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RICHARD A. GEPHARDT
MISSOURI
DEMOCRATIC LEADER

THE PRESIDENT HAS SEEN

9-12-99

H-204 U.S. CAPITOL
202-325-4700

Congress of the United States
House of Representatives
Office of the Democratic Leader
Washington, DC 20515-6537

August 6, 1999

Copied
Podesta

Mr. John Podesta
Chief of Staff
The White House
Washington, DC 20500

Dear John:

Thank you for engaging House Democrats in a continuing dialogue on China and other trade issues this year. The following confidential memo outlines the parameters of what I believe should substantively be in a WTO accession agreement for China to gain the full support of a substantial portion of House Democrats. In addition to the actual agreement, strong new enforcement mechanisms and a new and meaningful approach on human rights would also be necessary to win the endorsement of Democrats in the House.

Your reaction to this memo would be appreciated. I look forward to working with the President, the White House staff and trade policy officials in the Administration toward straining a China WTO deal that the vast majority of Democrats can support.

Sincerely,



Richard A. Gephardt

M E M O R A N D U M

~~Confidential~~

DETERMINED TO BE AN ADMINISTRATIVE

To: John Podesta
From: Democratic Leader Gephardt
Date: August 6, 1999
Subject: China

MARKING INITIALS: M' DATE: 7/9/16
2016-09708

I wanted to follow up on the meetings we have had on trade policy in general, and our specific discussions on the negotiations that are underway to allow China to become a member of the WTO. This memorandum outlines a number of objectives I believe are important to successfully completing an agreement that will garner significant support among Democrats. I am a strong believer in a rules-based approach, having been an early and vocal supporter of the GATT and the WTO. I want to be able to work with you and the Administration as a partner in ensuring the successful conclusion of an agreement. I am prepared to work for the passage of an agreement that advances our basic interests in trade and that promotes a rising standard of living.

The first test, of course, is whether the agreement protects and enhances our economic interests. While there are a number of important areas where changes must still be achieved, the basic agreement that was outlined by Ambassador Barshsfaky some time ago represents real progress on many of the issues.

But we both understand that once a good deal with China is negotiated an effort to grant permanent MFN will begin. I have opposed granting MFN for China in recent years because I have not believed that effective mechanisms or policies have been in place to ensure that we can continue to press forward on the important issue of human rights. Eliminating MFN has not been my objective: progress on human rights is the ultimate goal.

Accordingly, as we have discussed, I want to work with the Administration on developing a meaningful and effective alternative mechanism providing for an annual evaluation, with potential action to follow, to achieve real progress on human rights, labor rights and the rule of law. I look forward to working with you, Nancy Pelosi and other and key Democratic Members of Congress to develop the specifics of such a program.

In addition, a parallel process must be developed to insure that China implements and adheres to existing trade agreements. China does not have a stellar record on this important matter. I believe that bilateral and multilateral mechanisms can be developed in this area.

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Taking the above approach with China will help insure that we can collectively forge a new Democratic consensus on China trade. If we are able to build confidence among House Democrats for this type of progressive engagement with China, other important items on the President's trade agenda would become easier to achieve as well. The political implications of all of this in 2000 are also clear.

Clearly, the summary of the deal released in April shows major progress on both market access and protocol issues. I view these accomplishments as a very solid floor upon which we can build an acceptable agreement. With a few more concessions from the Chinese, I believe you will have achieved our mutual goal, a strong substantive pact to bring China into the WTO, in a manner that strengthens rather than weakens this regime.

When negotiations are completed, I hope to be able to endorse a final agreement on China's accession to the WTO. Before the next round of negotiations are entered into, I wanted to share some of the objectives that I believe should be addressed in any final negotiating sessions. At the moment, I still have concerns about both the agreement itself and enforcement issues.

I understand the Clinton Administration obtained Chinese commitments to reduce average industrial tariffs from 25 to 9 percent, full distribution rights for US firms in China after a phase-in period, elimination of most quotas in five years, phase out of export performance requirements, and the phasing out of many geographical restrictions. This is an impressive record thus far.

My understanding is that assuming all the commitments made by Premier Zhu are kept by the Chinese, there are several outstanding issues still subject to negotiations. First and foremost on the protocol side, I urge you to continue to press for full preservation of all US trade laws to combat Chinese unfair trade practices, and resulting potential import surges from China. Our domestic industry and its workers need to be assured that all currently available tools to combat unfair trade will continue to be available.

China must provide the full ten-year phase-out of bilateral textile quotas upon its accession, just as other WTO members have done. This is vital to a critical US industry that employs over one million US workers. In addition, on the market access side, China must provide better marketing opportunities for the American movie industry with provisions for access to box office revenue. Finally, China must agree to foreign financing of auto sales.

