

UNITED STATES OF AMERICA
 OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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SECTION 301 INVESTIGATION AND HEARING:
 CHINA'S ACTS, POLICIES, AND PRACTICES RELATED TO
 TECHNOLOGY TRANSFER, INTELLECTUAL PROPERTY,
 AND INNOVATION

+ + +

October 10, 2017
 9:30 a.m.

U.S. International Trade Commission
 500 E Street S.W.
 Washington, DC 20436

COMMITTEE MEMBERS:

WILLIAM BUSIS	Chair
KATHERINE LINTON	USTR Office of General Counsel
TERRENCE McCARTIN	Acting AUSTR for China Affairs
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MICHAEL DIEHL	Office of Intellectual Property and Innovation
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WILLIAM BOBSEINE	U.S. Department of Commerce
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P R O C E E D I N G S

(9:33 a.m.)

1
2
3 MR. BISHOP: Will the room please come to
4 order.

5 CHAIR BUSIS: Good morning and welcome.
6 My name is William Busis with the U.S. Trade
7 Representative's Office of General Counsel. I am
8 also Chair of the interagency Section 301 Committee.
9 The representatives from that committee are sitting
10 around the table here. As stated in our *Federal*
11 *Register* notice, the U.S. Trade Representative
12 self-initiated this investigation under Section 301
13 of the 1974 Trade Act, as amended, on August 18,
14 2017.

15 The purpose of today's hearing is to
16 receive public testimony relating to whether acts,
17 policies, and practices of the Government of China
18 relating to technology transfer, intellectual
19 property, and innovation are unreasonable or
20 discriminatory and burden or restrict U.S. commerce.

21 Before we begin the hearing, I will
22 briefly summarize the background of this matter,

1 provide some procedural and administrative
2 instructions, and have the other agency
3 representatives introduce themselves.

4 On August 14, 2017, the President issued a
5 memorandum to the U.S. Trade Representative stating
6 that China has implemented laws, policies, and
7 practices that may encourage or require the transfer
8 of American technology and intellectual property to
9 enterprises in China, or that may otherwise
10 negatively affect American economic interests.

11 The memorandum further stated that these
12 laws, polices, and practices may inhibit U.S.
13 exports, deprive American citizens of fair
14 remunerations for their innovations, divert American
15 jobs to workers in China, contribute to our trade
16 deficit with China, and otherwise undermine American
17 manufacturing services and innovation.

18 After consultations, the USTR initiated
19 this investigation and issued a *Federal Register*
20 Notice. The notice seeks comments on acts,
21 policies, and practices of the Chinese government
22 including the following:

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1 Those that require or pressure the
2 transfer of technologies and intellectual property
3 to Chinese companies; those that deprive U.S.
4 companies of the ability to set market-based terms
5 in licensing and other technology-related
6 negotiations with Chinese companies; those that
7 direct and/or unfairly facilitate the systemic
8 investment in and/or acquisition of U.S. companies
9 and assets by Chinese companies to generate
10 large-scale technology transfer; and, four, those
11 that direct and/or support unauthorized intrusions
12 into U.S. commercial computer networks or
13 cyber-enabled theft of intellectual property, trade
14 secrets, or confidential business information.

15 In addition to these four types of
16 conduct, we invite comments on other acts, policies,
17 and practices of the Chinese government that may be
18 relevant to this investigation. We also invite
19 information on the nature and level of burden or
20 restriction on U.S. commerce caused by the stated
21 acts, policies, and practices.

22 The Section 301 Committee will carefully

1 consider the testimony from this public hearing and
2 all comments received in making our recommendation
3 to the U.S. Trade Representative.

4 We have four panels of witnesses scheduled
5 to testify today. We will have a brief break
6 between panels to let the witnesses get situated.
7 Each organization represented is limited to five
8 minutes of oral testimony.

9 After the testimony from each panel of
10 witnesses, agency representatives will have an
11 opportunity to ask questions. All questions will be
12 from agency representatives. There will be no
13 questions accepted from the floor.

14 All public submissions for this hearing
15 are available for public review on the
16 [regulations.gov](http://www.regulations.gov) website. The docket number is
17 USTR-2017-0016.

18 Post-hearing comments, including any
19 written responses to questions from the Section 301
20 Committee, are due by Friday, October 20, 2017. The
21 rules and procedures for written submissions are
22 available in the original *Federal Register* Notice.

1 Video recordings and photographs of the
2 proceedings are not permitted.

3 A written transcript of this hearing will
4 be posted on the [regulations.gov](https://www.regulations.gov) website as soon as
5 possible after the conclusion of this hearing.

6 If you have any questions about the
7 facilities, please feel free to ask the guards at
8 the front desk.

9 We are pleased to have international trade
10 and economic experts from a range of U.S. government
11 agencies. I would ask each person to introduce
12 themselves. I'll start to my left.

13 MR. McCARTIN: Thank you, Bill.

14 Terry McCartin, Acting Assistant U.S.
15 Trade Representative for China Affairs.

16 MR. MITCHELL: Stevan Mitchell
17 representing Department of Commerce, International
18 Trade Administration.

19 MS. McNULTY: Kate McNulty with U.S.
20 Department of State.

21 MR. LAMBERTI: Good morning, everyone.
22 Matt Lamberti with the U.S. Department of Justice.

1 MS. BONNER: Sarah Bonner with the U.S.
2 Small Business Administration.

3 MS. MITCH: Sage Mitch with the Treasury
4 Department.

5 MS. PETTIS: Maureen Pettis, Department of
6 Labor.

7 MR. DIEHL: Good morning. I'm Michael
8 Diehl. I'm Senior Director for Intellectual
9 Property at the U.S. Trade Representative.

