

NSSM 149/CIEPDM 21
March 10, 72

S
From: HAK and Peter M. Flanigan
To: SecState
SecTreas
SecDef
SecAgric
SecComm
DCI

US-PRC Trade

Pres has directed study of ways in which statement on trade in Joint US-PRC Communique of Feb 28, 72 should be implemented.

Should address PRC attitudes and practices in conducting trade with other countries, with special emphasis on countries with which PRC does not have diplomatic relations, and past trading patterns and specific commodities which have constituted principal imports and exports of PRC. Should examine political aspects of PRC trading arrangements.

Consideration of following means of facilitating trade should be considered

--ways in which USG can begin and facilitate exchange of general trade information and data between US and PRC; possible uses of our third-country contact should be examined

--measures which USG can take to facilitate ~~PRC~~ contacts between exporters and importers on both sides. Include examination of role which should be played by USG and how it should relate to US private individuals and corporations

--effects of US-PRC trade on China COCOM differential

--effect of non-tariff and tariff barriers and claims settlement problem on US-PRC trade

--additional issues including establishment of trade centers, exchange of trade deals, additional means of contact, other measures to facilitate trade.

To be conducted by ad hoc group chaired by State including representatives of addressees and PA. Submit to CIEP RG and SRG by March 24, 72

DM 170/CIEPDM 7; DM 188, 195, 204

Memo for Haig
From: Jon Howe
June 9, 1972
S/NODIS/HOMER
#3556
Chiaa Trade DM

Attaches is joint DM and CIEODM which HAK signed and asked that you "get out ASAP". CIEP concurs providing changes made in due dates for two reports. Although there is remote possibility HAK wanted to have rapid response, mor likely he overlooked need to change date. Originally memos to be submitted to Pres by June 10 ~~(xxxxxxxxxx)~~ (obviously OBE) and June 16. CIEP suggests slipping to June 23 and July 3 respectively. I concur.

If your agree, changes will be made and instruction gotten out to bureaucracy immediately. Presumably HAK has considered all aspects of this instruction including tact that Chi would shortly in Paris be given long memo re trade. Implementing cble already in clearance process although Chi Abm in Paris has not yet returned. Presumably HAK does not want to "save" this "news, but I thought you would want to consider again, this aspects.

Note in HAIG writing: Dispatch. AH

Memo for HAK
From: John Holdridge/Robert Hormats
May 10, 1972
S/NODIS/HOMER
#3556

Implementation of SM 149 - China Trade

As you requested at March 31 SRG meeting, State/Comm have prepared recoms for "Action Program" for implementing SM 149 on trade with PRC. Also attached are proposed nego instructions to be sent Amb Watson and draft memo to be given Amb Huang.

Major problem with paper is that on balance tone of presentation to Chinese is negative. Although paper recoms number of means of acilitating trade, it also calls for our informing PRC--primarily in ememo for Huang--of myriad regs and laws with which they will have to comply in order to trade with us. While we agree certain of our restrictions and legal constraints should be brought to attention of PRC at this time, we should not overwhelm them. Question of settlement of private claims should receive high priority, and it is also advisable to inform Chi in near future of our textile proglem; however, not necessary at this time to raise quetion of debts allegedly owed by China to Eximbank, our restrictions on prob ibition of endangered animal species, antidumping reg., etc.

Paper's recoms divided into: I. Actions, both unilat and re PRC, which we should take within next three months; ~~EE~~ II. Action which should be taken three-six months from now; III. Actions which should be taken six-twelve months from now. IV. Actions which can be taken at any time.

Ia. Within next threemonths:

--notify PRC we are in process of forming private Sino-American Trade Council which will act as central clearing house for info and reserarch on PRC trading practices for US businessmen.

--advise PRC of range of products which we will consider favorably for export license applications Prepare list of goods which China might export to US. Invite Chi to comment on lists and suggest additional items. Offer to provide trade info to PRC and ask whether PRC would be willing to provide info to us.

--amend transportation order T-2 to allow reciprocal port visits by US and PRC vessels, thus accord China same treatment presently accorded USSR. (requires Pres action)

--present PRC memo outlining possible topics for future discussion including:

- settlement of private claims, increasingly important now that direct trade is increasing
- scheduled air services between China and UA
- US import restrictions on textiles
- explanation of US restrictions and criteria for determining market disruption and dumping, and procedures for handling these problems, and offer to provide more detailed explanation
- industrial property protection issues.

