevent such double-counting.

Article 2.4.1 of the World Trade Organization (WTO) Agreement on Anti-dumping states that antidumping margins must be calculated using currency conversions set by currency markets and not arbitrary estimates set by the administering authorities. Today, there is not a widely established and accurate benchmark to determine the extent by which a currency deviates from its "market" value. Calculating anti-dumping margins to take into account currency manipulation could be determined as in violation of international trade rules and the U.S. could be taken before the WTO's dispute settlement panel. If the panel finds that these provisions violate WTO rules, many U.S. exporters could face high retaliatory tariffs from our trading partners, including China, our fastest growing export market.

We recognize that U.S. trade remedies law is designed to protect domestic U.S. manufacturers from unfair foreign subsidies through higher duties placed on these foreign goods. However, those remedies must be applied in a way that conforms to U.S. obligations under international trade rules. In addition, it must be recognized that the import taxes imposed in these cases are frequently passed on to consumers through higher prices (indeed, these laws intend such a pass-through). Over the past decade, a wide variety of consumer products have been sourced from non-market economies such as China and Vietnam. These imported products have allowed the neediest of Americans to afford a variety of basic goods for their families. In the event that both anti-dumping and countervailing duties are applied to the same imported product without correcting the double-counting problem, the resulting increase in price paid by U.S. consumers could erode these benefits through an unwarranted trade tax imposed on many hard working Americans.

II. Application of "Zeroing" in the Calculation of Dumping Margins

We are also concerned with legislation requiring the Department of Commerce to ignore the impact on dumping calculations of export sales above "normal value"—a practice referred to as "zeroing". As a consumer group, CWT strongly opposes the practice of "zeroing," which uses dubious mathematical procedures to levy unfairly high hidden taxes on American consumers and consuming industries. Not only do these duties inflate the price of finished products for the end user, they threaten the livelihoods of workers in industries that must import their intermediary inputs, an increasingly important part of our manufacturing economy.

The use of "zeroing" when calculating dumping margins also clearly violates our international trade commitments. Several World Trade Organization decisions have rejected the use of "zeroing" in applying anti-dumping margins. The continued use of the practice could lead our trading partners to apply high tariffs on U.S. exports as a punitive measure.

The Department of Commerce already has the statutory authority to abandon the practice of zeroing without authorizing legislation or regulation. In fact, as of February 22, 2007, the Department of Commerce abandoned the practice in original investigations. Consumers for World Trade applauded the Department of Commerce on this decision; however, the assessment of duties after administrative reviews continues to employ the unfair practice of "zeroing." We strongly urge Commerce to abandon "zeroing" in *all* cases, and for Congress to recognize that doing so would benefit U.S. consumers and the American economy.

Statement of Emergency Committee for American Trade

This statement is on behalf of the Emergency Committee for American Trade—ECAT—an association of the chief executives of leading U.S. business enterprises with global operations. ECAT was founded four decades ago to promote economic growth through expansionary trade and investment policies. Today, ECAT's members represent all the principal sectors of the U.S. economy—agriculture, financial, high technology, manufacturing, merchandising, processing, publishing and services. The combined exports of ECAT companies run into the tens of billions of dollars. The jobs they provide for American men and women—including the jobs accounted for by suppliers, dealers, and subcontractors—are located in every state and cover skills of all levels. Their collective annual worldwide sales total over $2.5 trillion, and they employ over six million persons. ECAT companies are strong supporters of negotiations to eliminate tariffs, remove non-tariff barriers and promote trade liberalization and investment worldwide.

THE U.S.–CHINA COMMERCIAL RELATIONSHIP

The United States' commercial relationship with China is one of our most critically important and complex. It has produced both enormous economic gains and challenges for the United States. For example, China is the United States' fastest

growing export market, growing 32 percent last year to $55.2 billion in goods exports.

With 1.3 billion people, China will also be one of the most important world markets for decades to come, providing important economic opportunities to U.S. farmers, manufacturers, service providers and their workers. In 2006, China was the United States' third largest trading partner and could surpass Mexico in 2007 as the United States' largest trading partner in terms of total exports and imports. China continues to be the United States' fourth largest export market worldwide and its second largest source of goods imports. For China, the United States is its largest export market, followed closely by the European Union and Hong Kong. The United States represents China's fifth largest source of imports, after Japan, the European Union, Taiwan, and Korea. U.S. services trade with China has also grown substantially, to $9.1 billion in U.S. services exports to China in 2005 and $6.5 billion in U.S. services imports from China in 2005. U.S. investment flows have expanded considerably to $16.9 billion in U.S. foreign direct investment in China in 2005.

At the same time, China is the source of significant concern in some U.S. sectors, particularly over its lack of full enforcement of intellectual property rights, its discriminatory trade barriers and industrial policies, its lack of transparency and other issues.

Following China's entry into the WTO on December 11, 2001, much of the focus of the U.S. commercial relationship with China has been on its implementation of its WTO commitments. China has made very significant progress in coming into compliance with many aspects of its WTO commitments, including:

- tariff reductions from a base of 25 percent to seven percent;
- reductions in non-tariff barriers, where China eliminated hundreds of WTO-inconsistent requirements;
- trading rights reforms for certain sectors, where China implemented its commitments six months early to allow companies to import and export directly;
- distribution rights reforms in 2005 for certain sectors, where China now allows foreign enterprises to distribute products within China;
- new regulations on foreign-invested insurance companies and the elimination of geographic restrictions on insurance company activity;
- TRQ implementation in 2004 for agricultural products which was finally brought closer in line with China's commitments; and
- expanded market access in a number of services areas.

Despite China's substantial progress and reform, much more work needs to be done by the Chinese government to open its markets to U.S. goods and services and to implement China's WTO commitments. In particular, ECAT companies are concerned about the following key issues in the U.S.-China commercial relationship:

Intellectual Property Rights Protection and Enforcement. While China's laws on the protection of intellectual property have been improving over time, although they still remain deficient in certain areas. Moreover, there remain substantial problems in China's enforcement of such protections. As a result, piracy and product counterfeiting continue to flourish in numerous sectors. China's protection of intellectual property is currently being reviewed in a WTO case filed by the United States.

Government Procurement. At the 2006 U.S.-China Joint Commission on Commerce and Trade (JCCT) meetings with the United States, China committed to initiate formal negotiations to join the WTO Government Procurement Agreement (GPA) and to submit its initial offer of coverage by December 2007. Action in this area is critical to eliminate discriminatory practices that block U.S. participation in China's very substantial governmental procurement market, covering central and sub-central government entities and state-owned enterprises.

- Industrial Policy. China continues substantial governmental intervention in the marketplace that impedes participation of U.S. and other foreign suppliers of goods and services through the use of unique standards and other barriers. For example, China's continues discriminatory preferences for domestic auto parts and technology, which are the subject of a U.S.-brought WTO challenge.
- Financial Services Liberalization. There has been positive reform of China's banking sector, including steps toward the elimination of the single-bank system, implementation of a viable commercial-lending system and the establishment of interbank, equity and forex markets. The issuance in November 2006 of Regulations for the Administration of Foreign-Funded Banks raised, however, additional issues, including inappropriate restrictions on incorporation and on the activities in which foreign banks can engage. As well, new restrictions were imposed in 2006 on foreign providers of financial news. Improvements have

been slower in the insurance sector. However, it is encouraging to note that the CIRC, the Chinese insurance regulator, has taken steps to resolve the long-standing non-life subsidiary conversion issue. Discriminatory branch-licensing practices continue.

- Other Non-Tariff Barriers on Agriculture, Manufactured Goods and Services. China continues to maintain and create burdensome and opaque entry, regulatory, licensing, customs, customs valuation, and other requirements that place major barriers on agricultural, goods and services trade. While progress has certainly been made since China's entry to the WTO, many issues remain, such as China's Compulsory Certification (CCC), barriers to entry and investment, non-scientific and non-commercial barriers in agricultural trade, and China's maintenance of a quota limiting screening to 20 foreign films.
- Transparency. While remarkable progress has been made from the opaque situation that most companies experienced 10 years ago, there remains uneven and inadequate transparency in the promulgation of governmental measures, standards, judicial proceedings and other governmental actions. Lack of full transparency undermines significantly the ability of U.S. companies seeking new or continued market opportunities in China.
- Discriminatory Taxation Policies. While China made progress in lifting its discriminatory tax rebate for certain semiconductors, it continues to maintain and erect discriminatory taxes and apply the value-added tax (VAT) in an uneven and discriminatory manner that undermines the ability of U.S. and other foreign companies to compete on a level playing field. The United States has brought WTO challenges to certain of China's tax policies that it believes constitute WTO-violative subsidies.

PROMOTING CONTINUED IMPROVEMENT IN THE U.S.–CHINA COMMERCIAL RELATIONSHIP

The United States' engagement with China and China's full participation in the global trading system, including China's commitment to and implementation of the rules of that system, are critical to promoting U.S. commercial interests, as well as promoting our country's broader interests in the rule of law and other key issues. How to improve the U.S.-China commercial relationship is the subject of numerous legislative proposals, Administration initiatives and academic and expert analyses. For the companies of ECAT, it is also the subject of their day-to-day business dealings, and their conversations with Congressional leaders and the Administration.

While we provide below a more detailed analysis of some of the primary legislative proposals that the Committee on Ways and Means may consider, we offer here some general comments on key principles for ensuring that new initiatives promote positive change in the U.S.-China relationship. These approaches can oftentimes overlap and build upon each other and should not be viewed as mutually exclusive.

- **Engaging Constructively.** Progress in the United States-China relationship requires, at a minimum, engagement at all key levels of government. Successive U.S. Administrations of both parties have established numerous government-to-government mechanisms and more seem to be developed each year. While there is some concern about overlapping jurisdiction and activities, more dialogue, rather than less, is important and has proven effective in making progress on a variety of issues. For example, the JCCT, first established in 1983, provides a high-level forum to address more immediate trade frictions and promote bilateral commercial opportunities. While not every meeting has produced significant progress, the JCCT has induced China to take additional steps to open its market to U.S. goods and services and is credited with moving China to begin by the end of this year formal negotiations to join the Government Procurement Agreement. Just last year, the United States and China initiated the Strategic Economic Dialogue (SED) to focus on more medium- and long-term issues to improve the bilateral relationship. While complaints exist that the SED has not produced immediate results, that was never its intent, since to do so would make it largely duplicative of the JCCT. Dialogue and engagement do not necessarily produce many short-term results, but are critical if the goal is to help promote enduring and significant reforms.
- **Emphasizing Common Goals**. Like any nation, China has and will be able and interested in moving most quickly on issues that are important from its own domestic perspective. Helping to recast issues as ones that the United States and China share a common interest in addressing is likely to be the most effective way to resolve certain issues. While this approach will not apply to all issues, it is increasingly seen as useful in the following types of areas:

Intellectual Property Protection. China's own scientific, technological and artistic communities are increasingly interested in protecting their own intellectual-property-based works. As well, China's need to address health concerns as a result of poor regulatory oversight could increasingly foster improved protections for pharmaceutical products.

Government Procurement. The Chinese government's own interest in high quality and cost-effective technology and other goods and services can increasingly promote their interest in moving forward in negotiations to join the WTO Government Procurement Agreement. Continued work by the U.S. Government and business in helping to identify China's own interests in joining that agreement could be useful.

Trade in Environmental Goods and Services. China and the United States are actively discussing how to move towards eliminating tariff and other barriers to trade in environmental goods and services, which will enable China to increase its use of state-of-the-art products and services to address its environmental problems.

Financial Reform. Many experts agree that China cannot allow a market valuation of its currency until it more fully reforms its banking and financial sector. While progress has been made in this area, it is also an issue that coincides with U.S. interest in greater, non-discriminatory access for financial-service providers to the Chinese market. More work in establishing common interests in this area could help address key issues for both China and the United States.

Using Multilateral Mechanisms Strategically. It is also important for the United States to employ multilateral mechanisms where appropriate. Use of the WTO dispute-settlement mechanism to induce China's improved compliance with WTO rules represents a highly useful tool. As with other countries, use of the WTO dispute-settlement mechanism is most appropriate where there are clear-cut violations that can be persuasively demonstrated on issues of importance in the relationship. The United States was successful the first two times it raised WTO challenges with the Chinese government:

Discriminatory Tax Treatment of Semiconductors. In March 2004, the Administration filed the first WTO challenge to China's actions, involving China's discriminatory tax treatment of U.S. semiconductors. After consultations in April 2004, the United States and China reached a mutually agreed settlement that addressed the United States' concerns.

Antidumping Action Against U.S. Exports of Kraft Linerboard. Less than 24-hours after the United States indicated that it would be filing a WTO challenge to the Chinese imposition of antidumping duties on U.S. exports of kraft linerboard, the Chinese government completely rescinded the antidumping order, obviating the need for a formal WTO action.

The United States has brought several other WTO cases against China and has, very importantly, won the support of other major trading partners in several of them. These cases involve:

Chinese discrimination against imported automobile parts;
Chinese subsidies;
China's failure to enforce effectively intellectual property rights; and
China's market-access barriers.

ECAT very much welcomes this approach, particularly the efforts to address market-access barriers both in specific industries and more generally and to promote better enforcement of intellectual property protections.

- **Leading by Example**. China's entry into the World Trade Organization in 2001 represented the culmination of years of effort to encourage China's commitment to the rules of the global trading system. China's accession was, however, really just the first step in the long and complicated process of ensuring that China implements those rules fully and effectively. To be effective in promoting China's full integration, however, requires the United States to lead by example and follow the rules-based WTO system it helped create. Proposing or implementing policies that directly contravene or are widely viewed as violating the United States' own international obligations sends a powerful message to the Chinese government that it can do the same. It is not effective in promoting change within China and, if imposed, would most likely harm U.S. credibility and commerce.

Focusing on Key Issues. Congress has focused heavily on China's currency, and ECAT supports work to promote China's adoption of a market-valued currency. For ECAT companies, however, there are numerous important and immediate issues of concern, such as intellectual property protection, subsidies and industrial policy, transparency and market access, as noted above. Indeed, given China's large market, it would seem that more balance can best be achieved in the U.S.-China com-

mercial relationship not by penalizing imports from China—which also penalizes many American consumers and companies—but by focusing on ways to improve access for U.S. farm and manufactured goods and services in China's market.

COMMENTS ON SPECIFIC LEGISLATIVE PROPOSALS

Currency Proposals (H.R. 2942)

H.R. 2942, the Currency Reform for Fair Trade Act of 2007, seeks to address the negative impacts that fundamentally misaligned currencies may have on U.S. competitiveness through a variety of measures that would penalize imports from countries identified as having misaligned currencies. ECAT recognizes the need for and supports policies that promote the adoption of market-determined exchange rates, without substantial government intervention, by countries around the world. Some aspects of this proposal, however, could harm U.S. interests and violate the United States' international obligations, rather than producing the positive changes sought. Key problems with this legislation include the following:

Calculation of Currency Undervaluation. Determining what the proper exchange rate should be where there has been a history of significant government direct or indirect intervention can be a difficult proposition and result in very different findings. In the case of China, different methodologies have produced rates of undervaluation as varied as 5 to over 40 percent, while others have estimated the range of undervaluation of the Japanese yen to the dollar as between 15-to-30 percent. Nevertheless, Section 103(a) directs the Commerce Department to determine whether a currency is fundamentally misaligned based on a simple average of three prescribed methodologies. Section 202 directs the Secretary of the Treasury to use the same three methodologies to calculate any misalignment, but does not direct the Secretary whether to average or choose between the different results. As a result, it is likely that the two Cabinet agencies will reach different results regarding the extent of currency misalignment. Such differences, combined with the unilateral nature of this approach, will undermine U.S. efforts, including the United States' ability to garner international support (as sought by this legislation) to promote countries' improvements in this area.

Deeming Currency Misalignment a Countervailable Subsidy under U.S. Law. Section 103(b) revises U.S. countervailing duty (CVD) law[1] to provide that a misaligned currency represents an actionable subsidy under U.S. CVD law, by deeming that the misalignment represents a "financial contribution" and is a "specific" subsidy. Many believe that currency misalignment does:

> NOT represent a financial contribution from the government, because there is no transfer of anything of tangible value from the government; and does
> NOT constitute a specific subsidy, since all industries in a given country would benefit from currency misalignment, not a select group.

Thus, a number of industry and legal experts believe that Section 103(b) violates U.S. World Trade Organization (WTO) obligations, which define actionable domestic subsidies as ones that in fact provide a financial contribution from a government that give a benefit to a specific industry or industries.

Increase of Antidumping Duties for Currency Misalignment. Section 103(c) requires that the antidumping (AD) duty[2] calculated for a country found to have a fundamentally misaligned currency be adjusted upward to account for that misalignment. This addition to the AD margin is required whenever Commerce finds a fundamental misalignment, whether or not a country is designated for priority action (e.g., has engaged in protracted interventions, excessive reserve accumulations, restrictions in inflows or outflows, or other relevant policy or action). This provision raises several WTO-consistency issues. First, the WTO prescribes one very clear methodology for dealing with exchange rates, which is not this methodology and no other language of the WTO AD Agreement provides clear support for allowing this approach. In the case of a NME country, the application of this provision would

---

[1] Countervailing duty law authorizes the imposition of additional tariffs on imported goods found to be improperly subsidized and to cause injury or the threat thereof to the domestic industry.

[2] Antidumping duties are additional tariffs that are imposed on imported goods found to be sold at "less than fair value" in the United States and that cause injury or the threat thereof to the domestic industry. In a non-NME case, Commerce compares the U.S. sales (the export price) with either sales in the foreign market, sales in a third country market or "constructed value," calculated based on the foreign producer's costs of production. In an NME case, Commerce compares the U.S. price with the cost of production of the product in the NME country, calculated using the NME producer's factors of production (*e.g.*, hours worked, kilowatts of electricity, quantity of inputs), valued using costs and prices in a surrogate, market-economy country.

overcompensate for any currency misalignment, since the NME calculation does not involve the undervalued prices and costs in the home market, but uses surrogate valuation. This could be challenged as a further violation of U.S. international obligations. Finally, given the inability to calculate precisely the actual misalignment level, this calculation would likely be challenged as an inaccurate and unilateral penalty that other countries might seek to replicate in retaliation against the United States.

Other Penalties. Section 206 directs the Administration to impose several penalties on a country that has a fundamentally misaligned currency designated for priority action, including the denial of financing by the Overseas Private Investment Corporation (OPIC) or by multilateral development banks. The former penalty will most likely hurt U.S. exporters relying on OPIC financing to help them compete in foreign markets, to the benefit of foreign competitors. The denial of multilateral bank financing also raises issues by preventing or delaying poverty-reducing projects from moving forward. In both cases, the penalty is automatically imposed after the finding of a misaligned currency for priority action, thereby undermining any chance for significant progress in the consultations Treasury is required to initiate with such countries.

Lack of Presidential Waiver. Unlike S. 1607, which was introduced earlier and contains some similar provisions, H.R. 2942 does not permit the President to waive any of the penalty actions involving CVD or AD rates, or the other penalties for reasons of national security or economic benefit or harm. Coupled with the automaticity of imposition of many of the penalty actions, the failure to provide such discretion is likely to have unintended consequences. For instance, the Administration could be engaging in productive consultations, only to have the other government walk away as a result of the mandatory application of several penalties. Given the highly complex issues involved, legislation should not go forward in this area without appropriate Presidential waivers on both national security and economic grounds.

As drafted, H.R. 2942 would be counterproductive to promoting progress in the U.S. China commercial relationship and would undermine the United States' credibility in promoting a rules-based trading system.

Application of Countervailing Duty Law to Non-Market Economy Countries (H.R. 1229)

H.R. 1229, the Nonmarket Economy Trade Remedy Act of 2007, seeks to ensure that the U.S. Department of Commerce applies the countervailing duty (CVD) law to products from non-market-economy (NME) countries, such as China, Vietnam and Armenia;[3] sets specific benchmarks in the subsidy calculations and requires Congressional approval before a country can be graduated from NME status.

