

Testimony of
Under Secretary of Commerce for International Trade
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“WTO: Will China Keep Its Promises? Can It?”
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Chairman Baucus, Co-Chairman Bereuter, members of the Commission, thank you for the opportunity to appear before the Congressional-Executive Commission on the People’s Republic of China. I welcome the Commission’s interest in China’s compliance with its World Trade Organization (WTO) obligations, particularly as it relates to the development of the rule of law in China.

I am pleased to be joined on this panel by Deputy United States Trade Representative Jon Huntsman and GAO Managing Director Susan Westin. Jon, of course, brings many years of experience in trade with China. This is the sort of practical experience that is at a premium at this critical juncture in our relationship with China, where so much depends on ensuring that we see the benefits of our bargain. I had the great pleasure of working with Susan over the last several years, first during my tenure as Chief International Trade Counsel to the Senate Finance Committee at the time of Congress’ passage of permanent normal trade relations (PNTR), and now at the Department of Commerce. Susan and the GAO have become true partners in the effort to ensure both China’s compliance with the WTO and Congress’ ability to provide effective oversight of that process.

Secretary Evans and I both traveled to China in April to observe firsthand China’s implementation of its commitments under the WTO. We emphasized two points. The first was that our commercial relationship provides the foundation for our broader bilateral ties. WTO compliance has become the single most important measure of our bilateral commercial relationship. In other words, early, transparent, and measurable progress on compliance is the primary goal in our bilateral trade relationship. The second point we raised may prove still more important in the years ahead – that is the inescapable link between WTO compliance and the development of the rule of law in China.

China’s WTO Compliance and the Development of the Rule of Law

Observance of the law in any society must become a habit – it must be woven into the fabric of social relationships. Commerce is one of the primary means by which members of a society build those bonds of common trust that allow a society to function and provide a guarantee of freedom and basic human rights.

With language bequeathed to us by a long-dead economist, we tend to talk about the changes in China as a departure from socialism or the advent of capitalism. As has often been the case in the long, sad history of socialism, the language of Marx obscures more than it reveals. To talk of what has happened in China simply as the advent of capitalism on the one hand, or “socialism with Chinese characteristics” on the other, misses a more fundamental point. The point is that, from bitter experience with collectivization, the Great Leap Forward, and the Cultural Revolution, the Chinese have been forced to confront the fact that all good things in the economic sphere flow from one root cause -- human freedom.

Therein lies the most important part of the economic equation that the Chinese are currently trying to solve. To reach a higher standard of living, the Chinese government has been forced to embrace human freedom as the engine that drives both economic growth and innovation. The Chinese leadership has demonstrated a willingness to foster significant changes in Chinese society in pursuit of a higher standard of living. Those changes have been under way for over two decades, during which time China has lifted between 100 to 200 million people out of poverty.

Significantly, living economists have come around to a very different view of the role of government in the economy than existed at the time of either Adam Smith or Karl Marx. Views have changed regarding the role government plays in contributing to economic growth. On the one hand, there should be little doubt, given the many examples we have worldwide, that strong government is essential to a functioning market economy. On the other hand, what has become equally clear is that there must also be strong constraints on the government's ability to intervene in the market and upset the free rein of market forces. Government's role is to create the environment in which individuals can pursue their own best interest, not to intervene on the assumption that the government knows better than individual citizens what is best for them.

What role then does adherence to the WTO and the development of the rule of law play in solving that equation? In my view, the Chinese leadership's willingness to undertake reforms in their country's own economic interest extends to compliance with China's WTO obligations. The acid test will, of course, be whether their willingness to implement China's commitments translates into action.

How that relates ultimately to the development of the rule of law generally is, in my view, simple and direct. While we should not oversell the ability of the WTO, in and of itself, to foster fundamental change in China, we should not, at the same time, overlook or devalue the positive contribution China's adherence to the WTO can make. In adhering faithfully to the WTO, the Chinese government will, in the process, set a profound example for its own citizens about the benefits that flow from honoring the law.

