

Testimony
of
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In 1979 and 1980, I served in the Office of the United States Trade Representative during implementation of the first bilateral trade agreement between the United States and the People's Republic of China.

In the early 1990's, while a Member of Congress, I was strong advocate of extending most-favored-nation trade treatment to China.

A decade later, while Chairman of the Appellate Body of the World Trade Organization, I presided in the first appeal in which China appeared in WTO dispute settlement.

More recently, as a practicing lawyer, I represented the American motion picture, music, and book publishing industries in the two successful cases brought by the United States against China in the WTO relating to the protection in China of my clients' copyrights.

China is currently implementing the WTO rulings in favor of the United States in those two cases.

Thus, I have long been involved in efforts to establish and enhance mutually beneficial trade relations between the United States and China.

Likewise, I have long been engaged in efforts in the United States and worldwide to bring China fully within the WTO-based multilateral trading system.

I have long believed that, by trading with China, and by bringing China within the global trading system, we can do the most to serve the economic and security interests of the United States while also doing the most to increase both prosperity and freedom in China.

This remains my belief.

This is not an easy time for trade relations between the two countries. The Great Recession has created great pressures in both the United States and China. The temptation in both countries is to yield to these pressures, and to retreat from previous commitments into the politically appealing refuge of protectionism and economic nationalism.

For both the United States and China, this would be a mistake.

For both countries, by far the best way forward from recession to a lasting recovery is to sustain and strengthen our mutually beneficial economic relationship.

Crucial to this relationship will be a continuing commitment in both countries to more open trade, and a continuing commitment in both countries to compliance with WTO rules for trade.

The United States demonstrates a commitment to trade, and to the rule of law in trade, every day, and in many ways. And, since becoming a Member of the WTO in 2001, China has, in many ways, demonstrated this commitment as well.

China has been a positive presence in the WTO, and an increasingly frequent participant in WTO dispute settlement. My expectation, and that of many others, is that China will increasingly assume a responsible role of leadership within the WTO.

This is as it should be. As a large trading country, China should, like the United States, be a leader within the WTO, and China should be expected, inevitably, to have many trade disputes with other WTO Members.

Like all other WTO Members, China is bound by the WTO treaty to take all of its treaty-related disputes with other Members to WTO dispute settlement. In compliance with WTO rules, China is doing so.

China has profited enormously from the benefit of WTO trade concessions, and from the shelter of the WTO's fundamental rules of non-discrimination. The Chinese know this, and they know the considerable stake that, as a consequence, they have in the continued success of the multilateral trading system.

The United States has gained, too, from China's entry into the WTO. Understandably, we are inclined to focus on where China may have fallen short, so far, in reshaping Chinese ways to a full consistency with WTO obligations. This is especially so during this time of economic distress and continuing economic tension.

But a focus on how far China still has to go, should not blind us to how far China has already come, and in such a short time.

This does not mean that we should excuse and overlook WTO violations by China -- any more than we should expect China to excuse and overlook any WTO violations by the United States.

Such violations are rightly the subject of dispute settlement by both countries under WTO rules.

But as someone who has negotiated, legislated, and adjudicated on international trade, my view remains what it has always been: we should try always to resolve trade disputes by negotiation before resorting to litigation.

And this is my strong view with respect to trade relations between the United States and China.

There are some specific areas of trade with China that are rightly of concern to the United States. Some are already in the headlines. Others soon may be.

Obviously, there is considerable concern in the United States, and elsewhere in the world, with how Chinese currency practices affect the terms of trade. To me, this is one issue that would be

best resolved through negotiation, and not litigation, and I support the efforts of the Obama Administration to achieve a negotiated solution.

Despite our winning verdicts in the two copyright cases, counterfeiting, piracy, and intellectual property violations of all kinds remain a pervasive problem throughout China. Negotiation has accomplished all too little where IP rights are concerned. The Chinese have a clear obligation to enforce IP rights under WTO rules. If they do not do so, the two copyright cases help show the United States the way forward through further dispute settlement.

There is understandable concern in the United States that China's proposed rules for "indigenous innovation" will be applied in a discriminatory way in Chinese government procurement. Any such discrimination would certainly not promote innovation in China. It would deny the Chinese people the benefits of foreign innovations, and the benefits also of foreign competition to spur domestic innovation.

But on this issue the position of the United States has been weakened considerably by our own domestic actions. How can we criticize China for imposing a requirement to "Buy Chinese" when we have enacted "Buy American" provisions that deny the Chinese access to our government procurement market?

The United States and China should both refrain from discriminatory procurement practices, and should work together to make the WTO's Government Procurement Agreement a truly global agreement. This is much in the interest of both countries.

Trade in services is another area of legitimate American concern. China must comply fully with the national treatment and other obligations in its schedule to the General Agreement on Trade in Services, and a key negotiating aim of the United States should be to encourage China to add to those services obligations. Services represent 75 percent of the American economy, and we continue to have a significant overall comparative advantage in services trade.

A rapidly emerging area of concern -- and one that could create an entirely new arena of conflict in international trade -- is export restrictions. China is not alone in applying export restrictions, but the Chinese restrictions on exports have already led to one WTO dispute, on raw materials, and may soon lead to another, on rare earth elements. No one country can be self-sufficient in everything. The United States and China share an interest in making certain that WTO rules ensure a free flow of trade and investment in natural resources.

As elsewhere in the world, barriers to trade with China are increasingly taking the form, not of tariffs, but of non-tariff barriers. Sanitary and phytosanitary measures, technical standards, and other technical regulations can sometimes be pretexts for protectionism, imposing restrictions on trade beyond those necessary to achieve legitimate domestic purposes. WTO rules provide remedies that can be effective against such non-tariff barriers to trade, and that should be used.

Like a number of other developing countries, China is increasingly relying on trade remedies to restrict imports -- which it has every right to do under WTO rules. The United States will expect China to comply fully with WTO rules in applying safeguards, antidumping duties, and

countervailing duties to subsidies -- just as China rightly expects the United States to do in applying such remedies to restrict imports from China.

Overall, there continues to be a compelling need for China to enhance transparency and to uphold the rule of law. Where trade is affected, these are WTO obligations. These are also essential ingredients of any truly enduring economic success for China.

As I see it, the principal difficulties facing U.S. companies in China can be addressed satisfactorily within the framework of the WTO. If necessary, this can be done through litigation. Ideally, this should be done through negotiation.

Certainly the United States and China both have much to gain, in their two-way trade and otherwise, from a successful conclusion of the Doha Development Round of multilateral trade negotiations. Beyond that, new understandings, and perhaps new rules, are needed in such areas as investment and climate change and electronic commerce.

I think it vital that we continue to engage with China, and that we continue to encourage China to engage constructively and cooperatively with other trading nations in the world trading system.

I am persuaded that the United States and China can work together to address not only our bilateral concerns, but also any number of urgent global concerns.

I am also of the view that none of our global concerns can be addressed effectively without the engagement and the cooperation of both the United States and China.

I worry when I hear other Americans describe China as a "threat" to the United States.

I am reminded at such times of the warning of Thucydides in his history of the Peloponnesian War -- that a belief in the inevitability of conflict can become one of the main causes of conflict.

Trade disputes between the United States and China are inevitable. Conflict is not.

I see China as I have always seen China -- not as a "threat" to the United States, but as an opportunity for the United States, and as an opportunity for all the world.

We Americans must continue to do all we can to encourage China to be our partner in addressing world concerns, and in expanding the worldwide domain of prosperity and freedom.

A partnership between the United States and China in ensuring the continued success of the WTO is one of the best ways we can do so.

