

Prepared Testimony

The Broken Promises of China's WTO Accession: Reprioritizing Human Rights

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Mr. Chairman, Members of the Commission. It's an honor and a privilege to appear before you today as we evaluate the past, and assess the future of China's approach to human rights and the impact of our policies.

I am a Commissioner on the "other China Commission" – the US-China Economic and Security Review Commission. While we have different mandates, our two Commissions are united in the goal of improving the lives of the American people, and the people of China. Let me make clear that the views I express today are my own.

As a former Congressional staffer who worked in the House for more than 2 decades, let me start with my conclusion, as I know the demands on everyone's time. Promoting human rights and the rule of law isn't just the right thing to do, it is critical to our economic and national security interests. These issues are inextricably intertwined.

The failure by the last two Administrations to hold China accountable has essentially granted China a license to steal – our jobs, our economic strength, our national security and the rights of their own people. From human rights to intellectual property to the Law of the Sea, China has ignored international norms and rules essentially without consequence. The world is less safe, less secure and human rights are increasingly at risk because of China's refusal to be a responsible stakeholder and our own government's refusal to hold them accountable for adhering to the rule of law and the protection and advancement of human rights.

Our two Commissions were created in conjunction with Congress' consideration of the grant of Permanent Normal Trade Relations (PNTR) with China that paved the way for China's entry into the World Trade Organization in 2001. A little over fifteen years has passed since China's entry and, in my opinion, the proponents of PNTR got it wrong. For many of the proponents, their optimism and enthusiasm has turned into pessimism and realism about China's future path. These concerns are increasingly voiced by the business community, who once saw China as the avenue for enormous profits and opportunity. The harsh reality of China's approach to foreign businesses has been publicly highlighted in the most recent report of the American Chamber of Commerce in China which found that 80% of businesses felt less welcome than before in China.

But, beyond the failure of China's market to yield the profits that were expected, China's entry into the WTO was supposed to bring with it a new, and increasing, respect for the rule of law. Businesses thought that membership in the WTO would help create a foundation that would yield greater certainty about how laws were promulgated and implemented. Time after time, however, they have confronted a system that is opaque, unfair and discriminatory.

In the short period since its accession to the WTO, China has become not only a manufacturing powerhouse, but an increasingly tough competitor in advanced sectors. Our nation now runs an annual trade deficit with China in Advanced Technology Products exceeding \$110 billion. What started with toys and textiles is now computers, aerospace equipment and other goods at the leading edge of the competitive landscape we face.

Almost half – 46% -- of China's exports to the U.S. emanate from foreign-invested enterprises. China has proven to be a significant export platform for foreign businesses rather than the destination of our exports to their consumers. China isn't interested in free trade, it is interested in winning the economic competition at all costs.

There has been a natural evolution of China's approach. It started with Made in China, where China provided incentives for foreign companies to locate there to produce their products. Then they moved up the ladder to Made with China, and approach that focused on joint ventures and other ways of getting foreign firms to help teach China how to make the products that their consumers, and ours, were hungry for. Now, it's Made by China, where China's government is squeezing foreign firms out of the market, especially as growth slows, to promote the interests of indigenous Chinese firms.

China is quite public about all of this. It's 13th Five Year Plan identified a broad range of sectors where China wants to be the world leader. Separate policies such as China 2025 identify how China wants to be among leaders in advanced manufacturing of high technology by mid next decade. More than \$1.5 trillion has been allocated to help ensure the success of the latest Five Year Plan.

China's discriminatory and mercantilist approaches have ranged from forced joint ventures, required technology transfers, performance requirements, standards setting and a variety of other approaches to rob our companies of their technology, their know-how while strengthening China's competitive posture at the same time.

We have seen foreign firms and their staff forced to deal with everything from accusations under the State Secrets Law for publishing market information to enforcement of China's relatively-new Anti-Monopoly Law in ways apparently discriminatory to foreign firms. China has used its laws to try and force our firms to provide the source code – their crown jewels – to gain access to the market.

China has enhanced its power, and advanced its economy through overt and covert mechanisms. When they need something that they can't procure through legal means, they often turn to illegal means. These actions have essentially gone unchallenged, despite high-level attention in the Obama Administration.

Leaders in the manufacturing sector have long complained about China's currency manipulation and the impact it has had on their companies. Indeed, the Economic Policy Institute estimated that currency manipulation has contributed to the loss of millions of jobs (an estimated 3.4 million jobs between 2001 and 2015) and our overall trade deficit with China.