Within this category there are two issues on which State and Comm differ:

MFN treatment for PRC

PRC (For Min Chi) raised matter in Peking. State wishes to take cognizance of PRC interests in MFN and offer to nego bilat agreement which would lead to seeking legis to grant MFN status to PRC. Pros: responsive to PRC inquiries; positive element in developing trade relations; positive incentive for PRC to settle private claims issue. Cons: Might make us appear over anxious; legis reception uncertain; we haven't not moved this far with Russians who have been more insistent on this and are more important trading partner.

Comm recoms we make no mention of MFN in memo for Huang but instruct our Amb to reply, if asked, that MFN should be subject for later discussions after major initial issues, such as claims, are resolved. Pros: Avoids appearance of over eagerness; holds major sweetener in reserve. Cons: Not responsive to PRC inquire; would leave memo to Huang largely negative in tone.

We believe neither option satisfactory. Premature to begin negos on MFN with PRC without doing so with Sovs. We do not even have MFN with Romania, and Cong is reluctant to move on our request for that. On other hand, to say nothing would make it appear we were ignoring ForMin inquiry. We recom you approve including in memo to PRC that we view MFN as subject for later discussions. (Should not portray settlement of claims issue as quid pro quo for which we owe China such as MFN. Settlement of claims problem should be portrayed as being of mutual benefit, as it is.)

Settlement of Eximbank Debt

Eximbank asserts certain claims against PRC deriving from shipments of US goods to China before PRC established in Oct 1949. It holds that until payments are made it cannot finance trade with PRC. Comm recoms that, if policy determination is made that debts are proper claims against PRC, this issue should be inscribed in memo to Huang as one of subject for future discussion. Pros: Would permit early resolution of issues and determination whether Eximbank financing would be available for US-PRC trade. Cons: Raises issue which is of no current interest to PRC since it does not seek foreign financing at present; could introduce as contentious issues other USG claims and PRC counter claims.

State recoms matter not be raised now, but that effect of alleged PRC failure to repay exim debt on PRC eligibility for eximbank financing be considered by National Advisory Council. Pros: would result in coord interagency determination on whether or not PRC eligible for Exim financing; permits considered position on total USG claims against PRC. Cons: Runs risk of bringing wide variety of agencies into decision-making process on what could be sensitive matter important to our econ relations with PRC.

We recom we not raise matter with PRC at this time, since they have not asked for Exim credits, but study matter. However, NAC, although usually forum for studying financial issues of this type, is too large for task and fact of study would quickly leak. Best means of handling would be to ask Treasury to

chair interagency etc to review problem.

Ib. Actions which USG should take unilat at this time:

- encourage US businessmen to invite their Chi counterparts to US
- begin review in NAC of alleged Chi delinquencies relative to Eximbank
- begin referring all businessmen wishing info on PRC trade to approp office in Comm
- instruct AmConGen in Hong Kong to expand coop with Am Chof Comm

II. Near-term actions (3-6 months)

--announce formation of Sino-Am Trade Council. As one of first activities it would contact Chi Council for Promotion of Intl Trade re possibility of our sending vanguard trade del to China. SATC would work in close coop with Comm.

- initiate discussions of topics listed in memo to Huang
- give Chi selective list of trade fairs in US and encourage attendance
- encourage SATC to organize trade exhibit in China
- invite PRC to hold trade exhibit in US.

III. Intermediate term actions (6-10 months)

- provide Comm and Agric asst to collective exhibitions by US firms in Chi
- seek through Paris to arrange for contact between US Commodity and Credit Corp and PRC national cereals, oils and foodstuffs import and export corp to explore possibility of grain sales.

IV. Actions which can be done at any time:

- explain to PRC that adequate end-use info required for all valid export licenses cases by Comm
- ask PRC through Paris for details and procedural info on Chi trademark laws
- use AmConGen in HK to encourage specialized banking contacts to facilitate trade with PRC (Treas reps would act as liaison)

Comments

First issue is whether another SRG Meeting necessary. We do not think so. Paper presents only two contentious issues to be decided, and we recom you make those decision so that we can promptly begin our trade contacts with Chi in Paris.

