

## **TESTIMONY OF ROBERT W. STAIGER**

Many thanks to Commissioners Cleveland and Wessel for inviting me to testify before this Commission on the WTO's role in a workable US strategy to challenge China's trade practices and integrate China more fully into the rules-based multilateral trading system.

My research suggests that the architecture of the WTO -- and of the General Agreement on Tariffs and Trade or GATT, on which the WTO is built -- is based on sound economic principles, and is well-designed to meet the challenges faced by the world trading system of the twenty-first century. These challenges include the important task of integrating China more fully into the rules-based system, the focus of today's hearing.

But to accomplish this task, it is critical that the underlying China-specific challenge for the WTO is identified, and that it is distinguished from other non-China-specific challenges with which the WTO must contend. In particular, I believe that the rise in economic importance of the large emerging and developing economies, with China playing a leading role, has created three interrelated challenges for the world trading system. And I believe that it is only when these challenges are identified and distinguished from one another that the appropriate WTO legal instruments can be deployed to address each challenge.

What are these three challenges?

First, there appears to have emerged a substantial departure from reciprocity between China and its major industrialized trading partners, a departure that is directly attributable to the non-market features of China's economic system. But I believe that these features are not, by themselves, incompatible with China's obligations in the multilateral trading system, and that the implied need for rebalancing market access commitments between China and other WTO

members can be addressed with GATT/WTO non-violation claims. This challenge is clearly China-specific, and I would call it the essence of the WTO's China Challenge.

Second, even once reciprocity between China and its trading partners is established, there is a possibility that the Uruguay Round MFN tariff commitments made by the United States and other industrialized countries now imply the grant of a greater level of market access than some of these countries are comfortable with. I believe that the implied need for reconsideration of the level of reciprocal market access commitments, where necessary, can be addressed with GATT Article XXVIII renegotiations. Owing to its sheer size in world trade, China undoubtedly plays a leading role in this second challenge as well, but this challenge is not specifically about China.

The third challenge arises from the historical lack of participation by non-industrialized countries in 50 years of GATT reciprocal tariff negotiations, and the asymmetric levels of market access commitments between the developing/emerging economies and the industrialized countries that exists as a result. This has led to a latecomers problem for the WTO that may be hindering the ability of many developing and emerging economies to gain from GATT/WTO membership. Because China made significant market access concessions as part of its 2001 protocol for accession to the WTO, this third challenge is less about China than about other emerging and developing economies.

In my remaining few minutes I will elaborate on the first of these challenges, and refer the Commission to my written statement for a treatment of the second and third challenges.

My research suggests that the fundamental purpose of a trade agreement such as the WTO remains the same whether member countries adopt market-oriented or non-market economic systems. This is because the choice between these two economic systems will not impact the nature of the problem for a trade agreement to solve. Either way, it is still the international spillovers associated with unilateral government decisions -- which are driven by the quantities

of goods and services that countries offer for exchange across national borders, not by what happens inside national borders to generate those quantities -- that creates the problem that a successful trade agreement must address.

This observation is clarifying, because it indicates that, succinctly put, the challenge for the WTO posed by China, Inc. is this: The WTO must find a way for China to make additional policy commitments, tailored to compensate for the non-market features of its economy, that can serve the role of preserving the market access implied by its tariff bindings, much as the role that GATT articles play for market-oriented economies.

Evidently, there is no reason to think that China's entry into the world trading system raises issues that are fundamentally inconsistent with the WTO's underlying mandate. To the contrary, the market access orientation of the GATT/WTO provides a useful guardrail for what China should be willing to contemplate -- and what the United States and other WTO members have a right to expect -- in the context of China's WTO commitments.

The essence of the WTO's China Challenge can therefore be characterized as follows. Upon China's 2001 accession to the WTO, and in combination with existing WTO disciplines and together with the expectation that China would evolve strongly toward a more market oriented economy, its trading partners believed that the tariff bindings and additional specific market access commitments that China agreed to were sufficient to ensure that China would adhere to an appropriate balance between rights and obligations, a balance that is embodied in the GATT/WTO norm of reciprocity. But the set of specific commitments that China agreed to has turned out to be unsatisfactory for this purpose, primarily because China has not evolved toward a market economy as quickly or as fully as its trading partners expected.

If this characterization is accurate, then the non-violation clause provides a promising path for the United States and other WTO members to address the current impasse. This provision, which was an important focus of the drafters of GATT in 1947 and whose relevance was reaffirmed with the creation of the WTO in 1995, allows one GATT/WTO member government to seek compensation from another for adverse trade effects of the other's policies, even though those policies do not violate specific obligation under the GATT/WTO agreement. Under a successful non-violation claim the defendant government is under no obligation to remove the measures at issue, but if it does not remove them then the claimant government is owed compensation, the level of which is subject to arbitration by the WTO Dispute Settlement Body.

A successful non-violation claim would provide China with the freedom to decide whether and, if so, how best to offer new and secure market access commitments that would reestablish reciprocity with its trading partners, with the knowledge that if its offer is not sufficient for this purpose then its trading partners have the right to restore reciprocity by withdrawing market access concessions of their own. Crucially, any disagreements between China and its trading partners over the magnitude of the policy adjustments required to restore reciprocity would be referred to the relevant WTO dispute settlement bodies for a ruling, thereby keeping the resolution of these issues within the rules-based multilateral system. [Of course, this presumes that the current vacancies in the Appellate Body are filled, so that it is able once again to review appeals.]

In short, I believe that China is unlikely to agree to a one-way "do-over" of its accession negotiations in order that industrialized countries can impose new commitments on it. But as a WTO member, China *did* agree to be subject to the logic of the non-violation claim, and China *did* negotiate its accession under the explicit expectations that it would achieve reciprocity between its rights and its obligations. It is for these reasons that utilization of the WTO's non-violation clause provides the appropriate US strategy for addressing the non-market features of China's economy and integrating China more fully into the rules-based multilateral trading system.