Despite broad agreement in industry, and passage of legislation in each House of Congress that would make currency manipulation subject to our countervailing duty laws, Administration after Administration has refused to act. We are all waiting to hear what the current Administration will do on this critical issue.

Indeed, almost 2 ½ years ago, the US Attorney for the Western District of Pennsylvania, David Hickton, obtained an indictment against five hackers from the People’s Liberation Army for their intrusions into the computer networks of the United Steelworkers, Alcoa, US Steel, Allegheny Technologies, Westinghouse and SolarWorld. Today, those five hackers may not be able to vacation in the U.S., but for China, there has been no other penalty. Arguments and foot dragging in the Administration, despite the valiant efforts of some, have simply empowered and emboldened the Chinese.

Intellectual property theft is rampant – both in terms of U.S. firms doing business in China and those operating within our borders. A very conservative estimate by the Intellectual Property Commission several years ago identified the loss at more than \$300 billion a year. That probably represents just a portion of the damage inflicted on U.S. companies on an annual basis.

Support for China’s entry into the WTO, via the grant of PNTR, was based on a faulty premise: Western ideals of “reform” and rule of law are very different than those of the Chinese leadership. Too many here heard what they wanted to hear. In part, they didn’t listen carefully enough. In part, they failed to recognize the unique characteristics of the Chinese system.

One area of Chinese mercantilism deserving particular attention is the massive buildup of industrial overcapacity in a broad array of sectors ranging from steel to aluminum to chemicals to shipbuilding, to paper and solar and a number of others. China continues to expand its capacity despite, in the case of steel, for example, the Chinese having more than 400 million metric tons of productive capacity beyond what it needs domestically. They continue to subsidize their producers, dump their products in our and other markets, and jeopardize our economic and national security. Of course, China is not bound by market economics, most of their companies don’t have to turn profits and the goal is maintaining domestic harmony and the power of the Communist Party leadership by keeping their people employed.

At the end of the day, the Chinese economic system is not truly a market-based system. The goals, are designed to strengthen the state and the party. As Thilo Haneman of the Rhodium Group recently stated at a hearing of the Commission I serve on, “China’s state-dominated financial system and the lack of rule of law means that state involvement can be pervasive, even if a firm is nominally privately owned. China wants to be designated as a Market Economy under U.S. trade law, which would proffer significant advantages to their companies in terms of how they are treated, despite continuing subsidies and dumping. But, it is impossible to separate the actions, policies, intervention and support of the state in looking at how Chinese companies “compete”.”

It is critical that China know that the U.S. will not grant market economy status anytime in the near future. Our underlying statutory provisions would preclude that. As the annual report of the U.S.-China Economic and Security Review Commission indicated in its latest report,

“A review of the U.S. statutory test for determining whether an economy can be classified as a market economy – including the extent to which the currency is convertible, the extent to which wage rates are determined by free bargaining between labor and management, the extent to which joint ventures or other investments by foreign firms are permitted, the extent of government ownership or control of the means of production, and the extent of government control over the allocation of resources – reveals that China is not currently a market economy and is not on the path to become one in the near future.”

The European Union has also taken a stance against the broad grant of Market Economy Status to China. In December, China indicated that it would pursue actions against both the EU and U.S. for their failure to automatically confer such status. Regrettably, the EU has reportedly refused to cooperate with the U.S. in a joint response strategy to China's actions potentially allowing China to pit the U.S. and EU against each other. A combined and coordinated response would yield the greatest opportunity for success at the WTO.

And, while the underlying statutory test as to how China must be treated is clear, the fact is that the Administration has broad authority to determine otherwise. While it is doubtful the current Administration would grant such preferential treatment to China, Congress should assert its Constitutional authority over trade in this critical area.

We are seeing China's policies being promoted and advanced through its outward investment strategies and acquisitions. Indeed, as part of achieving their state goals, the leadership promoted a "go out" strategy. Major offshore investments by Chinese entities must be approved by the state and, of course, any investment by a State-Owned Entity is designed to promote state goals. With the advent of new capital controls, the scrutiny of outbound investments has increased and we should assume that any that are approved directly advance the state and CCP's interests.

Concerns in this area not only touch upon what have traditionally been considered national security assets. Take, for example, the purchase several years ago of Smithfield Foods, our leading pork producer, by a Chinese entity supported by billions of dollars in state bank loans.

For years, U.S. pork producers had been trying to access the Chinese market to sell their products. China had virtually closed the market to our exports. But, as the income of the Chinese people rose, their desire for increased amounts of protein in their diets began to exceed domestic supplies. But, rather than open their market to all foreign pork products that met their standards, they decided to acquire our leading firm. For the most recent year where data is available, the statistics show that 97% of all pork exports from the U.S. to China were from Smithfield Foods.

