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Submission Before the Committee on Ways and Means
Hearing on China Trade and Industrial Policies

I. Introduction.

I appreciate the opportunity to submit this paper on overall trends in China's trade and industrial policies. This hearing is particularly appropriate 10 years after Congress approved permanent normal trade relations ("PNTR") with China, when it is possible to assess the implications of China's accession to the World Trade Organization ("WTO") – and the direction of its trade and industrial policies since then.[2] As discussed below, the economic and market-opening promises put forward when China joined the WTO have, to a large degree, not materialized – and indeed, China's trade and industrial policies have, in many ways, remained centered on a mercantilist model of promoting national economic champions, rather than a market-based model of economic development.

II. The Promises When China Entered the WTO.

When Congress approved PNTR in 2000, China's potential accession to the WTO was presented as an enormous opportunity to see China's market opened to U.S. producers and their products. A publication from the Center for Trade Policy Studies at the Cato Institute, for example, asserted that "{a}s the U.S. market is already largely open to Chinese imports, *it is primarily U.S. exporters who will benefit.*"[3] Robert Kapp, President of the U.S.-China Business Council, stated that "{o}pening China's markets to U.S. products and services under this agreement is *the biggest single step we can take to reduce America's growing trade deficit with China*, a problem we have faced for a decade."[4]

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[2] Before China joined the WTO, it was subject to the Jackson-Vanik Amendment to the Trade Act of 1974. 19 U.S.C. § 2432 (2006). Jackson-Vanik denied most-favored nation ("MFN") status to non-market economies that restrict emigration. Starting in the late 1970s, U.S. presidents regularly waived this provision with respect to China. After the Tiananmen Square protests of 1989, however, these waivers became highly controversial, and each year Congress fiercely debated whether to override the Presidential waiver. As part of China's WTO accession process, however, Congress voted on whether to provide China with MFN status (also referred to as "normal trade relations") on a *permanent* basis. After a debate in which supporters repeatedly emphasized the benefits of China's WTO accession to the United States, the House of Representatives approved PNTR on May 24, 2000. The Senate gave its approval on September 19, 2000. China officially acceded to the WTO on December 11, 2001.

[3] Mark A. Groombridge, "A Vote for PNTR is a vote for the U.S. Economy and Chinese Reform," (May 28, 2000) (emphasis added), available at http://www.freetrade.org.

[4] Press Release, U.S.-China Business Council, "U.S.-China Business Council Welcomes Administration Moves on Permanent Normal Trade Relations with China," (Jan. 10, 2000) (emphasis added), available at http://www.uschina.org.

These views were also endorsed by high-ranking officials. President Clinton said of PNTR that "{i}n every way it's an economic winner."[5] Then-presidential candidate George W. Bush said that it would "provide American businesses and farmers access to China's growing market *and narrow our trade deficit with China*."[6] Rep. William R. Archer (R-Tex.) said that PNTR would lead to "hundreds of thousands of new higher-paying jobs for American workers."[7]

One supporter said that U.S. farmers would benefit as China eliminated unscientific barriers that had been used to discriminate against beef and other agricultural imports in the past.[8] President Clinton pointed to industry claims that American high-tech companies – such as manufacturers of computers, semiconductors, and audio-video equipment – would gain from improved access to growing Chinese demand for their products.[9] He further pledged that PNTR would "greatly increase the opportunities open to professional services such as law firms, management consulting, accountants, and environmental services."[10]

Supporters also argued that the market reforms China would implement as part of its accession to the WTO would encourage even further market liberalization. In May 2000, for example, Alan Greenspan (then serving as the Chairman of the Federal Reserve Board of Governors) stated that "{f}urther development of China's trading relationships with the United States and other industrial countries" would serve to strengthen China's "commitment to economic reform."[11]

Central to this view that China' WTO membership would lead to extensive market opening was the notion that WTO commitments would strengthen the rule of law in China. President Clinton stated that China would be required to publish laws and

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5 Gary Duncan, "Finding a correct answer to the Chinese puzzle," *Scotsman* (May 17, 2000), available at 2000 WLNR 2471945.