Also believe memo to Huang should be modified to effect following changes:

- indicate we recog PRC interest in MFN but see this as subject for later discussions
- place greater stress on necessity of beginning discussions in near future on settlement of claims
- delete ref to alleged PRC failure to repay Eximbank debt
- remove ref to US prohibitions on "certain endangered animal species"
- remove ref to US antidumping regs
- remove for time being ref to cotton textile issue, but present it to Chin in separate memo in next several weeks. (Amb Watson should indicate orally we will do this soon.)
- approve general scenario submitted by State, but ask that no mention be made to PRC of US changes in transportation regs at this time. Request that approp documents be submitted to Pres so that he may at time of his choosing make approp determinations re travel and reciprocal ship visits. Would be inapprop to move on this now when question of PRC shipping to NVN is so controversial.

Attached is memo from you and Flanigan to approp agencies informing them of decisions and how they should proceed.

Recom: Sign joint DM

Memo for HAK
From: Winthrop Brown, Ch, IG/EA
S/NODIS/HOMER
April 24, 72
#3556

Implementation of NSSM 149

Attach State/Comm recoms for impeleation of SM 149 and propoed nego instructions to Amb Watson.

Highlights MFN and Eximbank debt issues.

Port Security regs and T-2 must be amended before Amb can be auth to inform Huang that US flag carriers auth to enter Chi and PRC carriers auth to enter US. Endorse recom that T-2 be amendmeed to permit US flag ships and ac to visit PRC.

If US scheduled airlines with auth to serve PRC (PanAm, TWA and Northwest) not restrained from approaching PRC individually as soon as T-2 is amended, PRC could play off one US airline against another in way that would be contrary to overall US intersts.

To minimize, we recom that when T-2 is amendmended, such action be accompanied by public statement that eventual establish of scheduled services would be subject to US-PRC intergov discussions. Urge that State be given advance notice of T-2 amendment so that we can instruct sehceuled airlines not to approach PRC about esta scheduled services until auth to do so.

Memo for HAK
From: Holdridge/Hormats
May 8, 1972
#2463

Differential Treatment of PRC in COCOM List Review Negos

COCOM is presently reviewing items which it restricts for sale to Comm countries. An ineragency paper asks for Pres decision on our position in that review. Japan has repeatedly urged that COCOM eliminate the "China differential" which results in stricter appliction of COCOM controls on exports to PRC than on exports to USSR or EE. During first phase of present review 15 of 45 "differential" items have been removed entirely from COCOM control or from "China differential" status.

There is agreement in princile among agencies that we should reduce "differential" as much aspossible. However, ~~DD~~ DOD feels items should be eliminated on item-by-item basis and argues that there are two items which should be retained for embargo to China alone--helium liquidation equipment and containers for transportation of liquified gases. Several other COCOM members--with Japan in forefront--plus State, Comm and NASA favor deletion of all "differential" items from COCOM list and rejection of principle of "China differential"

Two options

Option A: Adopt general principle of termination of differential treatment for PRC in COCOM

Option B: Deal with "China differential" on item-by-item bsis, with view to retention of small number of "hard-core" items for embargo to China alone.

Pros and cons of each set forth in propoed memo to Pres.

On balance ~~re~~ we reom Pres approve A. Peter Flanigan concurs. This would put us in position od advocating equal treatment for USSR and PRC in COCOM and remove a Nother barrier to trade ~~with~~ PRC. There are itess on which we and

other COCOM countries agree require retention of "differential" this should be done in form of "disguised differential"

Two suboptions:

--to retain through "disguised differential" the two items which DOD wishes to have included on COCOM list for embargo to PRC along, or
--to remove these items from embargoed list

Arguments in favor of 2 are that these items can be purchased by PRC from USSR and EE, to which they are not embargoes under COCOM, and that other COCOM nations believe rationale for restricting their export to PRC--on grounds that they contribute to Chi rocket tech--is weak. DOD, which favors 1, argues that while items may be available in EE, amounts in which they would be available to PRC are not adequate; it is incorrect to assume such specialized items would be made easily available by these countries to PRC; and that Japan might not object strenuously to retention of controls on these items if most other "differential" items are decontrolled.

We recom Pres approve 1. These items--if any "differential" is to be retained--are logical candidates. However, because our case of retention of these items on list is weak and our holding out for inclusion might cause friction in our relations with other COCOM countries and make coop with ~~xxx~~ them in other aspects of COCOM negos more difficult, we recom US not hold to this position if it means open confrontation with other COCOM countries.

Recom: Sign memo for Pres

Memo for Pres
From: SecState Rogers
March 20, 1972
C
#2463

State's views as cited above.

Memo for HAK
From: Ted Eliot
March 20, 1972
C
#2463

Options paper.