While the CVD provisions are silent with respect to NME countries, from 1984 until 2007, the Commerce Department refrained from applying the CVD law to NMEs, given the difficulty in determining individual subsidies in NME markets because of widespread governmental intervention. The Federal Circuit upheld Commerce's discretion not to apply the CVD law to NME countries in *Georgetown Steel Corp.* v. *United States (1984)*. In its 2007 preliminary determination involving Coated Free Sheet from China, Commerce found that it could identify subsidies in NME cases. Several other CVD cases against imports from China have been filed.

Notably, AD rules have long included a special NME mechanism that seeks to create a benchmark that better approximates market-economy costs of production. Rather than relying on NME producers' actual costs or prices, the AD rules require Commerce to compare the price of the product sold in the United States (the export price) with the cost of production in the foreign country, calculated using the NME producer's factors of production (e.g., hours worked, kilowatts of electricity, quantity of inputs), valued using costs and prices in a surrogate, market-economy country at a similar level of economic development.

While the intent of H.R. 1229 to ensure that the countervailing duty law is applied to NMEs is relatively non-controversial, this legislation contains several problems that need to be corrected so that it is constitutional, in compliance with U.S. international obligations and demonstrates that the United States continues to be a strong supporter of the rules-based system. In particular, this legislation should be modified to:

[3] As defined in the Omnibus Trade and Competitiveness Act of 1988, an NME country is one that the Commerce Department finds "does not operate on market principles of cost or pricing structures so that sales of merchandise in such country do not reflect the fair value of the merchandise" based on its analysis of several factors, including currency convertibility, freely bargained wage rates, and governmental control in the market.

Eliminate the Legislative Veto on NME Graduation. The current proposals violate the Constitution's presentment clause by allowing Congress to veto an Administration action (the graduation of a country from NME to market-economy status) by failing to pass a joint resolution. This is a form of a legislative veto that the Supreme Court has rejected. This provision also undermines the ability to use the graduation criteria to promote economic reforms sought by Congress (such as currency convertibility) and sends the wrong signal to other countries, which are increasingly blocking U.S. exports through the misuse of trade-remedy provisions. Far preferable would be a consultation and layover process that requires that a country's graduation to market-economy status can only take effect 60 days after the Administration provides Congress with a full explanation of how the graduating country meets the legislative criteria. This approach holds Commerce accountable and permits full Congressional review.

Eliminate the WTO-Violative Subsidy Benchmark Presumption. The current provisions explicitly violate the WTO terms under which subsidy benchmarks are to be calculated. The United States (and all other WTO members) agreed to use benchmarks within China, unless special difficulties exist as part of China's accession. Similarly, the 2004 WTO Appellate Body decision in Final Countervailing Duty Determination with Respect to Softwood Lumber from Canada (WT/DS257/AB/R) found that out-of-country benchmarks in subsidy cases could only be used in "limited" circumstances where in-country benchmarks are "distorted." H.R. 1229 effectively reverses this presumption and violates U.S. WTO obligations. To avoid unnecessary WTO challenges and promote continued U.S. credibility as the United States seeks to promote improved WTO compliance by China and other countries, this benchmark provision must be dropped or modified in a manner consistent with U.S. obligations.

Add Language to Promote Fair and Proper Calculations. As U.S. companies are increasingly facing antidumping actions for goods exported to China and elsewhere, it is imperative that the United States seek to maintain the fairest possible trade-remedy laws. Given the use of surrogate methodology for NMEs under the AD laws, application of the CVD laws on the same products raises a strong possibility of double-counting the same subsidy (since under the AD methodology, costs and prices are based on non-NME costs and prices from surrogate countries that are not subsidized). It is critical to provide Commerce the explicit authority to ensure fair calculations that do not double-count subsidies.

Limitation of Presidential Discretion in Section 421 Safeguard Cases

Various pieces of legislation, such as Section 401 of S. 364 seek to eliminate presidential discretion to waive or modify remedies for economic interest reasons in section 421 safeguard cases involving imports from China. Denying presidential discretion in China safeguard cases is punitive and will likely result in substantial harm to other domestic industries and workers.

Section 421 cases involve products that are fairly-traded, but which are found to come into the United States in substantial quantities. Such cases involve a very low injury threshold—market disruption—compared to both antidumping and countervailing duty cases (where material injury or the threat thereof must be demonstrated). The independent ITC makes a recommendation to the President on what, if any, remedy should be imposed and the President has the ability, weighing both economic and national security interests, to modify or not apply any remedy.

Given that this provision involves fairly-traded goods and a very low injury threshold, the retention of presidential discretion for section 421 safeguard cases is very much needed to prevent the misuse of such provisions from disrupting other major parts of the U.S. economy.

Other Antidumping/Countervailing Duty Proposals

We also understand that a number of other antidumping and countervailing duty proposals may be considered as part of China trade legislation, such as zeroing and changes to the material injury standard. ECAT would note that trade remedy laws in the United States and throughout the world have become increasingly complicated, as global relationships and commerce have expanded. Changing U.S. trade remedy law should be undertaken with great care and much review of the effects of those changes on all U.S. industries, including the need for U.S. manufacturers and farmers to be able to access foreign markets without the unfair and anti-competitive misuse of such remedies. As well, even through goods from China have increasingly been subject to U.S. trade-remedy actions, these laws have much broader effect on imports from around the world. Thus, changes to these rules should not be occasioned by one country. This is quite important for U.S. industries, as U.S.

exports themselves are increasingly subject to Chinese and other governments' actions under their own antidumping rules.

To the extent changes are considered, ECAT very strongly urges that those changes, like other legislation, represent WTO-consistent policies that will continue to support the United States' leadership in the rules-based trading system.

CONCLUSION

ECAT welcomes the opportunity to provide these comments on ways to improve the U.S.-China commercial relationship. As indicated above, ECAT very strongly urges that the United States continue on the path of constructive dialogue and engagement, using WTO and other mechanisms to promote continued efforts at reform. ECAT strongly urges the Committee not to adopt WTO-inconsistent legislation or proposals that will undermine U.S. leadership in the rules-based trading system it helped to create.

Law Offices of Stewart and Stewart
Washington, DC 20037
August 16, 2007

Hon. Charles B. Rangel, Chairman
Committee on Ways and Means
Hon. Sander M. Levin
Chairman, Subcommittee on Trade
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairmen Rangel and Levin:

These comments are submitted on behalf of the Law Offices of Stewart and Stewart. For nearly fifty years, Stewart and Stewart has specialized in domestic trade remedies law, participating in hundreds of investigations and reviews under U.S. antidumping, countervailing duty, and other trade remedy laws on behalf of U.S. manufacturers, farmers, ranchers, and workers.

First, we applaud the Ways and Means' Subcommittee on Trade for holding hearings earlier this month on the important issues of legislation related to trade with China. Congress has long supported strong and effective trade remedy laws to ensure that expanded trade was also trade that complied with fair trade rules so that workers and their families, companies and the communities of America could compete on the basis of efficiency and innovation and not because of closed markets, government largesse or other distortions that prevent Americans from having a fair opportunity to compete. As stated in the Trade Act of 2002, support for expanded trade will not exist in America if U.S. trade remedies are not usable and effective.

In the hearing held on August 2nd of this year, three topics were discussed. The first, ensuring that U.S. countervailing duty law is applicable to all countries, not just to market economies, is important, although developments in the case law at the Department of Commerce make the changes being considered by the Committee and its Trade Subcommittee mainly about codifying recent actions by the Department. We are supportive of both the actions taken to date by Commerce and of the legislation considered by the Subcommittee.

A second issue examined in the hearing is how problems with the valuation of other currencies can or should be addressed by U.S. law. This is obviously a critically important issue since misaligned currencies hurt our exporters by making U.S. exports more expensive than they should be, and hurt our domestic producers of agricultural and industrial goods by making imports artificially inexpensive. It is in the global trading system's interest to have rational currency policies and rates reflective of underlying economic strengths. While there has been considerable discussion of how best to address the issue, the trade approach reviewed in the bill before the Committee and Subcommittee sounds in WTO rights and would appear to be certainly one way to move forward on this important issue.

Finally, and (from our perspective of what is needed to ensure that existing trade remedies remain effective) most importantly, there is a need to address two constructions of either U.S. obligations and/or U.S. law that are harmful to maintaining the effectiveness of U.S. trade remedy laws. While the issues involved pertain to all antidumping and (for one issue) all countervailing duty cases, they are also critically important in ensuring our trade remedy laws work vis-à-vis one of our largest trading partners, China. As the Subcommittee noted in its Advisory on the August 2

hearing, "China is a major source of dumped and injurious imports, with nearly 85% of imports subject to new antidumping orders since 2004 originating from China, and it has many subsidy programs that could distort trade between the United States and China." TR–5 at 2 (July 26, 2007).

I. Congressional Action Is Needed to Ensure WTO Dispute Settlement Decisions Comply with the Limits within the Dispute Settlement Understanding and Do Not Undermine the Effectiveness of U.S. Antidumping Law by Creating Obligations Never Agreed to by the U.S.

While most trading nations are generally pleased with the operation of the WTO's dispute settlement system, since at least 2002, Congress has identified a concern that in the trade remedy area, panels and the Appellate Body were rendering decisions not anchored in the agreements, essentially creating obligations not agreed to by the United States. While DSU Articles 3.2 and 19.2 limit the power of panels and the Appellate Body by indicating that they cannot create rights or obligations not contained in the underlying agreements, unfortunately, there is no easy way to enforce such limits when the Appellate Body reaches a decision that is palpably inconsistent with U.S. rights.

On the issue of how weighted average dumping margins are calculated (a critical issue in the administration of U.S. law), a series of WTO Appellate Body rulings are invented obligations ignoring long standing practice, and even better reasoned panel decisions. So off the mark have these decisions been that the Administration has told U.S. trading partners that overreaching WTO decisions on "zeroing" must be resolved through negotiations in the on-going Doha Round of negotiations at the WTO. Congress can help make such a resolution a reality by ensuring that the WTO "zeroing" decisions are not implemented until such negotiations succeed. While trading partners typically implement adverse decisions, this is not always the case, particularly where issues are of significant importance to the member who seeks clarification through ongoing negotiations. Thus, the EU has lagged in its implementation of certain issues as have Canada and Brazil. The WTO gives members the ability to choose not to comply. Thus, active pursuit of the resolution of the erroneous construction of obligations through negotiations is not only permissible but critically important where, as here, both Congress and the Administration have noted the erroneous nature of the decisions made.

Thus, we encourage the Committee and Subcommittee to include the legislative language in H.R. 2714 in any trade legislation that it moves forward this year. Trading partners need to understand that the issue is of great importance and resolution through negotiations is the appropriate avenue for addressing a troubling series of decisions. We believe that the bill sends that message. Enactment will also help focus the WTO on the periodic problem of overreaching by the WTO Appellate Body and the need to find approaches which in fact have the Appellate Body operating within the confines of the Dispute Settlement Understanding.

A. U.S. Practices Challenged at the WTO Are Needed to Redress 100% of the Dumping Occurring in the Market

Since the creation of the Antidumping Act of 1921, U.S. trade policy has provided a remedy to U.S. producers harmed by international price discrimination that results in goods being exported to the U.S. at a price below the good's normal value. This basic right to address injurious dumping was included in GATT Article VI in the late 1940s and has been maintained ever since. Since the beginning of U.S. law, all injurious dumping was addressable through the imposition of a duty equal to 100% of the dumping found on individual transactions. Where an imported article was not dumped, no duties were assessed. Never in the history of U.S. antidumping law has dumping found been excused because some imports were not dumped. Yet that is what the Appellate Body indicates is the correct construction of WTO obligations. Importantly, virtually every one of our trading partners with active trade remedy laws has used similar approaches. Even today, most of our trading partners ensure that all duties to be collected are in fact collected. In assessments, we are unaware of any major country which gives "credit" for non-dumped sales.

Indeed, the European Union which challenged the U.S. in one of the WTO challenges, continues to sum all dumping found even in investigations whenever they find prices vary significantly to accounts, regions or during different time periods. Stated differently, the EU "zeros" non dumped sales in investigations in certain circumstances. In such an environment, the correct course of action is to maintain our longstanding system and pursue a negotiated resolution with our trading partners. This is what H.R. 2714 would ensure occurs.

B. *WTO* Dispute Settlement Panels and the Appellate Body Have Made Erroneous, Overreaching Decisions on "Zeroing," Creating Obligations to Which the U.S. Never Agreed

From the beginning of the GATT, it was recognized that countries had the right to address injurious international price discrimination through the imposition of dumping duties. According to Article VI:1 of GATT 1994, injurious dumping is to be "condemned." Article VI:2 of GATT 1994 further explains that the purpose of antidumping duties is to "offset or prevent dumping." The entire focus of Article VI of GATT 1994 is to set out what member states can do to counteract dumping,[1] and the Antidumping Agreement elaborates upon the provisions of Article VI. The United States was a major participant in the creation of the GATT and in the negotiation of the current Antidumping Agreement. At all times during these negotiations, the U.S. understanding of its rights has been the same—that it may collect antidumping duties on 100% of the dumping that it finds. No duties are collected on imports that are not dumped. This is just like other government regulation of conduct that needs to be controlled. You receive a ticket if you are caught speeding. You don't get a ticket when you are obeying the speed limits or traveling below the speed limit. You certainly don't receive credit because you weren't speeding a mile back. The concept of the "credit" or "offset" is nonsensical in that context and is similarly nonsensical in the trade remedy area.

Yet, in a series of decisions, beginning with *E*C—Bed Linen, and continuing through U.S. Softwood Lumber V, U.S.—Zeroing (EC), and U.S.—Zeroing (Japan), WTO Appellate Body decisions have, for various and changing reasons, found that imports that are not dumped actually constitute a basis for reducing the amount of dumping found. Such an obligation cannot be found in the Antidumping Agreement. Indeed, U.S. negotiators during the Uruguay Round understood that efforts to introduce such a nonsensical approach had been rejected and defeated:

This interpretation of the Agreement creates an obligation to which the U.S. did not agree, and, even more disturbing, it imposes upon the U.S. an obligation that the U.S. affirmatively opposed and successfully prevented from being incorporated into the WTO Antidumping Agreement.[2]

Not surprisingly, therefore, the Administration has been consistently critical of the reasoning, or lack thereof, in the "zeroing" decisions:

- "The United States had grave concerns about whether the Appellate Body had properly applied the special standard of review under Article 17.6(ii) of the Anti-Dumping Agreement." Dispute Settlement Body, Minutes of the Meeting (May 12, 2001), WT/DSB/M/101 (May 8, 2001).
- "There was a widespread view among the GATT Contracting Parties—including Canada—that such offsetting had not been required in the years and decades before the WTO Agreement, and they had continued in this view as WTO Members after 1995." Statement of the United States at the adoption of the Panel and Appellate Body Reports in Softwood Lumber (WT/DS264) (Aug. 31, 2004).
- "[T]he United States remains of the view that the Appellate Body report in [the U.S. Zeroing (EC)] dispute is a deeply flawed document." Statement of the United States on implementation of the Panel and Appellate Body Reports in Zeroing (EC) (WT/DS294) (May 30, 2006).
- "[T]he sum total of the Appellate Body's findings on the zeroing issue over the past several years calls into question whether the major users of the antidumping remedy began breaching that Agreement the very day it went into effect in 1995. This is a surprising result. Presumably the Members who negotiated the Agreement understood its meaning." Statement of the United States at the adoption of the Panel and Appellate Body Reports in Zeroing (Japan) (WT/DS322) (Jan. 23, 2007).

In the Trade Act of 2002, Congress recognized that "[s]upport for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements," noting that, "the recent pattern of decisions by dispute settlement panels of the WTO and the Appellate Body to impose obligations and restrictions on the use of antidumping, countervailing, and safeguard measures by WTO mem-

[1] *U.S.—1916 Act (EC) (Panel)*, Panel Report, at paras. 6.103, 6.106–107, 6.114.

[2] Letter from Eric I. Garfinkel, Former Assistant Secretary of Commerce for Import Administration (1989–1991), and Alan M. Dunn, Former Assistant Secretary of Commerce for Import Administration (1991–1993), to the Secretary of Commerce and the U.S. Trade Representative (Jun. 20, 2005).

bers—has raised concerns."[3] Congress expressed concern that WTO dispute settlement panels and the Appellate Body "apply the standard of review contained in Article 17.6 of the Antidumping Agreement,—[and] provide deference to a permissible interpretation by a WTO member. . . ."[4] The accompanying Senate report stated that the concerns expressed in the legislation were prompted by "recent decisions placing new obligations on the United States . . . which are not found anywhere in the negotiated texts of the relevant WTO agreements."[5] That report specifically refers to the decision in *EC—Bed Linen*, wherein the "zeroing" issue was first addressed.[6]

More recently, Members and Senators have written letters to the Administration about the continuing problem of WTO overreaching in the "zeroing" cases. In November 2006, Representatives Cardin and Levin wrote to Ambassador Schwab about their "continuing serious concern with regard to decisions of the World Trade Organization Appellate Body (AB) addressing the issue of 'zeroing' in antidumping proceedings."[7] Likewise, in December 2006, eleven Senators wrote to Secretary Gutierrez and Ambassador Schwab to express: concern about the continuing pattern of World Trade Organization (WTO) Appellate Body decisions addressing the issue of "zeroing" in antidumping proceedings. Without question, the Appellate Body is creating obligations not included in the WTO agreements and never accepted by the United States. We are deeply troubled that U.S. trade remedy laws are being undermined by WTO overreaching on the "zeroing" issue.[8]

Chairman Rangel and Chairman Baucus of the Senate Finance Committee also wrote to Secretary Gutierrez and Ambassador Schwab seeking delay of the implementation of the decisions because of their own "concern that the Appellate Body decision at issue involves an attempt to impose unilaterally obligations on a WTO Member—in this case, the United States—without its prior consent."[9]

Outside observers and academics have also questioned the validity of the "zeroing" decisions.[10]

In such circumstances, it is important for Congress to indicate such wrongly decided decisions will not be implemented. Rather, negotiations should be mandated and pursued aggressively by the Administration. Indeed, the Administration has indicated "zeroing" must be addressed through negotiations. Specifically, in its request, the U.S. explained why negotiations are needed:

A prohibition of zeroing, or a requirement to provide offsets for non-dumped transactions, simply cannot be found in the text of the AD Agreement. Nevertheless, the Appellate Body concluded that authorities are required to offset non-dumped comparisons against dumped comparisons, even though this conclusion is at odds with long-standing practices implementing AD Agreement provisions relating to, among other things, targeted dumping and prospective normal value systems, as well as with long-held views on the very concept of dumping itself. The issue of zeroing, on which Members could not reach agreement in the Uruguay Round, should not be left to dispute settlement. We as Members should endeavor to reach an agreement on this issue through negotiation.[11]

Too many trading partners seem to be taking the position that they need not negotiate with the United States. With a 90% violation rate found by the Appellate Body on cases brought, many governments seem to believe that they can and will achieve through negotiations concessions from the United States that the government would never agree to because of the underlying policies and constituent positions. Implementing truly egregious decisions simply encourages such an approach contrary to the rights and interests of the United States and the stated structure and purpose of the WTO generally. As a leading promoter of the WTO, the U.S. has an obligation to see that the system works properly, that the Appellate Body does

---

[3] 19 U.S.C. § 3801(b)(3).

[4] 19 U.S.C. § 3801(b)(3).

[5] S. Rep. No. 107–139, at 6 (2002).

[6] *Id.* at 7, n.1

[7] Letter to Ambassador Susan C. Schwab from Representatives Benjamin L. Cardin and Sander M. Levin (November 27, 2006).

[8] Letter to Secretary Carlos M. Gutierrez and Ambassador Susan C. Schwab from Senators Rockefeller, Baucus, Craig, Durbin, Crapo, Byrd, Voinovich, Conrad, Graham, Bayh, and Dole (December 11, 2006).

[9] Letter to Secretary Carlos M. Gutierrez and Ambassador Susan C. Schwab from Chairman Charles B. Rangel (Committee on Ways and Means) and Chairman Max Baucus (Committee on Finance) (January 19, 2007).