I fully expect that the WTO principles of transparency, judicial or administrative review of executive action, and non-discriminatory treatment will have a direct impact on the development of the law in China. Accession to the WTO will further the development of an impartial judiciary, neutral regulatory bodies, transparent legal processes, and regularity in the administration of law in China. To the extent that entry into the WTO reinforces the development of the rule of law in China, it does suggest broader lessons for China's leadership as they attempt to build a new foundation for Chinese society.

Let there be no doubt that the United States intends to play a constructive role in that process. It is in both our commercial interest and our interest in a peaceful, more stable world to see China succeed in honoring its WTO commitments and in building a stronger foundation for China's future based on the rule of law.

We can help most at a very practical level. As I said earlier, observance of the law must become a habit. We can contribute to that process by ensuring that we raise our commercial problems as quickly as they surface and ensure that China strengthens its record on WTO compliance at every opportunity. In the process, we will make three important contributions. First and foremost, we will vindicate the bargain we reached with the Chinese at the negotiating table and ensure that our exporters have access to the market per the WTO agreement. Second, we will avoid turning every dispute into potential litigation at the WTO, with all that implies in the way of both politics and delay in real market access. Third, we will also help by demonstrating that the habit of observing the law is profoundly in China's interest, as much as ours.

In practice, both the commercial importance and the broader significance of WTO compliance has led to a natural emphasis within the Administration on two different processes. One is the ongoing effort to monitor China's compliance efforts. The other is developing a program of technical assistance that contributes both to the goal of compliance and, consistent with that goal, the development of the rule of law. It is to those two topics that I would like to turn.

Monitoring Compliance Efforts

From the perspective of American exporters, China's accession to the WTO represents the most significant market-opening initiative since the North American Free Trade Agreement (NAFTA) and the Uruguay

Round. But, the advantages of China's accession will only be guaranteed by a vigilance and a willingness to promote American exports aggressively in the Chinese market.

I have testified before Congress that our efforts to assist China in implementing its commitments are guided by two principles: (1) China's implementation of its WTO obligations is the key issue in our bilateral trade relations; and (2) early detection and resolution of problems is necessary to avoid protracted trade disputes.

We emphasized the importance of implementation in April when Secretary Evans led a business development mission to Beijing and Shanghai to help American companies take advantage of the opportunities that China's membership in the WTO will bring. He met with President Jiang and other senior leaders as well as his Chinese counterpart as part of the Joint Commission on Commerce and Trade, which he chairs for the U.S. side, to drive home the message about the importance of timely and transparent implementation of each of China's commitments under the WTO. Three weeks prior to Secretary Evans's trip, I was in China myself leading a delegation of senior professional staff from the House and Senate, many of whom worked on the Congressional passage of Permanent Normal Trade Relations (PNTR) and are experts on trade matters. They participated in all of my meetings in Beijing and Shanghai. By doing so, they underscored for the Chinese the important role that Congress will continue to play throughout the WTO implementation process. The subtext – and an important point to have made – was that there is no daylight between the Administration and the Congress when it comes to China's implementation of its WTO obligations.

At the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) – our counterpart agency – we met with Minister Shi and Vice Minister Ma. MOFTEC appears to have the best of intentions for tackling a very tough job. We need to do what we can to help them – especially in terms of our work with other central government agencies as well as with provincial authorities. We met with officials from the State Development and Planning Commission, the Ministry of Information Industry, the National People's Congress and local officials in Shanghai. I also discussed WTO issues with local officials in Guangzhou and Shenzhen. There is a clear recognition of the enormity of the task the Chinese leaders want to accomplish. I was impressed by the level of knowledge and familiarity that our interlocutors had with the WTO agreements and China's accession commitments.