Memo for Pres
From: SecDef Laird
5-9-72
C
#3973

Def views.

Memo for SecState
SecDef
Sec Comm
Dir, NASA
From: HAK and Peter M. Flanigan
June 12, 1972
C
#2463

Differential Treatment of PRC in COCOM List Review Negos

Pres has considered memo submitted by State and your positions on subject. Has decided:

--In review now taking place in COCOM, US should adopt as general principle termination of differential treatment for PRC as basis for development of US nego position. In event there are particular items which we and other COCOM countries agree should be treated on differential basis, we should endeavor to apply concept of "disguised differential" as described in memo submitted by State.

--In event other COCOM nations agree to concept of "disguised differential" on particular items in COCOM negos, we should attempt to retain "Disguised differential" for helium liquefaction equipment and containers for transportation of liquefied gases. If, however, our holding to this position engenders confrontation with other COCOM countries, we should accept removal of these items from "disguised differential" category.

Memo for Pres
From: HAK and Flanigan
June 9, 1972
C
#50788, 2463

COCOM presently reviewing items which it restricts for sale to Comm countries. Major issue is "~~China differential~~" which results in stricter application of COCOM controls on exports of 30 items to PRC than to USSR or EE.

Agencies agree in principle that we should reduce "differential" as much as possible. However, DOD feels items should be eliminated on item-by-item basis and that helium liquefaction equipment and containers for transport of liquefied gases should be retained for embargo to China alone. Several other COCOM members, particularly Japan--plus State, Comm and NASA, favor deletion of all "differential" items from COCOM list and rejection of "China differential" principle.

Two options:

A. Adopt general principle of termination of differential treatment for PRC in COCOM. Pros: Consistent with our equal treatment of PRC and USSR on US export controls; benefits our relations with PRC; enables us to agree with Japan on issue important to her. Cons: Establishes principle of equality when we recog there is greater likelihood of diversion of certain items to mil uses in PRC than in USSR; decreases our flex to agree to relaxation of controls on items for USSR and EE because such items would then necessarily have to be decontrolled for China.

B. Retain China "differential" on item-by-item basis. However, differential would not be applied explicitly but would be disguised by attaching two conditions to export of hard-core items: a) determination by exporting gov that item could not reasonably be used for strat purposes, and b) certification by importing country that item would be used for peaceful purposes. Although these conditions would not apply only to PRC, its inability to comply would mean that these few items could not be exported by COCOM members to PRC. Pros and Cons are reverse of those under A.

On balance, I recom A--push for removal of "China differential" as matter of general principle. If, hoer, there are a few items on which we and other COCOM countries agree require retention of "differential" this should be in form of "disguised differential". In latter case, other nations' support for retaining "differential" would absolve us of total responsibility for its maintenance. And, real effect of "differential" on PRC is not signifcant.

Recom: That you approve A. Reproduced at the Richard Nixon Presidential Library
DECLASSIFIED This document has been reviewed pursuant to Executive Order 13526 and has been determined to be declassified. principle differential treatment

in COCOM for PRC while attempting to apply "disguised differential" to those few items which we and other COCOM members agree should be treated on differential basis. We would attempt to retain gas transportation equipment and helium separators on China "differential" list as DOD proposes, but would not hold to this position at risk of confrontation with other COCOM countries.

RN initialled Approve

Disapprove, prefer B (deal with differential on item-by-item basis while attempting to place such "disguised differential" on these items--include the gas transport equipment and helium separators--on which we believe differential should be maintained.

Memo for HAK
From: ActExecSecMiller
July 7, 1972
S/NODIS/HOMER
#5386

Attaches draft cable to Paris for clearance implementint proposals of SM 149, modified per DM 170 and to taken account of discussions on trade during "counterpart meetings" in Peking June 19-23.

Memo for HAK
From: SecTreas George P. Shultz
July 13, 1972
S
#5499

cc Flanigan

In resp nse to request in DM 170, enclosed is report on interagency committee composed of reps of State, Comm, Eximbank and Treas. Outlines possible courses of action from point of view of effect of debts on lending to PRC but does not recom a policy. I would like to discuss with you the important policy implications of possible Exi bank lending to PRC.