This has repercussions across a broad range of industries and is a threat to our capitalist system. If China will not allow U.S. exports on a broad basis into their market unless they acquire the underlying assets, it adds to the outdated nature of the "comparative advantage" theory. And, the ability of other U.S. producers, those who aren't owned by Chinese firms, to compete in the world marketplace is diminished as they will have to compete based on market terms, rather than with the assistance of state financing and other benefits.

This also has implications for the freedom of speech and expression. In recent years, Chinese firms have acquired a number of U.S. media properties – studios and production companies, for example. There have been widespread stories of production companies changing story lines, altering filming locations and other activities to curry the favor of Chinese censors who have complete control over what films may be shown in Chinese theaters. The outright ownership of these assets adds to the potential for self-censorship as companies look to market their films in China.

While there have been stories recently of delayed and denied acquisitions, we don't know whether this is a short- or long-term issue.

China limits the number of U.S. films that can be shown in their theaters. As with pork, are we going to see a majority of films that can access their market be those where the studio is owned by Chinese investors? That is not only an economic and market access issue, it further threatens the ability to share American values with the Chinese people.

Movies are a uniquely American art form. We brought them to life. We made them talk. We gave them color. We have used them to highlight some of the great moral problems facing society. Our entertainment industry is the envy of the world. We must not allow its voice to be silenced.

As Congressman Pittenger identified earlier this year in a letter signed by 16 members of congress, silencing our voices in movies does have propaganda value and ultimately could impact on our national security interests. Before approving other acquisitions, we should carefully review what is in *our* national interest.

At the same time, the freedom of the press – our press – is under attack. China has repeatedly refused to allow access for our news providers to their public. Reporters for U.S. news organizations have been denied visas. Pressure is put on international news organizations, especially those operating in Hong Kong which are most at risk, to write favorable stories on Beijing's actions and publishers increasingly engage in self-censorship to toe the Party line.

At the same time, we grant unfettered access to Chinese reporters and news organizations here. And, those of us living in Washington regularly open our Washington Post newspapers to find paid inserts of Chinese news organizations promoting the openness and successes of China.

China's propaganda machine is hard at work. Reuters ran a story entitled "Beijing's covert radio network airs China-friendly news across Washington, and the world". Beijing operates Confucius Institutes at colleges and universities across the country. They operate the so-called "Thousand Talents" program. All of this essentially goes unanswered and unchallenged while it undermines our ability to hold China accountable.

China's refusal to respect the rule of law directly impacts our national security interests. While China appears to have become more diligent about policing international weapons proliferation regimes in recent years, that is not out of concern for world interests, but their own. China has been linked to the proliferation of weapons technologies that have advanced the nuclear capabilities of Pakistan, for example. China is actively promoting arms exports to nations of concern.

And China's lack of respect of the rule of law has created new and lasting security threats in the South China Sea. Although China is a signatory to the United Nations Convention on the Law of the Sea, it refused to acknowledge the jurisdiction of the Permanent Court of Arbitration at the Hague which was assigned to hear the complaint of the Philippines on the validity of China's claims in the South China Sea. China has continued to reclaim reefs and rocks to create habitable islands with military facilities. If their activities continue, military experts have indicated that China will soon have the capability to assert control of the entire South China Sea and accurately target U.S. naval forces with Anti-Ship Ballistic Missiles.

Proponents argued that engagement would yield expanded rights and freedom. They believed that engagement, and China's membership in the WTO with its rules-based approach, would bring about reform there. China's economic policies and the failure of the U.S. to have a clear, consistent and comprehensive response have simply made China stronger. Our government's inaction has empowered and emboldened China's leadership. The business community's complaints and concerns may have come too late.

And, for the Chinese people, they have seen their hopes of so-called "reform" shattered. Crackdowns on dissent are increasing. China allegedly resorted to kidnapping five booksellers when they were travelling claiming that they were a threat to the state (check). They refused to consult with the Vatican about the choice of church officials, naming their own. They are in the process of potentially trying to choose the next Dalai Lama, rather than allowing his followers to make their own choice. Leaders and followers of the Falun Gong have been targeted.

The list goes on and on and, indeed, this Commission deserves enormous credit for documenting, analyzing and disseminating critical information that calls international attention to the human rights abuses that are occurring daily.

China PNTR fueled the power of the state, increased America's dependence on China's manufacturing products and limited the willingness of the business community, and our government, to respond.