6 The Associated Press, January 5, 2000, *available at* http://www.uschina.org/public/wto/gao/voices.pdf (emphasis added).

7 Statement of Rep. William R. Archer (R-Tex.), 146 Cong. Rec. H3596 (May 23, 2000).

8 Gene B. Sperling, Director, National Economic Council, "Permanent Normal Trade Relations and the Potential for a More Open China," Remarks before the Dallas Ambassadors Forum (May 12, 2000), *available at* http://clinton5.nara.gov/WH/EOP/nec/html/PunkeChinaSpeech1.html.

9 *See, e.g.*, President Clinton, Press Release, "President Clinton Announces Broad New National Support For Congressional Action Granting China Permanent Normal Trade Relations Status" (Apr. 3, 2000) (quoting a letter signed by nearly 200 high-tech CEOs), *available at* http://clinton6.nara.gov/2000/04/2000-04-03-fact-sheet-on-granting-china-permanent-normal-trade-relations.html.

10 President Clinton, Press Release, "Permanent normal trade relations for China: An historic moment for U.S.-China relations" (Sept. 19, 2000), *available at* http://clinton5.nara.gov/WH/new/html/Tue_Oct_3_164420_2000.html ("Sept. 19, 2000 Press Release from President Clinton").

11 Remarks by Chairman Alan Greenspan, Permanent normal trade relations with China, at the White House, Washington, D.C. (May 18, 2000), *available at* http://www.federalreserve.gov/boarddocs/speeches/2000/20000518.htm. *See also* Sept. 19, 2000 Press Release from President Clinton (stating that we could expect China "to privatize its state-owned industries and expand the role of the market in the Chinese economy.").

regulations concerning trade to the WTO.[12] Rep. James P. Moran (D-Va.) stated that bringing China into the global free enterprise system would "shine a much-needed light on its government" and thus make it more accountable to its own citizens.[13] President Clinton maintained that such developments would not be limited to Chinese domestic laws, but that accession would also "increase the likelihood that China will play by global rules as well."[14] A key point in this argument was that the United States could use the WTO dispute settlement process to pursue claims against China.

Proponents assured Americans that China's accession to the WTO presented no downside for the United States. President Clinton summarized this claim as follows:

> The United States doesn't lower any tariffs. We don't change any trade laws. We do nothing. They have to lower tariffs. They open up telecommunications for investment. They allow us to sell cars made in America in China at much lower tariffs. They allow us to put our own distributorships over there. They allow us to put our own parts over there. We don't have to transfer technology or do joint manufacturing in China anymore. *This is a hundred-to-nothing deal for America when it comes to the economic consequences.*[15]

The Business Coalition for U.S.-China Trade made a similar argument in a particularly blunt manner:

> In return {for making various concessions to join the WTO}, China's "reward" from the U.S. is? . . . ZERO. ZIP. NOTHING. NADA. That's right. China gets no increased access to U.S. markets, no cuts in U.S. tariffs, no special removal of U.S. import restrictions. That's because our market is already open to Chinese imports.[16]

In short, the promise at the time China entered the WTO was of a very significant change in the direction of China’s trade and industrial policies – one that moved away from a mercantilist model, and that provided significant new market opportunities for American companies and workers.

III. <u>What Actually Happened in Terms of China’s Trade and Industrial Policies.</u>

Ten years later, it is appropriate to consider whether the promises made at the time China entered the WTO have been fulfilled. Unfortunately, the evidence demonstrates that they have not and that China’s mercantilist trade and industrial policies have had devastating consequences.

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12 Sept. 19, 2000 Press Release from President Clinton.

13 Statement of Rep. James P. Moran (D-Va.), 147 Cong. Rec. H4303-02, H4307.

14 Sept. 19, 2000 Press Release from President Clinton.

15 Press Conference by the President (March 29, 2000), available at http://clinton6.nara.gov.

16 Business Coalition for U.S.-China Trade, "Fact Watch: Correcting the Record on China Trade Issues," (March 2, 2000), *available at* http://www.uschina.org/public/wto/b4ct/fact0302.html.