Conclusions

1. debts exist as valid receivables of Eximbank--i.e. they represent credits disbursed and not repaid or otherwise settled.
2. they are state obligations of China validly entered into by its gov
3. In light of letter of May 11, 1961, Eximbank agreed "to forbear and take no action re remaining balance of indebtedness of ROC until such time as matter may be opened for discussion..." these debts are not now in default. However, Eximbank could as legal matter place ROC in default by opening issue for discussions and demanding repayment.
4. Eximbank appears never to have released ROC from these obligations and ROC has recog their validity.
5. In event of US recog of PRC as successor gov to gov of ROC, Eximbank would have clear legal basis for holding PRC responsible for these debts.
6. In event of less than full succession by PRC (e.g. US recog PRC in addition to ROC) there would be no clear legal basis for PRC liability, although there are precedents for division of financial responsibility for debts
7. As matter of law, Exmbak entitled to look to ROK for payment and US has option to make no claim against PRC. In this case debts would not constitute an obstacle to Eximbank lending to PRC.
8. Should policy decision be made to look to PRC for repayment, there are precedents which would support ~~SMERX~~ request to PRC for agreement to assume debts on theory that mainald benefitted from utilization of loans. However, our non-recog of PRC would militate against PRC acceptance of responsibility for loans. Should claim be made against PRC and should PRC refuse repayment, future Exi bank lending to PRC would raise questions. PRC, in any

ement, could not be "in default" until there had been formal demand for repayment and demand had been refused by PRC. Even if PRC were considered in default, this would not as legal matter prevent Exi bank lending to PRC although it would be contrary to long-standing policy of Eximbank and NAC.

9 9.. Middle course between 7 and 8 would be to seek PRC acceptance of responsibility on benefit-of-use theory, without holding PRC in default. Under this course, Eximbank default policy would not constitute impediment to lending to PRC.

Any future policy determination on issue of responsibility for Eximbank debts must take into account following factors:

1. Eximbank loans are among number of ROC debts to USG which have been in suspense since at least 1961; any decisions re Eximbank loans will have inevitable implications for resolution of larger question of ROK debt to USG and to USG claims, both public and private against PRC.

2. We could seek PRC agreement to assume debt obligations as described in para 9 without changing our recog policy or our support for ROK intl position but any such agreement could raise questions about ROⁿ claim to legitimacy

3. Any decision on settlement of these debts will have implications for potential delinquencies in other areas.

Memo for HAK

From: Richard L. Sneider, Ch, AdHoc Interdepartmental Group

Feb 15, 1972

S/NODIS/HOMER

#899

Implementation of SM 149

Status report with recoms from State/Comm on implementations of SM 149, as requested in DM 170, for further steps which might be taken to facilitate trade between US and PRC.

NSDM 170 /CIEPDM 7
June 8, 1972
HAK;Peter M. Flanigan
S/NODIS/HOMER

US-PRC Trade

SecState
SecTreas
SecDef
SecAgric
SecComm
DCI

Pres has reviewed memo from State, with Domm, of April 24 and response to NSSM 149 by Ad Hoc Group of March 24. Has approved recommendations for actions over next three months contained in April 24 memo for proceeding to implement statement on trade in Shanghai communique with following modifications:

--Memo for Ambassador Huang should indicate that we recognize PRC's interest in MFN but view this as subject for later discussion.

--Alleged PRC failure to repay Exinbank debt should not be raised with PRC at this time. Interagency committee chaired by Treasury should examine question and effect on PRC eligibility for Eximbank financing, and submit report to Pres by July 3.

--Memo for Ambassador Huang should place greater stress on necessity of beginning discussion ~~nx~~ in near future on settlement of claims issue.

--References to cotton textile issue and to US anti-dumping regs and US ~~xxxxxx~~ prohibitions on imports of "certain endangered animal species" should be removed from memo for Huang. These matters should be dealt with in separate memos to be presented to Huang within ~~next~~ several weeks. In oral presentation, Amb. Watson should indicate that we ~~intend~~ intend to provide PRC with such memos shortly. Memos on these subjects ~~xxx~~ together with recoms as to timing of presentation should be submitted to Pres by June 23.

--No mention should be made to PRC at this time of possible US changes in transportation regs. State, in cooperation with other appropriate agencies, should submit to Pres asap documents necessary to review US regs re reciprocal visits by ships and aircraft. Draft statement announcing such decisions as well as statement ~~indicating~~ indicating that eventual establishment of scheduled air services would be subject to US-PRV inter-Governmental discussions ~~xxxx~~ ~~xxxxxxx~~ should also be submitted.

Re recommendations for longer term steps, Pres has deferred decision and requests that they be resubmitted with proposed memoranda where appropriate, and specific recommendations as to timing.