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**Before the Congressional Executive Commission on China
China's Compliance with the WTO and International Trade Rules**

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Good morning, Chairman Brown and Chairman Smith, members of the Commission. Thank you for inviting me to testify on behalf of the twelve and a half million working women and men of the AFL-CIO on China's compliance with its World Trade Organization (WTO) obligations and how that record impacts American workers.

I would like to start by congratulating the Commission for its excellent work over the past thirteen years, particularly under the leadership of the current chairmen. It is essential that the U.S. Congress and the White House pay attention to the breadth of issues that affect our economic and national security relationship with China, and the CECC has helped to bring needed attention to human rights, democracy, and rule of law.

Too often, our bilateral dialogues focus solely on narrow commercial concerns. As the CECC pointed out in its 2013 report, though, workers' rights, human rights and rule of law issues are also central to American workers, consumers and businesses. We urge that these concerns be made an integral part of all bilateral U.S.-China economic dialogues and that our government seek more effective avenues for raising these concerns within the multilateral framework of the WTO and other international bodies.

When China joined the WTO more than twelve years ago, the AFL-CIO and many other organizations raised concerns about:

- 1) whether WTO rules were adequate to protecting workers' rights and the environment, promoting democracy and development, addressing currency manipulation or supporting U.S. jobs and manufacturing;
- 2) whether China would comply with WTO commitments, and, if not, whether WTO enforcement measures would be adequate;
- 3) whether the U.S. government had the will and/or the tools to use WTO mechanisms effectively to protect the interests of American workers and domestic producers, rather than just the interests of multinational corporations.

On all these fronts, after twelve years, the results have been disappointing, and American workers and domestic businesses pay a high price every day for these failures.

Rapid industrialization and export growth in China far outpaced the development of

regulatory institutions, laws, and enforcement capacity. Workers' rights, environmental protections, and consumer safety did not naturally and automatically improve, while foreign investment and exports grew rapidly. WTO rules were ineffectual at addressing any of these problems. While the Obama Administration has taken several important and effective trade actions to protect U.S. interests, these have not matched the scale of China's non-compliance.

In addition, other developing countries striving to protect workers' rights and improve living standards have lost market share and investment to China. The Chinese government's currency manipulation continues to be a concern, and the U.S. government has failed to use international trade tools effectively to counter this intervention. In fact, the WTO's paralysis in the face of currency manipulation by China and other countries highlights an enormous gap in international trade rules. Finally, China's workers continue to see their most fundamental rights routinely violated, worker insecurity and unrest continues to grow, and the Chinese government continues to crack down on most forms of dissent.

Trade Impact

Our trade deficit with China has almost quadrupled in nominal terms since WTO accession -- from \$84 billion in 2001 to an estimated \$320 billion in 2013. Robert Scott of the Economic Policy Institute has estimated that the growth in the U.S. trade deficit with China between 2001 and 2011 displaced about 2.7 million American jobs.¹ Our imbalanced trade relationship with China has resulted in a huge transfer of intellectual property as a result of Chinese intellectual property theft, as well as forced technology transfers. The Chinese government's continuing violation of its workers' fundamental labor rights has limited not only the economic prospects of its own people, but has diminished opportunities for American workers as well.

China's actions are continuing to distort global trade and investment patterns and stymie our still weak recovery. The government of China's failure to honor its WTO commitments has had dire consequences for U.S. workers and the American economy, causing businesses to shut their doors and leaving their former workers unemployed.

Perhaps even more disturbing than the aggregate growth in the U.S. trade imbalance with China is the composition of our imports and exports. In 2013, we ran a trade deficit with China in advanced technology products of \$106 billion – up more than ninefold from less than \$12 billion in 2002 and \$31 billion more than our overall ATP deficit. In fact, we ran trade surpluses in ATP with most of our other trading partners in 2013, and no other country had an imbalance larger than \$16 billion. This should raise many questions about the underlying policies skewing this important trade balance.

¹ “The China Toll: Growing U.S. trade deficit with China cost more than 2.7 million jobs between 2001 and 2011, with job losses in every state,” Robert E. Scott, EPI Briefing Paper, Economic Policy Institute, August 23, 2012 (available at: <http://www.epi.org/publication/bp345-china-growing-trade-deficit-cost/>).