We also talked with American businesses at functions organized by the American Chambers of Commerce and the U.S.-China Business Council and visited U.S. company facilities and one Chinese state-owned enterprise. We met with representatives of the Shanghai Film Studio, where we were told that piracy of optical disks was hurting their sales in China. It was fascinating to discover that we have a new ally in our work to enhance enforcement of intellectual property rights (IPR) protection in China and elsewhere. We saw the Shanghai Model Port Project – an APEC initiative that demonstrates how Customs officials can use technology to facilitate trade and protect IPR. I thank U.S. Ambassador to APEC Larry Greenwood for suggesting that we visit this facility. We went to the WTO Affairs Consultation Center, where Chinese officials are being trained in different aspects of the requirements of WTO membership. Members of my delegation and I were invited to come back and help them teach classes, and I look forward to doing so in the future. Capacity-building is extremely important, and I'll discuss this momentarily when I focus on technical assistance.

I took every opportunity to underscore the importance that both we, in the Administration, and Congress attach to WTO compliance. Bringing a strong delegation from the professional staff of the Senate Finance and House Ways and Means Committees helped demonstrate that point for our Chinese hosts. Our delegation was, in and of itself, a demonstration for Chinese officials of the importance that both the executive and legislative branches of our government place on WTO implementation. I plan to travel to China roughly every six months between now and 2005 to continue that process and I hope to take a delegation of Members of Congress or staff with me as often as possible.

Our efforts must, of course, extend beyond high-level attention. We need to ensure that we have dedicated our resources to the steady, day-to-day accumulation of successes. Where the rubber meets the road in that regard is the efforts of our Foreign Commercial Service officers on the ground in China. The Foreign Commercial Service's representation in China is the largest delegation of what I like to refer to as our "commercial diplomats" of any country in the world. We divide our staff in mainland China into five sections (Beijing, Shanghai, Guangzhou, Chengdu, and Shenyang), and have another office in Hong Kong. The staff in mainland China comprises 18 officers and an additional 66 foreign service nationals and contractors. In cooperation with State Department Economic officers, Foreign Agriculture Service officers, and Customs attaches, Commercial Officers monitor China's WTO implementation efforts and help organize training programs to educate Chinese officials and business leaders on China's WTO commitments. In addition, Commercial Officers continue to provide the export promotion services of the Commercial Service, including counseling, market analysis, advocacy, and an array of services chiefly aimed to benefit small- and medium-sized exporters.

In March 2002, the Department of Commerce opened a Trade Facilitation Office (TFO) in Beijing to support and coordinate compliance activities in both Beijing and Washington and to act as an "early warning" system. This office will be staffed by two Market Access and Compliance (MAC) officers and two Import Administration (IA) officers. Maintaining close contact with American firms doing business in China and with Chinese officials, these officers will be able to help resolve commercial disputes before simple misunderstandings can escalate into a point of principle on one side or another. These officers will monitor and report on disputes – the primary indicia of implementation problems. In addition, these officers will serve as on-the-ground experts to answer technical questions from U.S. and Chinese government officials and business representatives. The TFO works closely with the whole China Compliance Team in Beijing and Washington, and while security clearances and training are being finalized for the four compliance officers, the office is being staffed by detailees from the China Compliance Team.

We also have augmented our staff working on China in MAC's Trade Compliance Center and on the China desk. Just two years ago, we had only five people in MAC's Office of the Chinese Economic Area (OCEA). We added six new officers to OCEA in FY 2001 and are adding five more in FY 2002. Combined, the nine officers currently in this office have approximately 40 years of expertise working on trade issues. This office is tasked with the job of monitoring China's compliance with its WTO commitments, coordinating technical assistance to China, addressing trade problems as early as possible, and promoting new trade opportunities for U.S. exporters.