Economic Consequences. Contrary to the expectations of PNTR supporters, the U.S. trade deficit with China has almost tripled over the last decade, rising from $83.1 billion in 2000 to $226.8 billion in 2009 – an increase of *172.9 percent*.[17] Indeed, our trade deficit with China in computers, electrical equipment, appliances, and components has exploded, rising from $28.6 billion in 2000 to $109.6 billion in 2009.[18] In 2000, China accounted for just over one quarter of our manufacturing trade deficit. By 2009, however, that figure had increased to *over 75 percent*.

Since 2000, the United States has lost over 5.6 million manufacturing jobs – almost one third of all such jobs in our economy.[19] Between 2001 and 2009, the United States shuttered 42,400 factories.[20] According to one estimate, between 2001 and 2008 our growing trade deficit with China resulted in 2.4 million jobs being lost or displaced.[21] Earlier this year, the Nobel Prize-winning economist Paul Krugman wrote that "{m}y back-of-the-envelope calculations suggest that for the next couple of years Chinese mercantilism may end up reducing U.S. employment by around 1.4 million jobs."[22]

Furthermore, U.S. businesses trying to enter the Chinese market continue to face an array of market-distorting barriers. For example, China manipulates standards and technical regulations in order to protect its high-tech companies from international competition.[23] China also uses the regulatory process to frustrate attempts by U.S. service suppliers to enter its market.[24] Even in agriculture, a rare bright spot for U.S. producers in the Chinese market,[25] USTR has complained that "China remains among the least transparent and predictable of the world's major markets for agricultural products."[26] As these facts show, the sweeping access to China's market promised by President Clinton and others simply has not materialized.

It should also be noted that China's accession to the WTO has *not* generated significant forward momentum for market liberalizing practices. USTR recently reported that

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17 *See* U.S. Trade with China, available at http://www.census.gov.

18 Trade Stats Express, Office of Trade and Industry Information, U.S. Department of Commerce, "NAICS Codes 334 and 335 – Balance with China." By one estimate, rapidly-growing imports of computer and electronic parts accounted for more than 40 percent of the increase in the U.S. trade deficit with China from 2001 to 2008. Robert E. Scott, "Unfair China Trade Costs Local Jobs," Economic Policy Institute (Mar. 23, 2010) ("Unfair China Trade Costs Local Jobs") at 2, *available at* http://www.epi.org.

19 Bureau of Labor Statistics, Series CES3000000001.

20 Richard McCormick, "The Plight of American Manufacturing," *The American Prospect* (Dec. 21, 2009), available at http://www.prospect.org.

21 Unfair China Trade Costs Local Jobs at 3.

22 Paul Krugman, "Chinese New Year," *The New York Times* (Jan. 1, 2010), ("Chinese New Year"), available at http://www.nytimes.com .

23 United States Trade Representative ("USTR"), "2010 Technical Barriers to Trade Report" (March 2010) at 50-51.

24 USTR, "2009 Report to Congress on China's WTO Compliance" (Dec. 2009) ("2009 USTR Report") at 9.

25 The U.S. trade surplus in agriculture and livestock products with China grew from $626 million in 2000 to $9.4 billion in 2009. Trade Stats Express, Office of Trade and Industry Information, U.S. Department of Commerce, "NAICS Code 11 – Balance with China." Of course, this figure is miniscule by comparison to the overall U.S. trade deficit with China of more than $200 billion per year.

26 2009 USTR Report at 8.

"beginning in 2006, progress toward further market liberalization began to slow."[27] Last year, USTR identified examples of a trend toward an even more restrictive trade regime in China, including: (1) tighter limits on exports of key raw materials, (2) the increased use of unique national standards to hinder sales of high-tech items from other countries, (3) new restrictions on non-Chinese providers of high-end services; and (4) the selective use of border measures to encourage or discourage trade in particular products.[28]

Particularly troubling is the increasing evidence of efforts to unfairly promote Chinese technology and innovation. During the debate over PNTR, some Americans adopted the somewhat patronizing position that as U.S.-China trade matured, China would concentrate on relatively "low-tech" goods, while we would maintain a competitive advantage in "high-tech" products.[29] But China is actively promoting so-called "indigenous" innovation at the expense of its trading partners. USTR recently criticized a policy whereby companies seeking to sell high-tech goods to China's government – a very significant portion of the China market – would have to originally register their intellectual property in China.[30] While U.S. high-tech companies have expressed alarm over these plans,[31] recent Chinese revisions to its original proposals have failed to satisfy U.S. policymakers.[32]