10 CHAIR BUSIS: Mr. Bishop, could you please
11 introduce our first panel of witnesses?

12 MR. BISHOP: Thank you, Mr. Chairman. Our
13 first witness on this panel is Richard Ellings with
14 the Commission of the Theft of American Intellectual
15 Property.

16 Mr. Ellings, you have five minutes.

17 MR. ELLINGS: Committee Chairman Busis and
18 distinguished members of the Section 301 Committee,
19 your hearing is our country's opportunity to face a
20 tidal wave of illegal activity that a senior U.S.
21 official characterized a few years ago as the
22 greatest transfer of wealth in history.

1 Today is America's opportunity to
2 appreciate that the successful integration of China
3 into an international system that accords with rule
4 of law and other democratic values requires U.S.
5 policies based not on hope and platitudes but on
6 strength and leverage.

7 On behalf of the Commission on the Theft
8 of American Intellectual Property, thank you for
9 your dedication to safeguarding American workers,
10 entrepreneurs, consumers, and investors, and to
11 bolstering the nation's security.

12 Along with measuring the scope of the
13 problem, the IP Commission, as we call it, has
14 proposed policy options to curtail IP theft, some of
15 which have become U.S. law or policy and one of
16 which I will raise below.

17 I'd like to draw your attention to several
18 points. The problems of IP theft and its pernicious
19 twin, forced IP transfer, as bad as they have been,
20 we estimate the cumulative cost to America of just
21 IP theft over the past 4 years at \$1.6 trillion.
22 Over the past 15 years, the costs of theft are

1 millions of American jobs directly and through
2 stolen opportunity with the accompanying personal
3 and societal costs damaged or ruined of thousands of
4 American companies; reduced new business creation
5 research, development, and innovation at home;
6 reduced productivity at home; and lowered GDP growth
7 with prospects for even lower growth.

8 A footnote on the job and societal
9 impacts: There is new evidence by economists in a
10 slew of recent studies showing that impacts in
11 America and Europe purely from China trade are
12 negative and much worse than economists had
13 previously thought. These impacts include net
14 numbers of jobs lost from that trade, longer periods
15 of time for impacted workers to get new jobs,
16 reduced income of those who do get jobs, and large
17 numbers of people simply leaving the workforce. I'm
18 happy to give you a citation for the survey of these
19 studies.

20 All the means of industrial espionage are
21 employed. The victims range from small industrial
22 companies to high tech start-ups, from professors

1 with National Science Foundation grants to our
2 biggest corporations. Industrial trade shows across
3 the country are targeted. Valuable equipment is
4 obtained from here and elsewhere, reverse
5 engineered, and sold worldwide. Phones are tapped,
6 emails intercepted, and computer systems
7 compromised. Trade secrets are stolen to undercut
8 bids and discover business weaknesses and
9 strategies. Software is copied at mind-boggling
10 rates. The list seems endless.

11 China's current Five-Year Plan and the
12 Made in China 2025 policy are guides to
13 understanding the regime's top IP acquisition
14 priorities. These priorities correlate positively
15 with documented IP theft and forced transfer
16 activity. Forced transfer of IP is a near
17 ubiquitous phenomenon experienced by American
18 companies seeking to sell products in China that
19 Chinese authorities have determined to be useful to
20 achieving their industrial goals.

21 China accounts for approximately 80
22 percent of international IP theft. IP theft is

1 government directed and government encouraged, the
2 latter unleashing enterprising Chinese business
3 people whose belief in IP is weak and national
4 loyalty and motivation to make money strong.

5 The problem of IP theft could get worse in
6 the immediate future for three reasons: First,
7 unless policy changes, the cost of stealing American
8 IP will remain miniscule compared with the benefits.
9 The chances of being caught are small, and the
10 penalties if caught usually trivial. And American
11 companies are intimidated and reticent over the
12 issue, especially in China. There they risk
13 punishment by a powerful and opaque Chinese
14 regulatory system. Besides, stock values can
15 plummet on news of IP theft. Private legal action
16 is simply not an option in the vast majority of
17 cases.

18 Second, the techniques for cyber-enabled
19 theft are improving during a time when many
20 companies are embracing technologies like cloud
21 computing and the internet of things, which make
22 them more vulnerable to attack. As the National

1 Counterintelligence and Security Center observed
2 last November, the cyber threat to the United States
3 continues to evolve, and millions of new instances
4 of malware are created monthly.

5 Third, as I noted earlier, China has
6 redoubled its efforts to lead the world in
7 innovation and dominate in industrial production.

8 Many illuminating testimonies for this
9 hearing conclude with things that China should do to
10 stop its behavior; for decades, in fact, China
11 should have done this or should have done that.
12 Needless to say, China knows what we would like it
13 to do. But with 40 years of successful theft and
14 forced transfer of IP, it does not see why it should
15 do anything. The United States lacks credibility on
16 the issue due to its failure to take effective
17 action.

18 With the long term in mind, I recommend
19 that the Administration prudently establish
20 procedures and target infringers with sanctions.
21 The President has all the authority he needs in our
22 trading laws and in Section 1637 of the FY 2015

1 National Defense Authorization Act. The latter
2 contains a top recommendation and an original IP
3 Commission report. The provision authorizes the
4 President to prohibit all transactions and property
5 of any foreign person or entity the President
6 determines knowingly engages in economic or
7 industrial espionage.

8 In tandem with unilateral action, I also
9 recommend obtaining where we can the support of
10 like-minded nations. China might try to bargain and
11 give the Administration one or more settlements
12 beforehand; however, it is very likely to retaliate
13 against our companies and perhaps more broadly. It
14 will also seek to exploit competition and divisions
15 between American, European, Japanese, and Korean
16 firms and governments to acquire what it wants and
17 to seek to divide us all.