China has repeatedly used this power. Perhaps the best example of this is the case of China's export limitations on the export of rare earth minerals, products that are critical in manufacturing, technology and defense applications. China used its virtual monopoly on these materials as a weapon against Japan to back them down during a dispute over the Senkaku Islands in 2010.

While we await an indication from the new Administration on its policies and approach to China's economic transgressions and its human rights abuses, there are several potential areas that Congress can act on. And, as has been the case with China in the past, leadership on this issue may very well only come from Congress.

It was Congress, in the aftermath of the Tiananmen Square Massacre that called for sanctions. The Clinton Administration even backed away from a voluntary code of conduct for U.S. companies operating in China designed to promote human rights. While the Clinton Administration fought for Most Favored Nation status for China on a yearly basis, it offered no serious approach to confront China. Activism on human rights was primarily fostered by Members of Congress who demanded attention to the issue. And, it was Congress that demanded the creation of this Commission to ensure that, after China was granted PNTR, that the issue of human rights would not be ignored.

And, over the years, and throughout the process, it was Members of Congress – people like Representatives Wolf, Smith, Lantos, Pelosi and others – who never lost sight of the need to fight for those dissidents, detainees and democracy advocates whose lives depended on their attention and activism. I'm honored to be seated here with Jeff Gillis and want to add my voice of thanks to his for the attention you are giving his wife's plight here today.

Congress must, once again, demand that our values be embedded in our policies.

While there is a broad array of options to consider, let me offer a couple of recommendations here today:

- Members of Congress, whenever possible, must raise their voices on behalf of those fighting for their rights, freedom and very lives in China. Members travelling to China must make clear to the Chinese leadership, that we will not rest until there is justice for those unfairly and unjustly imprisoned, detained or treated. And, there needs to be more attention on this critical issue more generally, not just associated with potential travel.
- Members of Congress must also speak out on the need to preserve the remaining democratic attributes of Hong Kong's system. There has been a continuing erosion of the commitments made in conjunction with the 1997 handover, under the iron hand of Beijing but we must highlight the rights and privileges that are at risk.
- Similarly, we must not lose sight of the uniqueness of Taiwan in the context of the recently reaffirmed "one China policy". Our responsibilities under the Taiwan Relations Act, and our support for the country, must continue to guide our approach.
- We must not lose our "voice" in terms of movies and the media. We should use the renegotiation of the Memorandum of Understanding between the People's Republic of China and the United States of America regarding films for theatrical release to try to ensure that access for U.S. films is not limited simply to the products of those companies that the Chinese have purchased. A minimum of 50% of the limit on films covered by the agreement should be allocated to non-Chinese owned firms – that's if the Administration negotiators can't open the market completely, which should be the goal. And, we should carefully examine the purchase of our media assets to determine what impact there may be on the independence and strength of the American voice.
- We should examine the impact of Chinese propaganda efforts here in the U.S. more closely. And, we should highlight and renew our efforts to open China to our news organizations.
- We should also assess China's activities relating to students, researchers and other nationals here in the U.S. and ensure that not only our national security interests are protected, but that we are able to get increasing and equal access to Chinese schools, research institutions and workplaces.
- We must begin to seriously address China's protectionist and predatory trade practices. This, of course, is a comprehensive problem. But, for far too long, a majority of complaints that have been lodged and the actions taken to address China's violations of trade law have had to be filed by the private sector. Most, if not all, of the cases that have been filed could have been initiated by the Administration. Failing to do so has undermined our economic and national security and empowered and subsidized the massive expansion of the power of the Chinese Communist Party and its leadership.
- As the US-China Economic and Security Review Commission recommended in its most recent report, Congress should enact legislation requiring Congressional approval prior to any change in China's Market Economy Status. That would apply not only to the designation of the entire country as market oriented, or for individual sectors or companies, as has been discussed in the past.
- We must include the impact of certain acquisitions of U.S. companies by China on human rights as a consideration in whether to approve a transaction through the Committee on Foreign Investment in the United States (CFIUS). Congressmen Pittenger and Smith just published a

piece in the Wall Street Journal that identified the potential threat that might exist if the acquisition of MoneyGram by China's Ant Financial is approved. In their piece, they said: "the Chinese government is a significant shareholder of Ant Financial...Should this transactions be approved, the Chinese government would gain significant access to, and information on, financial markets and specific international consumer money flow. As the Chinese government increasingly cracks down on political, religious and human rights activists, we must fully examine how the Moneygram network may be used by the Chinese government to target these voices."

Mr. Chairman, Members of the Commission. I again want to thank you for the opportunity to appear before you today and look forward to your questions and working with you in the coming days.