Among the key issues that must be addressed are:

Currency

If China increased the value of its currency to the level it would be if free market forces were able to prevail, the resulting growth in the United States could create 2.25 million new U.S. jobs, according to a 2011 EPI report.² According to the report, if the value of the Chinese currency, the yuan, and satellite currencies, such as those in Hong Kong, Taiwan, Singapore, and Malaysia, were increased by 25 percent to 30 percent against the dollar, the U.S. gross domestic product would grow as much as \$285.7 billion, creating up to 2.25 million U.S. jobs. Creating that many jobs would reduce the U.S. unemployment rate by at least one full percentage point. By labeling China as a currency manipulator, and pursuing countervailing duties on Chinese imports to offset the unfair advantage of the artificially low value of the yuan if China failed to take immediate corrective action, the Administration could address this problem in a WTO-consistent manner. Brazil, another WTO member, has taken initial steps in this area. However, it is one in which the U.S. should take the lead. Addressing China's currency manipulation would likely be the single most effective action the U.S. government could take with respect to China's trade policy.

Existing domestic and international law permits the U.S., alone or in tandem with other nations through the WTO or IMF, to address this manipulation as a prohibited subsidy. To the extent that the Administration believes it does not, the Administration should support the Currency Exchange Rate Oversight Reform Act.

Selective Use of Value Added Tax (VAT) Rebates

China continues to utilize selective rebates as a way to promote exports of its products in a trade distorting manner. While the original GATT allowed for a system of general rebates, the intent of the GATT (and subsequent WTO) was to address the overall system of indirect taxation and not to allow for the exclusion to be used in a trade distorting manner. In the absence of an American VAT, the AFL-CIO continues to believe that the U.S. should seek the elimination of the exclusion of VAT rebates within the WTO to level the playing field, as Congress has called for in the past. In the interim, the Administration should seek to eliminate the ability of a country to engage in selective rebating.

Export Restraints

The United States deserves substantial credit for the export restraint case against China regarding raw materials, including bauxite, coke, fluorspar, and other products, and for the follow-up case regarding export restraints on 17 rare earth minerals, as well as

² "The Benefits of Revaluation: Full revaluation of the Chinese yuan would increase U.S. GDP and employment, reduce the federal budget deficit, and help workers in China and other Asian countries," Robert E. Scott, EPI Briefing Paper, Economic Policy Institute, Jun. 17, 2011 (available at: http://www.epi.org/publication/revaluating_chinas_currency_could_boost_us_economic_recovery/)

tungsten and molybdenum. The WTO's decision on the raw materials case made clear that China is engaged in facial violations of its WTO commitments. Despite the WTO's decision, China continues to limit the export of more than 300 products with only 84 of those products included in its first reserved schedule. China must bring its policies into compliance with its commitments—to do otherwise injures U.S. producers and their workers. As the U.S. considers further action, due regard should be given to commodities on which existing AD/CVD orders are in place or where similar domestic U.S. interests might be adversely affected.

Auto Parts

The President's leadership in saving General Motors and Chrysler has had an enormous positive effect on our economy, investment and, most important, jobs. Action by the Administration to address China's illegal duties on U.S. auto exports and its most recent request for consultations on illegal export-contingent subsidies are deeply appreciated. Nevertheless, as documents shared with the United State Trade Representative (USTR) earlier this year clearly identify, there are other practices and programs in place that are detrimental to auto and auto parts makers producing here in the U.S. , as well as their employees. Those items should continue to receive the highest priority within the ITEC and action to address these policies must be pursued. We reiterate that, as much as we appreciate an aggressive enforcement strategy, in many cases, by the time a case is filed, permanent damage has often been done to an industry and its workers. We continue to urge a proactive approach and the creation and use of mechanisms that can make effective changes as soon as WTO-inconsistent behavior is recognized.

Prohibited Subsidies (Generally)

Article 3 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) prohibits WTO members from granting subsidies that are contingent on export performance or on the use of domestic over imported goods. China committed to eliminate all prohibited subsidies when it joined the WTO—but it has not done so. Instead, it has put a tremendous amount of energy into disguising its subsidy programs or modifying them to be facially WTO-compliant. Illegal, mercantilist subsidies (including currency manipulation discussed above) have proliferated enormously, to the detriment of American workers and businesses.