[10] *See, e.g.*, Greenwald, John, *WTO Dispute Settlement: An Exercise in Trade Law Legislation?*, 6(1) J. Int'l Econ. Law 113, 120 (2003); Alford, Roger P., *Reflections on U.S.-Zeroing: A Study in Judicial Overreaching by the WTO Appellate Body*, 45 Colum. J. Transnat'l Law (2006).

[11] *United States—Offsets for Non-Dumped Comparisons*, Communication to the Negotiating Group on Rules, TN/RL/W/208 (June 5, 2007).

not impose obligations on members contrary to the limitations in the DSU, and that trading partners engage in negotiations to resolve issues not contemplated in the existing agreements. Such an approach promotes the proper functioning of the WTO system and ensures long-term support for the multilateral trading system and its rule of law.

Legislation has been introduced (H.R. 2714) that would mandate resolution of the "zeroing" issue through negotiations and ensure that resolution through negotiations is the approach that is pursued. Passage of this legislation will ensure that U.S. producers and workers are protected from negative impacts arising from these erroneous WTO decisions while an agreement to address these decisions is reached in Geneva.

II. Legislation on China Trade Should Ensure Effective Relief Is Available to Industries and Workers Harmed by Unfair Trade

As the House Ways and Means Committee considers legislation related to trade with China, there are additional measures that would help ensure that U.S. trade laws provide effective relief to industries harmed by unfair trade by China and other countries.

First, Congress should take action to address a decision by the U.S. Court of Appeals for the Federal Circuit that will significantly weaken U.S. trade remedy laws. The Court imposed a new test that must be met before an industry can receive relief from unfair trade. The decision requires the International Trade Commission not only to find that unfairly traded imports are a cause of injury to the domestic industry, but also to engage in a speculative, hypothetical inquiry to determine whether or not imports from countries that are not subject to investigation would cancel out the benefits of import relief if any relief is granted. This test has no basis in the law, and it is a dramatic departure from longstanding construction of U.S. law by the U.S. International Trade Commission. The test will make injury investigations much more costly, and it will diminish the likelihood of relief to America's producers and workers that have been harmed by unfair trading practices. Congress has the opportunity to correct this erroneous decision and re-affirm the intent of the trade remedy laws by enacting language in H.R. 2714 that would restore the law to its original meaning.

We appreciate this opportunity to submit our views.

Statement of the National Pork Producers Council

The National Pork Producers Council is a national association representing 44 affiliated states that annually generate approximately $15 billion in farm gate sales. The U.S. pork industry supports an estimated 550,200 domestic jobs, generates more than $97 billion annually in U.S. economic activity, and contributes over $34 billion to the U.S. gross national product.

Pork is the world's meat of choice. Pork represents 40 percent of total world meat consumption. (Beef and poultry each represent less than 30 percent of global meat protein intake.) As the world moves from grain based diets to meat based diets, U.S. exports of safe, high-quality and affordable pork should increase. This is because economic and environmental factors dictate that pork can be most efficiently produced in grain surplus areas, such as the United States, and imported into grain deficit areas. However, the ability of the U.S. pork industry to leverage its natural advantages, depends on continued agricultural trade liberalization and increased market access for U.S. pork exports.

FOREIGN COUNTRY MARKET ACCESS IS CRITICAL TO U.S. PORK PRODUCERS

Foreign country market access for U.S. pork exports is critical for U.S. pork producers. In 2006, the United States exported 1,262,499 metric tons of pork valued at $2.864 billion. This is a 9 percent increase over 2005 pork exports in volume and value terms. 2006 was 15th straight year of record pork exports. U.S. exports of pork and pork products have increased by more than 433 percent in volume terms and more than 401 percent in value terms since the implementation of the NAFTA in 1994 and the Uruguay Round Agreement in 1995, both of which improved market access for U.S. pork producers. Pork exports have grown because of these and subsequent trade agreements.

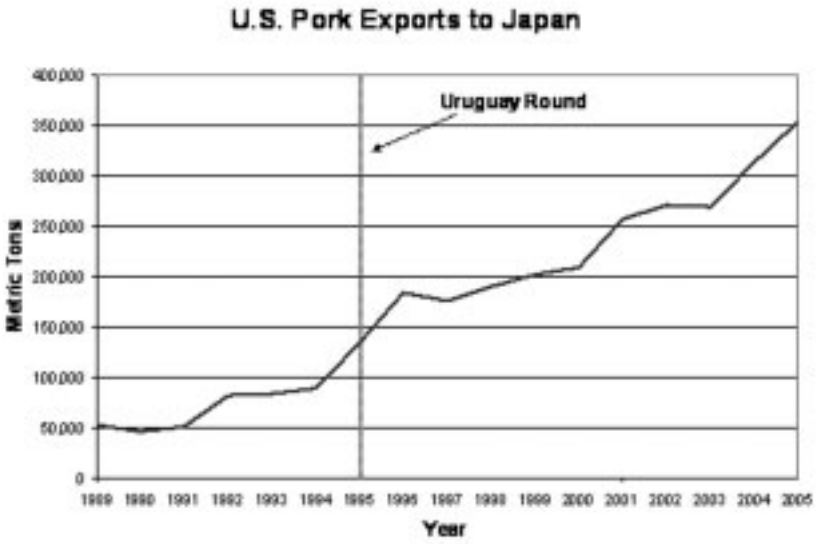
U.S. pork producers have increased their exports to many countries as a result of market access opening commitments within the context of the World Trade Organization (WTO). We highlight below a few of the markets that have grown.

Japan

Thanks to a bilateral agreement with Japan on pork that became part of the Uruguay Round, U.S. pork exports to Japan have soared. In 2006, U.S. pork exports to Japan reached 337,373 metric tons valued at just over $1 billion. Japan remains the top value foreign market for U.S. pork. U.S. pork exports to Japan have increased by 279 percent in volume terms and by 178 percent in value terms since the implementation of the Uruguay Round.

China

From 2005 to 2006, U.S. exports of pork and pork products to China increased 13 percent in volume terms, totaling 88,439 metric tons valued at $126 million. U.S. pork exports have increased because of the increased market access resulting from China's accession to the WTO. Since China implemented its WTO commitments on pork, U.S. pork exports have increased 53 percent in volume terms and 90 percent in value terms. China's adherence to WTO rules, including rules governing antidumping and countervailing duties, and sanitary and phytosanitary norms, is essential to U.S. pork producers' ability to increase their exports to this vast market.



Russia

In 2006 U.S. exports of pork and pork products to Russia totaled 82,677 metric tons valued at $164 million—a 105 percent increase in volume terms and 127 percent increase in value terms over 2005. U.S. pork exports to Russia have increased largely due to the establishment of U.S.-only pork quotas established by Russia as part of its preparation to join the World Trade Organization. (The spike in U.S. pork export to Russia in the late 1990s was due to pork shipped as food aid.)

Benefits of Expanding U.S. Pork Exports

Prices—The Center for Agriculture and Rural Development (CARD) at Iowa State University has calculated that U.S. pork prices in 2004 were $33.60 per head higher than they would have been in the absence of exports.

Jobs—The USDA has reported that U.S. meat exports have generated 200,000 additional jobs and that this number has increased by 20,000 to 30,000 jobs per year as exports have grown.

Income Multiplier—The USDA has reported that the income multiplier from meat exports is 54 percent greater than the income multiplier from bulk grain exports.

Feed Grain and Soybean Industries—Each hog that is marketed in the United States consumes 12.82 bushels of corn and 183 pounds of soybean meal. With an annual commercial slaughter of 105.3 million animals in 2006, this corresponds to 1.34 billion bushels of corn and 9.63 million tons of soybean meal. Since approximately 15 percent of pork production is exported, pork exports account for approximately 201 million bushels of corn and 1.44 million tons of soybean meal.

As the incremental benefits from the Uruguay Round and NAFTA begin to diminish because the agreements are fully phased-in, the creation of new export opportunities becomes increasingly important. U.S. achievements in bilateral and regional free trade agreements to increase market access for U.S. exports could be severely undermined or even eliminated if tariff reductions scheduled in these agreements are counteracted by antidumping duties on U.S. exports—effectively one duty replaced with another (perhaps even higher)—or through other sorts of barriers to trade.

CHANGES TO U.S. TRADE LAWS SHOULD NOT UNDERMINE MARKET ACCESS FOR U.S. EXPORTS

With 96 percent of the world's population residing outside of the United States, it is essential that U.S. pork producers continue to gain access to more of these potential customers. While pork exports have grown in recent years, future growth depends on further trade liberalization and increased market access for U.S. exports.

Legislation that has been introduced in this Congress to modify U.S. trade laws should be evaluated based on its impact on market access for U.S. exports. Specifically, in considering changes to U.S. trade laws, Congress should consider the possible impact on the ability of the United States to lead in compliance with global trading rules established under the WTO, which have significantly benefited the U.S. pork industry and other exporting industries.

Changes to U.S. trade laws should not set precedents that if imitated by other countries would impede market access for U.S. exports. Countries' trade laws, including trade remedy laws, as well as their compliance with WTO rules and dispute settlement body decisions, can significantly impact the U.S. pork industry's ability to export.

U.S. exports are increasingly subject to actions under other government's antidumping rules. The United States is no longer the biggest user of antidumping measures. Instead, it has become one of the most targeted countries for such measures. Only China, Taiwan and Korea have been subject to more antidumping actions since 1995 than the United States. 275 actions have been initiated and 104 measures taken against the United States. China and India have become by far the biggest users of antidumping measures, with other developing countries like Mexico and Argentina following them. Some 100 of the WTO's 151 members have antidumping legislation in place and about 80 of them have used it (counting the European Union's 27 members plus the European Commission).

As a result of the significant increase in cases and measures imposed against U.S. exports, the United States must evaluate the effect of changes to its trade laws on compliance by China and others with WTO rules. U.S. compliance with WTO rules sets an example to the rest of the world, and, therefore, is critical for maintaining and improving market access in other countries for U.S. exports of pork and other products.

In this context, the NPPC is particularly concerned with the following proposals to modify U.S. trade laws.

"Zeroing"—One legislative proposal would insert into the U.S. statute a practice known as "zeroing," which the U.S. Department of Commerce effectively has rejected for antidumping investigations following decisions by the WTO that the practice is inconsistent with WTO rules. Zeroing artificially inflates antidumping margins by changing negative dumping margins to zero in the dumping calculation. Modifying U.S. law in line with this proposal could encourage other countries to adopt zeroing, which would inflate the antidumping duties imposed on U.S. imports to those countries. Additionally, inserting into U.S. law a provision found to be in-

consistent with WTO rules would seriously undermine U.S. leadership in promoting compliance with WTO rules and decisions, especially by newer WTO members such as China and aspiring members such as Russia.

WTO Dispute Settlement Review Commission—Another proposed measure would block U.S. implementation of WTO dispute settlement body decisions. Implementation would take place only if a proposed Review Commission approved implementation. Non-implementation or untimely implementation of WTO dispute settlement body decisions would send a strong no-confidence signal by the United States in the WTO and its dispute settlement system. A vote of no confidence could jeopardize compliance by other countries with WTO rules and decisions, which have been crucial to advancing U.S. export interests around the world.

Other Trade Remedy Law Modifications—Several other proposals that would modify U.S. antidumping and countervailing duty laws (subsidy) would also raise WTO-consistency concerns that could undermine U.S. ability to encourage greater market access for U.S. exports. For instance, proposals to modify U.S. antidumping and countervailing duty laws to target currency undervaluation should be evaluated carefully in light of U.S. obligations pursuant to WTO rules. For example, U.S. law must be consistent with WTO antidumping rules that specifically address exchange rates in antidumping calculations and with WTO subsidies rules that require that subsidies benefit a specific industry or industries. In general, currency undervaluation affects a wide variety of export products, rather than a specific industry.

Another proposal would permit the application of U.S. countervailing duty laws and rules to non-market economies (NMEs), such as China and Vietnam. Until very recently, the U.S. Department of Commerce rejected the application of subsidies rules to NMEs. U.S. antidumping rules for NMEs already took into account the unreliability of price and cost information from companies operating in NMEs by relying on surrogate market values. The current proposal, long-rejected by the U.S. Department of Commerce, should be carefully scrutinized to ensure that it does not contravene U.S. obligations under WTO rules.

CONCLUSION—U.S. LEADERSHIP ON GLOBAL TRADING RULES IS CRUCIAL FOR U.S. EXPORTS

Implementing laws that are widely viewed as inconsistent with WTO rules sets an example for other countries to do the same. Reciprocal action by other countries, which are crucial export markets for the U.S. pork industry, would be disastrous for U.S. pork producers.

The priority for the United States should be to lead the charge for improvements to other countries' trade laws that would improve market access for U.S. exports. For instance, a proposal in the current negotiations on trade remedy rules in the Doha Round would require more transparency from other countries by subjecting their antidumping and subsidy laws and regulations to periodic review by the WTO Secretariat. The U.S. system already is among the most transparent, if not the *most* transparent, in the world. Other countries should be required to increase the transparency of their systems. But this and other opportunities for positive change in the context of the negotiations could be jeopardized or lost as a result of U.S. actions that clearly contravene members' rights under the WTO.

The leadership role of the United States is particularly important in helping to push forward the Doha Round negotiations. One of the biggest problems bedeviling the current negotiations is that many developing countries do not see clearly enough the benefits of WTO commitments to meeting their development objectives. These countries must have a basis to believe that developed countries—and the United States in particular—are prepared to both faithfully apply and abide by WTO rules. Otherwise, these developing countries' confidence in the multilateral trading system and WTO rule-making could be fatally undermined, with long-term results that would negatively impact U.S. exports.

Contact:
Nicholas D. Giordano, Esq.
Vice President and Council,
International Trade Policy
National Pork Producers Council

Statement of North American Association of Food Equipment Manufacturers

Statement submitted for the record of the August 2, 2007 hearing of the Trade Subcommittee of the House Ways and Means Committee, by the North American Association of Food Equipment Manufacturers (NAFEM).

The North American Association of Food Equipment Manufacturers (NAFEM) represents 600 North American firms that manufacture commercial equipment and supplies used for food preparation, cooking, storage and table service, and used by operators in restaurants, cafeterias, and other food service establishments. Our members employ more than 60,000 men and women, and approximately 30 percent of these firms export products to service a global customer.

We are submitting these comments in support of H.R. 1127, "The American Manufacturing Competitiveness Act." We also ask the Committee to support the complete elimination of the practice of "zeroing" in administering trade remedy laws.

We support trade remedy laws that are fairly administered. However, the ability of our members to remain competitive in world markets—both our domestic markets and our export markets—depends on fair access to raw materials at world competitive prices. If trade barriers drive the price of stainless steel in the United States above world prices, our competitiveness—our ability to employ our workers—suffers.

To maintain competitiveness, we need standing in trade cases, as would be provided by H.R. 1127. And, if after a fair hearing of the facts and the issues, trade remedies are judged applicable, they must be set correctly. The practice of "zeroing" clearly leads to inflated calculations of duties—in effect a tax on our firms—should be eliminated

Statement of Precision Metalforming Association

Chairman Levin and Ranking Member Herger, thank you for accepting these written comments on behalf of the Precision Metalforming Association (PMA) and our 1,200 member companies located in 41 states.

PMA is an Ohio-based national trade association representing the $91-billion metalforming industry of North America—the industry that creates precision metal parts, assemblies and products using stamping, fabricating and other value-added processes. The vast majority of PMA members are small and medium-sized manufacturers, known as SMMs. Many are second- and third-generation businesses averaging 100 employees. Our industry manufactures products in nearly every congressional district in the country, supplying the automotive, defense, medical, aerospace, agriculture, telecommunications and electrical industries, among others.

For many small companies who manufacture in America, the issue of international trade is met with great skepticism, but it can bring tremendous opportunities. However, many of these opportunities are not realized due to our current trade laws, which often protect a small segment of the economy at the expense of millions of workers and businesses.

PMA is a member of both the Consuming Industries Trade Action Coalition (CITAC) and the China Currency Coalition because our members are suffocating under our current antidumping and countervailing laws while at the same time facing increased illegal competition from overseas. We support H.R. 1127, legislation that will allow PMA members to utilize our trade laws and we support an effective, but balanced, legislative approach to address illegal currency misalignment.

H.R. 1127—Giving Manufacturers a Seat at the Table

Middle-market manufacturers are being injured by the unintended consequences of our trade policies. Small middle-market manufacturers, in particular, like PMA members are sandwiched between our raw material suppliers and customers.

We depend on a reliable, globally priced supply of steel which we source primarily from U.S. steel producers. Whether due to government-imposed tariffs on imports or domestic supply shortages, major business disruptions and financial losses occur when our members cannot regularly acquire high-quality steel in a timely manner. With steel comprising 60 percent of our overall manufacturing costs, the effect on our ability to compete in the global market is considerable, especially when we are also facing illegal trade practices by our foreign competition.

According to the most recent Department of Labor statistics, there are more than nine million steel-consuming jobs in this country, including nearly 300,000 in the Congressional Districts of members of the Trade Subcommittee. Because of our outdated trade laws, none of these employees or companies is represented in hundreds of cases at the Department of Commerce and the ITC. Whether regulatory or legislative, policymakers in Washington should consider the impact their decisions will

have on small middle-market manufacturers. This is why we support H.R. 1127, legislation offered by Reps. Knollenberg and Kind to provide domestic industrial consumers with full party status and a seat at the table.

In an effort to protect one segment of the economy through the application of tariffs, the Federal Government is making uninformed determinations that are tying the hands of U.S. manufacturers by protecting the few at the expense of millions of Americans. We believe H.R. 1127 is a reasonable approach that allows all U.S. manufacturers equitable access to our trade remedy law process. National trade policy should foster an environment that strengthens manufacturing in America, not close the door on our workers and employers.

Zeroing—An Artificial Tax on Manufacturers

Purportedly intended to provide additional protection to businesses, the practice of zeroing illegally taxes raw materials that our members need to continue manufacturing in America. Although our members do not use a significant amount of imports in their production, taxing their greatest raw material input creates an artificial U.S. steel market, putting us at a significant disadvantage against foreign competitors.

Supporters of zeroing seek to punish those who they believe are illegally importing products into the United States. However, the real-world impact is that zeroing injures millions of small middle-market manufacturers who rely on globally priced quality raw materials. PMA believes the United States should comply with the WTO ruling and not use the zeroing methodology.

Fundamental Currency Misalignment

SMMs are in the unfortunate position of facing restrictive domestic trade policies and illegal competition from foreign companies. Fundamental currency misalignment causes continued and protracted injury to U.S. businesses.

In the 109th Congress and upon its introduction in this one, PMA supported the original legislation known as the Ryan-Hunter bill. We did so because we felt the legislation took a reasonable approach that sends a strong message to China to abide by their trade agreements. We supported this legislation despite the recognition that our members are unlikely to take advantage of this proposed law—as small businesses, we simply lack the resources to bring trade remedy cases to defend ourselves.

Because China is a non-market economy (NME) experts have difficulty determining the exact level of misalignment and what amount of remedies to apply. We encourage the Treasury Department and USTR to work with our trading partners who are also acting against currency manipulators and take measured steps to counteract these illegal monetary practices.

Fundamental currency misalignment by China and other nations provides a clear advantage for their companies and injures our membership. PMA continues to work with the Administration and members of Congress to develop a balanced approach to force a change in China and Japan's currency policies. I ask members of this Committee to help ensure that Congress passes an effective legislative solution that does not have an adverse impact on small middle-market manufacturers.

Conclusion

Our trade laws should foster a domestic environment that will strengthen manufacturing in America. As this Committee considers moving comprehensive trade legislation, we encourage you and this Congress to take into consideration the impact your decisions will have on small and medium-sized businesses manufacturing in America.

Any legislation, to address currency misalignment or otherwise, must include equitable protections for small middle-market manufacturers like members of the Precision Metalforming Association. Millions of American manufacturers deserve equal rights to participate in the trade remedy process. In order to stop the hemorrhaging of the U.S. manufacturing base, PMA believes Congress should update the trade laws to provide domestic industrial consumers with full party status before the DoC and ITC. H.R. 1127 is a matter of fundamental fairness that will provide balance in our trade policies.