18 The global marketplace is diverse. When
19 confronting a bully, it's good to have allies and
20 friends.

21 CHAIR BUSIS: Mr. Ellings, if you could
22 just finish up? We have your written testimony as

1 well.

2 MR. ELLINGS: Okay. Yeah, this is, by the
3 way, separate. I want to point that out. In any
4 case, to underscore the multilateral part, I simply
5 want to suggest that it should be done in tandem.
6 We are gathered here, just to conclude, to take
7 another step in filling out a strategy that
8 incorporates IP protection into a wider set of
9 unilateral and international policies, policies that
10 protect American interests, strengthen international
11 relations, and support the Administration's focus on
12 revitalizing our country.

13 Thank you very much. I look forward to
14 your questions.

15 MR. BISHOP: The next witness on this
16 panel is Stephen Ezell with the Information
17 Technology and Innovation Foundation.

18 Mr. Ezell, you have five minutes.

19 MR. EZELL: Thank you for the invitation
20 to testify today.

21 I'm Stephen Ezell, Vice President of
22 Global Innovation Policy at the Information

1 Technology and Innovation Foundation, a nonprofit
2 science and tech policy think tank in Washington,
3 D.C. We commend the Trump Administration for
4 undertaking a serious investigation of China's
5 economic trade and IP practices and the impact these
6 have on U.S. jobs, industries, and employment.

7 As ITIF has written in numerous reports
8 and testimony, for too long China has systematically
9 flouted the spirit and often the letter of its
10 commitments to the World Trade Organization. Even
11 more than 15 years after it joined, China remains
12 the leading purveyor of what ITIF calls innovation
13 mercantilism, fielding every mercantilist policy
14 imaginable from forced IP and technology transfer as
15 a condition of market access, to production export
16 subsidies, to currency and standards manipulation in
17 sectors ranging from ICTs and solar panels to steel
18 and automobiles.

19 We need to be quite clear that China's
20 objective is to become competitive across virtually
21 all advanced technology industries and that the
22 techniques it is fielding to become so pose a direct

1 and even existential threat to America's and other
2 foreign high tech companies and industries. For
3 instance, China's \$300 billion Made in China 2025
4 strategy calls for China to become global leaders
5 across 10 key strategic sectors from semiconductors
6 and biotechnology to aircraft and robots.

7 One clear manifestation of this strategy
8 is China's National Integrated Circuit or IC
9 Strategy, which seeks to invest \$150 billion over
10 the next decade to create a completely closed-loop
11 semiconductor manufacturing ecosystem within China.
12 The strategy unabashedly calls for China to reduce
13 imports of U.S. semiconductors by half within 10
14 years and to eliminate them entirely within 20
15 years, with 70 percent of the semiconductor chips
16 used by companies operating in China to be
17 domestically produced by 2025.

18 Put simply, in advanced technology
19 industries like this, China fundamentally rejects
20 the notion of comparative advantage and instead
21 seeks absolute advantage, wanting to limit imports
22 and/or place them with domestic production, all the

1 while enjoying unfettered access to global markets
2 for its exports.

3 Assimilating foreign technology is the key
4 component of China's efforts here. And in general,
5 China's technology acquisition strategy kind of goes
6 like this: Can we develop the technology
7 indigenously? If yes, do so. But if not, try to
8 compel the transfer of technology or IP to China
9 through forced JVs or else go out and acquire it on
10 international markets or failing that steal
11 intellectual property.

12 And so as my colleague, Mr. Ellings,
13 alluded to, Chinese technology or IP transfer
14 requirements have affected virtually all enterprises
15 and industries from aviation, automotives, renewable
16 energy, and high-speed rail. For example, global
17 auto brands have long been only allowed to
18 manufacture cars in China through joint ventures
19 with local partners. More recently, China made GM's
20 access to subsidies for electric vehicle purchase
21 contingent on the company handing over the IP behind
22 its electric hybrid car, the Volt. And Ford has

1 been forced to do the same.

2 Likewise, another issue is China's
3 Technology Import and Export Regulations, or TIER,
4 which compel exchange on unbalanced licensing terms
5 by mandating Chinese ownership of any technology
6 improvements for imported technology. Effectively,
7 this means that foreign licensors, including U.S.
8 firms, cannot negotiate to own any improvements or
9 share these with Chinese licensees even if they
10 would wish to do so.

11 Another concern is that TIER obligates a
12 foreign licensor into China to offer an indemnity
13 against third party infringement to the Chinese
14 licensee, but this obligation does not attain to the
15 Chinese party.

16 Another concern related to intellectual
17 property is the growing use of secure and
18 controllable measures mandated by China's National
19 Security Law and Cybersecurity Law. These may
20 induce or force the localization of design or
21 manufacturing of ICT products such as semiconductors
22 or servers. Under the pretext of attempting to

1 ensure that technology products are secure, some of
2 these measures require the disclosure of sensitive
3 information and/or that the IP rights must be
4 Chinese owned.

5 Moreover, Chinese draft technical measures
6 require American innovators of CPU microprocessor
7 technology enterprise servers and operating systems
8 to disclose design secrets. Essentially, China
9 wants to force software companies, network equipment
10 makers, and other tech companies to disclose source
11 code to supposedly prove that their products can't
12 be compromised.

13 Another concern is China's Anti-Monopoly
14 Law, which has been designed to treat legitimately
15 acquired IP rights as a monopolistic abuse, even
16 when firms charge market-based IP licensing fees to
17 Chinese companies. Another concern is that SAIC's
18 recent interpretation of Article 7 of China's AML
19 may make certain refusals to license critical IP to
20 third parties, including competitors, a potential
21 violation of the AML.

22 And, finally, as ITIF has documented,

1 whether it comes to Micron, Aixtron, or Lattice in
2 semiconductors, or Germany's Kuka in robotics,
3 Chinese foreign direct investment is increasingly
4 state-backed and financed, directed at gaining
5 technological capacity and ultimately global market
6 share across a number of advanced technology
7 sectors.

