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Testimony

Before the Committee on Ways and  
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## U.S.-CHINA TRADE

# Opportunities to Improve U.S. Government Efforts to Ensure Open and Fair Markets

Statement for the Record by Loren Yager, Director  
International Affairs and Trade



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Mr. Chairman and Members of the Committee:

We are pleased to have the opportunity to comment on issues related to U.S.-China trade. Today's hearing takes place not only at a time of increasing trade between the United States and China but also amidst a period of ongoing concern about the growing U.S. trade deficit with China, which totaled \$162 billion in 2004. Managing this relationship with one of the United States' most important trading partners is an effort that calls upon the resources of nearly every aspect of the U.S. trade policy apparatus. Our ongoing body of work has examined several aspects of this apparatus, including U.S. government efforts to ensure China's compliance with complex and far-reaching World Trade Organization (WTO) commitments, as well as the federal government's application of available trade remedies against China. As part of that work that has been issued to date, we have recently put forth a number of recommendations to the key executive branch agencies about how to improve the U.S. government's efforts in these areas.

To provide you with an update on these issues, this statement discusses (1) the key findings and recommendations from our recently issued work on U.S. government efforts to ensure China's compliance with WTO commitments, as well as U.S. efforts to protect U.S. intellectual property rights overseas<sup>1</sup> and (2) issues related to how the United States has applied a key trade remedy—the China textile safeguard.<sup>2</sup> These observations are based on a series of reports initiated at the bipartisan request of various congressional committees. That work has included an analysis of China's commitments, surveys and interviews with private sector representatives, the results of two annual assessments of the U.S. government's compliance efforts, a review of overseas intellectual property rights protection, and, most recently, a review of the China textile safeguard.<sup>3</sup> Our work on China-WTO issues included fieldwork in Washington, D.C., China, and at the WTO headquarters in Geneva, Switzerland, and was

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<sup>1</sup>See GAO, *U.S.-China Trade: Opportunities to Improve U.S. Government Efforts to Ensure China's Compliance with World Trade Organization Commitments*, [GAO-05-53](#) (Washington, D.C.: Oct. 6, 2004); and GAO, *Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain*, [GAO-04-912](#) (Washington, D.C.: Sept. 8, 2004).

<sup>2</sup>See GAO, *U.S.-China Trade: Textile Safeguard Procedures Should Be Improved*, [GAO-05-296](#) (Washington, D.C.: Apr. 4, 2005).

<sup>3</sup>See Related GAO Products.

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conducted in accordance with generally accepted government auditing standards.

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## Summary

The complexity, breadth, and ongoing nature of many of the problems with China's WTO compliance demonstrate the need for a cohesive and sustained effort from the key U.S. agencies to effectively monitor and enforce China's implementation of its commitments. The U.S. Trade Representative (USTR), and the Departments of Commerce, State, and Agriculture (USDA) have coordinated on policy issues and increased staff resources to enhance their capacity to carry out these efforts. Our previous work acknowledged the administration's concerted and deliberate strategy of high-level bilateral engagement with China. However, recent turnover of key U.S. trade officials has seemed to interfere with this strategy this year. These developments punctuate the relevance of our recommendations for the key agencies to institutionalize U.S. compliance efforts at the working levels through better strategic planning and human capital management. Specifically, in order that agencies more effectively plan and measure results, we recommended that each of the key agencies improve performance management of their China-WTO compliance efforts. Further, we recommended that, in an environment of high and regular staff turnover, the key agencies should direct additional management attention to ensuring that staff have an opportunity to acquire training relevant to their China-WTO compliance responsibilities. The agencies generally responded positively to most aspects of these recommendations, and indicated that efforts were under way to enhance performance management and provide additional training opportunities for staff. We are in the process of following up with the agencies regarding their specific plans for implementing the recommendations. Finally, in our review of intellectual property protection overseas, we found that coordination on policy matters had helped lead to strengthened laws but that enforcement in China and other countries remains weak. We suggested that the Congress review the efforts of the key interagency mechanism for coordinating law enforcement efforts on intellectual property.

Managing the U.S.-China trade relationship goes beyond ensuring access for U.S. businesses seeking to enter China's market. It also includes ensuring U.S. industries are protected from harmful surges in imports and unfair Chinese trade practices. The terms of China's WTO membership allowed the United States and other members to put special mechanisms in place to respond to such situations while China's economy was in transition. Our most recent report examined the U.S. government's

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interagency Committee for the Implementation of Textile Agreements (CITA) use of one of these special mechanisms—the China textile safeguard. We found that procedural shortcomings have impaired effective application of this safeguard mechanism. First, 17 months elapsed before CITA issued any procedures and, second, the procedures did not clearly indicate how CITA would proceed in “threat-based” cases. A court-ordered injunction<sup>4</sup> has prevented further consideration of the threat-based cases until litigation is resolved and, as a result, new actual market disruption cases have been initiated instead. GAO does not take any position on the legal issues involved in the lawsuit, but this situation affects the speed, scope, and duration of potential relief for U.S. producers of these products. Additionally, the lack of production data impaired access to safeguard measures for U.S. sock producers and may pose similar problems if other producers in similar circumstances seek application of this mechanism. To address these issues, we recommended that CITA clarify its procedures for threat-based safeguard cases and that Commerce take actions to make production data more available for industry sectors that are at risk of experiencing disruptive import surges. The agencies did not comment on our recommendation relating to clarifying procedures for threat-based cases due to ongoing litigation and disagreed with our recommendations regarding production data, stating that such actions would be unproductive. We maintain that our recommendations would make the China textile safeguard more transparent and accessible. Lastly, we have an ongoing body of work on other import relief mechanisms regarding China, including countervailing and antidumping actions, and the China product-specific safeguard measures authorized under section 421 of the Trade Act of 1974, as amended.