Small and medium-sized American manufacturers can only be globally competitive if the U.S. Government takes a more complete approach to its trade policies and remedies when foreign governments fail to abide by international trade agreements. Our members recognize we are competing against companies from around the world, but we cannot do it with one hand tied behind our backs—whether tied by foreign governments or our own.

Statement of Retail Industry Leaders Association

The Retail Industry Leaders Association (RILA) appreciates the opportunity to provide written comments to the Ways and Means Trade Subcommittee for the hearing on legislative proposals related to trade with China. Open trade with China that allows the free flow of both imports and exports is a critical component of retailers' sourcing and growth strategies. Each of the topics under consideration at this hearing—currency, trade remedies, and food safety—are important and timely, and can have a significant impact on U.S. retailer operations, the workers they employ, and the customers that they serve.

RILA supports the longstanding U.S. policy of economic engagement with China. We advocate for a balanced trade policy that recognizes the tremendous opportunities and benefits that trade and investment with China bring to the U.S. economy, while also effectively addressing market access barriers and other unfair trade practices that affect U.S. companies. In addition, RILA supports a rules-based resolution of trade disputes in a manner consistent with World Trade Organization (WTO) obligations.

By way of background, RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Its members include the largest and fastest growing companies in the retail industry—retailers, product manufacturers, and service suppliers—which together account for more than $1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

I. China Currency

RILA members recognize that the valuation of China's currency is a significant concern, and we believe that China should implement steady, measured, and concrete movement toward a market-determined exchange rate. Toward this end, we support efforts by Treasury Secretary Henry Paulson through the Strategic Economic Dialogue and other fora to encourage broader financial sector reforms that will enable China to accelerate its removal of capital controls and allow market forces to fully determine the value of its currency.

At the same time, the effect of China's exchange rate policy on bilateral trade is likely overstated. Economists note that the trade deficit with China is also the result of other factors, including a very low U.S. savings rate and a high personal savings rate in China. The low U.S. savings rate means that America must import surplus savings from abroad to fuel U.S. economic growth.

RILA also advocates policies that promote more U.S. domestic savings, and encourages China to move from an economy based on export growth to one based on growth in domestic consumption. Congress and the Administration should encourage China to break down the remaining barriers to foreign investment in China's retail sector. Growth in the supply of retail outlets in China will increase consumer choice and competition in China and enable Chinese consumers to increase their purchasing options.

There are several proposals to address currency that are actively under consideration in the 110th Congress. We provide comments on some of these proposals:

Currency Misalignment as a Counteravailable Subsidy: Representatives Tim Ryan (D–OH) and Duncan Hunter (R–CA) have introduced legislation (H.R. 782 and H.R. 2942) to require the United States to treat foreign currency misalignment as a subsidy in the context of countervailing duty (CVD) cases. A companion bill, S. 796, has been introduced in the Senate by Senator Jim Bunning (R–KY), Senator Debbie Stabenow (D–MI), and others. These bills define exchange rate misalignment as "an undervaluation of a foreign currency as a result of protracted large-scale intervention by or at the direction of a governmental authority in the exchange market. Such undervaluation shall be found when the observed exchange rate for a foreign currency is below the exchange rate that could reasonably be expected for that foreign currency absent the intervention."

H.R. 2942 retains the authors' original approach of making a misaligned currency a countervailable subsidy, and adds additional provisions to apply the CVD law to non-market economies (NMEs) and expand the available remedies to address misaligned currencies in antidumping (AD) calculations (as proposed in S. 1607, the Baucus-Grassley bill).

RILA Position: H.R. 782, H.R. 2942, and S. 796 would be counterproductive as the approaches are inconsistent with WTO rules. Despite claims by some, currency misalignment is not a WTO prohibited subsidy because it is not tied to exports or the use of domestic goods. Moreover, the WTO Agreement on Subsidies and Countervailing Measures (WTO SCM) requires that a countervailable subsidy: (1) confer

a benefit, (2) involve a "financial contribution" from the government, and (3) be "specific" to an enterprise or industry. China's currency policy does not appear to meet these criteria because the government is not transferring anything of value to firms, and the policy is not specific to a particular enterprise, industry, or group of enterprises or industries. While the bill would revise U.S. law to assert that exchange rate misalignment satisfies the WTO criteria, that does not in itself make the legislation WTO-consistent. Enactment of the legislation could prompt harmful Chinese retaliation against U.S. exports to China.

Dumping Adjustment for Currency Misalignment: Senate Finance Committee Chairman Max Baucus (D–MT), Ranking Member Charles Grassley (R–IA), Senator Charles Schumer (D–NY), and Senator Lindsay Graham (R–SC) introduced the Currency Exchange Rate Oversight Reform Act (S. 1607) to address concerns that certain countries maintain undervalued currencies. The bill would repeal current provisions related to currency manipulation included in the 1988 Trade and Competitiveness Act and would replace them with new provisions to require the U.S. Treasury Department ("Treasury") issue semiannual reports identifying whether a country has a "fundamentally misaligned" currency. If so, Treasury would be required to initiate consultations with the country. If Treasury also finds that the government of such country is taking specific policy actions to maintain an undervalued currency (such as protracted large scale interventions in the currency market, significant accumulation of foreign reserves, or capital restrictions for balance of payment purposes) then the country would also face sanctions that increase over time if the currency misalignment is not remedied. The proposed sanctions include: U.S. Government consultations with international financial institutions, adjustments to price calculations in antidumping proceedings to account for a misaligned currency, a ban on Federal Government procurement with the country (unless it is a member of the WTO Agreement on Government Procurement), limitations on U.S. export financing programs in the country, opposition to multilateral lending programs in the country, dispute settlement proceedings in the WTO, and Treasury consultations with the Federal Reserve Board and other central banks to consider remedial intervention in currency markets. As reported by the Senate Finance Committee, the bill includes a binding Congressional resolution to disapprove the Administration's actions.

RILA Position: RILA welcomes the consultation provisions and Administration discretion in the bill. We believe that currency concerns are best addressed through consultations and cooperation with trading partners and international financial institutions, rather than the use or threatened use of trade sanctions. The bill requires Treasury to calculate the amount by which a currency is undervalued. Such calculations would be highly subjective and RILA believes that the U.S. Government should not be in the business of determining what another country's currency value ought to be.

The provision related to antidumping calculations is particularly problematic and is likely inconsistent with WTO obligations. Specifically, Article 2.4.1 of the WTO Antidumping Agreement requires a country to use the exchange rate on the date of sale, and it does not allow adjustments to that rate for an undervalued currency. Moreover, antidumping calculations would already reflect an undervalued currency in the U.S. price, rendering any further adjustments unnecessary. If the bill becomes law, China could successfully challenge the provision in the WTO and retaliate against U.S. exports until the measure is repealed.

Dodd-Shelby bill: Senate Banking Chairman Chris Dodd (D–CT) and Ranking Member Richard Shelby (R–AL) introduced legislation (S. 1677), "The Currency Reform and Financial Market Access Act of 2007," that would strengthen the definition of "currency manipulator" as defined by Treasury. The bill eliminates the intent of the country in question as a factor for being named a currency manipulator, in contrast to current law. Within 30 days of having named a country as a currency manipulator, Treasury would have to submit a detailed plan, along with benchmarks, to Congress on how it will address the manipulation. In addition, the bill would require Treasury to enter into bilateral and multilateral discussions with the country as well as consult with the International Monetary Fund (IMF). The bill would give Treasury up to nine months to meet its goals and benchmarks before authorizing the initiation of an Article XV dispute on currency before the WTO. The bill also provides for a joint resolution of disapproval if Treasury fails to cite a country as a manipulator. Other provisions require Treasury to annually report to Congress on barriers to trade for financial services firms as well as include relevant developments from the U.S.-China Strategic Economic Dialogue (SED).

RILA Position: RILA welcomes the consultation provisions in the bill as we believe that currency concerns are best addressed through consultations and cooperation with trading partners and international financial institutions, rather than the

use or threatened use of trade sanctions. At the same time, the bill may quickly escalate tensions with trading partners by essentially forcing Treasury to label China as a currency manipulator, with no means for the President to waive such action. The provision to initiate WTO consultations on currency manipulation under Article XV raises concerns. It is not clear how such a challenge could be successful.

In addition, statements by Chairman Dodd that he would welcome the addition of legislation to make currency manipulation a countervailable subsidy are not helpful. RILA will strongly oppose any such amendment.

II. Trade Remedies

U.S. trade remedy laws (for example, antidumping and countervailing duty laws, and safeguards laws) serve an important role in U.S. trade policy. By providing a process by which injured domestic producers may seek relief from unfair imports, trade remedy laws allow the broader positive trade agenda to move forward. In a globalized trading system, this is critical. RILA members have a significant interest in the balanced administration of U.S. import laws, as they depend on imports both of finished consumer products and of production inputs for merchandise that will eventually be sold at retail. RILA members are keen to ensure that those laws are fairly and neutrally applied, and not subject to sudden or unwarranted changes that increase their restrictiveness.

Trade remedy laws should remain focused on providing relief where an objective analysis warrants it, and they should not be used or written to provide or allow blanket protectionism. U.S. trade remedy laws should be balanced and fair, inclusive of the participation of all affected parties, and based on commercial practices. Nearly all of the proposed trade remedy issues that are the subject of this hearing do not only apply to China. As Congress considers whether to make changes to these laws, policymakers must consider the impact that these changes will have on all of our trading partners, and on our international trade obligations, and not just on trade with China.

Section 421 Special China Safeguard

The section 421 safeguard is an extraordinary provision because:

- it applies only to China,
- the threshold for injury is exceedingly low,
- and it does not require an allegation an unfair trade.

Section 421 was the result of intense negotiations both within the United States and with China as part of its WTO accession, and a key component to balance out these extraordinary concessions is the President's discretion to decline to provide import relief if he finds that the taking of such action would have an adverse impact "clearly greater" than the benefits of such action or, in extraordinary cases, he determines that it would cause serious harm to U.S. national security.

The requirement in the current statute to evaluate the potential benefits of trade restrictions against potential costs maintains this important balance. As already noted, section 421 does not require an allegation of unfair trade, and it has a very low threshold for industry injury. Within this framework, it makes little sense to impose a remedy that only benefits a narrow economic interest if it would result in serious and disproportionate harm to a wider segment of the U.S. economy.

Some lawmakers have suggested that the President's discretion to deny import relief should be removed. Full elimination of the President's discretion is far too restrictive an approach. Moreover, any modification to section 421 must provide the President the authority to determine the appropriate remedy, not just adopt the proposal of the ITC.

Application of Countervailing Duty Law to Non-Market Economy Countries

Legislation has been introduced (H.R. 1229) to allow countervailing duties (CVDs) to be applied to subsidized and injurious imports from nonmarket economy (NME) countries such as China, Vietnam, and Armenia.

There are three main concerns with H.R. 1229 as it was introduced. The bill would provide relief in addition to that provided under the special NME methodology in antidumping (AD) proceedings and, unless the bill is modified, it would create the potential for inappropriate and WTO-inconsistent remedies that are disproportionate to the subsidies granted. Separately, H.R. 1229 would also insert political influence in what should remain an independent, quasi-judicial process, and require the U.S. Department of Commerce (DOC) to employ methodologies to calculate the level of subsidization that on their face are inconsistent with WTO commitments.

Relief Should Not Be Disproportionate to the Subsidies Granted: WTO rules bar trade remedies from being applied at a rate higher than the subsidy found to exist.

(See Article 19.4 of the WTO Agreement on Subsidies and Countervailing Measures.) As such, when applying the countervailing duty law to products from NME countries, analysts must be careful to ensure that any duties applied are commensurate with subsidies granted, particularly if there is both an AD proceeding and a CVD proceeding on the same product.

Unlike AD cases that involve market economy countries, the AD methodology for NME countries does not employ a NME producer's actual prices or costs but instead uses subsidy-free values from a "surrogate" market economy country. As a result, this NME methodology not only creates a market-based benchmark for calculating a dumping margin, it also captures many subsidies provided by the NME government. Thus, applying the CVD law concurrent with the NME methodology in AD proceedings against the same product could result in relief that is disproportionate to the subsidies granted.

Congressional Role in Market Economy Status: H.R. 1229 includes a provision to require Congressional approval of an Administration's determination to grant market economy status to a country under the U.S. AD statute. Such approval is unconstitutional and would have several negative effects.

Congress' failure to pass an approval resolution would effectively veto the Administration's determination without presenting legislation to the President, which the Supreme Court ruled is an unconstitutional violation of the Presentment Clause in *INS v. Chadha*. Moreover, requiring a Congressional vote on market economy status undermines the objective, factual and case-by-case analysis of the economic criteria set forth that the graduation determination requires. This would send the wrong signal to China and our other trading partners, which might seek to replicate such congressional interventions in their trade remedy analyses, which would have very adverse effects on U.S. exporters. A constitutional way to give Congress broader oversight of these decisions is through a consultation and layover requirement, similar to that required for certain Presidential proclamations.

Legislative Language on Surrogate Country Benchmarks Should Track WTO Commitments: Article 14 of the WTO Agreement on Subsidies and Countervailing Measures generally requires a country to use benchmark rates prevailing *within the exporting country* to measure a particular subsidy. As part of China's accession to the WTO, all parties, including the United States, agreed that benchmark rates within China would be used unless "special difficulties" arise and it is not practical to use and/or adjust Chinese benchmarks. (PRC Accession Protocol, Part I, 15(b)) Thus, the WTO requirement is to presume to use Chinese benchmarks.

The language in H.R. 1229 suggests that, even if China is determined to be a market economy, the DOC must still apply special procedures in determining subsidy benchmarks for China. There is no basis in the law for singling out certain market economies for discriminatory treatment and the current law and regulations provide DOC sufficient discretion to address any benchmarking issues that may arise in market economies. This language therefore is unnecessary and inappropriate.

Zeroing and a Prospective Normal Value Dumping Regime

"Zeroing" refers to the practice of considering only those U.S. sales where normal value (usually the home market sales price) is greater than the U.S. price and ignoring transactions where the reverse occurs. Zeroing artificially inflates antidumping margins by adjusting negative dumping comparisons to zero. As a result, zeroing produces higher dumping duties than the data support, and these artificially increased duties make goods more expensive than they should be. The WTO has repeatedly ruled that zeroing as applied by the United States is inconsistent with WTO obligations.[1] RILA believes that the zeroing policy as has been applied in the United States is harmful and unfair and should be ended in all antidumping proceedings.

Some lawmakers have expressed the opinion that the DOC should continue to zero despite the clear potential for WTO-sanctioned retaliation from trading partners. To allow the continued use of zeroing, RILA respectfully suggests that Congress should consider changing the U.S. antidumping regime to a prospective normal value system (as done in Canada). This is the only way in which zeroing may continue in a WTO-consistent manner.

Under a prospective normal value system, the United States could effectively continue to zero because normally in practice duties would be collected entry by entry. When the U.S. price is below the normal value, duties are collected; when the U.S.

[1] The WTO also ruled against the European Union (EU) on its zeroing policy. The EU has since ended its zeroing policy.

price is above normal value, duties are not collected but other entries are not offset by the negative dumping (thus zeroing continues).

In addition to the continued use of zeroing, policymakers should consider other benefits of a prospective normal value system:

- ***Significantly Improved Duty Collections:*** Since enactment of the Continued Dumping and Subsidy Offset Act (otherwise known as the "Byrd Amendment"), it has come to light that the U.S. Customs and Border Protection (CBP) has tremendous challenges in collecting certain antidumping and countervailing duties.
  - There are hundreds of millions of dollars in unpaid duty bills.
  - Changing to a prospective normal value system would end this problem because in most instances the final duty bill would be collected at the time of entry.
- ***Fairer Treatment of Importers:*** The U.S. retrospective system for collecting dumping duties creates significant uncertainty because final duty bills may be assessed years after the entry (with interest), and long after the good is sold to the consumer.
  - Each time the Congress compiles a miscellaneous tariff bill, several private bills have been offered to provide relief from retrospective dumping duties. Sponsors of these bills believe the retrospective system is unfair to their constituents.
  - The biggest concern that large importers and retailers raise with the U.S. antidumping and countervailing duty regime is the unpredictability of the retrospective system—more so than the actual duties themselves.
  - ***Periodic Reviews Still Possible:*** A prospective system would still allow reviews of the normal value whenever an interested party requests one.

Bratsk Decision from the Federal Circuit

In the "Bratsk" decision last year (*Bratsk Aluminum Smelter v. United States*, 444 F.3d 1369 (Fed. Cir. 2006)), the Court of Appeals for the Federal Circuit ruled that the U.S. International Trade Commission (ITC) must consider whether imposing antidumping duties would benefit the domestic industry or instead result in an increase of imports from non-subject countries without any beneficial impact on domestic producers. If the latter, then the court said no duty shall be imposed. The decision is a reasonable one because there is no valid reason to impose antidumping or countervailing duties on imports from a particular country if imports from elsewhere will replace subject imports. The domestic producers will not get relief from the duties, yet U.S. manufacturers and consumers are forced to pay higher costs. The Court recognized that this lose-lose scenario is inappropriate. Some have suggested that Congress should overturn the Bratsk decision through legislation. RILA would oppose such proposals.

Inclusion of Consuming Interests in Trade Remedy Cases—the American Manufacturing Competitiveness Act

U.S. trade remedy laws are decidedly exclusionary. It is unfair that importer and consuming industries are barred from participating in antidumping and countervailing duty proceedings, and policymakers are forced to make decisions with partial information—even though the outcome of such cases can have a tremendous impact on importer and industrial consuming businesses (particularly small businesses with limited resources). The American Manufacturing Competitiveness Act (H.R. 1127) seeks to remedy this unfairness by allowing industrial consumers to participate in trade remedy cases, and requiring policymakers to consider the benefit versus the harm of imposing duty orders. As lawmakers consider changes to U.S. trade remedy laws, RILA believes H.R. 1127 should be included in any legislative package that moves forward.

III. Food Safety

RILA members place the highest priority on ensuring the safety and quality of the products they sell to their customers, regardless of whether the products are produced domestically or abroad. To this end, RILA members have vigorous quality assurance requirements and enforcement mechanisms. The size and market share of RILA members provides them the ability and resources to ensure their suppliers produce the highest quality products that meet rigorous safety standards.

Effectively ensuring product safety requires a close partnership between the private sector and the U.S. Government. RILA stands ready to work with government policymakers to enact policies that strengthen consumer confidence and ensure that products are safe, high-quality, affordable, and readily available.

Food Safety Policies Should Be Effective, Efficient, and Consistent with International Trade Obligations: As Congress considers proposals to improve product safety, RILA suggests that any proposal should ensure that all products meet equivalent high standards, regardless of whether the good is produced domestically or abroad. Any food safety and quality assurance system must also be effective and efficient, and not be used for protectionist purposes.

RILA members are able to bring great value to consumers through sophisticated just-in-time inventory systems. The slightest disruptions to the supply chain could keep essential food items from hitting store shelves, depriving consumers of their regular products. In the case of fresh produce, delay could cause millions of dollars of fruit and vegetables to be stuck on cargo ships and truck beds and left to rot.

U.S. Regulators Need Sufficient Resources: As the volume of U.S. food imports has risen, the budgets for agencies that oversee food safety have generally remained stagnant or been cut in recent years. These agencies provide testing, certification, and monitoring of food products—on top of what retailers and product manufacturers already do—to help secure the food supply chain in a post-9/11 world. Food safety should be a critical homeland security priority, and it deserves proper funding.

RILA supports increasing the annual budgets of the regulatory agencies with responsibility over food and consumer product safety. At the same time, it would be a mistake to demand that the importer community alone bear the costs for a strengthened food safety regime. RILA instead encourages Congressional authorizers and appropriators to establish a dedicated funding stream from the general treasury to ensure the safety of food and consumer products sourced both domestically and abroad. Additional fees and hurdles placed solely on the import community could be viewed as protectionist and would undermine the credibility and effectiveness of the new regime.

IV. Conclusion

RILA appreciates the opportunity to provide comments for this hearing. Trade with China is a critical component of RILA members' strategies for sourcing and global growth. China's growing market of 1.3 billion people presents both opportunities and challenges, and the legislative proposals under consideration can have a significant and long-lasting impact on our bilateral trading relationship. Some proposals, if not modified, would cause significantly more harm to U.S. interests than provide benefits to select economic groups.