8 In conclusion, we want to stress that we
9 hope that the outcome of this investigation will be
10 to prevail upon China to abide by the commitments it
11 made in joining the WTO and to embrace rules-based,
12 market-determined, and enterprise-led commerce that
13 benefits the U.S. and its China and other partners.

14 Thank you.

15 MR. BISHOP: Before we move to our next
16 witness, I would remind everyone that any
17 photography is strictly prohibited during this
18 proceeding, so we ask that you please do not take
19 pictures. Thank you.

20 Our next witness on this panel is Erin
21 Ennis with the U.S.-China Business Council.

22 Ms. Ennis, you have five minutes.

1 MS. ENNIS: Thank you for the opportunity
2 to appear at today's hearing.

3 As you have heard, I am Erin Ennis, Senior
4 Vice President of the US-China Business Council. We
5 represent 200 American companies that do business
6 across all industries and sectors in China,
7 employing millions of Americans across the United
8 States. Protecting intellectual property and
9 market-based decisions on technology transfer are
10 top priorities for our membership. We appreciate
11 the USTR's focus on these important issues to reach
12 the ultimate goal of eliminating the policies that
13 harm U.S. companies.

14 The requirement to transfer technology as
15 a condition to gain market access in China is an
16 acute concern of American companies in key sectors,
17 who must often make difficult choices about managing
18 the trade-off of technology sharing and access to
19 the world's second largest economy. The protection
20 of intellectual property rights is also critically
21 important. Addressing these issues with effective
22 measures will positively contribute to building a

1 stronger and more durable commercial relationship
2 between the United States and China.

3 As we look to do that, we should keep in
4 mind the overall bilateral commercial relationship
5 in perspective. While there are numerous challenges
6 that companies face, U.S. trade and investment with
7 China supports roughly 2.6 million American jobs
8 across many industries. China is expected to
9 continue to be one of the fastest, if not the
10 fastest growing major economy, fueling more market
11 opportunities for U.S. businesses. According to
12 research by Oxford Economics, U.S. exports to China
13 are expected to rise to more than \$520 billion by
14 2030. Given those important benefits, the United
15 States should seek to preserve the gains we have
16 made for American companies in China while
17 addressing the problems that remain.

18 As you have seen in our written
19 submission, USCBC has made recommendations of how
20 problems identified in each area could effectively
21 be addressed. I will not repeat all of them this
22 morning but will simply note that there are steps

1 that can be taken in each area that would create an
2 environment that protects intellectual property and
3 bars technology transfer requirements.

4 I will reiterate a specific point in our
5 written submission, however. While Section 301
6 provides a variety of options that the United States
7 may use when it finds trading partners' policies are
8 unreasonable or discriminatory, the ultimate goal of
9 the U.S. statute and the goal of U.S. companies who
10 face discrimination is the elimination of those
11 policies.

12 To achieve that goal, the United States
13 needs a clear plan of what constitutes success.
14 Rather than simply seeking to impose penalties or to
15 restrict trade which could have the effect of
16 inhibiting commercial cooperation that benefits U.S.
17 companies and U.S. citizens, the preferred approach
18 should be to develop and achieve enduring solutions,
19 changes to Chinese policies and practices that
20 resolve the issues.

21 In addition, in order to be an enduring
22 solution and provide certainty to companies, it's

1 essential that any related trade actions taken by
2 the United States should be able to withstand a
3 challenge at the World Trade Organization, while
4 addressing the concerns of American companies about
5 the protection of their intellectual property and
6 technology.

7 Such an approach should prioritize
8 bilateral and multilateral agreements with
9 enforcement options tailored to deal with specific
10 concerns to ensure that progress made in these areas
11 can be effectively locked in. If existing
12 agreements do not cover all the United States'
13 concerns, the new agreement should be negotiated to
14 do so.

15 While these are difficult issues, the
16 United States has allies among its trading partners,
17 all of whose domestic industries face the same
18 challenges as American companies in China. The
19 Administration has the opportunity to lead
20 like-minded countries in an effort to address
21 China's policies that are inconsistent with both the
22 letter and the spirit of WTO's rules on national

1 treatment, nondiscrimination, IP protection, and
2 technology transfer. Coordinated action will be
3 stronger than unilateral action.

4 Thank you for the opportunity to appear
5 today, and I look forward to your questions.

6 MR. BISHOP: Our final witness on this
7 panel is Owen Herrnstadt, International Association
8 of Machinists and Aerospace Workers.

9 Mr. Herrnstadt, you have five minutes.

10 MR. HERRNSTADT: Thank you.

11 The International Association of
12 Machinists and Aerospace Workers represents several
13 hundred thousand active and retired members
14 throughout North America. Our members work in a
15 variety of industries including aerospace,
16 manufacturing, electronics, and many more. Our
17 members work for both prime and sub-tier contractors
18 producing, assembling, servicing, and maintaining a
19 wide variety of products for the manufacturing
20 industry.

21 Given our unique position in the aerospace
22 industry, our prevailing concern with respect to

1 China's continuing development of its own aerospace
2 industry, and our persistent criticism of U.S.
3 companies who transfer U.S. work and technology to
4 China, we are honored to appear before you today.

5 Given the importance of the U.S. aerospace
6 industry, my testimony goes through statistics about
7 how important it is to our national and economic
8 security. We obviously are seriously concerned
9 about any threats to the industry and, of course, to
10 U.S. employment.

11 As we have testified before, China is one
12 of the few countries that understands the great
13 benefits of what aerospace can offer a nation's
14 economy. As summarized by China's civil aviation
15 chief, "A great nation must have its own large
16 commercial aircraft." As discussed later, with the
17 development of the C919, China is on the cusp of
18 reaching that goal.