As management tools, MAC maintains two important databases. The first tracks compliance, market access and commercial disputes in China. Our staff in Washington and China routinely update the database so that we can efficiently track these cases and share real-time information. The second database contains information on the training programs designed to help China implement its WTO obligations that are offered by the Department of Commerce, other agencies, academia, other governments, multilateral organizations and non-governmental organizations. We are monitoring other assistance efforts to avoid duplication, identify training needs and note other countries' programs that may favor competing ways of doing business. In addition to sharing information through databases, our Washington staff is in daily contact with our staff in China – through e-mails, phone calls, and travel. Over the last three months, 10 members of our China Team have been able to visit China for at least 10 days.

IA has established a team dedicated to monitoring compliance with China's WTO commitments on trade remedies and unfair trade practices. IA keeps track of China's use of antidumping and countervailing duty laws, monitors and analyzes its subsidy programs in relation to WTO disciplines, monitors imports for unusual trends, and provides a point of contact for U.S. companies that believe they face potential unfair trade problems arising from the Chinese market. These efforts, led both by technical experts in Washington and, soon, the overseas-based IA officers in the TFO, provide in-country support for the administration of

U.S. antidumping and countervailing duty proceedings as well as close coordination with other offices and agencies to proactively identify and resolve problems before they develop into unfair trade disputes. The IA team also provides a point of contact for Chinese government and business representatives to obtain information and technical assistance about trade remedies.

ITA's Trade Development (TD) unit has undertaken a thorough review of China's tariff schedule and continues to work closely with industry to ensure that all obligations are fully implemented. TD's industry specialists allow us to follow China's implementation efforts on a practical level, knowing the day-to-day problems that U.S. companies might encounter.

To coordinate Commerce's action on China's implementation of its WTO commitments, the Department of Commerce has developed a China compliance team that meets internally twice a week. The goal at this stage is to make judgments as to whether and when we need to raise issues directly at a political level with our Chinese counterparts to get appropriate action.

To strengthen the force of our efforts, Commerce works hand-in-hand with other agencies through the Trade Policy Staff Committee subcommittee on China WTO Compliance, which meets on a monthly basis to review China's progress with WTO implementation and potential WTO compliance issues; to strategically coordinate USG agencies' WTO implementation and compliance work; and to decide on appropriate responses when problems arise. We are working closely with USTR and the State Department to track China's specific WTO commitments and to raise any potential concerns. We are working closely with industry to ensure that all obligations are fully implemented.

China has committed itself to a number of major reforms. Of these, none is more critical than its obligation to allow for public comment before new laws, regulations or other measures are implemented. By allowing for input from industry and other affected parties, the Chinese can achieve regulatory and economic goals in a manner that facilitates rather than inhibits business. We are watching China's efforts to revise, create or rescind laws and regulations and are providing comments on draft regulations. We meet with MOFTEC regularly and consult with other Chinese Government entities. For instance, we recently intervened with the State Economic and Trade Commission with regard to regulations that could have prohibited companies from using independent contractors to provide a myriad of services in a flexible manner.

Beyond those standing functions, Secretary Evans has committed to send one senior Commerce official to China every month for the foreseeable future to check up on our implementation and trade promotion efforts. I am leading that effort with help from the Assistant and Deputy Assistant Secretaries at the Department. The commitment of those senior resources further reflects the priority we place on China's implementation of its commitments.

Technical Assistance

Compliance, of course, is not just the threat of retaliation for the failure to implement trade agreements. In many instances, compliance has as much to do with encouraging a greater understanding of the WTO rules and their purpose. Dr. Supachai, who will begin serving as the Director General for the WTO in September, has said that he is concerned that "the WTO doesn't have the resources to provide all the know-how that China requires." To help fill that gap, we are working with the WTO as well as with other countries and the private sector to monitor compliance and to provide technical assistance to China.

By joining the WTO, a rules-based international trading system, China has agreed to implement systemic reforms designed to establish a more transparent and predictable regime for business dealings. Though China's phased-in implementation of its WTO commitments will make the market more conducive for U.S.

companies, the process will be challenging. China has begun the process of creating, revising and eliminating thousands of laws, regulations, and rules at the central, provincial and local levels.