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## Recommendations to Improve the U.S. Government’s Efforts to Ensure China’s Compliance with its WTO Commitments

Ensuring China’s compliance with its WTO commitments is a continuing priority for the U.S. government. The complexity, breadth, and ongoing nature of many of China’s problems complying with its obligations demonstrate the need for the U.S. government to have a well-coordinated, sustained effort to ensure China’s compliance. To that end, we have recommended that the key agencies involved in this effort take steps to improve performance management and ensure that staff has adequate opportunity to acquire the training necessary to carry out their responsibilities. The agencies generally responded positively to most

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<sup>4</sup>See *U.S. Ass’n of Importers of Textiles and Apparel v. United States*, Ct. No. 04-00598 (C.I.T. Dec. 1, 2004).

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aspects of these recommendations, and indicated that efforts were under way to enhance performance management and provide additional training opportunities for staff. We are in the process of following up with the agencies regarding their specific plans for implementing the recommendations. Additionally, we recommended that Congress consider reviewing the efforts of a U.S. government coordinating group on intellectual property law enforcement.

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### Problems with China's WTO Compliance Are Broad in Scope, Complex, and Ongoing

China's WTO obligations span eight broad areas and include hundreds of individual commitments on how China's trade regime is to adhere to the WTO's agreements, principles, and rules and allow greater market access for foreign goods and services. Some of these commitments are relatively simple and require specific actions from China, such as reporting information to the WTO or lowering tariffs. Others, however, are significantly more complex and relate to systemic changes in China's trade regime. For example, some commitments require China to adhere to WTO principles of nondiscrimination in the treatment of foreign and domestic enterprises. China has successfully implemented many of its WTO commitments, but a significant number of problems arose in these first years of China's membership. Problems in implementing these obligations spanned all areas in which China had made commitments. Importantly, many of these compliance problems have continued from year to year, and many concerns relate to China's inability thus far to make some of the systemic changes that its WTO commitments require. For example, USTR's most recent report (2004) on China's WTO compliance cites continuing problems with lack of transparency and protection of intellectual property—problems that USTR has cited in each of its annual reports since China's accession to the WTO in 2001.<sup>5</sup>

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### Key Agencies Need to Improve Performance Management of China Compliance Efforts

We found weaknesses in the key agencies' ability to assess the effectiveness of their China-WTO compliance efforts and determined that agencies would benefit from increased emphasis on planning and performance management. The Government Performance and Results Act and our substantial body of work on planning emphasize the importance and usefulness of developing unit- and program-level plans and measures that are connected to an agency's overall mission. We acknowledge the

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<sup>5</sup>See USTR, *2004 Report to Congress on China's WTO Compliance* (Washington, D.C.: Dec. 11, 2004).

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challenges of developing measurable goals, given the extent to which external factors can influence agencies' trade compliance efforts; however, we believe that it is possible for these agencies to better quantify and measure results annually.

We recommended that USTR and the Secretaries of Commerce, State, and USDA take steps to improve performance management pertinent to the agencies' China-WTO compliance efforts. Specifically, we recommended that (1) USTR set annual measurable predetermined targets related to its China compliance performance measures and assess the results in its annual performance reports; (2) Commerce take further steps to improve the accuracy of the data used to measure results for the agency's trade compliance-related goals; (3) State require its China mission to assess results in meeting its goals and report this information as part of the annual Mission Performance Plan; and (4) USDA further examine the external factors that may affect the agency's progress toward achieving its trade-related goals and present the agency's strategies for mitigating those potential effects. Furthermore, we recommended that the head of each agency direct the agency's main China compliance units to set forth unit plans that are clearly linked to agency performance goals and measures, establish unit priorities for its activities, and annually assess unit results to better manage its resources.

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### Key Agencies Should Take Steps to Improve Training Opportunities

We found that the key agencies have opportunities to better manage their human capital involved in China-compliance activities. Specifically, in an environment of high and regular staff turnover, new staff are called upon to take up monitoring and enforcement activities that involve complex, long-term issues. New staffs' effectiveness and efficiency is reduced when (1) no formal training is available to help them with their day-to-day activities and (2) when staffing gaps mean that they cannot learn from more-experienced predecessors. Increased management attention to provide an adequate mix of on-the-job training and formal training can help ensure that new staffs have the necessary tools for doing their jobs well.

