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Ten Years in the WTO: Has China Kept Its Promises?

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Excerpts from Hearing Statement
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Ten years ago this week, China acceded to the World Trade Organization. Prior to that, the United States granted China permanent normal trade relations. This Commission was formed in that process, with a mandate to monitor human rights and the development of the rule of law or the lack of progress thereof in China.

In 1998, two years before China joined the WTO, I chaired a hearing of the Subcommittee on International Operations and Human Rights of the Committee on International Relations in which I examined whether bringing China into the WTO would improve its human rights record. At the time, I noted reports from the State Department and Amnesty International citing serious problems in several key areas of China's human rights record, such as the imprisonment and abuse of prisoners of conscience, including those who sought genuine, independent representation for China's workers; restrictions on religious freedom; and the implementation of coercive family planning including pervasive forced abortion and coercive organ harvesting; among others.

As a member of the WTO, China has experienced tremendous economic growth and integration into the global economy, but as this Commission's most recent Annual Report documents, China continues to massively violate the basic human rights of its own people and systematically undermine the rule of law. Lawyers and activists who stand up for individuals' rights are detained, often under deplorable conditions—and tortured. Chen Guangcheng, a blind and self-taught legal activist, is imprisoned in his own home. Nobel laureate Liu Xiaobo continues to serve an 11-year prison sentence for peacefully advocating for political reform. Web

sites that do not adhere to the government line are shut down. Freedom of religion is denied to those who worship outside state-sanctioned institutions and believers harassed, incarcerated and tortured. Ethnic minorities are persecuted.

This hearing, asking whether China has kept its promises as a member of the WTO, will revisit a hearing the Commission held in June 2002, six months after China joined the WTO. That hearing was titled, “WTO: Will China Keep its Promises? Can it?” There was optimism by some at the time, but even that was tempered by caution. China was liberalizing. It was a vast and promising market and foreign businesses were eager to see the imposition of the WTO’s set of rules and principles bring some order to the Chinese investment and legal systems. It seemed at the time that China’s leadership envisioned a market economy more similar to ours than to that of a Communist state. However, some people, including me and some of our commissioners, were highly skeptical that China’s WTO accession would lead to rule of law in China.

Judging by the experiences of the past 10 years, I think the answer to the first question—whether China will keep its promises—is sadly, no. Arguably, the Chinese people now have more freedom to participate in China’s changing economy, but the Chinese government continues to place harsh restrictions on that participation. More Chinese citizens are able to travel, while many dissidents are barred from leaving the country.

The deplorable state of workers’ rights in the PRC not only means that Chinese men, women and children in the work force are exploited and put at risk, but also that U.S. workers are severely hurt as well by profoundly unfair advantages that go to those corporations who benefit from China’s heinous labor practices. Human rights abuses abroad have the direct consequence of robbing Americans of their jobs and livelihoods here at home.

Charlie Wowkanech, the president of the New Jersey State AFL-CIO, testified at my hearing in 1998 and his words are as true today as then. He said, “Chinese economic policy depends on maintenance of a strategy of aggressive exports and carefully restricted foreign access to its home market. The systematic violation of internationally recognized workers’ rights is a strategically necessary component of that policy. Chinese labor activists are regularly jailed, or imprisoned in reeducation camps for advocating free and independent trade unions, for protesting corruption and embezzlement, for insisting that they be paid wages that they are owed, and for talking to journalists about working conditions in China.”

On the one hand, the Internet seemingly gives Chinese citizens greater access to information than was possible before, but it is heavily censored, restricting access by Chinese citizens to information and by U.S. companies to the Chinese market. Moreover, the internet has become a ubiquitous, potent weapon of suppression employed with devastating impact.

In 2006 I held the first major hearing on Internet freedom in response to Yahoo!'s turning over the personally identifying information of its e-mail account holder, Shi Tao, to the Chinese government – who tracked him down and sentenced him to 10 years for sending abroad e-mails that revealed the details of Chinese government press controls. At that hearing Yahoo!, Google, Microsoft, and Cisco testified as to what we might ruefully call their “worst practices” of cooperation with the Internet police of totalitarian governments like China's.

Since then China has further transformed from what should have been a freedom plaza to big brother's best friend. The technologies the Chinese government uses to track, monitor, block, filter, trace, remove, attack, hack, and remotely take over Internet activity, content and users has exploded.

Last week I introduced the Global Online Freedom Act, a bill which requires the State Department to beef up its reporting on Internet freedom in the annual Country Report on Human Rights Practices, and to identify by name Internet-restricting countries.

The bill requires Internet companies listed on U.S. stock exchanges to disclose to the Securities and Exchange Commission how they conduct their human rights due diligence, including with regard to the collection and sharing of personally identifiable information with repressive countries, and the steps they take to notify users when they remove content or block access to content.

Finally, in response to many reports that we've all seen in the papers recently of U.S. technology being used to track down or conduct surveillance of activists through the Internet or mobile devices, the bill will prohibit the export of hardware or software that can be used for potentially illicit activities such as surveillance, tracking and blocking to the governments of Internet-restricting countries, including China

Could China have kept its promises? Of course it could have, though doing so would have meant the Communist Party would have had to submit to the rule of law. China faced many challenges when it joined the WTO. However, given its economic success and clout—as well as the immense resources it has poured into the expansion of the state's role in its economy—China certainly could have kept its promises if it wished to do so.

So how is China doing by WTO standards? Awful. China had agreed to abide by the WTO principles of non-discrimination and transparency. However, U.S. exporters face many barriers when trying to sell products to China, starting with customs delays and other problems at the border. Those problems extend into China's markets. Companies in the large and growing state-owned sector operate under a set of policies that favor Chinese producers. Also, it is extremely difficult for our companies to access government procurement.

Some of these barriers are obvious, such as China's indigenous innovation policy, which has created strong incentives to condition market access on the transfer of valuable technology, contrary to WTO rules. Others, such as directed purchasing of Chinese-made products by China's state-owned companies, are harder to prove, notwithstanding China's agreements that state-owned companies would operate on a market basis.

There is no reciprocity, not strictly speaking a WTO requirement, but certainly a principle underlying the WTO. It is much more difficult for American companies to access the Chinese market than it is for Chinese companies to reach buyers in the United States. Even China's Internet censorship serves to keep American products and services out of the Chinese market, by blocking access in China to U.S. Web sites in many cases.

China's record of protection of intellectual property rights, a fundamental WTO obligation, is abysmal. Infringement of our companies' IP leads to lost sales in China, the U.S., and other countries; lost royalty payments; and damaged reputations; and presents a risk to consumers here and in China of unwittingly buying counterfeit pharmaceuticals or unsafe fake products.

The level playing field promised as part of China's WTO accession has not arrived. WTO membership has resulted in a massive shift of jobs and wealth from United States to China, which has come at a huge cost to us.

The trade deficit in China's favor has tripled over the past 10 years—in 2010 it was a whopping \$273 billion.

It also has come with a cost to the credibility of the WTO, raising the question 'is China killing the WTO?' given China's state capitalism and poor governance.

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