While RILA members recognize that legitimate concerns have been raised regarding certain Chinese policies, we believe any legislative proposals must also take into account the tremendous benefits that trade with China brings to U.S. companies, their workers, and U.S. consumers. Also, as Congress considers changes to the trade remedy rules or product safety regime, policymakers should be as inclusive as possible to allow continuing input from all interested parties.

If you have any questions on this statement or require any assistance, please contact Lori Denham, Executive Vice President, Government Affairs and Industry Operations, or Andrew Szente, Director, Government Affairs.

Statement of Robert S. Nichols

Introduction

I'd like to thank Chairman Levin and Ranking Member Herger for the opportunity to submit this written statement to the Subcommittee regarding its important work on the impact of U.S.-China trade relations on American manufacturers, consumers, and workers. The emergence of China will not only be one of the great economic stories of the 21st century, but one of the most significant events in economic history. The integration of a fifth of the world's population into the global economy not overnight, but over time has truly profound implications for U.S. economic growth and job creation. Given the reality and inevitability of China's continued emergence, the task before Congress and other U.S. policy makers is to ensure that America participates constructively in China's development, and in ways that work for American producers, workers, and consumers.

I am president and chief operating officer of the Financial Services Forum. The Forum is an association comprising the chief executive officers of 20 of the largest and most diversified financial institutions with business operations in the United States. The Forum works to promote policies that enhance savings and investment and that ensure an open, competitive, and sound global financial services marketplace. As a group, the Forum's member institutions employ more than 2 million people in 175 countries and hold combined assets of more than $16 trillion an amount

greater than the annual economic output of the United States, United Kingdom, and France combined.

In addition to our other activities, the Forum is also the chairing organization of the ENGAGE CHINA coalition a partnership among eight financial services trade associations united in our view that active engagement with China remains the most constructive means of ensuring that our two nations mutually benefit from our growing economic relationship.[1] More specifically, the coalition is strongly of the view that a more open, competitive, and effective Chinese financial sector is a prerequisite if China is to achieve its own economic goals, and if the issues that have complicated the U.S.-China economic relationship particularly further currency reform and the trade imbalance are to be satisfactorily addressed.

Importance of China to the Global and U.S. Economies

The 20 member CEOs of the Financial Services Forum meet twice a year, our most recent meeting occurring this past April. At each meeting, we conduct a survey regarding our members' outlook on the U.S. and global economies. As part of the survey, we ask our CEOs to rate a number of factors, including technological innovation, improved education, freer and more open trade, and growth in a number of regions around the world, to reflect their likely contribution to global economic growth over the next decade. Our CEOs have consistently rated the emergence of China as the single most important source of growth for the global economy.

The rate of China's expansion and the impact of its integration into the global trading system are unprecedented in the history of the world's economy. As recently as 1999, China was the world's 7th largest economy. China is now the world's 4th largest economy and will likely overtake Germany as the 3rd largest later this year.[2] Government figures released in mid July showed that China's economy expanded at an annualized rate of 11.5 percent in the first half of 2007, its fastest rate of growth since 1994. China has grown at an average annual rate of better than 9 percent for two decades. If such growth is maintained, China could surpass Japan as the world's second largest economy by 2020.[3] Together, the United States and China already account for half of the world's economic growth.

China's emergence is also stimulating growth and job creation in the United States. Since China's joined the World Trade Organization (WTO) in December of 2001, trade between the United States and China has nearly tripled, exports to China have grown at five times the pace of U.S. exports to the rest of the world, and China has risen from our 9th largest export market to our 4th largest.

It's important to point out that as staggering as these figures are, they represent only the beginning of China's eventual impact. Nearly all of China's economic activity is currently centered in the large, industrialized cities of China's eastern coast, and involves only about 35 percent of China's 1.3 billion people. More than 800 million people in China's central and western interior an eighth of the world's population are poor subsistence farmers, completely unengaged in the global economy. Even the 500 million people who live in China's eastern cities, produce its manufactured goods, and comprise China's rapidly growing middle and affluent classes, have so far had a somewhat muted impact on the global economy.

This is because Chinese households historically save anywhere from a third to as much as half of their income, as compared to single digit savings rates in the United States and Europe. This pronounced propensity to save is related to the declining role of the state and the fact that most Chinese do not have access to the financial products and services that we take for granted mortgages, 401ks, pensions, credit cards, and life, property, and health insurance products that would help them save, borrow, invest, insure against risk, and, therefore, consume at higher levels.

If China's economy continues to grow and diversify, and if China's citizens enjoy increasing access to a wider range of modern financial products and services that help to eliminate the need for such "precautionary savings," China's 1.3 billion potential consumers will begin to consume at more normal levels, with profound implications for global economic growth and job creation, as the following comparison demonstrates:

Last year, the United States exported to Japan goods and services worth $60 billion approximately the same amount exported to China ($55 billion). But China's

---

[1] American Bankers Association, American Council of Life Insurers, American Insurance Association, The Council of Insurance Agents & Brokers, The Financial Services Forum, The Financial Services Roundtable, Investment Company Institute, and the Securities Industry and Financial Markets Association.

[2] See "China Growth Revs Faster, Escalating Policy Pressure," The Wall Street Journal, July 20, 2007.

[3] See "China's GDP Poised to Top Germany's as Power Shift Speeds Up," The Wall Street Journal, July 16, 2007.

population of 1.3 billion is ten times Japan's population of 127 million. In per capita terms, therefore, China consumed one-tenth the amount of American goods and services as Japan. If China's citizens were to eventually consume American-made goods and services at the same rate that Japan's citizens did last year, the United States would export more than $600 billion worth of goods and services to China, 11 times what America exported to China last year, an amount equivalent to 5 percent of America's GDP, and more than twice what we imported from China last year replacing the trade deficit with a significant surplus.

Pace and Structure of China's Growth has Created Challenges—for China and the United States

Despite China's remarkable economic development over the last 25 years, the structure and pace of its economic growth has produced significant problems, both economic and social. The country's fixed investment and export driven development more factories to produce more goods for world markets has left China vulnerable to economic slowdown elsewhere in the world (particularly in the United States), and to rising energy, materials, and labor costs. The manufacturing and export focus of the economy has also led to widening disparities between rich and poor, made worse by the closing or privatization of state owned enterprises, which had provided most healthcare services in China. There are, in effect, two Chinas a wealthy elite and a developing middle class along the coast, and the 800 million poor in the central and western interior.[4] The worsening wealth gap and the resulting social dichotomy have led to increasing political instability. Reports indicate that as many as 100 significant incidents of protest occur in China every day.

Almost immediately after assuming leadership at the 16th Chinese Communist Party Congress in 2002, President Hu Jintao and Premier Wen Jiabao sought to distinguish themselves as the "putting people-first administration." They also articulated the notion of a "scientific viewpoint of development," by which economic growth is to be balanced with social priorities such as a more equitable distribution of income, poverty reduction, education, improved medical care, and environmental protection.[5] Such adjustments were necessary, according to the new leadership, to establish a more sustainable course for China's long-term economic growth and to achieve a more "harmonious" which is to say, a more equitable and stable society.

These priorities became the framework of China's 11th Five-Year Plan[6], which broadens China's development policy beyond simply promoting rapid economic growth to include a clear emphasis on "common prosperity"—that is, an effort to extend westward the economic gains enjoyed principally in China's east coast urban areas. The FiveYear Plan seeks to address the twin problems of an economy perceived as being too dependent on external demand and the social consequences of the widening wealth gap by: 1) maintaining high rates of growth and job creation; 2) encouraging a structural shift from industry to services; 3) promoting the development of domestic consumer demand; 4) reducing poverty; and, 5) ensuring a more equitable distribution of opportunity and prosperity.

It is important to note that each of these goals is utterly aligned and consistent with the interests of the U.S. economy and working Americans. A growing, more diversified Chinese economy that emphasizes a more active Chinese consumer is more stable, less dependent on exports, more in keeping with China's responsibilities in the global trading system, and an enormously important and ever expanding market for American-made products and services.

But if China is to achieve these ambitious economic goals and, in doing so, serve as an ever-increasing source of U.S. economic growth and job creation it needs an open, modern, and effective financial system. Unfortunately, at present, China's primitive and ineffective financial system represents perhaps the greatest threat to the continued growth and diversification of the Chinese economy.

Critical Importance of Financial Sector Reform in China

Capital is the lifeblood of any economy's strength and well being, enabling the investment, research, and risk-taking that fuels competition, innovation, productivity, and prosperity. The financial system can be thought of as an economy's cardio-

---

[4] According to an unpublished report by the World Bank that has been shared with the Chinese government, from 2001 to 2003, as China's economy expanded by nearly 10 percent a year, average incomes of the poorest 10 percent of Chinese households fell by 2.5 percent. See "In China, Growth at Whose Cost," The Wall Street Journal, November 22, 2006.

[5] See Wen Jiabao, closing speech at the Specialized Research Course for Province-Level Cadres on Establishing and Implementing a Scientific Developmentalist Viewpoint," February 21, 2004.

[6] The Five-Year Plan, the 11th since 1953, was approved by the fifth plenary session of the 16th Communist Party Central Committee in October of 2005 and ratified by the National People's Congress this past spring.

vascular system the institutional and technological infrastructure for the mobilization and allocation of the economy's lifeblood, investment capital.

As a financial sector becomes more developed and sophisticated, capital formation becomes more effective, efficient, and diverse, broadening the availability of investment capital and lowering costs. A more developed and sophisticated financial sector also increases the means and expertise for mitigating risk—from derivatives instruments used by businesses to avoid price and interest rate risks, to insurance products that help mitigate the risk of accidents and natural disasters. Finally, the depth and flexibility of the financial sector is critical to the broader economy's resilience its ability to weather, absorb, and move beyond the inevitable difficulties and adjustments experienced by any dynamic economy. For all these reasons, an effective, efficient, and sophisticated financial sector is the essential basis upon which the growth and vitality of all other sectors of the economy depend. It is the "force multiplier" for progress and development, amplifying and extending the underlying strengths of a growing economy.

Given the unique and critical role an effective and efficient financial sector plays in any economy, reform of China's financial sector is a prerequisite to China achieving its own economic goals. Financial sector reform is also a prerequisite to meaningfully addressing issues that have complicated the U.S.-China economic relationship, particularly greater currency flexibility and reducing trade imbalances.

Achieving China's Economic Priorities

- Maintaining High Rates of Growth and Job Creation: Maintaining exceptional rates of economic growth and job creation in China increasingly depends on an effective system for mobilizing investment capital. At present, China's weak banking system intermediates nearly 75 percent of the economy's total capital, compared to about half in other emerging economies and less than 20 percent in developed economies. Despite some improvements in recent years, Chinese banks' credit analysis, loan pricing, risk management, internal controls, and corporate governance practices remain inadequate. Meanwhile, China's equity and bond markets are among the smallest and least developed in the world. More fully developed capital markets would provide healthy competition to Chinese banks and facilitate the development and growth of alternative retail savings products such as mutual funds, pensions, and life insurance products. And by broadening the range of funding alternatives for emerging companies, more developed capital markets would greatly enhance the flexibility and, therefore, the stability of the Chinese economy.

Shifting from a Manufacturing for Export to a Services Based Economy: Facilitating China's desired transition to a more services-based economy will require that competitively priced capital and credit be channeled to the most promising emerging service businesses, and that the array of financial products and services emerging businesses require loans, letters of credit, accounts management services, asset management, and insurance products be made available.

Activating the Chinese Consumer: Activating the Chinese consumer requires the availability of financial products and services personal loans, credit cards, mortgages, pensions, insurance products, and insurance intermediary services that will eliminate the need for such "precautionary savings" and facilitate consumption.

In sum, a more modern, open, and competitive financial system would greatly enhance the productive capacity and stability of the Chinese economy and facilitate the achievement of China's economic goals, as described in the 11th Five-Year Plan. Indeed, research conducted by McKinsey indicates that genuine reform of its financial system would expand China's economic output by as much as 17 percent, or an additional $320 billion a year.[7]

Addressing Issues with the United States

A more effective and efficient financial sector in China is also a prerequisite to successfully addressing issues that have complicated the U.S.-China economic relationship, particularly further currency reform and meaningfully reducing the trade imbalance.

Market-determined exchange rate: A Chinese authorities have repeatedly argued reasoning generally acknowledged by most foreign analysts that a more rapid shift to a market-determined yuan is not possible given the underdeveloped state of China's capital markets. More specifically, China's banks, securities firms, and other businesses lack the expertise to develop and trade derivatives and other structured instruments used to hedge the risk associated with greater currency volatility. So-

[7] See "Putting China's Capital to Work: The Value of Financial System Reform," by Diana Farrell, Susan Lund, and Fabrice Morin, The McKinsey Global Institute, May 2006.

phisticated derivative products and hedging techniques provided by foreign financial services firms would clearly diminish such concerns.

Reduction of trade deficit: Reorienting the financial habits of China's population from precautionary savings to a better balance between savings and consumption while progressively bringing more than a billion Chinese into the global economy is the most powerful remedy to the U.S.-China trade imbalance.

Status of Financial Sector Reform in China

In addition to working to meet its WTO commitments, China has also taken important steps to liberalize its financial sector and improve financial regulation. For example:

The financial sector has been transformed from a single bank system to a more diversified system with a central bank the People's Bank of China at the helm.

Meaningful steps have been taken to eliminate state-directed policy lending, and amendments to the Law on Commercial Banks and the Law on the Peoples Bank of China have laid the foundations for commercially viable lending.

The China Banking Regulatory Commission (CBRC) was established in April of 2003 to oversee all banks in China, investigate illegal banking operations, and punish violations of law.

Interbank, equity, and foreign exchange markets have been established and important progress made toward implementing monetary policy through market mechanisms rather than by government fiat.

Despite these achievements, China's financial sector still faces serious challenges:

Non-commercial lending to state-owned enterprises continues, although on a diminishing scale. The stock of nonperforming loans on banks' balance sheets remains high.

Banks are undercapitalized and lending practices, risk management techniques, new product development, internal controls, and corporate governance practices remain inadequate.

Prudential supervision and regulation of the financial sector is opaque, applied inconsistently, and lags behind international best practices.

China's equity and bond markets remain small and underdeveloped.

With these problems in mind, efforts to build on the progress achieved to date should focus on:

The critical importance of open commercial banking, securities, insurance, pension, and asset management markets to promoting the consumption-led economic growth that China's leaders seek;

The clear benefits to China of increased market access for foreign financial services firms—namely the introduction of world-class expertise, technology, and best practices—and the importance of removing remaining obstacles to greater access.

Foreign investors in Chinese banks remain limited to 20 percent ownership stakes, with total foreign investment limited to 25 percent. The China Securities Regulatory Commission (CSRC) continues to limit foreign ownership of Chinese securities firms to 33 percent and foreign ownership of Chinese asset management companies to 49 percent. Worse, since December of 2005, a de facto moratorium on foreign investments in Chinese securities firms has been imposed. Foreign life insurance companies remain limited to 50 percent ownership in joint ventures and all foreign insurers are limited to 25 percent equity ownership of existing domestic companies.

While these caps were agreed to in the course of WTO accession negotiations, the limitations are among the most restrictive of any large emerging market nation and stand in the way of a level playing field for financial service providers. Most importantly, they limit access to the products, services, know-how, and expertise that China needs to sustain high rates of economic growth, and that China's businesses and citizens need to save, invest, and create and protect wealth. For these reasons, the United States and other WTO members have urged China to relax these limitations.

China also continues to restrict access by foreign credit card companies. Banks in China are permitted to issue cards with a foreign logo only if they are co-branded with the logo of China Union Pay (CUP), an entity created by the PBOC and owned by participating Chinese banks. In addition, all yuan-denominated transactions must be processed through CUP's network, while the network of the foreign credit card company is used only to process foreign currency transactions.

Non-discriminatory national treatment with regard to licensing, corporate form, and permitted products and services.

Non-discriminatory national treatment with regard to regulation and supervision.

Regulatory and procedural transparency.

Attracting sophisticated institutional investors to China's capital markets through the expansion of the Qualified Foreign Institutional Investor (QFII) and Qualified Domestic Institutional Investor (QDII) programs.

Priority issues from the Transitional Review Mechanism that remain unresolved.[8]

The Importance of a Market-Determined Yuan

With the importance and status of financial sector reform in China as a backdrop, let me focus for a few minutes on the importance of a market-determined Chinese yuan. In recent years the discussion in Washington regarding the U.S.-China economic relationship has focused in large part on China's currency policy. Many policymakers assert that an undervalued yuan makes cheap Chinese exports even cheaper, giving Chinese producers an unfair advantage over American companies and contributing to the U.S. trade deficit with China.

A market-determined yuan is important for the United States and especially for China. Foreign exchange market intervention by the People's Bank of China buying dollars with yuan has boosted liquidity in China's economy, thwarting government efforts to scale back excessive bank lending and fixed investment. Speculative money flowing into China in anticipation of a revaluation is also undermining government objectives. Finally, allowing the yuan to more fully float according to market forces would free the PBOC to pursue monetary policies that advance China's macroeconomic goals. For these reasons as well as the priority of a more fair and transparent trade relationship U.S. policymakers should continue to press China to accelerate progress toward a market-determined yuan.

For years, the United States has worked with China toward achieving a yuan whose value is determined by market forces. Indeed, shortly after taking office, the Bush Administration committed to helping China develop the capital markets know-how and expertise necessary to end the yuan's peg to the dollar, providing massive technical assistance. And those efforts have begun to bear fruit. In July of 2005, China revalued its currency upward by 2 percent. Since mid-2006, the pace of appreciation has accelerated, averaging about 4.9 percent a month at an annualized rate, and quickening to around 5.4 percent in the first few months of 2007, as China has become more confident about the resilience of its economy. In total, the yuan has appreciated by about 8 percent since July of 2005.

This is important progress but, clearly, much more progress is needed. Given the importance of a market-determined yuan to the economic objectives of both countries, the United States should continue to press China to redouble its reform efforts and accelerate movement toward a freely floating yuan.

But even as we continue to press China on the yuan, we should not allow the currency issue to overshadow the broader potential of the U.S.-China economic relationship. Indeed, it should be noted that the short term effect of a significant appreciation in the yuan would likely be to make the trade deficit worse. Because a higher-valued yuan would mean higher prices for imported Chinese goods, and because the process of finding cheaper alternatives to more expensive Chinese goods takes time, the trade deficit would likely get worse before getting better a phenomenon economists call the J-curve effect.

Of far greater significance to the policy goals of maintaining strong U.S. economic growth and job creation is for China to achieve a more sustainable model of continued economic growth, and for its population of 1.3 billion a fifth of the world's population to begin consuming at higher levels. Both goals require reform of China's financial sector.

Conclusion

The fastest way for China to develop the modern financial system it needs to achieve more sustainable economic growth, allow for a more flexible currency, and increase consumer consumption is to import it that is, by opening its financial sector to greater participation by foreign financial services firms. Foreign institutions bring world-class expertise and best practices with regard to products and services, technology, credit analysis, risk management, internal controls, and corporate governance. In addition, the forces of competition brought by foreign institutions would accelerate the development of modern financial techniques and methodologies by China's financial institutions.

By providing the financial products and services that China's citizens and businesses need to save, invest, insure against risk, raise standards of living, and con-

[8] China's WTO accession included the Transitional Review Mechanism (TRM) as a means for ongoing review of China's compliance with its obligations, and to provide those elements of the Chinese government supportive of further economic reform with information and evidence to urge full compliance with China's WTO commitments.

sume at higher levels, foreign financial institutions including U.S. providers would help China develop an economy that is less dependent on exports, more consumption-driven and, therefore, an enormously important and expanding market for American products and services. In doing so, U.S. financial services firms can help China become a more stable and responsible stakeholder in the global economy and trading system.

Chairman Levin and Ranking Member Herger, thank you again for the opportunity to contribute this submission. If you or the Subcommittee's staff have any questions, please feel free to contact the Forum's offices.

