

English Bill Provides Little in the Way of Direct Action on China

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WATERED-DOWN BEER IN A DIRTY GLASS

Evaluation of H. R. 3283: “United States Trade Right Enforcement Act”

The “United States Trade Right Enforcement Act” (H. R. 3283) was introduced July 14, 2005 by Rep. Phil English (R-PA) with the backing of House Ways and Means Committee chairman Rep. Bill Thomas (R-CA). It was hailed as a major effort to deal with the mounting trade deficit with China. Thomas admitted that he had opposed many of the provisions of the legislation in the past. His endorsement of H. R. 3283 was the result of pressure by other House Republicans who were refusing the vote for the Central American Free Trade Agreement (CAFTA) because of their mounting concern over the failure of U.S. policy to address growing trade imbalances and predatory actions by foreign rivals.

H.R. 3283 is a long bill that touches upon a number of topics. Unfortunately, all it does is touch upon them, it does not propose any actual solutions or mandate any remedies.

The bill incorporates Rep. English’s H. R. 1216 which would make the countervailing duty law under subtitle A of title VII of the Tariff Act of 1930 applicable to nonmarket economy countries such as China. However, Thomas had called H.R. 1216 “too aggressive.” The new bill adds two sections to English’s original legislation which is meant to weaken its impact on China. One would “take into account....prevailing terms and conditions in China” and then “adjust” for them before “considering the use of terms and conditions prevailing outside China.” Second is an arcane concern that there be no “double counting” between countervailing duties on subsidies and antidumping orders, again so as not to be too harsh when dealing with Chinese actions that harm American business firms.

The longest part of the bill is Section 5 which is to establish “comprehensive monitoring” of China’s compliance with its international trade obligations. The first part of this section deals with intellectual property rights (IPR) protection. It lays out 14 things Beijing needs to do to “significantly decrease” the counterfeiting and piracy of intellectual property which The President's 2005 Annual Report on the Trade Agreements Program stated was “at epidemic levels and cause serious economic harm to U.S. businesses in virtually every sector of the economy.”

The United States has been down this road before. The first U.S.-China agreement on intellectual property protection was signed in 1992. At last year’s meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT), a process referenced repeatedly in H. R. 3283, Vice Premier Wu Yi presented an “action plan” intended to “substantially reduce IPR infringement.” The plan promised improved legal measures to

facilitate increased criminal prosecution of IPR violations, increased enforcement activities and a national education campaign. Yet, these promises have not been kept any better than previous Chinese assurances. The question now is what will Washington do to compel China do to what it has refused to do in the past.

The only remedy H.R. 3283 calls for is the filing of a case at the World Trade Organization. Such a course would take years to prosecute with no certainty of a favorable outcome, given the bias of foreign judges on WTO dispute panels against U.S. trade law. In the end, even if the United States gained a favorable ruling, it would still have to resort to sanctions (if approved by the WTO) to compel Beijing to act. In the meantime, billions more in stolen intellectual property would have been lost to American entrepreneurs and artists. Washington has monitored Chinese IPR behavior enough. It is now time to act directly, but if H.R. 3283 is the controlling legislation on the subject, it will only serve to delay and possibly frustrate needed action.

Other parts of Section 5 deal with U.S. exports of goods and services, and the “accounting of Chinese subsidies” to the WTO – but not their termination. Biannual and monthly reports are to be made by the President to Thomas’ Ways and Means Committee on the steps the Beijing regime is making to correct problems, or at least their “good faith” efforts. Then the President is to describe what actions “if any” are to be taken if it is determined that Beijing is failing in its efforts. Again, the only specific action mentioned in the bill is a possible WTO case.

Given the general reluctance of the Bush administration to find fault with China, these reports will most likely be used as an excuse for doing nothing rather than provide a rationale for action. For example, the Secretary of the Treasury under current law is to report biannually on currency manipulation, but Secretary Snow has refused to formally declare China to be in violation.

China’s currency, which is not freely traded on world financial markets, has become one of the most pressing issues this year. Yet, the section dealing with this topic is the shortest in H. R. 3283. It does nothing more than call on the Treasury to submit a report that “(1) defines currency manipulation; (2) describes actions of foreign countries that will be considered to be currency manipulation; and (3) describes how statutory provisions addressing currency manipulation by trading partners of the United States...can be better clarified administratively to provide for improved and more predictable evaluation.” That’s it, nothing about what measures should be taken to offset its effect on the U.S. economy or to compel foreign governments to stop the practice.