In June 2011 pursuant to a petition filed by the United Steelworkers, the Administration was able to secure agreement (under threat of WTO action) to end illegal subsidies in the wind energy sector, but this success was hard fought, expensive, and left lost jobs and reduced market share in its wake. Because China has repeatedly failed to publish all its subsidies, as required by WTO rules, even explicit, on-the-books subsidies can only be found at great expense. Aside from such specific subsidy programs, China provides a number of benefits to its exporters that are *de facto* dependent on export performance, such as low-cost or free land, infrastructure, industrial inputs, tax rebates, cash transfers disguised as loans, and below-market export insurance. Due to this lack of transparency,

we strongly recommend that the U.S. investigate other critical sectors, including aerospace, autos, electronics, and shipbuilding, for such hidden subsidies.

The American labor movement simply does not have resources on its own to pursue a Section 301 complaint against every Chinese violation of its WTO commitments. Nor would such a strategy be effective in protecting and promoting jobs: by the time a union collects enough evidence to pursue a case effectively, thousands of workers may have lost their jobs and the factories that employed them may have already closed or moved overseas. Therefore, we urge the Administration to act affirmatively to monitor and address prohibited Chinese subsidies in their many forms.

National Treatment

Article III, Section 4 of the GATT 1994 requires WTO Members to accord imported goods treatment no less favorable than that afforded to domestic goods in respect of all laws or regulations affecting their internal sale or use. Laws that condition the receipt of an advantage on the use of domestic over imported goods—local content requirements—are a classic example of a policy that violates this Article. In paragraph 3(a) of its Protocol of Accession to the WTO, China also agreed to accord foreign firms treatment no less favorable than that accorded to domestic firms with respect to the procurement of inputs and the conditions under which their goods are produced, marketed, or sold. China violates these commitments on a regular basis in a variety of sectors.

For example, the wind sector subsidy program challenged at the WTO also violated the national treatment principle because it required Chinese wind turbine manufacturers receiving grants under the program to use key components made in China rather than imports. In July 2012, the USTR won a WTO case challenging measures with respect to China UnionPay, which has had a monopoly over the handling of domestic currency payment card transactions. Such a policy clearly discriminates against American and other non-Chinese financial services providers—the win, though beneficial for the U.S. financial services sector, illustrates the weakness of the piecemeal approach toward China’s WTO compliance. As China defends each new case, it has time to implement alternate policies.

Given the USTR’s long-standing recognition that China has failed year after year to abide by its commitment to provide national treatment for U.S. goods and services, we urge you to make clear that continued discrimination will not be tolerated.

Market Access

China has never provided the kind of market access that it promised when it joined the WTO. It has used a variety of mechanisms, including obscure licensure and certification requirements and official supplier lists, to ensure that its own firms dominate the market. As a result, China imports almost no finished goods, thereby harming employment in the United States and obligating American firms to conduct business through joint ventures with Chinese partners.

Even financial services firms, loathe to take on China and thereby risk losing what little access they do have to the vast Chinese market, have urged the Administration to act forcefully to ensure China opens its banking and insurance sectors. In 2009, the WTO ruled that China unfairly restricted the ability of U.S. firms to sell DVDs, music, books, software and other copyright-intensive material in its market (not only restricting access, but building a market for counterfeit goods). Despite this ruling, China continues today to restrict access to films, music, books, and other entertainment, including certain internet sites (particularly those that carry news and information). Such restrictions harm our members and cost jobs in the U.S. China also continues to demand that U.S. manufacturers transfer technology and production in return for market access. Industries like aerospace, machine tools, and shipbuilding have been significantly impacted by this market distorting mechanism.

Intellectual Property Rights

China's abject refusal to enforce intellectual property rights (IPR) is a problem of long standing. From movie studios, to book publishers, to software giants, American businesses—and those they employ—are losing income every minute of every day. In 2010, at a hearing before the House Ways and Means Committee, even the U.S.-China Business Council, the trade organization for U.S. firms doing business in China—not an organization with a strong record of challenging China's policies—said:

“China's poor record of IPR protection influences what products foreign companies are able to sell in China's market; counterfeit products made in China often show up in other markets as well. Only one-third of respondents in USCBC's most recent survey of China's business environment say that the poor IPR environment does not impact them. And, for companies in certain sectors, like movies and software, the issue is without doubt their top problem in China and needs to be addressed.” (John Frisbie President, U.S.-China Business Council, Testimony before House Ways and Means Committee, June 16, 2010)

Likewise, the Business Software Alliance reports that nearly four out of every five computer programs installed on personal computers in China in 2009 were being used illegally. U.S. firms cannot stay in business and continue to employ hard-working Americans with an 80 percent theft rate. While China has initiated some reforms in this area, the results have been incremental at best. More must be done.