We recommended that USTR and the Secretaries of Commerce, State, and USDA undertake actions to mitigate the effects of both anticipated and unplanned staff turnover within the agencies' main China-WTO compliance units by identifying China compliance-related training needs and taking steps to ensure that staff have adequate opportunity to acquire the necessary training. These actions could include determining which of the agencies' existing courses would be appropriate for staff, determining

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what types of external training are available, developing training courses on relevant issues, and establishing a plan and time lines for existing and new staff to receive training.

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### Congress Should Review Efforts of Interagency Law Enforcement Coordinating Group on Intellectual Property

We found that in contrast to the relatively successful coordination efforts agencies had in strengthening intellectual property laws overseas, a key mechanism for coordinating law enforcement activities has not been effective. The National Intellectual Property Law Enforcement Coordination Council (NIPLECC), which was established to coordinate domestic and international intellectual property law enforcement among U.S. federal and foreign entities, has struggled to find a clear mission, has undertaken few activities, and is perceived by the private sector and some U.S. agency officials as having little impact.

We suggested that the Congress review the council's authority, operating structure, membership, and mission and noted that such a review could help the council identify appropriate activities and operate more effectively to coordinate Intellectual property law enforcement issues. Subsequently, the 2005 appropriations act made changes that responded to some of these issues and provided funding for the council.

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### Recommendations to Improve the U.S. Government's Use of the China Textile Safeguard

The WTO China textile safeguard is a transitional mechanism that allows the United States and other WTO members to temporarily restrict growth in textile and apparel imports from China through the end of 2008, even though WTO textile and apparel quotas in general were eliminated on January 1, 2005. The U.S. government's interagency Committee for the Implementation of Textile Agreements (CITA) has established procedures that explain to the public how it will consider safeguard action requests. These procedures stipulate that when requesting safeguard actions, producers must submit data on imports, market share, U.S. production, and additional information showing how imports from China have adversely affected U.S. industry or any other data deemed pertinent.

CITA has applied safeguard quotas on specific products in response to four out of five U.S. industry requests that were primarily based on evidence of actual market disruption. Twelve threat-based requests remain unresolved. Since the recent imposition of a court-ordered injunction, new actual market disruption-based cases have been initiated.

Procedural shortcomings have impaired effective application of the China textile safeguard. First, 17 months elapsed before CITA issued any

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procedures about the China textile safeguard, and, second, the procedures did not clearly indicate how CITA would proceed in threat-based cases. Currently, a court-ordered injunction prevents further government consideration of threat-based cases until litigation is resolved. We do not take any position on the legal issues involved in this ongoing litigation. Regardless of the result of the lawsuit, this situation will affect the speed, scope, and duration of potential relief available to U.S. producers who made these requests. Additionally, the unavailability of production data on about 20 percent of textile and apparel product categories—data that are necessary to fulfill CITA filing requirements—inhibits equal access to the safeguard. These categories represented about half of the total value of textile and apparel imports from China. Beyond these issues, uncertainty about future developments in global textile trade makes the future impact of the safeguard unclear. For example, it is unclear to what extent any textile safeguards imposed on China will provide relief to the U.S. industry or whether the textile safeguards will instead increase the market share obtained by other foreign producers, such as India, Pakistan, or Vietnam.

In the event the courts should rule that CITA may process threat-based requests for China textile safeguards, we recommended that CITA amend its procedures to clarify how it will proceed in threat-based cases, including the information that producers should submit. To enhance access to safeguard relief for all segments of the textile and apparel industry that may face import surges, we also recommended that Commerce, as CITA's chair, review the products and categories for which the U.S. Bureau of the Census production data are unavailable and, with public input, conduct a risk assessment aimed at identifying industry sectors at high risk of experiencing disruptive import surges from China. We further recommended that on the basis of the risk assessment, Commerce's Office of Textiles and Apparel work with the Census Bureau to explore options to make production data concerning these industry sectors available for safeguard requests. The agencies did not comment on our recommendation relating to clarifying procedures for threat-based cases due to ongoing litigation, and disagreed with our recommendations regarding production data, stating that such actions would be unproductive. We maintain that our recommendations would make the China textile safeguard more transparent and accessible.

In addition to our recent work on the textile safeguard, we are continuing a body of work on other import relief mechanisms. We expect that this ongoing work will result in a series of reports on relief mechanisms available to U.S. producers who are adversely affected by unfair or surging imports and the manner in which these remedies have been applied to



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China. These reports will cover countervailing and antidumping actions and China product-specific safeguard measures authorized under section 421 of the Trade Act of 1974, as amended.

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## **Contacts and Acknowledgments**

For further information regarding this statement, please contact Adam Cowles at (202) 512-9637. Matthew Helm also made key contributions to this statement.

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# Related GAO Products

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*U.S.-China Trade: Textile Safeguard Procedures Should Be Improved.* [GAO-05-296](#). Washington, D.C.: April 4, 2005.

*U.S.-China Trade: Summary of 2003 World Trade Organization Transitional Review Mechanism for China.* [GAO-05-209R](#). Washington, D.C.: January 25, 2005.

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*International Trade: Current Government Data Provide Limited Insight into Offshoring of Services.* [GAO-04-932](#). Washington, D.C.: September 22, 2004.

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