Statement of Schottenstein Stores Corporation

Summary

Schottenstein Stores Corporation, and its subsidiary, American Signature, Inc., urges the Committee to ensure that any legislation to apply U.S. countervailing duty laws to non-market economies address the potential for excessive double-counting of duties in cases where antidumping and countervailing duty actions are brought against a non-market economy supplier.

Statement

The Schottenstein Stores Corporation[1], and its subsidiary, American Signature, Inc. welcome this opportunity to supplement our previous statement (see March 29, 2007 Statement of Schottnestein Stores Corporation, submitted to the House Ways & Means Committee in connection with the Subcommittee on Trade hearing on the Non-market Economy Trade Remedy Act of 2007) and provide additional comments on the proposed legislation designed to apply the countervailing duty (CVD) laws to imports from China, as embodied in H.R. 1229 and addressed at the hearing held by the Subcommittee on Trade on August 2, 2007.

American Signature, Inc. is one of the country's largest privately owned furniture retailers and the parent company to American Signature Furniture and Value City Furniture. We employ over 7,000 people around the United States, including approximately 1,200 associates in Ohio. We have four (and soon to be five) distribution facilities, and manufacture products at three U.S. facilities, in West Virginia, Georgia and North Carolina. As a major retailer, we pride ourselves on delivering globally-sourced, quality goods to consumers across the country. We rely on fundamental notions of free and fair trade to remain competitive. While we firmly believe the U.S. should hold China to its commitments, in our view, the current version of H.R. 1229 threatens to harm many more U.S. jobs than it will save in some selected sectors.

H.R. 1229 would allow the United States to impose duties to counter alleged subsidies from "non-market economies" (NMEs) such as China and Vietnam—in addition to anti-dumping duties that can already be imposed. While we understand the need to address inappropriate subsidies provided by trading partners, this legislation as written has the potential to impose excessive duties on many of the goods we import. Consequently, this issue is of utmost concern to any business that relies on a dependable supply chain of global suppliers in China and elsewhere.

Specifically, the bill would allow for the imposition of U.S. countervailing duties (CVDs) against imports from countries, such as China, that are considered NMEs to counteract any alleged government subsidies these products may be benefiting from.

Many trade law experts contend that U.S. domestic industries already have a tool at their disposal that addresses this issue. Specifically, the U.S. antidumping (AD) laws employ a methodology for NME countries that is designed to eliminate the benefit of any subsidies that otherwise would reduce an NME producer's cost of production when calculating AD duties. These experts suggest that, while it is not uncommon for litigants to file AD and CVD cases against imported products, in such cases involving market economy countries there is a statutory mechanism to ensure that subsidies and dumping effects are not double-counted; H.R. 1229, however, could open the door to the imposition of CVD duties to counteract the effect of certain subsidies that are already offset in the NME AD calculation, resulting in "double-count-

[1] The member companies of this group are: American Eagle Outfitters (a publicly traded fashion retailer); Retail Ventures, Inc., the parent to retailers DSW, Filene's Basement and Value City Department Stores; American Signature, Inc.; and Retail Entertainment Design, (an in-store entertainment provider).

ing" and imposition of duties that are grossly in excess of any subsidy and dumping effects that may be involved.

American businesses that rely on global sourcing and trade with China employ millions of American workers. Passage of legislation such as H.R. 1229 in its current form has the potential to seriously alter our business model. The expected flood of CVD cases against China that this legislation would invite from litigants seeking double-duties would inject a significant level of uncertainty into our product supply chain that will undermine our ability to provide consumers here at home the most cost-effective product.

The fear of these cases has already been realized: within the last two months four new companion sets of AD and CVD cases have been filed against China. This has largely been in response to the Commerce Department's recent decision asserting its authority to initiate CVD cases against NME countries like China, and its determination that various practices constitute countervailable subsidies. Clearly this is at least partially an attempt to take advantage of the double-counting and excessive imposition of duties.

We further understand that if enacted as written, the legislation might violate World Trade Organization (WTO) rules. As part of China's accession to the WTO, all parties, including the U.S., agreed to use benchmark rates within China to calculate subsidies, with a possible exception for "special difficulties" and cases where it is not practical to use and/or adjust Chinese benchmarks. H.R. 1229 as written makes an explicit presumption that Chinese benchmarks cannot be used, contrary to the WTO requirement. If enacted, H.R. 1229 could lead China or others to bring a WTO case against the U.S. and potentially subject a broad range of U.S. exports to retaliatory tariffs.

We believe that with appropriate modifications, H.R. 1229 could address improper subsidies, while not leading to excessive duties against goods imported by our company and many others in the U.S. Given the high stakes involved for our business, we urge the Committee to resolve the critical issues raised by this legislation and modify H.R. 1229 to ensure that it is WTO consistent and addresses the potential for double-counting.

Statement of Securities Industry and Financial Markets Association

The Securities Industry and Financial Markets Association[1] is pleased to submit this written testimony on China's capital markets and the benefits for U.S. financial services firms and both the U.S. and Chinese economies of opening China's financial markets. Our testimony will focus on the goals and objectives of the U.S. securities industry in our growing relationship with China's economy. As such, this testimony delves into some key issues related to China's capital markets. We welcome and appreciate the Committee's interest in this important issue. This testimony outlines progress made to date on expanding opportunities in China for non-Chinese financial services firms as well as areas for continued attention.

SIFMA has long supported more open, fair and transparent markets, and has strongly advocated liberalization in U.S. multilateral and bilateral trade in financial services. The economic benefits of financial services sector liberalization reverberate throughout the world in the form of higher growth and greater opportunities. Financial services liberalization leads to new entrants, innovative products and services, and capital markets with greater depth and efficiency.

In the global economy, openness and fairness are essential to ensuring that markets operate efficiently so that capital can move seamlessly across borders and investors can easily and quickly buy and sell securities anywhere, while businesses can access capital at the lowest cost. The international financial system has been a major contributing factor in the marked increase in living standards of those countries that participate in it.

China's WTO accession commitments for financial services, and more specifically for the securities industry, demonstrated a reluctance to open this sector fully to foreign competition. China's reluctance to open its securities markets fully to foreign

[1] The Securities Industry and Financial Markets Association ("SIFMA") brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

investment has stymied the interest of foreign securities firms, and has slowed the pace of reforms in China's capital markets. Since China's accession to the WTO, nearly $24 billion has been committed to China's financial services sector, and according to SIFMA estimates less than $600 million of this total has found its way to China's securities firms. We believe China should improve and accelerate its financial sector reform so that it will have the financial tools necessary to sustain and improve the quality of its economic growth.

We also wish to take this opportunity to commend the U.S. Treasury Department for its continuing work and active engagement in seeking open and fair markets for securities firms in China. Through the formation of the U.S.-China Strategic Economic Dialogue ("SED"), and the establishment of a Treasury Financial Attaché in Beijing, Treasury has put in place the framework for continued and active advocacy on behalf of the U.S. financial services sector.

Expanding Business Opportunities for U.S. Financial Services Firms

Many of SIFMA's leading member-firms have identified China as the largest single emerging market opportunity in the next few decades, with some measures indicating that China will be the world's largest economy within the next 40 years.[2] To achieve this, China will need an enormous supply of capital and a market that can efficiently allocate savings. Analysts predict that over the next five years China will need to invest more than $1.5 trillion in improvements to physical infrastructure. Moreover, as China's economy continues to move from planned to market-based, decisions on capital allocation will become increasingly complex, and it will be ever more important to have efficient capital markets to ensure capital is allocated to where it is needed and will be used most efficiently.

At the same time, China will accelerate its ambitious reform program even while its nascent pension system begins to address the needs of a huge and rapidly aging population. In 2005, 7.6 percent of China's population was over 65; by 2025 that number is projected to reach roughly 14 percent. The country's infrastructure, privatization, and social welfare demands will require an increasingly more efficient and sophisticated deployment of capital.

To meet these demands, China will need to modernize its capital markets more rapidly. Currently, banks intermediate nearly three-quarters of all capital in the Chinese economy. For China to meet its financing needs, increase the products and services available to investors, provide companies with new funding options, and enhance financial stability it will need to transition to a financial system less dependent on bank lending and more focused on capital markets financing. China's first modern stock market only opened in 1990. Between 1998 and 2000, market capitalization more than doubled from $231 billion to $581 billion; by the end of 2006, market capitalization rose to more than $917 billion. In less than two decades China's stock market stands as the largest in the emerging market world.[3] However, the need for China to further develop its capital markets is illustrated when compared to other developing markets. A McKinsey & Company study found that in 2005, equity market capitalization, excluding non-tradable, state-owned shares, was 17 percent of GDP. This is the smallest market capitalization to GDP ratio in emerging Asia, where the ratio averages 70 percent.[4]

The government of the Peoples Republic of China (PRC) has acknowledged the need to reform the securities industry and has stated that it wants foreign investors and foreign firms to participate. China's domestic capital markets will benefit from the entry of U.S. securities firms and their technology, capital, innovation and best practices. As local firms prepare for this increased competition, they will adopt new technologies and improve the quality of products and services they offer. More competitive and efficient capital markets will also improve the allocation of capital to borrowers and users, facilitate the hedging and diversifying of risk, and assist the exchange of goods and services.

Importantly, increased competition will create incentives and opportunities for niche players to enter the market and provide financial services on a regional basis, offer expertise in specific product areas, and produce new and innovative products that respond to consumer demands for risk management and retirement products, for example.

---

[2] *Goldman Sachs' Global Economics Weekly*, Issue 03/34, 1st October 2003.

[3] However, according to McKinsey Global Institute, once these figures are adjusted for nontradable shares, China's stock market capitalization as a percent of GDP is among the world's smallest, about 17 percent. Corporate debt issuance lags too, with issuance equal to about only 1 percent of GDP. "How Financial System Reform Could Benefit China," 2006 Special Edition: Serving the New Chinese Consumer, *The McKinsey Quarterly.*

[4] Similarly, corporate bond issues by non-financial companies amounted to between 2 and 3 percent of GDP, compared with a typical 50 percent in other emerging Asian markets.

As China's capital markets develop, Chinese firms will be able to raise more capital at lower costs to grow their businesses and create more products, services, and jobs. Since financial markets are inextricably linked to increased investment and economic growth, it is estimated that financial sector reforms could boost China's GDP annually by up to $321 billion.[5] To put that number in perspective, as of 2005, only 20 countries have total GDP that exceeds $321 billion.[6]

China's private and public sectors alone cannot mobilize the massive financial resources, advice and expertise that are necessary to sustain its economic growth. Much of the infrastructure development will, by necessity, be funded through foreign sources, and this opportunity has generated substantial interest by the U.S. securities industry. Indeed, despite difficulties entering and operating in China, numerous U.S. securities firms have established offices in China and have participated in China's international securities offerings.

U.S.-China Strategic Economic Dialogue

SIFMA is an enthusiastic supporter of the Strategic Economic Dialogue (SED) and we commend Treasury Secretary Paulson, Ambassador Holmer, their Treasury colleagues, and the Administration, for this important undertaking. Our view is that the SED has the potential to play a key role in advancing the U.S.-China economic relationship. The SED provides a forum where—with a single, unified voice—the Administration can underscore the importance to China of an open, fair and transparent market for financial services. Consequently, SIFMA has urged the Administration to engage in a results-oriented discussion that leads to the reduction and elimination of barriers that continue to obstruct global financial services firms in China. Eliminating burdensome barriers to entry will benefit the economies of both nations. While we detail our agenda for reform below, we believe there are a number of steps the Chinese should take in the short-term that will help it to reach its stated economic goals and reinforce the political sustainability of the SED.

First, China should lift the de facto moratorium on foreign securities firm joint ventures that has been in place since December 2005. Importantly, removal of the moratorium will bring China back into compliance with its WTO commitments. We are pleased that during the May 22–23, 2007 SED meeting, China took a critical first step towards this goal by lifting the moratorium imposed on foreign investment in Chinese securities firms. It is important to note, however, that the moratorium is to be lifted sometime in the second half of 2007, rather than by a specific date.[7]

Second, China should put in place a precise and transparent roadmap, on an agreed to timetable, that would result in providing foreign securities firms with the right to own 100 percent of a PRC financial services firm and the ability to engage in a full range of securities activities. No progress was made on this issue during the recent SED.[8]

To develop broader and deeper integration into the global financial market, China undertook in SED II to raise the quota for Qualified Foreign Institutional Investors from $10 billion to $30 billion. We note, however, a number of current QFII requirements that are onerous, and substantially limit the utility of the program, as well as the universe of investors that can take advantage of it.[9] We urge China to continue the process of making its securities markets more attractive to investment through the rapid liberalization of current QFII restrictions on an agreed transition schedule. Such progressive liberalization, done in consultation with foreign and domestic capital markets participants, would almost certainly result in greater foreign

---

[5] Putting China's Capital to Work: The Value of Financial System Reform, May 2006, McKinsey & Company.

[6] World Bank, World Development Indicators database, World Bank, 23 April 2007.

[7] More recently, we note that "Mr Paulson said he had been told by Shang Fulin, the head of China Securities Regulatory Commission, that the moratorium on new brokerages joint ventures would be lifted in the northern autumn, a few months ahead of the initial schedule."), *U.S. presses China on liberalisation*, by Richard McGregor in Beijing, Financial Times, August 1, 2007.

[8] That being said, Tu Guangshao, vice chairman of the China Securities Regulatory Commission, was quoted by state media as saying China will raise the ceiling for foreign investment banks' stake holdings in domestic brokerages and joint ventures before the year-end. Reuters, Shanghai, Wednesday, May 30, 2007.

[9] More specifically: 1) requirements that the principal amount in the QFII account remain in the account for at least one year (three years for closed-end funds) and that subsequent remittances must be approved by the State Administration of Foreign Exchange with principal withdrawal permitted only in stages; 2) requirement that investment quotas must be fully funded within a three-month period, and the unused portion of quota will expire; 3) requirement that a QFII commit at least $50 million in a special QFII account; and 4) individual and aggregate limitations on QFII ownership which, as the market changes, may limit interest in the program.

investment in China's securities markets, add to the depth and breadth of trading in those markets and result in increased capital available to Chinese issuers.

We respectfully urge the U.S. Government to view the successful implementation of China's SED II financial services commitments as an integral part of SED III.

China's WTO Commitments For Foreign Securities Firms

China's 2001 World Trade Organization (WTO) entry commitments in the securities and asset management sectors marked the country's first step toward liberalizing its capital markets. The commitments permit foreign firms to participate in the securities sector only through joint ventures (JVs) in which foreign ownership is capped at 33 percent—although as more fully described below the scope of securities activities in which these joint ventures can participate is limited. China's WTO commitments also limit foreign participation in China's asset management sector to ownership of no more than 49 percent of domestic fund management firms.

These WTO commitments make no provision for further increases in foreign ownership in either securities or asset management firms. Instead, the commitments suggest that without a change in policy, foreign investors will remain minority shareholders in local securities firms for the foreseeable future. Indeed, China remains as one of the few markets of interest to the securities industry where majority ownership is not permitted.

China's WTO commitments in the securities sector also limit these minority owned JVs to underwriting the A shares of Chinese corporations, and to underwriting and trading government and corporate debt, B shares and H shares. The fundamental ability to trade in A shares was not conferred on these minority JVs. (A shares are Renminbi (RMB)-denominated shares limited to domestic investors, foreign financial firms with qualified foreign institutional investor (QFII) status, and foreign strategic investors. B shares are foreign-currency denominated shares listed on PRC exchanges and are open to both domestic and foreign investors. H shares are shares of PRC companies listed in Hong Kong.).

Though foreign industry involvement can improve many aspects of the securities industry, we would urge China to move forward in two distinct, but reinforcing, areas to modernize and strengthen its capital markets. First, improvements in market access would improve the ability of foreign securities firms to compete in a fair manner with local firms. Second, steps in market reform would better regulate the industry and increase transparency.

However, there remain significant market access barriers. SIFMA strongly urges China to make the following additional commitments, in the context of the ongoing WTO financial services discussions, in other trade forums, or government-to-government discussions:

1) Permit Full Ownership and the Right to Choose Corporate Form

China should put in place a precise and transparent roadmap, on an agreed to timetable, that would result in providing foreign securities firms with the right to own 100 percent of a PRC financial services firm, including the ability to engage in a full range of securities activities, including underwriting, secondary trading of government and corporate debt and all classes of equity, hybrid mortgage products, derivatives trading, and asset management. We do note, however, that one of the results of the recent SED was that the Chinese will announce before the next SED meeting that foreign securities firms will be permitted to expand their operations in China to include brokerage, propriety trading and fund management.

The right to enter a market and establish a wholly owned presence in a form of the firm's own choosing is relatively common in today's global markets. Currently, foreign investors can enter China's securities markets in two ways: by establishing a new JV with a Chinese partner or by taking a stake in an existing brokerage, the path that a number of foreign securities firms have chosen. Because in most cases the negotiations that result in a JV or a foreign stake are opaque, however, potential entrants have little available in the way of guidance on how to arrange such JVs. Similarly, foreign asset management firms should be permitted to manage money for Chinese investors, both retail and institutional, as well as to sell internationally diversified mutual funds to individuals through qualified local distributors.

2) Liberalization of Qualified Foreign Institutional Investors (QFII) Standards

China's decision to permit foreign investment in A shares through QFIIs beginning in 2003 was a landmark step in the development and liberalization of China's capital markets. More recently, PRC authorities have taken steps to increase the

number of QFIIs and the amount invested by QFIIs.[10] Nevertheless, a few QFII requirements are onerous and have substantially limited the utility of the program, as well as the number of investors that can take advantage of it.

Along with the QFII program, China has recently taken steps to allow certain large foreign investors to purchase shares in domestic companies. These new rules will allow foreign investors to buy stock in Chinese companies that have completed the share-reform program (exchange of nontradable shares to common A shares). Foreign investors that meet certain government standards can buy existing shares or purchase new shares that might be issued. But requirements that an investor purchase at least 10 percent of the company, and hold the stake for at least three years, could limit the desirability of the program.

China would make its securities markets more attractive to investment through the liberalization of QFII restrictions. Such progressive liberalization, done in consultation with foreign and domestic capital markets participants, would almost certainly result in greater foreign investment in China's securities markets, deepen and broaden trading in those markets, and increase capital availability to Chinese issuers.

3) Implement a QDII program

China is in the process of launching its long-awaited qualified domestic institutional investor (QDII) program to promote Chinese investment in foreign stocks and bonds. The People's Bank of China (PBOC) announced the launch of the program in April 2006, and the PBOC, the China Banking Regulatory Commission, and the State Administration of Foreign Exchange released interim measures that permit qualified commercial banks to pool RMB from domestic institutions and individuals and convert them into foreign exchange for investment overseas in fixed-income securities. Other implementation rules will eventually expand the program to qualified mainland insurance companies, fund management firms, and securities brokerages to convert RMB into foreign currency, raise funds in RMB or foreign currency, and invest in overseas securities. Such a program will further liberalize China's capital accounts. It may also help familiarize Chinese domestic investors with international corporate and brokerage practices and give them access to top-quality research under conditions that would respect officials' concerns about currency flows. China recently lifted restrictions prohibiting Chinese banks from buying foreign equities, and will allow banks to invest up to 50 percent of the QDII funds in overseas stocks. Previously, QDII banks were restricted to buying bonds, money-market products and fixed-income derivatives.[11]

4) Promote Regulatory Transparency

A transparent industry is generally one in which the public and industry participants have the opportunity to be involved in the rulemaking process, access information about proposed rules, question and understand the rationale behind draft rules, and have sufficient opportunity to review and comment on them. Transparent and fair regulatory systems play an integral role in the development of deep, liquid capital markets that attract participants, increase efficiency, and spur economic growth and job creation. The absence of transparency in the implementation of laws and regulations can seriously impede the ability of firms to compete fairly and often distorts the market. Though China's securities regulator, the China Securities Regulatory Commission (CSRC), has improved its policies on prior consultation and has presented many proposed regulations for public comment, much progress is still needed. Short comment periods are insufficient to review complex new regulations, particularly those intended to affect foreign firms whose ability to comment is hampered by distance and language.[12]

SIFMA has published a paper that serves as a blueprint for a transparent regulatory regime. The paper underscores the key guiding principles of fair and transparent regulations as follows: 1) rules, regulations and licensing requirements should be considered and imposed, and regulatory actions should be taken, only for

---

[10] China will raise the quota for Qualified Foreign Institutional Investors from $10 billion to $30 billion, SED Financial Sector Reform Fact Sheet, May 23, 2007.