During my recent visit to China, I heard repeated requests from Chinese officials for joint cooperation on technical assistance and training programs. Effective technical assistance programs can help China better understand what a particular WTO commitment means in practice, so that compliant legislation and practices are put in place, not just in Beijing, but throughout China. This will help China comply with WTO commitments in a timely manner, which should reduce the number of problems we will have to handle in the future.

Toward that end, in addition to tracking capacity-building programs, we are, with help from a variety of other agencies, conducting a series of WTO compliance seminars in China. This technical training is designed to disseminate as much information as possible regarding the practical implications of the WTO agreements to Chinese officials both in the central government and in the provinces. The seminars to date have focused on those areas, such as intellectual property and standards, in which we have had particular problems in the China market in the past.

Even before China became a WTO member, our training team traveled to Beijing and Shanghai to review China's WTO obligations with Chinese officials and the resident U.S. business community in important areas including standards, intellectual property rights and anti-dumping requirements. In early 2001, a half-dozen sessions were held in Washington for Chinese officials, on topics ranging from e-commerce regulation to corporate mergers and acquisitions, to WTO anti-dumping rules. These sessions have continued through this year.

Last year, our China Team officers traveled to China with the American National Standards Institute for seminars in Beijing and Xian, organized IPR Enforcement Training sessions in Shenyang, Hangzhou, and Xiamen, and conducted seminars on information technology and telecommunications equipment standards and testing issues in Beijing. A medical equipment standards program was held jointly with the medical device Global Harmonization Task Force in Kunming in September.

Now that China has joined the WTO, ITA is sponsoring a series of more than half-a-dozen technical assistance programs in FY 2002, including training in sector-specific areas, as well as more general rule of law issues. This year we've already conducted a program on the Rule of Law for Distribution and Franchising in Beijing, Shanghai and Guangzhou, an IPR Enforcement Training session in two Chinese cities to follow up on last year's successful IPR seminar and program on the impact of WTO on the telecommunications sector in Xian.

In April, Secretary Evans and Minister Shi agreed to enhance our cooperative training efforts. At the plenary session of the U.S.-China Joint Commission on Commerce and Trade, the two sides announced plans for future training programs on the impact of WTO on the semiconductor industry, pharmaceutical standards and intellectual property protection, environmental technologies, antidumping procedures and trade facilitation through logistics improvements. The co-chairs also announced plans for a potential TDA grant to fund a WTO e-learning program that will provide guidance to both Chinese government officials and citizens on WTO implementation. We are also exploring a website in China for Chinese officials and U.S. businesses, which will provide WTO implementation and compliance guidance.

Our commercial officers who work in ITA's Foreign and Commercial Service unit at the U.S. Embassy and our consulates also have a strong outreach program in place, including a general WTO introduction seminar, which they have conducted in 12 provinces, and an IPR seminar, which they have conducted in every province. FCS officers are also organizing digital videoconferences on WTO issues between the Shanghai WTO Affairs Consultation Center and U.S. experts in different fields.

Many of the IPR programs have been joint efforts between ITA and the U.S. Patent and Trademark Office (USPTO). Jim Rogan, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and I have worked closely together these past months on various IP initiatives. For example, last month USPTO in conjunction with the U.S. Consulate/Hong Kong, hosted a digital video conference with a group of judges from Jiangsu Province attending a WTO training program in Hong Kong. USPTO and ITA also are planning another IPR enforcement training program for September; a program on technology transfer and intellectual property protection in the fall, and a program on judicial enforcement of IPR in the fall. Jim advises me that USPTO has also undertaken a number of other initiatives in support of U.S. efforts -- including hosting a number of digital video conferences with various U.S. consulates and Chinese counterparts on timely intellectual property matters, and a planned detail of a USPTO attorney advisor to the U.S. Embassy in Beijing to advise on intellectual property matters during July and August 2002. USPTO also is working closely with other foreign IPR offices, such as the European Patent Office and Japan Patent Office, in areas where mutual assistance can make their efforts more effective.