Perhaps no trade and economic policy in China has been so harmful as its sustained and massive intervention in currency markets. Paul Krugman recently explained how China boosts exports and blocks imports by keeping the value of its currency (known as the “renminbi” or the “yuan”) artificially low:

> Here's how it works: Unlike the dollar, the euro or the yen, whose values fluctuate freely, China's currency is pegged by official policy at about 6.8 yuan to the dollar. At this exchange rate, Chinese manufacturing has a large cost advantage over its rivals, leading to huge trade surpluses.[33]

C. Fred Bergsten, Director of the Peterson Institute for International Economics, recently testified before the House Ways and Means Committee that the yuan is undervalued by

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27 *Id.* at 4.

28 *Id* at 4-5.

29 *See, e.g.*, Rafiq Dossani & Martin Kenney, “Value Creation in the Global Economy: The Changing Role of India and China” (July 2, 2009), available at http://rafiqdossani.com (“There was a comforting belief that the nations receiving the work . . . were developing nations and their labor forces would remain largely ‘hands’ directed by managers and engineers from the developed world.”).

30 USTR, "2010 National Trade Estimate Report" (March 31, 2010) at 69.

31 *See* Andrew Browne and Loretta Chao, "U.S. Firms Feel Shut Out in China," *The Wall Street Journal* (March 22, 2010) ("A growing number of U.S. companies feel unwelcome in China, according to a new survey by the American Chamber of Commerce in China, as measures aimed at squeezing foreign technology companies out of the vast government-procurement market start to bite.")

32 Doug Palmer and Lucy Hornby, "U.S. still concerned on China innovation rules," *Reuters* (May 25, 2010) ("The United States is concerned that China's revised proposals to promote innovation will still discriminate against American firms, U.S. Trade Representative Ron Kirk said on Tuesday.")

33 Chinese New Year at 1.

about 25 percent on a trade-weighted basis and by about 40 percent against the dollar.[34] Mr. Bergsten made clear that "*{the} competitive undervaluation of the renminbi is a blatant form of protectionism.* It subsidizes all Chinese exports by the amount of the misalignment, about 25-40 percent. It equates to a tariff of like magnitude of all Chinese imports, sharply discouraging purchases from other countries."[35] There is no question that the enormous trade imbalance with China is in large part the result of this indefensible form of mercantilism and protectionism.

Rule of Law. Contrary to the expectation of supporters, China has not complied with its WTO obligations – much less adopted the "rule of law" as we know it. USTR's most recent report regarding China's WTO compliance identified a number of problems, including: (1) poor enforcement of IPR laws and regulations,[36] (2) the use of export restrictions in violation of WTO commitments, (3) the use of investment rules to protect Chinese industries, and (4) pressure from the Chinese government on non-Chinese companies to license their technology or intellectual property on unfavorable terms.[37]

These are not isolated problems, but part of a broader resistance within China to key WTO norms such as "national treatment" (giving others the same market access as one's own nationals), providing MFN status to all members (*i.e.*, not discriminating among trading partners), and "transparency" (making rules as clear and public as possible). USTR has admitted that by 2006, it was "clear that some parts of the Chinese government did not yet fully embrace the key WTO principles of market access, non-discrimination and transparency or the carefully negotiated conditions for China's WTO accession designed to lead to significantly reduced levels of trade-distorting government intervention."[38] USTR further commented that "China's difficulties *in fully implementing the rule of law* exacerbated this situation."[39]

One recent analysis pointed out that because China "has yet to meet many of the obligations delineated in its protocol of accession . . . . European and American business groups investing in China perceive China as becoming more interventionist and

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[34] C. Fred Bergsten, "Correcting the Chinese Exchange Rate: An Action Plan," Testimony before the Ways and Means Committee of the U.S. House of Representatives (March 24, 2010) ("Correcting the Exchange Rate"), available at http://www.piie.com. According to Mr. Bergsten, China is buying $1 billion each day in the exchange markets to prevent its currency from rising. *Id.*