No one should think that the policy change announced by the People’s Bank of China last week means that the currency problem is on its way to a solution absent continued American pressure. The Reminibi (RMB) was revalued by only 2.1 percent against the dollar, but is still being ‘managed’ by central authority, not the market. Given that the RMB has been estimated to be as much as 40 percent undervalued against the dollar, this alleged “new” policy does not deserve the term “float” that Beijing has tried to use in its behalf. According to the same statement, the “People's Bank of China is responsible for maintaining the RMB exchange rate basically stable at an adaptive and equilibrium

level.”

But the large (and increasing) trade surplus China is running in American and world markets is not an “equilibrium” by any normal use of the term. As Barrons put it, “We do not think that a 2% change in the exchange rate is enough to cause the volume of the mega-trade flows of goods into and out of China to adjust very much, if at all.” The Wall Street Journal was even more explicit, stating July 22, that the new procedure for setting the RMB exchange rate is just “a new formula for preserving one of the crucial elements of its economic success.” The WSJ knows that the objective of Beijing’s policy, however implemented, remains to “gave foreign investors the confidence to build factories in China, fueling the country's export-led boom.” That boom has been devastating to American manufacturers, has driven the United States deeper into debt and has supported the rise of China as a global strategic rival. As long as Washington is only studying the situation and talking (mainly to itself), Beijing knows it need not make any substantial change in a policy that provides it with such enormous advantages.

Will Washington do more if the English bill passes? Under Sections 7 and 8, the bill authorizes more money for the U.S. Trade Representative and the International Trade Commission for enforcement, monitoring, and studies of China’s impact on the U.S. economy, but nothing is specified as to what actions, if any, are to be taken. The trade problems with China did not just start this year. Every year the USTR reports on China in its annual National Trade Estimate Report on Foreign Trade Barriers. In the 2005 report, the section on Beijing’s faults ran over 50 pages. With a \$162 billion trade deficit with China last year and a likely deficit this year of \$200 billion, the problem is self-evident.

The final Section 9 of H.R. 3283 is a non-binding sense of the Congress that China should join the WTO Agreement on Government Procurement, something most foreign governments– not just China, have refused to do. The section notes that Beijing has moved in the opposite direction and “enacted a law on government procurement that incorporates preferences for domestic goods and services” in 2002. So what is to be done? Nothing more than “raise these concerns with appropriate officials of the People's Republic of China and other trading partners.”

H.R. 3283 does not constitute the kind of substantial, energetic and, above all, results-oriented policy that those concerned with the negative impact of China’s rise as a global economic power have demanded. And for those whose concerns run to how Beijing is using its new wealth to expand its military power in ways dangerous to the U.S. position in Asia and elsewhere, H. R. 3283 says nothing. Indeed, in one respect it undermines the attempt to focus American attention on the Chinese threat. In Sections 2 and 7, it criticizes Japan for trade barriers and currency manipulation as if to put Tokyo and Beijing on an equal footing. While the United States certainly has outstanding trade issues with Japan, as it does with all of its major trading partners, Japan is an ally of the United States. The security ties between Tokyo and Washington have been growing closer in recent years precisely because both countries face a strategic challenge from China. One can only assume that Rep. Thomas, who has a strong pro-China voting record, wanted Japan mentioned to mollify Beijing.

How far **Thomas** will go to protect Chinese interests was shown in a June 30 vote on the Chinese National Overseas Oil Company's attempt to buy Unocal. The House adopted a "sense of the Congress resolution" stating the obvious; that "a Chinese state-owned energy company exercising control of critical United States energy infrastructure and energy production capacity could take action that would threaten to impair the national security of the United States." The resolution passed 398-15, but Thomas was one of the 15 "no" votes.

One would not expect a bill put together under his guidance, and thus able to get his endorsement, would contain anything really harmful to the interests of those who have placed their economic bets on China's emergence as the next great power. Indeed, Thomas was quoted by National Journal's Congress Daily PM on July 19 saying in regard to H. R. 3283, "**My concern is that we tip into legislation that says specifically China, and says there is a violation and specifically punishes them for that violation.**"

Though H.R. 3283 is nothing more than a glass of warm, watered-down beer, Thomas still hopes it will befuddle the senses of those who drink of it. But Congress must not lose the energy needed to take stronger, more dynamic, action to correct the current failed policy which has surrendered the initiative to Beijing.

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