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Chairman Brown, Cochairman Smith, Members of the Commission, and ladies and gentleman, it is my pleasure and honor to speak with you this morning. I would like in particular to thank Lawrence Liu, Staff Director of the Commission, for contacting me back in October, and inviting me here today. His loyal service over the past eight years has been an enormous asset, helping educate not only Members of Congress and the Executive branch, but also the general public both in the United States and around the world. I routinely assign testimony from Commission roundtables and hearings to my law students at Case Western Reserve.

Throughout the US, but especially here in Washington, there is a pervasive belief that China is an international trade scofflaw. By manipulating its currency, subsidizing domestic industries and dumping goods in the US market, China is a scourge whose baleful influence harms us all. My recent research, which will appear later this year in the *Michigan Journal of International Law*, tries to temper this view through empirical observation. Specifically, I have examined China's record of implementing ten decisions rendered by the World Trade Organization's Dispute Settlement Body ("DSB") over the past decade.

I find that China has a strong, but increasingly *imperfect*, record of implementing DSB decisions. For reasons I will explain, I conclude that China is, at base, a *system maintainer*, not a *system challenger*. Part of using any system – whether the rules of football or of civil procedure – involves tactical manipulation. A smart lawyer, coach, or WTO member strategically deploys procedural rules to benefit its side to the greatest extent possible. Sometimes a member even breaks the rules. That has been, I submit, China's experience with the DSB over the past decade.

In the first wave of cases, concluded before 2007, China either settled cases, or revised its domestic regulations to accord with WTO rulings, relatively quickly. These cases involved minor adjustments to subsidies, tax refunds, and financial incentives that China provided to both state-owned enterprises and foreign-invested enterprises.

After gaining greater familiarity with WTO dispute settlement procedures, China has become an increasingly sophisticated WTO litigant. It is now more willing to use the DSB's procedures to minimize the effects of unfavorable WTO rulings. In a series of cases over the past five years, China has begun to test the limits of what is possible, rather than conceding at the earliest stages.

This testing may include probing internal DSB procedures. For example, China failed to submit a compliance report in one case, and then explained that it was not bound to do so because the dispute was resolved (DS 340). Likewise, as we know from our colleague in the steel industry, China sought an unusually long period of time in which to implement the electrical steel case decision (DS 414). China suggested that it needed nineteen months, far in excess of the fifteen-month ceiling suggested by WTO rules, whereas the US believed the number was closer to four months. Unable to resolve this difference China and the US submitted the issue to an arbitrator, who determined that eight and a half months would be a "reasonable period of time."

But it also involves decisions, outcomes rendered by the DSB. First, China has appealed unfavorable decisions, even when the appeal lacks merit, presumably to postpone revising the offending regulation. In so doing, China has bought itself a year or two of time before the decision becomes final (DS 340, DS 363).

Second, China has failed to make the necessary changes to its legal system within the prescribed "reasonable period of time." In the publications and entertainment case, which required major changes to its censorship regime and film distribution system, China failed to make all necessary changes within the 14-month period (DS 363).

Third, China has left in place many regulations that the DSB found inconsistent with WTO disciplines. In the publications case just cited (DS 363), a national regulation prohibiting foreign investment in news, radio, television and internet services remains in effect. Indeed local-level regulations, promulgated years after the DSB found the measure inconsistent, cite this regulation, and bid local officials to "earnestly and thoroughly implement" it. The US and China signed a Memorandum of Understanding in May 2012, though they disagree about its significance. China believes it has achieved full implementation, while the US views the MOU as significant progress, but not a final resolution. Inconsistent regulations remain in effect in the financial information services case as well (DS 373). One regulation in particular continues to subject foreign service-providers to onerous requirements not placed on domestic outfits.

In light of these shortcomings, what should the United States do?

First, since the US is usually the "plaintiff" in cases against China, it is well positioned to guide the enforcement action. The US could push the DSB to specify which laws and regulations must be revised. As WTO panel may find a dozen or more Chinese regulations in violation of WTO disciplines. Does China need to change all of them? Some of them? It would be helpful to have a roadmap explaining how China should implement the decision. I believe the US should bring about greater clarity to the legal steps prescribed by the DSB.

Second, the US needs to focus on enforcement. My research shows that many regulations remain in effect, even after the DSB found them inconsistent. I would argue that China has an obligation to annul such regulations, and that the US should apply

pressure on China to ensure their annulment. In addition, many local- or provincial-level regulations reference these inconsistent national regulations. It is possible, then, that inconsistent regulations emit an "enforcement afterglow" at the local or provincial level.

Third, the US needs additional capacity. As I have argued in a prior paper, China understands the US far better than the US understands China. This is a systemic imbalance, to be addressed by educating more Americans about China, its language, political culture, and legal system. To be sure, the Commission plays a vital role in disseminating sophisticated information about China, but it is not enough. The narrower issue is the insufficient number of US trade officials who speak and read Mandarin, understand the Chinese legal system, and can monitor China's compliance efforts. US officials may not know that inconsistent regulations remain in effect, or that they are referenced by lower-level regulations after they have been annulled. Accordingly, it is difficult to ascertain when China has changed its laws and regulations, when it has not done so, and what the overall effect of these implementation efforts is. I am pleased to note that the Interagency Trade Enforcement Center (ITEC) is currently looking to hire Mandarin-speaking trade analysts. I would urge even more efforts if this type as well as the allocation of funds to hire Chinese legal experts, and to train the next generation of trade officials with China expertise.

Fourth, the US also needs to live up to its end of the bargain. A recent study by the Congressional Research Service lists a dozen WTO decisions that the US has not fully implemented. China frequently raises these implementation failures when the DSB meets in Geneva. As the chief architect of the WTO, and its dispute settlement procedures, the US has a special obligation to implement WTO decisions. Our failure to do so erodes confidence in the international trade regime we have worked so hard to create and perpetuate. Implementing our obligations would also give us additional moral authority when calling on other states to implement theirs.

To sum up, China is now an active litigant in the world trade system. It mounted the learning curve of WTO dispute resolution during its first five years of membership, and now artfully deploys the procedural mechanisms and features of the DSB. One could say that we got what we asked for. By welcoming China into the WTO, the US now has a forum in which to challenge the compatibility of China's domestic regulations with the international trade law that the US helped write. It was only a matter of time before China learned the rules of the game. Now that it does, we can expect a savvier adversary in WTO proceedings, one less likely to fold at the first threat of litigation, and one that will use procedural tactics and other tools to challenge our claims. We should also anticipate that China will not only annul inconsistent regulations, as it has traditionally done, but also leave a small subset of inconsistent regulations in place. The latter problem, I believe, can be addressed by additional scrutiny from US trade officials.

I thank you for your attention and look forward to your comments and questions.