[35] *Id.* (emphasis in original). Mr. Bergsten also pointed out that "{s}everal neighboring Asian countries of considerable economic significance – Hong Kong, Malaysia, Singapore, and Taiwan – maintain currency undervaluations of roughly the same magnitude in order to avoid losing competitive position to China." *Id.*

[36] 2009 USTR Report at 5. In June 2009, the WTO adopted a dispute settlement panel report holding that Chinese law does not adequately provide for the protection and enforcement of IPR on a wide range of products. *See* Press Release from USTR, "World Trade Organization Adopts Panel Report in China – Intellectual Property Rights Dispute," (June 22, 2009). Nevertheless, in December 2009, USTR reported that "Effective IPR enforcement has not been achieved, and IPR infringement remains a serious problem throughout China." 2009 USTR Report at 13.

[37] *Id.* at 6-7.

[38] *Id.* at 4.

[39] *Id.* (emphasis added)

protectionist."[40] Indeed, China's failed legal system not only contributes to the U.S.-China trade deficit, but threatens the WTO itself:

> China's competitive advantage is to some degree based on its inadequate governance – it fails to enforce its own laws in a transparent, evenhanded manner. China's system is broken. And because it is broken, its inadequate governance affects its trade partners – and ultimately, could break the WTO.[41]

There are several reasons why China's political system is fundamentally at odds with the American conception of the "rule of law." At the national level, the Communist Party is willing to ignore international commitments to maintain power. Moreover, the Communist Party owns and operates, or is tied to, private enterprises in key sectors such as transportation, energy, and banking. China also suffers inadequate governance at the provincial level – a result of many factors including corruption, a lack of uniformity among rules, and arbitrary abuse of power. Finally, China suffers from a culture of non-compliance "where bad actors set the norm, where laws and regulations are often ignored or unevenly enforced, and where many citizens and market actors don't know or can't obtain their rights under the law."[42]

Implications for the United States. As early as 2006, Paul Krugman was warning that the U.S. trade deficit with China was "unsustainable" and that the economic consequences of this deficit "will be ugly."[43] Now this fact is broadly recognized. U.S. Secretary of Commerce Gary Locke has said that our trade deficit with China "simply can't be sustained."[44] Last November, U.S. Secretary of the Treasury Timothy Geithner stated that "previous global economic patterns were unsustainable. To establish a more global foundation for growth and avert future crises of this nature, *we must rebalance global demand.*"[45]

Indeed, the trade deficit with China seems to have played a role in creating the financial bubble that exploded in 2008. Due in large part to its growing surplus with the United States, China's reserves of foreign currency soared from $165 billion in 2000 to $2.4 trillion by the end of 2009.[46] China's enormous purchases of U.S. treasuries kept interest rates artificially low – and thereby drove private investors to riskier investments such as collateralized debt obligations.[47] In short, there is now little debate that the consequences

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40 Susan Ariel Aaronson, "Is China Killing the WTO?" *International Economy* (Winter 2010) ("Is China Killing the WTO?") at 41, available at http://www.international-economy.com.

41 *Id.*

42 *Id.*

43 Paul Krugman, "Debt and Denial," *The New York Times* (Feb. 13, 2006).

44 Doug Palmer, "U.S.-China trade imbalance not sustainable – Locke," *Reuters* (July 15, 2009), available at http://www.reuters.com .

45 Secretary of the Treasury Timothy F. Geithner, Written Testimony before the Senate Foreign Relations Committee (Nov. 17, 2009), available at http://www.ustreas.gov (emphasis added).

46 Niall Ferguson, "The End of Chimerica: Amicable Divorce or Currency War?" Testimony before the Committee on Ways and Means of the U.S. House of Representatives (March 24, 2010) at 4, available at http://waysandmeans.house.gov.

47 *Id.*

of China's trade and industrial policies has been enormously detrimental to the United States – and threaten even more dire consequences if strong action is not taken.