19 China continues to utilize every tool
20 available to establish a strong aerospace industry,
21 including the demand of the transfer of technology
22 and production from both U.S. and European aerospace

1 companies. The U.S.-China Economic Security Review
2 Commission has noted this practice in extensive
3 reports, as have other agencies looking into this
4 matter.

5 The transfer of technology and production
6 to China's aerospace industry appears to be strong
7 as China continues to play the two large commercial
8 aerospace manufacturers against one another, Boeing
9 and Airbus. Airbus reports that it has several
10 major technology transfer programs underway in
11 China. My testimony also includes many other
12 transactions that Airbus has reported.

13 According to Boeing, more than 9,000
14 Boeing airplanes fly throughout the world with parts
15 and assemblies built in China. In 2015 Boeing
16 announced that it had sold 300 planes to China. It
17 had also announced that it would be teaming with the
18 Commercial Aircraft Corporation of China to build an
19 aircraft completion center for the 737. Ground was
20 broken on that facility just this year.

21 Given the focus China has made on
22 developing its own aerospace industry, it should

1 come as nobody's surprise that it has entered the
2 large commercial aircraft industry. The C919
3 program requires that its manufacturer favor
4 components produced in China, as reported, and
5 relies extensively on western companies. According
6 to one aerospace industry expert, "This means
7 western suppliers need to give away technology to
8 play on this jet."

9 As the IAM has testified before, transfers
10 of production and technology to China threaten the
11 industry and threaten U.S. employment in a variety
12 of ways. Jobs are lost directly. Jobs are lost
13 indirectly through aerospace-related industries.
14 Industries that are created by aerospace, creating
15 the leading edge, high-skilled jobs that our country
16 is based on, are also lost in the future as China
17 develops its own innovation.

18 The IAM has been calling for a 301
19 investigation into China's trade practices for
20 several years. While we welcome the recent
21 initiative, it should be expansive and include
22 transfers of production even when the transfer does

1 not include leading edge technology.

2 Moreover, since transparency remains a
3 critical matter in reviewing these transfers, formal
4 as well as informal agreements and understandings
5 should be included in the review. Additionally, the
6 investigation should also review as precisely as
7 possible the number of direct and indirect U.S. jobs
8 that will be lost in the future.

9 We have been calling for a 301 trade
10 investigation into China's subsidies as well to
11 aerospace industry. And I would be remiss if we
12 also didn't remind the government that we continue
13 to consider China's refusal to honor fundamental
14 human rights itself as a subsidy lowering their cost
15 of products entering into international commerce.

16 In summary, efforts must be made to ensure
17 that China plays by trade rules. The importance of
18 fully investigating and remedying China's trade
19 practices is long overdue.

20 Thank you.

21 MR. BISHOP: Mr. Chairman, that concludes
22 direct testimony from this panel.

1 CHAIR BUSIS: We will now have our
2 questions for this panel. I would ask the witnesses
3 in formulating their answers to consider that we
4 have quite a few questions and that there are --
5 there is an opportunity for more elaboration in your
6 written post-hearing comments. I would also ask
7 each member of our panel to introduce themselves to
8 assist the court reporter before they give their
9 first question. And with that I'll turn it over to
10 Mr. McCartin.

11 MR. McCARTIN: Thanks again, Bill. Terry
12 McCartin, Assistant U.S. -- Acting Assistant U.S.
13 Trade Representative for China Affairs.

14 My question is for all of the panelists.
15 I think each of you have described in your testimony
16 and your submissions the pressure to transfer
17 technology that China puts on U.S. firms. We also
18 have a number of other submissions that address that
19 issue as well.

20 What's described is the pressure that
21 arises from formal published legal measures, and
22 then there is also what happens informally behind

1 the scenes. I'm trying to get a sense from you as
2 to the problem that you've described. How much of
3 it is attributable to these formal published
4 measures, and how much is attributable to what
5 happens behind the scenes? And if you have any
6 additional examples or details that you could share,
7 we'd welcome that as well.

8 MR. ELLINGS: Rich Ellings. You know in
9 China, national policy sets parameters. And then
10 behind the scenes, enterprising regulators want to
11 maximize for their own personal gain and for their
12 own standing everything they can get. So you look
13 at these broad policies that give clear guidelines
14 to those throughout the society who can make
15 decisions. And I think that's the way to look at
16 it.

17 So much is behind the scenes, and the
18 Communist Party pervades. That's something really
19 important to understand. It's not that there is
20 this disjuncture between the government and --
21 because it's a party state -- and entities
22 throughout the country. The Communist Party

1 structure absolutely infiltrates everything:
2 companies, regulatory agencies, you name it. And so
3 there is this kind of shadow structure of
4 communicating policies and enforcing them that is
5 key. It's not as helter-skelter as many would like
6 to characterize the environment in China.

7 MS. ENNIS: Erin Ennis. I would say there
8 is some data available on this. We ask about this
9 every year in our member survey: Have you been
10 asked to transfer technology in the past three years
11 and by whom? Only about a third of companies report
12 that they've actually been asked, and that's either
13 coming from a government entity, be it at the
14 central government, provincial, or local level, or
15 by one of their business partners. So once you
16 start drilling down into it, a third are asked for
17 it.

18 And then you're sort of asking kind of the
19 questions of just because you're asked doesn't mean
20 you have to transfer the technology. Were you able
21 to put off the request? Were you able to get paid
22 for the technology transfer, since that is part of

1 what technology transfer when it's functioning
2 properly should be, that you are compensated for
3 your technology.