My recent trip helped me assess what more we could be doing and where we need to focus our training efforts in the future. There is much more we could do to help China reform its commercial legal system and to help China implement its WTO commitments. The China PNTR legislation contained an authorization for the Department of Commerce to establish a program to conduct rule of law training and technical assistance related to commercial activities in China, and we are evaluating how best to employ our resources to satisfy that.

The Commerce Department has demonstrated expertise in assisting other countries to develop their commercial legal systems. Through our Commercial Law Development Program (CLDP), we have trained lawyers, judges, and government officials throughout Eastern Europe, the former Soviet Union, in Africa and elsewhere in Asia to promote commercial law. And we would like to do the same in China.

Effective programs can help China efficiently implement its market opening concessions which means greater market access for U.S. firms. Other nations – Japan, the EU member states, Canada – all have substantial programs in place. At this Commission’s staff roundtable on May 24, the Asia Foundation’s Vice President and Washington Director Nancy Yuan testified that it is non-governmental organizations (NGOs), rather than the U.S. Government, that have taken the lead in conducting on-the-ground rule of law programs in China. She also noted that the assistance provided by U.S. NGOs, is “nowhere on the scale of assistance provided by European and other donors.” As a practical matter, the Chinese are faced with choices: do they adopt a U.S., an EU, a Japanese, or another approach to regulation and the rule of law? Though all these systems may be WTO-compliant, China’s utilization of the U.S. approach to matters like standards will benefit U.S. firms.

Just as I regard the CLDP program as one of our “best practices,” I would like to call your attention to another. The International Trade Administration hosts an AID-funded program called the Business Information Service for the Newly Independent States (BISNIS), which serves as a resource for U.S. companies which want to do business in the countries which comprised the former Soviet Union. BISNIS could serve as a successful model replicated to provide the same services for China -- a larger market with even greater potential for U.S. businesses. The time to undertake this initiative is now -- to “fill in behind” our agreement in order to help U.S. companies gain from our negotiators’ hard work on China’s accession to the WTO.

Conclusion

China joined the WTO with an awareness that it would be difficult to fulfill its commitments but with a resolve to do so. The Chinese leadership pragmatically recognized that WTO membership would be important for continued economic growth. Let us not forget that China’s economic progress in the last 20

years has been nothing short of remarkable, and that the World Bank lauds China for accomplishing in poverty reduction in two decades what has taken other countries two centuries. Between 100 to 200 million people have been lifted out of poverty; a country that knew scarcity now has an economy that boasts surpluses.

Economists at the IMF estimate that, by the time China will have been in the WTO for five years, its economy will have grown to be \$26 billion larger than it would have if China had not joined the WTO. And the IMF was only looking at the effects from tariff cuts. The impact of new foreign capital flows will be even greater. China's annual average of \$40 billion in foreign direct investment is second only to that of the United States. This has been one of the most important factors in the transformation of the Chinese economy. To fully benefit from these capital flows, China's financial and legal system must continue on the path of reform. My counterpart at MOFTEC seems to fully understand this. The WTO's requirements for legal consistency and fairness will help further develop the rule of law in China – which will benefit our companies as well as the growing private sector in China.

As President Bush said when he was in Beijing in February, "China is on a rising path, and America welcomes the emergence of a strong and peaceful and prosperous China." In a global economy that is just beginning to improve, we need China to serve as an engine of growth. Beyond that, China's reforms can create a "virtuous circle" of competitive liberalization in the region – after all, success breeds success. This will encourage China's neighbors to undertake the hard steps needed to improve transparency, corporate governance, and their legal systems. At the end of the day, the rule of law – and the economic freedoms that it brings – may be our most important export.

Mr. Chairman, Mr. Co-Chairman, to answer your question: Yes, I believe that China can and will seek to keep its promises, and we should do whatever we can to help. I thank you for devoting this hearing to this important issue, and I welcome your questions now or at any time. It is an honor to serve on this Commission.