IV. Why Policy Makers Have So Badly Misjudged China's Actions.

There have been a number of factors at work in explaining why policy makers have misjudged the trade and industrial policies that China would implement – and their consequences for the United States.

First, policy makers assumed that WTO membership would lead China to become more Western in its behavior. They misjudged the very different cultural and historical traditions, the model of "state capitalism" and mercantilism being pursued by China, and the enormous imperative in China to provide employment for the tens of millions of citizens pouring into their cities (mostly through export-oriented businesses). These factors have proven in large part incompatible with WTO norms.

Second, policy makers misjudged China's role in the WTO. Allowing a huge non-market economy like China – which practices neither democracy nor capitalism – to enter the WTO had profound consequences. There are serious doubts whether that system is capable of effectively dealing with the wholesale distortions inherent in a large non-market economy, particularly given an almost complete lack of transparency

Third, by focusing on the trade barriers in China and the United States prior to PNTR – and making the simplistic argument that "our market is already open so we can only benefit" – supporters of China's WTO accession failed to account for the incentives created to shift production to China and serve the U.S. market through imports.

Fourth, China's WTO membership led the U.S. to largely forfeit its leverage over China to modify its trade and industrial policies. Without an annual review of MFN status, and without effective use of crucial unilateral tools such as Section 301 of the Trade Act of 1974, the United States has had little ability to influence China's economic behavior.

Fifth, the U.S. government has been relatively passive in terms of exercising what rights it does have to deal with China's market-distorting behavior – having pursued only a handful of direct WTO actions and (up until the most recent case) completely failing to enforce the special safeguard (Section 421) negotiated as part of China's WTO accession.

Finally, U.S. policymakers have had a profound confidence, and arguably hubris, in the ultimate triumph of democracy and capitalism. Indeed, many Americans took for granted that the rise of democracy and capitalism "to global predominance was the crucial development of the millennium."[48] Over the last decade, however, China's surge has discredited the notion that America knows best. Between 2001 and 2009, U.S. nominal GDP grew by 38.6 percent, while China's nominal GDP grew by over 271 percent.[49]

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[48] J.M. Haas, "Can Western Democracy Prevail?" *St. Louis Post-Dispatch* (Dec. 19, 1999).
[49] International Monetary Fund World Economic Outlook Database (April 2010).

While our total exports grew 45 percent from 2001 to 2009,[50] China's total exports grew by 351 percent.[51] In addition, there is now a widespread belief that "{t}he humbling of Wall Street was proof that the American system was not invincible."[52]

V. <u>Where Do We Go From Here?</u>

For ten years now, U.S. policymakers have done very little as China pursued policies that created an enormous trade imbalance. This approach has not worked, and it is past time for the U.S. government to become more aggressive.

We should take certain obvious steps. <u>First</u>, we must aggressively enforce our anti-dumping and countervailing duty laws with respect to China. In particular, we should appoint enforcement-oriented officials to administer these laws, and should flatly reject any efforts to weaken them. <u>Second</u>, we should address currency manipulation by designating China as a manipulator, by aggressively pursuing our options at the International Monetary Fund[53] and at the WTO,[54] and most importantly, by treating currency manipulation as a countervailable subsidy under our trade laws. <u>Third</u>, while the WTO dispute settlement process has serious limitations in addressing the systemic non-compliance we see in China, we should use that process as aggressively as possible.

We must take a more imaginative approach. Unfortunately, the steps outlined above may not be sufficient to resolve the crisis. We must consider taking bolder action. For example, we should consider aggressive interpretations of WTO provisions that might help us deal with Chinese mercantilism. Some have argued that Article XII of the GATT, which applies in situation where WTO members need to safeguard their external financial position, may help address our overall trade deficit.[55] Others have suggested a WTO challenge to currency manipulation under Article XV of the GATT, which covers situations where a WTO member uses exchange policy to "frustrate the intent of the provisions of this Agreement."[56] Others have argued that GATT Article XXIII might serve as a basis to challenge China's failure to enforce its own laws in a manner

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50 *See* Trade Stats Express, Office of Trade and Industry Information, U.S. Department of Commerce.

51 *See* U.S.-China Trade Statistics and China's World Trade Statistics, available at http://www.uschina.org/statistics/tradetable.html .