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Several other important areas must also be addressed: China should improve their market access offers for US banks and securities firms. In addition, China should commit to full distributional rights and contracting of artists for our recording industry. Finally, my understanding is that the pharmaceutical industry still has IPR concerns and that both pharmaceuticals and insurance have market access concerns.

Again, the preservation of US trade laws is the most important of the outstanding issues.
Specifically, I have three objectives in this area:

- A) Preservation of Section 406 of the trade act of 1974 for nonmarket economies must occur until China has implemented all of its WTO commitments and beyond until state enterprises comprise a much smaller percentage of the Chinese economy. I understand the Administration is supportive of this objective. As you know, Section 406 is a revision of our Section 201 law for non market economies with a lower threshold "market disruption" rather than "substantial" injury standard. I urge you to obtain China's commitment not to retaliate against any action taken under this statute. The 1994 draft protocol assured no Chinese retaliation, but the 1997 draft did not.
- B) Full applicability of Super 301, Section 301 and Special 301 to non-market economies need to be preserved for the full transition period. The threat of 301 retaliation enabled the Administration to obtain the strong 1996 IPR Agreement with the Chinese. As you know, the WTO has severely constrained US ability to utilize this law against other WTO members.
- C) The US Countervailing duty law must be applied immediately to China. The Chinese provide massive subsidies to their state enterprises. It was wrong and arbitrary to determine as we did years ago, that nonmarket economies by definition provide no subsidies.

In addition, a series of other measure will be important to building confidence in the Congress that the Chinese will live up to their commitments. I believe it essential that we obtain full Chinese enforcement of all bilateral trade agreements including the 1992, 1995 and 1996 IPR agreement and the 1992 MOU on various industrial and agricultural sectors.

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As you know, another 1992 MOU prohibited trade in prison labor products. At present, up to 8 million Chinese toil at slave labor. The Chinese have not allowed any inspections to determine if they are living up to their commitments on this issue. The US government must get Chinese permission to inspect sites suspected of sending prison labor products. This is just the first step on the China labor rights question that is critical to all Members that have concerns about human rights and labor rights.

In addition, the US Treasury Department must do a better job enforcing the long-standing US law prohibiting the importation of all goods made with forced or prison labor. Fully implementing that prohibition is critical to attaining a Congressional consensus in support of a WTO accession agreement for China.

Over time, China must work toward freeing its labor market by allowing full internal migration, and a commitment to the ILO's five basic labor rights, including the right to organize.

I have been an advocate of the inclusion of labor rights and environmental enforcement provisions in future trade agreements and believe that we should advance this issue with the Chinese. Concurrently, we should aggressively pursue the inclusion of these issues as part of the Seattle Ministerial. Ultimately, labor and environmental issues need to be treated the same as "traditional" trade issues.

Also, many in the Congress will insist that China and the US agree that Taiwan will join the WTO simultaneous to China's accession. It is unfortunate that an important economy in a much better position to meet its WTO commitments has to wait for China. I am also hoping that the Administration's emphasis on transparency will yield rapid Chinese publication of all laws, regulations and directives affecting exports and imports.

Another important issue is US monitoring of Chinese phase-out of tech transfer, production and offset requirements. Strong and creative bilateral and multilateral approaches to monitoring phase-out of Chinese offset requirements will help to build support in domestic US industry and in key industrial unions for the deal. Attention to the offset and tech transfer issues will assure continued US technological superiority and enhancement of US jobs and industrial base. More broadly, I want to work with the Administration, and key labor and business leaders to develop a better and more comprehensive strategy to address the global offset issue. It is unacceptable that foreign governments can require companies to give away their technological edge to attain a deal.

Finally, it is my belief that the US government should work with other G7 countries to fund and design a technical assistance program to assist China and other developing nations in meeting

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their WTO commitments. This program could be administered by the WTO or by NED or one of the other US aid agencies. Part of the problem in China is lack of a system of rule of law and the genuine confusion about what is required to join the WTO. Technical assistance will help combat these problems. I will work with you to obtain resources for such an endeavor.

I look forward to your reaction to these areas of concern regarding Chinese accession to the WTO. I pledge to work constructively with you to develop a new Democratic consensus on China trade policy. It is my belief that this new approach can be applicable to the Seattle Ministerial, fast track and indeed the entire trade agenda.

12 SEP 1999 07:51
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SITUATION ROOM**

99 SEP 12 AM 11:26

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SUBJECT: <u>GEPHARDT MEMO ON CHINA/WTO</u>	PAGES: _____	

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