4 When you get down to it, it appears to be
5 that there is a minority of companies who are forced
6 to transfer the technology and who are not
7 compensated. But on top of all of this, you have to
8 overlay just the nature of the investment market in
9 China for foreign companies. While when China
10 joined the World Trade Organization, it opened up
11 the vast majority of its sectors to 100 percent
12 foreign investment, there are still those that
13 require either a joint venture or that have an
14 equity cap in it.

15 In those circumstances, while technically
16 China's accession agreement says that it will stay
17 out of decisions between two parties and so that's
18 not a government decision, you're dealing with an
19 inherently unlevel playing field in those
20 circumstances because the U.S. company or any
21 foreign company are required to have a Chinese
22 partner to be able to do business. Therefore, the

1 Chinese partner has a much stronger negotiating
2 leverage in terms of what the terms are. If they
3 choose not to participate in a deal with you, then
4 you can't get into the market.

5 So it's among the reasons why we have
6 strongly encouraged the U.S. government to seek
7 elimination of those kinds of policies that would
8 then give businesses more power to be able to say
9 not only are we not required to transfer these
10 technologies, but the inherent inadequacies in the
11 system could also be addressed because the companies
12 would know that they could still do business even if
13 their Chinese partner chose to not to do business
14 with them.

15 MR. HERRNSTADT: As someone who represents
16 a union, we're hardly privy to these offset deals
17 that occur, which is why I think it's incumbent upon
18 you, as you investigate this, to ask the companies
19 specifically about informal arrangements that have
20 occurred. The literature is filled with stories of
21 transfers, demanded transfers of technology, demands
22 of co-partnership, and other co-licensing

1 particularly in the aerospace industry.

2 And our members see it when they lose
3 their jobs and when they lose their futures every
4 day. But this is something that we would really
5 urge you to ask the aerospace companies and related
6 industry suppliers on this.

7 MR. ELLINGS: If I could just quickly
8 interject? At the IP Commission, we conducted many,
9 many, many private interviews with companies. We
10 looked at the surveys that were just referred to,
11 that Erin just referred to. But in those
12 interviews, we did not find a single instance in
13 which companies had not felt pressure and in many
14 cases caved into the pressure to share technology.

15 So the data often is anecdotal. I would
16 like to say that the anecdotal evidence is almost
17 countless in number, adding up to some kind of
18 statistics that are important. But this is really
19 in quiet conversation, as was just mentioned, you
20 find out incredible stories about the pressure and
21 the few options companies have.

22 MR. EZELL: And it's also important to see

1 these types of policies in a global context because
2 often if a U.S. company holds tight and refuses to
3 disclose the IPR or technology, then China will turn
4 to a company from Europe or elsewhere in Asia and
5 play them off one another in the ultimate goal of
6 acquiring the technology.

7 It should also be mentioned that because
8 state-owned enterprises are so dominant within China
9 and particularly in advanced technology industries
10 like aircraft, or ICT, or semiconductors do account
11 for such a large share of purchasing decisions, that
12 often an implicit part of the deal of whether or not
13 a company has its product or good chosen and
14 purchased is, is there's going to be a transfer of
15 technology concomitant with that sale.

16 I should just also point out that there
17 are any number of very clear-cut cases where China
18 does in fact insist that the IP has got to be
19 transferred if you want to sell there. For
20 instance, in January 2017, a new law said that joint
21 investors must demonstrate that they have mastered
22 "the complete technology for new energy vehicles,

1 NEVs, before they receive permission to produce
2 them." So that's a clear case in the electric
3 vehicle sector that you're simply not going to be
4 able to sell that product in China unless that local
5 partner has mastered the ability to leverage the
6 technology and take it to produce it going forth.

7 CHAIR BUSIS: One follow-up. Mr. Ellings,
8 you mentioned the pressure to transfer technology.
9 Does that pressure extend to pressuring companies
10 not to talk about the pressure to transfer
11 technology?

12 MR. ELLINGS: Well, of course, you can
13 imagine an environment -- this is an authoritarian
14 system that absolutely will sanction or punish a
15 company instantly for saying things, doing things,
16 even in this country, for instance. The reticence
17 shown by companies is just smart business practice.
18 You don't even talk about these things.

19 I mean there are two reasons not to talk
20 about them: One, if you shared technology, critical
21 technology, or had it stolen, your stock price may
22 plummet; but the other is making -- looking at the

1 likelihood of retribution by authorities in China.
2 And it's ubiquitous. So that feeling just going
3 into the country or even here, talking here, acting
4 here, they feel that pressure.

5 MR. MITCHELL: Stevan Mitchell, Department
6 of Commerce, International Trade Administration.

7 This is another question for the panel
8 following along those lines. We know from our
9 review of the filings that some witnesses are likely
10 to assert that U.S. firms' decisions to enter into
11 joint ventures or technology transfers are purely
12 voluntary and provide no basis for a finding of
13 unfair conduct on the part of China. We'd like
14 those of you who care to respond, to respond to that
15 argument.

16 MS. ENNIS: I guess that means me, Erin
17 Ennis. There certainly are instances where
18 companies have a voluntary choice to go into a JV.
19 Companies choose the structure of how they do
20 business in a market based on what they feel is
21 going to be suiting them best to go into it.

22 There certainly are instances where

1 companies -- as I noted from our data, about a third
2 of companies say they have been asked to transfer
3 technology, and some of them have felt in the end
4 that they had to make that kind of a choice to be
5 able to do business in the market. Some of those
6 circumstances may involve JVs or other arrangements.

7 But I would say that whether a company is
8 in a JV or not, the first question should be does
9 China's investment regime require it? The services
10 sector in general has significant restrictions still
11 on joint ventures and with equity caps, and so
12 inherently those companies are more likely to be
13 forced into a joint venture if they want to
14 participate in the market.