52 Sean O'Grady, "China will overtake America, the only question is when," *The Independent* (Oct. 6, 2009).

53 While the IMF could not force China to change its currency policy, it could pressure China by entering into consultations on currency issues or through a report criticizing China's exchange rate policy. *See generally* Bergsten, "Correcting the Chinese Exchange Rate: An Action Plan" at 4.

54 For a discussion of how Chinese currency manipulation should be treated as a prohibited export subsidy under WTO rules, *see generally* Petition for Relief Under Section 301(a) of the Trade Act of 1974, as amended, on Behalf of the China Currency Coalition (Sept. 9, 2004), available at http://www.chinacurrencycoalition.org .

55 *See, e.g.*, Robert E. Scott, "Re-Balancing U.S. Trade and Capital Accounts: An analysis of Warren Buffet's import certificate plan," *EPI Working Paper # 286* (Dec. 2009) at 2, available at http://www.epi.org. It should be pointed out, however, Article XII does not appear to anticipate measures aimed at only one country, such as China.

56 *See* Jonathan E. Sanford, "Currency Manipulation: The IMF and the WTO," *CRS Report for Congress* (Jan. 26, 2010). Of course, even if such a case were to succeed, China might simply refuse to comply – or take steps that appear to comply, but make no significant difference.

consistent with its WTO commitments.[57] Of course, we cannot be certain that the WTO would adopt any of these theories – or that, if adopted, they would make a significant difference in China's behavior. But U.S. officials must at least be prepared to consider very aggressive positions at the WTO.

We should also consider taking unilateral action to impose special duties or quotas on Chinese imports and keep them in place until a reasonable trade balance has been restored. Such action, while drastic, is not necessarily incompatible with the WTO. After all, WTO commitments represent market-opening stipulations by individual countries. If a country fails to implement such commitments, other countries have the right to suspend their own commitments – in an amount equal to the value of the trade they have lost.[58] Where a particular trading relationship has become so unbalanced that the threat of retaliation pales in contrast to the potential benefits of derogation, a sovereign country like the United States must at least consider this option.

Of course, I am not advocating that we "leave" the WTO – that body is too important to us and the global trading system. I am merely pointing out that given our dangerously high trade deficit with China, and the fact that it is not the result of market forces, we should ask the common-sense question of whether Chinese retaliation could even remotely offset the potential benefits that aggressive trade measures might deliver.

I do not raise this topic lightly, or deny that such a course would give rise to serious questions and concerns. But if the problem is as serious as many have suggested, and our trade deficit is truly unsustainable, then we must place all options on the table. Indeed, derogation may be the only way to force change in China's system and to put in place a sustainable and mutually beneficial trade relationship.

Finally, I emphasize that any solution to this problem can only be accomplished if our political leaders have the will to take bold actions. The current course is clearly not working. Finding a path to success will not be easy, but as a wise man once said: "if you always do what you did, you will always get what you got."

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57 *See* "Is China Killing the WTO?" at 67.

58 At least one scholar has argued that an adopted dispute settlement report at the WTO establishes "an international law obligation upon the member in question to change its practice to make it consistent with the rules of the WTO Agreement and its annexes." John H. Jackson, "International Law Status of WTO Dispute Settlement Reports: Obligation to Comply or Option to 'Buy Out'?" 98 Am. J. Int'l L. 109 (2004). The better view – not to mention the practical and legal reality reflected in the WTO structure itself – is that "WTO law is not like the international law proscription of genocide or aggressive war: It does not normatively demand compliance at all costs. Rather, WTO law is better understood largely as instrumental law that is only worthy of compliance to the extent that compliance makes people better off." Joel P. Trachtman, "The WTO Cathedral," 43 Stan. J. Int'l L. 127 (2007). Indeed, some have suggested that the WTO compliance system is best understood through an economic theory that encourages member states to engage in an "efficient breach" if the costs of compliance outweigh the benefits of compliance. *See generally* Warren F. Schwartz and Alan O. Sykes, "The Economic Structure of Renegotiation and Dispute Resolution in the World Trade Organization," 31 J. Legal Stud. 179 (2002).