China's violations of intellectual property rights are not limited to copyrights, servicemarks, and trademarks. Increasingly, China is engaging in theft of patents—including “downstream dumping” by violating the patents involved in the manufacturing process. Law enforcement officials have identified instances where the Chinese have sought to pirate plans for proprietary production equipment—resulting in dramatically lower costs of production. Today, China's IPR violations threaten U.S. producers across the board. At all levels of IPR, China's record is abysmal.

State-Owned Enterprises

Upon WTO accession, China agreed that it would ensure that state-owned and state-supported enterprises (collectively, SOEs) would make purchases and sales decisions based solely on commercial considerations.³ It also agreed that it would not influence commercial decisions except in a WTO consistent manner. This promise, like so many others, has been broken. China's state-owned and state-supported enterprises receive raw materials and other inputs at below market rates, and have access to preferential debt and equity financing, including soft "loans" from state-owned banks that do not need to be repaid. Moreover, they are consistently operated in a manner that gains them market share—rather than profits. A private enterprise would not long remain in business if it failed to respond to the market, but, because state resources prop them up, Chinese SOEs not only can, but do. While losing money by selling goods at below market prices, they force U.S. competitors out of business. The overcapacity that China is intentionally pursuing in industries like glass and steel will eventually be needed, once international competitors have all folded.

Increased outward investment by Chinese SOEs is becoming a greater issue every day. Several Chinese entities have already entered into or announced transactions that could pose problems for U.S. producers and their workers. Tianjin Pipe, a Chinese SOE, is investing \$1 billion in a Texas facility. However, we know little about its cost of capital and whether it will operate on the basis of commercial concerns. So long as China refuses to comply with its SOE commitments, U.S. workers remain at risk.

We believe that the USTR should ensure that SOEs and any other entities acting with state-delegated authority do not undermine the competitiveness of private enterprise or the rights, pay, and benefits available to their workers. Nor should these entities be allowed to skew supply chains or engage in predatory practices in the U.S. or third country markets, thereby destroying jobs for American workers.

Workers' Rights

While the WTO does not include specific commitments regarding fundamental labor rights, they are important on their own merits and as they relate to trade. Furthermore, the 1998 Singapore WTO Declaration did commit WTO members to "respect, promote, and realize" the core ILO standards as delineated in the ILO Declaration of Fundamental Principles and Rights at Work. Nevertheless, the Chinese government fails to guarantee these core labor standards. China shirks its duties to its own people, as well as to the international community, by failing to uphold fundamental labor rights for its citizens.

Multi-national employers and brands, their Chinese contractors, and even Chinese employers outside international supply chains have frequently adopted business models

³ The AFL-CIO does not oppose SOEs *per se* and does not seek to privatize them. However, especially given America's lack of a comprehensive manufacturing strategy or adequate governmental support for that sector, without strict disciplines on the behavior of SOEs, U.S. workers and producers remain at risk from those entities.

premised on this relative lack of human rights and labor standards, for example, by failing to ensure workplaces are free from child and forced labor or to abide by laws with respect to wages, hours, and conditions of work. Taking advantage of, and acquiescing to, the government's failure to enforce its own labor laws or secure fundamental rights means firms operating in China, whether in private hands or state-supported, operate with an unfair advantage over U.S. competitors: it is not just that labor costs less in China, it is that government practice aims ensure low costs and a workforce that is officially limited in its ability to act collectively to better its wages, benefits, and conditions of employment. Chinese workers, seeing the failure of their own government to protect their rights, have in recent years engaged in numerous wildcat strikes to take back the rights and benefits their own government failures to secure for them.

Given that the Bipartisan Trade Promotion Authority Act of 2002 included the goals, among others, "to foster economic growth, raise living standards, and promote full employment in the United States," and "to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO," we urge the USTR to address this issue in no uncertain terms. A violation of labor rights anywhere is a violation of labor rights everywhere. China's current labor policies hurt not only Chinese workers, but American workers who must compete economically with forced and child labor; discriminatory pay and conditions of employment; and a lack of opportunity to freely associate and collectively bargain.

In sum, the AFL-CIO believes that the Chinese government's approach to international trade and investment since its accession to the WTO demonstrates that China was an inappropriate candidate for WTO membership. China has shown little commitment to the rules-based system. Its strategies have wreaked havoc on the American manufacturing sector. Anything the U.S. can do to hold China accountable and to ensure that American workers do not bear the brunt of this policy mistake will be welcome.