15 In manufacturing, it's a little less
16 prevalent. But as has been noted, auto is one of
17 the sectors where China does maintain a 50 percent
18 cap on what foreign companies can do in the market.
19 So whether that is a choice that a company makes
20 because it voluntarily chooses to be in the market
21 or not, that's the nature of how you have to be to
22 be able to operate there.

1 MR. ELLINGS: Let me just add China is a
2 member of the WTO. It's supposed to live up to
3 certain requirements, and it lives up to virtually
4 none of them. It cheats across the board
5 outrageously. And so when you ask about terms,
6 well, aren't they negotiated, completely misses the
7 fundamental point that IP is either required before
8 market entry, which is against the rules, and/or
9 becomes highly vulnerable to theft. So when you
10 manufacture there, and we can give you tremendous
11 stories behind the scenes of just manufacturing,
12 just agreeing to manufacture in the country means
13 it's opened itself to penetration, IP penetration,
14 and literally being destroyed.

15 This is again a ubiquitous phenomenon and
16 runs counter to absolutely everything international
17 trade should be based on and the WTO is based on.

18 MS. ENNIS: If I could just make one
19 response to that? This is Erin Ennis, for the
20 record. We do have significant problems with China
21 in particular areas, but I think the assertion that
22 China lives up to none of its WTO commitments is one

1 that we like to use a lot as a talking point in
2 Washington. But I spent a good amount of time
3 reading my three-inch thick book of China's WTO
4 commitments to prepare for our testimony for this,
5 and the vast majority of China's commitments it has
6 implemented.

7 Whether it is implemented that to what the
8 spirit was of what we all envisioned back in the
9 '90s of where China's economy would be after it
10 complied might be different. And the areas where
11 China has fallen short of implementing its WTO
12 commitments are glaring. There are sectors where we
13 have yet to see the market openings implemented that
14 China committed to.

15 But we should be clear in pointing out the
16 fact that when China has been held accountable, when
17 the United States or other trading partners have
18 taken China to the WTO and raised issues, in general
19 they have implemented those commitments. There are
20 definitely some areas where those commitments don't
21 cover, where despite I think the very good efforts
22 of forward-looking negotiators in the '90s of trying

1 to anticipate what the needs would be of the market,
2 that the agreement just simply didn't anticipate the
3 problems that would arise.

4 But that should point to areas where you
5 should be seeking new solutions to those problems,
6 rather than assuming that China will not implement
7 its commitments ever.

8 MR. HERRNSTADT: Thank you. I think your
9 original question had to do with companies
10 voluntarily transferring technology to China. It
11 seems to us all too often companies seemingly are
12 all too willing to transfer production and
13 technology to China. Obviously, the anecdotal
14 information points to some demand. Sometimes, I
15 would assume companies are looking for cheap labor
16 based on the lack of fundamental human rights that
17 exists in China.

18 We were always told that the idea of the
19 WTO and of free and fair markets was that companies
20 would compete on quality and price, and quality and
21 price alone. Maybe I got that wrong. But if that's
22 true, then the best quality workers are those that

1 are in North America producing aerospace, for
2 example.

3 Last but not least, I really am not that
4 surprised that a lot of these arrangements are done
5 informally and in an opaque way. That's the nature
6 of many of these things in the commercial industry
7 of it. And that is why it's incumbent upon this
8 investigation to probe deeply into companies'
9 reasoning for transferring work and technology to
10 China.

11 Thank you.

12 MR. EZELL: I agree with my colleague that
13 China has certainly made progress in some areas with
14 living up to its WTO commitments. But as we write
15 in our report, "Stopping China's Mercantilism: A
16 Doctrine of Constructive Alliance about
17 Confrontation," there are a number of areas where
18 that just doesn't happen.

19 They promised to join the Government
20 Procurement Agreement back in 2001 when they joined
21 the WTO. That still hasn't happened. Access to
22 telecommunications markets, the services markets,

1 the banking markets, to express services markets
2 still aren't open to levels that were promised in
3 2001.

4 There has been a whole host of new
5 discriminatory technology standards that China has
6 implemented over the years. Now, as we move into
7 whole new sectors of the economy like cloud
8 computing, online services, entirely new barriers
9 have emerged.

10 So I think particularly with regard to
11 advanced technology industries, we need to be aware
12 that there is a systemic strategy in place on
13 China's part to limit the ability of American firms
14 to compete there, in part to improve the ability of
15 Chinese firms to have access to a protected domestic
16 market on which they can grow and then ultimately
17 move out into the world, the go-out strategy that Xi
18 Jinping talks about, and then be able to be in a
19 better position in global markets and defense
20 technology industries.

21 MS. McNULTY: Good morning. Kate McNulty
22 with the U.S. Department of State, Bureau of

1 Economic and Business Affairs.

2 This question is for the entire panel.
3 Having noted that so many of you have emphasized the
4 importance of JVs in doing business and gaining
5 market access in China, as well as having heard
6 about the importance that SOEs play in the market,
7 can you speak to whether or not the Government of
8 China strongly encourages the installation of
9 current or former officials in joint ventures or
10 other types of firms with foreign ownership?

11 And if so, how prevalent is this practice,
12 and what is the effect of this practice on the
13 operation of the JV? Specifically, does this
14 practice increase the risk of involuntary technology
15 transfer?

16 Thank you.

17 MR. ELLINGS: Yeah, I alluded to this a
18 little earlier. That's interesting the way you pose
19 the question. It kind of shows an American
20 perspective about former officials being in place
21 and so on. This is a party state. The Communist
22 Party penetrates every entity of any importance in

1 China whether it's a private -- so-called private
2 company or even an American company overseas in
3 China. There is a party structure, a political
4 structure in every entity.

5 So this isn't just an occasional or random
6 to employ people placed in positions. It's a
7 systematic effort to penetrate, monitor, and when
8 necessary control every entity. Every entity in
9 China is a potential threat to the regime and/or
10 useful to the regime. That's the way it operates.