[11] QDII's will still be prohibited from, ". . . no investment in commodities-based derivative products, hedge funds and debt securities with credit ratings below BBB as assigned by an international credit rating agency." **Notice of the Adjustments to the Offshore Investment Scope of Overseas Wealth Management Business of Commercial Banks on behalf of Their Clients** (promulgated on May 10, 2007), http://www.cbrc.gov.cn/english/home/jsp/docView.jsp?docID=20070511425E7E3A4547640AFFE563AD79AEB000.

[12] For example, draft rules on credit rating business supervision in the securities market, and separate CSRC draft measures on corporate bond issuance, only provided a comment period of one week.

the purpose of achieving legitimate public policy objectives that are expressly identified; 2) regulation should be enforced in a fair and non-discriminatory manner; 3) regulations should be clear and understandable; 4) all regulations should be publicly available at all times; and 5) regulators should issue and make available to the public final regulatory actions and the basis for those actions.

5) Liberalize Derivatives Regulation

Interim derivative rules, which took effect in March 2004, have prohibited securities firms from creating and distributing derivative products. The inability of securities firms to engage in these activities hampers the development of these markets. Foreign firms hope that China's newly revised Securities Law will lead the State Council to formulate measures on the issuance and trading of derivatives.

Continued liberalization of China's capital markets has clear benefits for China and the global economy. Long-established U.S. policy seeks to promote economic growth through open financial services markets. Global economic integration facilitates the importation of capital and intermediate goods that may not be available in a country's home market at comparable cost. Similarly, global markets improve the efficient allocation of resources. Countries gain better access to financing, and the suppliers of capital—institutional investors or individual savers—receive better returns on their investments.

The most reliable and expedient way for China to meet its massive capital demand is to access the larger pools of capital available in the global markets. Foreign securities firms can contribute to the development of China's financial markets by sharing their expertise on the infrastructure needed to effectively serve a sophisticated and globally oriented client base. Foreign players can also provide new financial products and services that meet the changing needs of Chinese investors, demonstrate the benefits of high corporate governance standards, and consult on legal issues that must be addressed to help domestic equity and capital markets flourish. Ultimately, the modernization of China's financial system, especially its capital markets, will benefit both China and the world.

Finally, open, fair markets help to increase living standards. We look forward to working with the Committee, the Congress, and the Administration to further expand the U.S. securities industry's access to China through the use of bilateral and multilateral trade forums. A coordinated U.S. Government effort, including all relevant agencies, will be critical in helping U.S. securities firms to gain full access to these crucial markets.

We appreciate the Committee's interest in this issue, and the opportunity to present this statement. We look forward to working constructively with this Committee on issues related to the global financial markets in the future.

R–CALF USA
Billings, Montana 59107
August 16, 2007

Hon. Charles B. Rangel, Chairman
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Rangel:

The Ranchers-Cattlemen Action Legal Fund—United Stockgrowers of America (R–CALF USA) appreciates this opportunity to submit comments regarding trade legislation relating to China. R–CALF USA represents thousands of USA cattle producers on domestic and international trade and marketing issues. R–CALF USA, a national, non-profit organization, is dedicated to ensuring the continued profitability and viability of the U.S. cattle industry. R–CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders, and feedlot owners. Its members are located in 47 states, and the organization has over 60 local and state association affiliates, from both cattle and farm organizations. Various main street businesses are associate members of R–CALF USA.

As the House Ways and Means Committee considers legislation related to trade with China, we urge you to include legislative proposals designed to ensure that U.S. trade remedy laws remain effective tools to combat unfair trade practices by China and other countries. As international trade has expanded with China and other countries, trade remedies have been critical for ranchers and farmers. China is becoming a more and more frequent source of dumped and subsidized imports

that harm U.S. producers, including American agriculture producers. Since 2004, China has accounted for 85 percent of the imports subject to new antidumping orders. Such unfair trade practices are a primary concern for the Nation's cattle ranchers, since the highly perishable nature of our product makes the cattle industry particularly vulnerable to unfair trade practices.

It is critical that domestic trade remedy laws provide effective and meaningful relief from these injurious trade practices. Unfortunately, we are deeply concerned that the effectiveness of our trade laws is being undermined by a series of misguided decisions from the WTO settlement dispute system. Of particular concern are decisions by the WTO Appellate Body on the so-called "zeroing" issue. These decisions threaten to make effective relief from unfair trade practices much more difficult to obtain for farmers and ranchers throughout the United States.

I. Congressional Action Is Needed to Ensure WTO Decisions Do Not Undermine the Effectiveness of U.S. Antidumping Law

We believe Congress has an important role to play in upholding our trade laws in the face of problematic WTO decisions. The Administration has told our trading partners that over-reaching WTO decisions on "zeroing" must be resolved through negotiations in the on-going Doha Round of negotiations at the WTO, and Congress can help make such a resolution a reality by ensuring that the WTO "zeroing" decisions are not implemented until such negotiations succeed. Specifically, we believe that enactment of the legislative language in H.R. 2714 will help defend U.S. trade laws and provide a needed incentive to reach a negotiated solution at the WTO. This will provide our Administration with the leverage it needs to reach a meaningful solution on the zeroing issue with our trading partners. Most importantly, Congressional action on this issue will ensure that U.S. ranchers and farmers are not unnecessarily stripped of the tools they need to counteract unfair trade practices from China and other nations while negotiations proceed.

A. U.S. Practices Challenged at the WTO Are Needed to Redress 100% of the Dumping Occurring in our Market

Since the creation of the Antidumping Act of 1921, U.S. trade policy has provided a remedy to U.S. producers harmed by international price discrimination that results in goods being exported to the U.S. at a price below the good's normal value. This basic right to address injurious dumping was included in GATT Article VI in the late 1940s and has been maintained ever since.

Over many decades, the U.S. Government has employed calculation methods in antidumping proceedings that enable it to measure and redress the full extent of dumping occurring in the U.S. market. While this methodology has been given the misleading shorthand name "zeroing," the actual practice is not designed to unfairly "zero out" or lower dumping margins, but to fairly and accurately measure the full amount of dumping that is occurring. The Commerce Department looks at all relevant imports of a certain product and determines which imports were dumped and which were not dumped. All imports are included in Commerce's calculation of the margin of dumping for that product, but only those imports that are actually dumped face any liability for dumping duties.

When calculating the dumping margin using the weighted average method, the Commerce Department divides the total amount of dumping found by the total value of the imports to determine an average dumping margin. When determining this margin, the Department does not provide credits, or offsets, for any imports of the product that may not have been dumped during the period. These are simply non-dumped entries, and there is no margin of dumping for these sales included in the numerator of the Department's calculations. This is because there is no liability for dumping duties for non-dumped sales. Thus, including credits for those sales in the dumping margin would artificially lower that margin and subject dumped products to a duty that fails to account for the full amount of dumping that has occurred. Administering the law in this way ensures that all dumping is accounted for, and that dumping is not masked by unrelated instances of non-dumping.

This is no different than in other areas of the law, where such illogical offsets are not even contemplated. For instance, if you are caught exceeding the speed limit on the highway, you will receive a citation. You will be given no credit for other times when you (or other drivers) were complying with the law by driving below the speed limit. Likewise, if your car is found parked in front of an expired parking meter, that is a parking violation, regardless of whether other cars that are parked nearby still have time left on their meters and regardless of whether the same car on other days may have been parked (even at the same meter) with time left when it departed.

Before the WTO Appellate Body decisions on "zeroing," the concept of reducing the amount of dumping found by including credits for unrelated, non-dumped transactions was alien to the administration of the antidumping law. When the WTO was created, no country with active trade remedy laws would have understood the purpose of their law or the intent of the WTO agreements to be to require the inclusion of such counterintuitive offsets in dumping calculations. Such illogical offsetting, though, is precisely what the Department of Commerce has decided to implement in investigations in response to the WTO's misguided zeroing decisions. Inclusion of these offsets could seriously and systematically underreport on the amount of dumping occurring, leaving injured domestic industries, their workers and communities without the remedy intended by Congress for the last 86 years. Such offsets will be particularly harmful to the U.S. cattle industry, since accurate dumping margins that capture 100% of the dumping that occurs are vital to provide relief to producers of perishable and cyclical products that are particularly sensitive to dumping.

B. WTO Dispute Settlement Panels and the Appellate Body Have Made Erroneous, Overreaching Decisions on "Zeroing," Creating Obligations to Which the U.S. Never Agreed

From the beginning of the GATT, it was recognized that countries had the right to address injurious international price discrimination through the imposition of dumping duties. According to Article VI:1 of GATT 1994, injurious dumping is to be "condemned." Article VI:2 of GATT 1994 further explains that the purpose of antidumping duties is to "offset or prevent dumping." The entire focus of Article VI of GATT 1994 is to set out what member states can do to counteract dumping,[1] and the Antidumping Agreement elaborates upon the provisions of Article VI. The United States was a major participant in the creation of the GATT and in the negotiation of the current Antidumping Agreement. At all times during these negotiations, the U.S. understanding of its rights has been the same—that it may collect antidumping duties on 100% of the dumping that it finds. No duties are collected on imports that are not dumped. But the fact that there are some imports that are not dumped has never justified reducing the amount of dumping found and thus reducing the liability for dumping duties on those imports that are dumped.

Yet, in a series of decisions, beginning with EC—Bed Linen, and continuing through U.S.Softwood Lumber V, U.S.—Zeroing (EC), and U.S.—Zeroing (Japan), WTO Appellate Body decisions have, for various and changing reasons, found that imports that are not dumped actually constitute a basis for reducing the amount of dumping found. These decisions have ruled that Commerce's methodology for capturing 100% of dumping violates WTO rules and is prohibited. The reality, though, is that the U.S. never agreed to any prohibition of "zeroing" during the Uruguay Round. The Appellate Body simply created the prohibition out of whole cloth. Indeed, the U.S. Uruguay Round antidumping negotiators have publicly stated that they never agreed to a "zeroing" ban:

Despite the successful effort to prevent any provision in the Antidumping Agreement that would prohibit "zeroing," the WTO AB concluded that the Antidumping Agreement does prohibit "zeroing." This interpretation of the Agreement creates an obligation to which the U.S. did not agree, and, even more disturbing, it imposes upon the U.S. an obligation that the U.S. affirmatively opposed and successfully prevented from being incorporated into the WTO Antidumping Agreement.[2]

Not surprisingly, therefore, the Administration has been consistently critical of the reasoning, or lack thereof, in the "zeroing" decisions:

- "The United States had grave concerns about whether the Appellate Body had properly applied the special standard of review under Article 17.6(ii) of the Anti-Dumping Agreement." Dispute Settlement Body, Minutes of the Meeting (May 12, 2001), WT/DSB/M/101 (May 8, 2001).
- "There was a widespread view among the GATT Contracting Parties—including Canada—that such offsetting had not been required in the years and decades before the WTO Agreement, and they had continued in this view as WTO Members after 1995." Statement of the United States at the adoption of the Panel and Appellate Body Reports in Softwood Lumber (WT/DS264) (Aug. 31, 2004).
- "[T]he United States remains of the view that the Appellate Body report in [the U.S.Zeroing (EC)] dispute is a deeply flawed document." Statement of the

[1] *U.S.—1916 Act (EC) (Panel)*, Panel Report, at paras. 6.103, 6.106–107, 6.114.

[2] Letter from Eric I. Garfinkel, Former Assistant Secretary of Commerce for Import Administration (1989–1991), and Alan M. Dunn, Former Assistant Secretary of Commerce for Import Administration (1991–1993), to the Secretary of Commerce and the U.S. Trade Representative (Jun. 20, 2005).

United States on implementation of the Panel and Appellate Body Reports in Zeroing (EC) (WT/DS294) (May 30, 2006).

- "[T]he sum total of the Appellate Body's findings on the zeroing issue over the past several years calls into question whether the major users of the antidumping remedy began breaching that Agreement the very day it went into effect in 1995. This is a surprising result. Presumably the Members who negotiated the Agreement understood its meaning." Statement of the United States at the adoption of the Panel and Appellate Body Reports in Zeroing (Japan) (WT/DS322) (Jan. 23, 2007).

Congress has also identified the problem of WTO Appellate Body decisions creating obligations not agreed to by the United States as a serious concern, in particular on the issue of "zeroing." In the Trade Act of 2002, Congress recognized that "[s]upport for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements," noting that, "the recent pattern of decisions by dispute settlement panels of the WTO and the Appellate Body to impose obligations and restrictions on the use of antidumping, countervailing, and safeguard measures by WTO members—has raised concerns."[3] Congress expressed concern that WTO dispute settlement panels and the Appellate Body "apply the standard of review contained in Article 17.6 of the Antidumping Agreement,—[and] provide deference to a permissible interpretation by a WTO member—."[4] The accompanying Senate report stated that the concerns expressed in the legislation were prompted by "recent decisions placing new obligations on the United States—which are not found anywhere in the negotiated texts of the relevant WTO agreements."[5] That report specifically refers to the decision in EC—Bed Linen, wherein the "zeroing" issue was first addressed.[6]

More recently, Members and Senators have written letters to the Administration about the continuing problem of WTO overreaching in the "zeroing" cases. In November 2006, Representatives Cardin and Levin wrote to Ambassador Schwab about their "continuing serious concern with regard to decisions of the World Trade Organization Appellate Body (AB) addressing the issue of 'zeroing' in antidumping proceedings."[7] Likewise, in December 2006, eleven Senators wrote to Secretary Gutierrez and Ambassador Schwab to express: concern about the continuing pattern of World Trade Organization (WTO) Appellate Body decisions addressing the issue of "zeroing" in antidumping proceedings. Without question, the Appellate Body is creating obligations not included in the WTO agreements and never accepted by the United States. We are deeply troubled that U.S. trade remedy laws are being undermined by WTO overreaching on the "zeroing" issue.[8]

Chairman Rangel and Chairman Baucus of the Senate Finance Committee also wrote to Secretary Gutierrez and Ambassador Schwab seeking delay of the implementation of the decisions because of their own "concern[] that the Appellate Body decision at issue involves an attempt to impose unilaterally obligations on a WTO Member—in this case, the United States—without its prior consent."[9]

Outside observers and academics have also questioned the validity of the "zeroing" decisions.[10] Despite such strong, ongoing, and growing concern from the Administration, Congress, and outside observers, the Commerce Department has already implemented WTO "zeroing" decisions for antidumping investigations, and will in the future face a deadline for implementing the decisions in antidumping reviews.

C. *Congressional* Action Will Help the U.S. Negotiate a Solution on "Zeroing" in the WTO Doha Round Negotiations

The WTO Appellate Body decisions regarding zeroing have been harshly criticized by the U.S. Government as exceeding the authority of the Appellate Body by cre-

---

[3] 19 U.S.C. § 3801(b)(3).

[4] 19 U.S.C. § 3801(b)(3).

[5] S. Rep. No. 107–139, at 6 (2002).

[6] *Id.* at 7, n.1

[7] Letter to Ambassador Susan C. Schwab from Representatives Benjamin L. Cardin and Sander M. Levin (November 27, 2006).

[8] Letter to Secretary Carlos M. Gutierrez and Ambassador Susan C. Schwab from Senators Rockefeller, Baucus, Craig, Durbin, Crapo, Byrd, Voinovich, Conrad, Graham, Bayh, and Dole (December 11, 2006).

[9] Letter to Secretary Carlos M. Gutierrez and Ambassador Susan C. Schwab from Chairman Charles B. Rangel (Committee on Ways and Means) and Chairman Max Baucus (Committee on Finance) (January 19, 2007).

[10] See, e.g., Greenwald, John, *WTO Dispute Settlement: An Exercise in Trade Law Legislation?*, 6(1) J. Int'l Econ. Law 113, 120 (2003); Alford, Roger P., *Reflections on U.S.-Zeroing: A Study in Judicial Overreaching by the WTO Appellate Body*, 45 Colum. J. Transnat'l Law (2006).

ating obligations never agreed to by the members. These decisions have failed to properly interpret the WTO Antidumping Agreement and the GATT, they have failed to accord appropriate deference to the United States' understanding of its rights and obligations, and they have created obligations to which the U.S. never agreed, in violation of express provisions of the Dispute Settlement Understanding (DSU).[11] In such an extraordinary situation, the only way for the U.S. to protect its interests and improve the functioning of the WTO is to pursue clarification of its rights and obligations through negotiations.

Given the widespread concern over the implications of the WTO "zeroing" decisions, the Administration has requested that our trading partners engage in negotiations to address these misguided decisions. In its request, the U.S. explained why negotiations are needed:

A prohibition of zeroing, or a requirement to provide offsets for non-dumped transactions, simply cannot be found in the text of the AD Agreement. Nevertheless, the Appellate Body concluded that authorities are required to offset non-dumped comparisons against dumped comparisons, even though this conclusion is at odds with long-standing practices implementing AD Agreement provisions relating to, among other things, targeted dumping and prospective normal value systems, as well as with long-held views on the very concept of dumping itself. The issue of zeroing, on which Members could not reach agreement in the Uruguay Round, should not be left to dispute settlement. We as Members should endeavor to reach an agreement on this issue through negotiation.[12]

On June 27, 2007, the U.S. submitted a textual proposal to Rules Negotiating Group that would clarify that offsets are not required in dumping proceedings.[13]

Nothing in the WTO Agreement requires the U.S. Government to implement an adverse decision by automatically repealing our laws or changing our practices instead of negotiating a solution.[14] The U.S. is a strong supporter of the WTO and its dispute settlement system. In response to numerous adverse WTO decisions, the U.S. already has a remarkable record of bringing inconsistent measures into conformity with the covered agreements in most of those disputes. However, the U.S. expects WTO dispute settlement panels and the Appellate Body to comply with express limitations on their authority according to the WTO DSU. DSU Articles 3.2 and 19.2 explicitly prohibit dispute settlement findings or recommendations that "add to or diminish the rights and obligations provided in the covered agreements." The series of decisions on "zeroing" represents another instance of panels and the Appellate Body imposing obligations that were not negotiated or agreed to by the U.S. When a panel or the Appellate Body does not honor the limitation on their authority, there is no remedy for a Member. Absent negotiations, except for in the most extraordinary cases, the WTO dispute settlement system cannot effectively limit erroneous decisions.

The Administration has taken the essential first step of requesting WTO negotiations to correct the over-reaching "zeroing" decisions and proposing text that would clarify that WTO members are not required to include offsets for non-dumped sales in their dumping calculations. But the United States faces pressure from trading partners that seek to have the misguided "zeroing" decisions implemented in full by the United States and/or that have put forward their own proposals in the rules negotiations to weaken the effectiveness of domestic trade remedies. Thus, congressional support for a negotiated solution can play a key role in increasing U.S. negotiating leverage and creating an incentive for partners to come to the table in good faith to address overreaching by the WTO dispute settlement system.

---

[11] *See* DSU Articles 3.2 and 19.2; *see also* Antidumping Agreement Article 17.6(ii). In fact, numerous WTO Members have identified instances of overreaching by WTO dispute settlement panels and the Appellate Body in a variety of cases, suggesting the existence of a systemic problem. *See* Stewart, T., Dwyer, A., and Hein, E., *Proposals for DSU Reform that Address Reform Directly or Indirectly, the Limitations on Panels and the Appellate Body Not to Create Rights and Obligations*, 535–541, in Reform and Development of the WTO Dispute Settlement System (Georgiev and Van der Borght, eds.), Cameron May (2006); Stewart, T., Dwyer A., and Hein, E., *Trends in the Last Decade of Trade Remedy Decisions: Problems and Opportunities for the WTO Dispute Settlement System*, 22–23, 28–29, presented to the ABA Section of International Law: The World Trade Organization at 10 and the Road to Hong Kong (2005) (pending publication in the Arizona Journal of International and Comparative Law, Spring 2007).

[12] *United States—Offsets for Non-Dumped Comparisons*, Communication to the Negotiating Group on Rules, TN/RL/W/208 (June 5, 2007).

[13] *United States, Proposal on Offsets for Non-Dumped Comparisons*, Proposal to the Negotiating Group on Rules, TN/RL/GEN/147 (June 27, 2007).

[14] Under DSU Article 22.8, concessions or other obligations shall only be suspended until: 1) the inconsistent measure is removed; 2) a solution to the nullification or impairment of benefits is provided; or 3) a mutually satisfactory solution is reached between parties.

Legislation has been introduced (H.R. 2714) that would mandate resolution of the "zeroing" issue through negotiations and ensure that resolution through negotiations is the approach that is pursued. Because the decisions in these cases have so clearly created obligations never agreed to by prior negotiators, it is vital that our laws not be modified pursuant to these decisions in ways that prevent the United States from providing its domestic producers with a remedy that addresses all instances of dumping. H.R. 2714 would also ensure that outcome. Passage of this legislation will ensure that U.S. producers, farmers and ranchers included, are protected from negative impacts arising from these erroneous WTO decisions while an agreement to address these decisions is reached in Geneva.

II. Legislation on China Trade Should Ensure Effective Relief Is Available to Industries Harmed by Unfair Trade

As the House Ways and Means Committee considers legislation related to trade with China, there are additional measures that would help ensure that U.S. trade laws provide effective relief to industries harmed by unfair trade by China and other countries.

First, Congress should take action to address a decision by the U.S. Court of Appeals for the Federal Circuit that will significantly weaken U.S. trade remedy laws. The Court imposed a new test that must be met before an industry can receive relief from unfair trade. The decision requires the International Trade Commission not only find that unfairly traded imports are a cause of injury to the domestic industry, but also to engage in a speculative, hypothetical inquiry to determine whether or not imports from non-subject countries would cancel out the benefits of import relief if any relief is granted. This test has no basis in the law, and it is a dramatic departure from current practice. The test will make injury investigations much more costly, and it will greatly diminish the likelihood of relief to America's farmers and ranchers that have been harmed by unfair trading practices. The decision also has implications far beyond agriculture. Congress has the opportunity to correct this erroneous decision and re-affirm the intent of our trade remedy laws by enacting language in H.R. 2714 that would restore the law to its original meaning.

Second, Congress should ensure that the full range of trade remedy tools is available to combat unfair trade practices by China. While the Commerce Department has recently found that countervailing duty law can be applied to imports from China, Congress should codify this understanding in the law to ensure that massive government subsidies in China, which seriously distort trade and harm U.S. producers who receive no such subsidies, can be effectively redressed through U.S. trade laws. This will help level the playing field with China, provide important relief to U.S. producers harmed by unfair Chinese subsidies, and create certainty and predictability in the law for our producers. In addition, trade remedy laws should be clarified to ensure that there is an effective remedy against currency manipulation by China and to ensure that the China-specific safeguard in section 421 provides a meaningful tool to U.S. producers facing surges in imports from China.

III. Conclusion

We greatly appreciate the Committee's interest in legislation with regard to trade with China. While increased trade with China has provided many benefits, it has also revealed how vital our domestic trade remedy laws are as the first line of defense against unfair foreign trade practices. U.S. cattle producers understand how important effective trade remedy laws are, and they depend on those laws to ensure that the playing field is level when we compete internationally. Unfortunately, troubling developments at the WTO threaten to undermine the effectiveness of U.S. trade remedy laws with regard to China and other countries. We believe Congress can play an important role in ensuring that these erroneous decisions are corrected through negotiations, thereby guaranteeing that U.S. farmers and ranchers continue to have access to the tools they need to combat unfair trade.

We therefore strongly urge you to include the provisions of H.R. 2714 in any legislation the Committee on Ways and Means considers regarding trade with China. Other proposals to guarantee the effectiveness of our trade remedy laws with regard to China also merit inclusion, including provisions in H.R. 2714 to correct a troubling court decision on injury to the domestic industry, proposals to clarify that countervailing duty law applies to goods from China, and proposals that would ensure that currency manipulation and import surges from China can be effectively addressed through domestic trade remedy laws.

Our farmers and ranchers can compete with China and any other country in the world as long as the playing field is level and fair. That can only be assured by maintaining the integrity of our trade remedy laws. We believe that legislation regarding trade with China provides an important opportunity for the Committee to

defend and strengthen our trade remedy laws and thus improve the competitiveness of U.S. cattle producers.

R–CALF U.S. appreciates this opportunity to submit our views.

Sincerely,

R. M. Thornsberry, D.V.M.
President, R–CALF U.S. Board of Directors

Statement of the U.S.-China Business Council

The challenge facing America today is to consolidate and extend the substantial benefits of global trade to all Americans and to strengthen the Nation's ability to benefit from the exponential growth in commerce that will occur in the coming decades.

There are several broad issues currently being considered by Congress, including currency, trade remedies, and import safety, that affect U.S. trade and commerce across the globe. As the Ways and Means Committee considers proposals to address these issues in the context of the U.S. trading relationship with China, the U.S.-China Business Council (USCBC) encourages the members to ensure that the considerable gains to U.S. consumers and workers that result from trade globally and trade with China specifically are not undercut in an effort to remedy specific issues.

U.S. trade and investment with China clearly benefit the U.S. economy, both through exports and through broader effects such as lower prices and higher productivity. Since China joined the World Trade Organization (WTO) in 2001, U.S. exports to China have grown 187 percent, far more rapidly than U.S. exports to any major market during this time. China is now our fourth-largest export market—third, if exports to Hong Kong are included. The prospects for increased exports of services to China are also encouraging. As U.S. companies take advantage of service sector openings mandated by China's WTO agreement, the U.S. services trade surplus is projected to grow to $15 billion by 2015 according to Oxford Economics.[1]

These trends need to be encouraged as steps are taken to deal with legitimate and serious U.S. concerns regarding the bilateral commercial relationship, such as intellectual property rights protection, market access barriers, unfair trading practices, or product safety in China. USBC supports balanced and fact-based efforts to find solutions that are focused and do not threaten the tremendous gains to the U.S. economy that come from trade and investment with China. Legislation that undermines the United States' own credibility through inconsistent and illegitimate enforcement is both ineffective and counterproductive. Therefore, USCBC strongly recommends that the Committee ensures that all measures adopted by Congress are balanced and WTO consistent. A failure to abide by WTO commitments would undermine U.S. commercial relations with all of its trading partners, thereby costing American firms and citizens access to the enormously beneficial global market.

A fuller discussion of three key issues follows.

Currency Validation

One of the most contentious issues currently in U.S.-China trade relations is the exchange rate between the U.S. dollar and the Chinese yuan. The USCBC shares Congress's goal that China adopt a market-driven exchange rate as the ultimate and appropriate solution to this issue.

Toward this end, our focus should be on encouraging China to undertake the broader financial sector reforms that will enable China to remove capital controls at the appropriate time and allow market forces to determine fully the value of its currency. These reforms include opening the financial sector to more private companies, introducing more financial market products such as currency futures, requiring greater commercial accountability from existing financial sector companies, and, of course, allowing more foreign participation in China's capital and credit markets. The Strategic Economic Dialogue led by the Treasury Department has made these reforms a central part of its engagement with China's government and we fully support this approach.

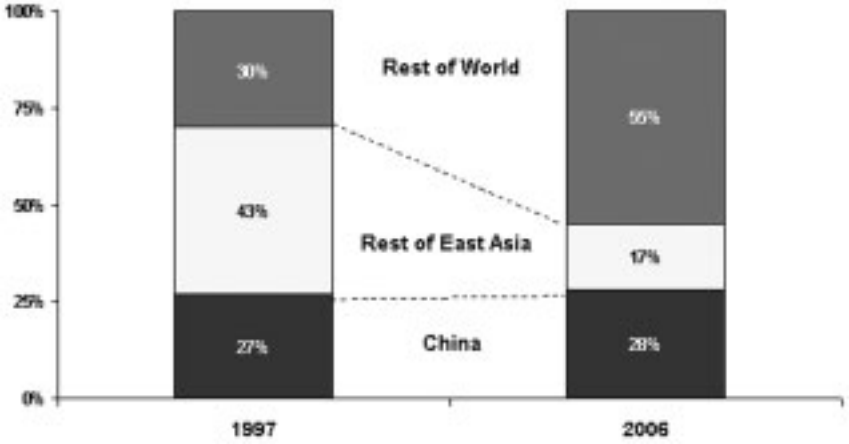
[1] Oxford Economics. *The Prospects for U.S.09China Services Trade and Investment.* The China Business Forum, December 2006. See: www.chinabusinessforum.org/pdf/uscbc-full-report-prospects-for-us-china-services-trade-and-investment-chinese.pdf.

In the meantime, China should move more quickly to allow market influences from trade flows to be reflected in the exchange rate between the dollar and the yuan. The yuan has strengthened by about 9 percent since a new currency policy was introduced in July 2005. Many economists here and in China expect gradual appreciation to continue for the balance of this year, with perhaps a cumulative appreciation of 11–12 percent by that time.

Many observers say that China's government keeps the value of its currency artificially low in order to boost its exports and that this is the main cause of the bilateral trade deficit between China and the United States. The effect of China's exchange rate policy on bilateral trade is likely overstated, however. USCBC member companies generally do not cite the exchange rate as a key business issue affecting their export competitiveness in China, for example. Many are concerned, though, about potential repercussions should the political dispute between the two countries over the exchange rate worsen.[2]

More broadly, recent research indicates that even a 25 percent revaluation of the yuan against the dollar—far greater than could be expected—would decrease the total U.S. trade deficit by only $20 billion[3] after two years. This limited impact is primarily because most of the goods we import from China we previously imported from other low-cost suppliers in Asia and throughout the world. These other economies have been investing heavily in China over the past decade, shifting their U.S.directed export manufacturing—and with it their longstanding trade surpluses with the United States—over to China (see the chart below). If we stopped buying these products from China, we would simply go back to buying these products from other countries—and pay more for them, potentially *increasing* our trade deficit.

Composition of the U.S. Global Trade Deficit



Even so, any benefit China gains from an undervalued currency—even if its actual impact on the U.S. economy is not great—should be addressed. The best way to eliminate any such unfair advantage is to continue to push for greater market influences to be reflected in the exchange rate now, and for broader financial reforms that will lead to the removal of capital controls at the appropriate time and a truly market based currency in the future.

Legislative approaches to the exchange rate issue may do more harm than good. Proposals that attempt to determine the "true value" of an exchange rate, or the amount by which a currency is believed to be misaligned, should be rejected. There is no broad international or even domestic agreement on how to determine the proper value of an exchange rate. Such estimates are subjective, vary greatly with the methodology, and can be politicized. In the case of China, for instance, estimates of misalignment range anywhere from 1 percent to 40 percent, depending on which economist you ask or whether you refer to the statistics of the International Monetary Fund, national governments, or other international organizations. As a con-

[2] USCBC. *U.S. Companies Gain in China, Still Face Hurdles. http://www.uschina.org/public/documents/2006/08/member-priorities-survey.pdf.*

[3] Oxford Economics: *The China Effect: Assessing the Impact on the U.S. Economy of Trade and Investment with China.* The China Business Forum, 2006. p.8.

sequence, directing the Treasury or Commerce departments to calculate how much a specific currency may be over or undervalued will require the department to make a politically charged guess, rather than an exact calculation.

The Committee also should not endorse efforts to define currency undervaluation as a countervailable subsidy. Under WTO rules, currency manipulation or misalignment would likely not meet the standard for action. Thus, applying countervailing duties (CVDs) to China on that basis would open the United States to a WTO challenge on the matter—a case which the United States would likely lose. Moreover, reinterpretation and inconsistent imposition of WTO laws undermine the calls by the United States for China to abide by international norms—and invites retaliatory sanctions from China.

The use of exchange rates to modify antidumping calculations on imports also may not be consistent with U.S. WTO commitments. The WTO antidumping agreement defines precisely how currency adjustments are to be made in antidumping proceedings and it does not authorize the additional adjustment proposed by some measures that have been introduced in Congress. Given the degree to which U.S. exports are increasingly subject to antidumping actions abroad, it would be counterproductive for the United States to adopt unfair and questionable procedures that undermine U.S. credibility as we work to improve other countries' compliance with WTO rules.

Continued firm engagement with China to move faster with financial reforms, and in the meantime allow the exchange rate to better reflect trade flows, remains the best approach to reaching our common goal of a market-driven exchange rate. We should work with other governments and the International Monetary Fund in a coordinated dialogue with China to achieve this end.

Countervailing Duties and Nonmarket Economies

USCBC believes that applying countervailing duties to exports from nonmarket economies is unnecessary. U.S. law already includes antidumping remedies that capture unfair trade advantages that might be enjoyed by producers in China and other nonmarket economies. At the same time, using CVDs against imports from nonmarket economies may act against U.S. economic interests. We want China to continue to reform its economy and graduate to market economy status once it has clearly met criteria under U.S. law. By applying CVDs to China now, before it has achieved market economy status, we are eliminating important incentives for China to move toward this goal by sending mixed signals about our intentions. We should instead be plotting out a clear roadmap of specific reforms that, if adopted, would result in China achieving market economy status under U.S. law. It is also important to note that a fully convertible currency—and by assumption, a market-determined exchange rate—is one of the criteria for graduation.

Congress is nonetheless considering legislation that would apply CVDs to nonmarket economies. If it chooses to go this route, there are several specific flaws in the approach reflected in H.R. 1229 that deserve highlighting. First, the bill creates the potential for inappropriate and WTO-inconsistent double remedies to be imposed for the same subsidies. When applying the countervailing duty law to products of nonmarket economy countries that are also subject to an antidumping investigation, subsidies may be double-counted under the two simultaneous proceedings. While the Department of Commerce (DOC) already has explicit authority not to double-count export subsidies, it does not have that authority with respect to domestic subsidies that might be targeted. Legislation that does not address this issue should be rejected.

Second, H.R. 1229 requires DOC to employ methodologies to calculate the levels of subsidization that are inconsistent with our WTO commitments. As part of China's accession to the WTO, all parties, including the United States, agreed that benchmark rates within China would be used to calculate subsidies, unless "special difficulties" arise and it is not practical to use and/or adjust Chinese benchmarks. Contrary to the explicit WTO requirement creating a presumption for the use of Chinese benchmarks, H.R. 1229 makes an explicit presumption that such benchmarks cannot be used. Determinations as to subsidy benchmarks must be consistent with U.S. WTO obligations and should be left to DOC, which has the data to make the objective and accurate analyses required. Moreover, the language of the provision inappropriately provides that, even if China is determined to be a market economy, DOC must still apply special procedures in determining subsidy benchmarks. There is no basis for singling out certain market economies for such discriminatory treatment.

Finally, H.R. 1229 requires congressional approval of any decision by DOC to grant market-economy status to a nonmarket economy country under antidumping rules. The requirement of a congressional approval undermines the objective, fac-

tual, and case-by-case analysis of the economic criteria set forth in the antidumping law that the graduation determination process demands. Requiring Congress to vote on this type of determination would send the wrong signal to China and our other trading partners, as they might seek to replicate such congressional interventions in their own trade remedy analyses; this would have adverse effects on U.S. exporters.

Import Safety

In recent months, the safety of goods made in China has become a high-profile issue for U.S. consumers and companies. Product safety and quality are serious matters that must be addressed quickly and transparently. The objective should be clear: to ensure the soundness of our product supply chain and maintain consumers' confidence that the products they buy are safe to use and meet U.S. quality standards, regardless of the source. It is vitally important to pursue a fact-based approach to the issues to ensure accurate understanding of the problems and address them with the appropriate solutions.

Though no product safety violation is acceptable, U.S. companies and consumers should bear in mind that most imports from China are safe, and the product safety issue should not be used as a reason to adopt blanket bans of all products made in China. In addition, both sides must take actions to address this issue effectively. The United States needs to work with China—and indeed, with all other economies whose suppliers produce goods for global markets—to ensure that the proper standards and procedures are in place and are being enforced. Actions must also be taken in the United States to ensure the same goal.

Although the issue has many facets and will require various approaches and solutions, one longstanding problem highlighted by recent episodes is the need for stronger criminal penalties in China to deter counterfeiting. USCBC has been recommending such penalties to the PRC government for some time. Stronger criminal penalties are also a core part of the intellectual property rights cases that the U.S. Trade Representative is pursuing with China under the WTO.

At the same time, it is important to note that under U.S. law, U.S. importers have the legal obligation to ensure that the products they import from anywhere in the world meet U.S. quality and safety standards. The majority of U.S. companies have a good track record of doing so, but some need to step up their efforts. Most larger U.S. companies with better-known brands have existing, effective, vigorous supplier compliance programs that they use in China and elsewhere.

It should also be noted that many U.S. companies that invest in China bring their global product quality and safety standards to their China facilities. These companies serve as models for improving product quality and safety in China, just as they do on other important issues such as workplace safety. Product quality issues tend to surface in Chinese enterprises and occasionally in enterprises of other foreign investors that have yet to develop a good track record of complying with product standards.

Finally, we should keep in mind that the United States has far more allies in China on this issue than opponents. Chinese consumers share the same concerns as U.S. consumers. The PRC central government is concerned about the reputation risk for the "made in China" label. And producers of legitimate goods in China are concerned about being tainted by the actions of the far fewer bad actors.

We should therefore seek to work with the Chinese government to achieve our common interests and avoid allowing this issue to devolve into a trade dispute—an outcome that would not get us closer to the goal of maintaining consumer confidence. USCBC has proposed that this issue be addressed bilaterally under the umbrella of the Strategic Economic Dialogue, particularly given the number of agencies in both countries that are involved in assuring product quality and safety and the need to coordinate a comprehensive set of actions by both sides.

Thank you for the opportunity to present the USCBC's views on these important issues.

Statement of Virgil H. Goode

Mr. Chairman, thank you for the opportunity to provide the Committee with my comments on trade with China. I have been a consistent critic of our current trade policies as they relate to China, and I am pleased that this Committee wishes to address these problems. China must not be allowed to circumvent international trade agreements and U.S. trade laws. The United States has lost millions of manufacturing jobs, particularly to China, and our country has seen the increasing import

of dangerous products from China. The recent cases of tainted food and unsafe children's toys are just the latest in a long history of trade problems with China.

Our trade deficit with China exceeds $230,000,000,000 per year, and for every dollar of products the U.S. exports to China, we import five dollars worth. In a truly fair trading environment, American companies could compete with their Chinese competitors, but that is not the environment in which U.S. manufacturers find themselves due to consistent violations of trade laws by the Chinese. For example, in the furniture industry, Chinese bedroom furniture is sold in the U.S. at prices that do not even cover the cost of the materials in the product. Because the Chinese companies are not held to the same standards for accounting and profitability as producers in market economies, the Chinese are able to routinely dump their excess production in the U.S. market to the detriment of American manufacturers. Any legislation related to trade with China should address the causes of this unfair playing field on which American companies find themselves competing.

First, Chinese companies benefit from substantial government subsidies, the most significant of which is the undervaluation of the yuan. To date, U.S. diplomatic efforts have been fruitless, leading many in Congress, including me, to believe a legislative remedy is necessary.

Second, China's markets remain largely closed to many U.S. companies creating a safe market for Chinese companies who then dump their products into the U.S. market gaining huge market shares.

Third, we must expand enforcement efforts in the U.S. The Chinese are notorious for violating U.S. trade laws. For example, last year, Customs and Border Patrol seized over $46,000,000 of textile products from China that were mislabeled in an attempt to circumvent quotas and other trade laws. China illegally exports to this country, and we should use all the resources available to stop this illegal activity.

Fourth, we need to expand our trade remedy laws to give U.S. companies all the tools they need to protect their right to fair trade.

Fifth, we must vigorously defend ourselves in the World Trade Organization so the WTO panels do not create new obligations to which the U.S. never agreed. One such example is "zeroing" in antidumping cases. In this instance, the WTO panels overturned U.S. practice by creating new requirements that are not in any WTO agreement. This is an assault on our sovereignty and must be addressed by this Congress.

I appreciate the Committee holding this important hearing, and I look forward to reviewing the legislation it puts forth to assist American manufacturers.

○