11 So whether it's an SOE -- that's an
12 artificial really differentiation. There's some
13 reasons to differentiate SOEs from supposed private
14 companies. But if it's an important company to
15 China, it is every bit as much tied into the
16 government -- the party structure as anything else.
17 That fundamental understanding can then shape your
18 appreciation for what's going on.

19 But I really enjoy, I kind of appreciate
20 your perspective because we learn in political
21 science in America is this corrupt because a former
22 official's there and this kind of thing. You have

1 to place yourself in the Chinese context.

2 MR. EZELL: If I could just briefly extend
3 the nature of your question, I think another
4 important consideration for the panel to look at is
5 not just the composition of the directors of Chinese
6 SOEs or investment groups, but also the nature of
7 the financing behind them.

8 I earlier referred to China's National
9 Integrated Circuit IC semiconductor strategy, and as
10 I pointed out, a large objective of the fund is to
11 go out into global markets and to acquire technology
12 companies at the cutting edge of various components
13 of the semiconductor value chain.

14 One way China has done this so as to
15 contend that it is compliant with WTO regulations is
16 to create private equity groups such as Tsinghua
17 UniGroup that are supposedly going out into global
18 markets and conducting market-based transactions
19 because they're a private equity firm. Or, as the
20 reality is, that the funding of these entities
21 apparently comes from other Chinese SOEs on a state-
22 directed basis, and so this is how they're getting

1 the funds, and then there is a strategy to go out
2 and buy the companies.

3 So it's not just that the individuals may
4 be connected directly to the Communist Party; it's
5 that the machinery of the entire transaction
6 involved is being directed and backed financially in
7 a state-directed way.

8 MS. BONNER: My name is Sarah Bonner. I'm
9 with the U.S. Small Business Administration.

10 My question is for Mr. Ellings. Your
11 statement and submission talks about China
12 systematically tracking and attacking the work of
13 National Science Foundation grantees and of
14 university scientists. Can you provide any more
15 background on that?

16 MR. ELLINGS: Sure. Among the testimony,
17 private testimony that we received at the IP
18 Commission was an eyewitness who in Beijing was
19 naively and proudly shown a large wall that had on
20 it all of the recent National Science Foundation
21 grants and to whom they went.

22 MR. LAMBERTI: Good morning again. My

1 name is Matt Lamberti with the U.S. Department of
2 Justice, the Computer Crime and Intellectual
3 Property section.

4 I have a question for Mr. Ellings. In
5 your view, does the China, Made in China 2025 Plan,
6 which was announced May 2015, correlate with
7 recently reported incidents of Chinese cyber
8 intrusions directed against United States
9 businesses? Are there any sectors or industries in
10 the United States that you believe are particularly
11 targeted?

12 MR. ELLINGS: Absolutely. In fact, the
13 whole history of cyber intrusions and more broadly
14 industrial espionage from China correlates with all
15 the Five-Year Plans, the Indigenous Innovation
16 Policy that came out 10 years ago, 12 years ago, 11
17 years ago, current Five-Year Plan, 2025 Plans. This
18 is, as I said, kind of a standard that is given out
19 to the country and to accomplish the goals set out
20 in these plans becomes a measure by which cadres and
21 entities throughout the country, their performance
22 is measured. So they have tremendous incentive.

1 So all of our tracking, whether they be
2 through the court cases that make it into the public
3 realm, whether cyber intrusion surveys and studies,
4 Verizon did one, the Mandiant one, and so on, they
5 all show a correlation between the priorities of the
6 Chinese government at any time and the kinds of
7 industrial espionage undertaken.

8 So all measures do show, with the
9 exception I would say of counterfeits seized at the
10 border. That's one measure that doesn't correlate
11 heavily with the -- because these are more
12 helter-skelter things where it's just the whole, you
13 know, Chinese society as a whole roaring over here,
14 grabbing stuff, and reverse-engineering it, doing
15 it, sending it out. So that, but all the other
16 measures really show this high correlation.

17 MS. MITCH: Good morning. Sage Mitch,
18 Treasury.

19 I have another question for Mr. Ellings.
20 The 301 investigation is focused on U.S. damage from
21 China's practices and policies related to technology
22 transfer, intellectual property, and innovation.

1 The IP Commission, in your submission, has provided
2 an estimate of between \$225 billion and \$600 billion
3 attributable to Chinese IP infringement.

4 How should we interpret your estimate in
5 relation to the investigation? Is your estimate a
6 ceiling on the damage amount given that you looked
7 at a broader range of practices and policies? Are
8 there any methodologies or other information about
9 your calculations that might be relevant in
10 understanding the damages from the practices alleged
11 in the investigation?

12 MR. ELLINGS: Well, you've asked the
13 hardest question because figuring out the extent of
14 IP, illicit IP transfer is so difficult. You could
15 just imagine the companies' disincentives to say,
16 oh, my gosh, we've been comprised again. It's just
17 not something the CEO is going to say because he's
18 worried about or she's worried about the next, you
19 know, the stock market price the next day. So they
20 have huge disincentive to admit anything.

21 So there are all kinds of these indirect
22 surveys, the number of as I said court cases that

1 come to pass, reports in the media. There are all
2 these kind of indirect -- the seizures at the
3 border, all these indirect, for the most part
4 indirect measures.

5 No, the lower limit and the upper limit,
6 particularly the lower limit is nowhere near the
7 reality. It doesn't even include patent
8 infringements. The lower limit is the most
9 imaginably conservative figure we could come up
10 with. But for the sake of just methodological
11 purity, okay, it's not below this amount. So it's
12 very difficult, impossible to give you an exact
13 figure.

14 But the evidence is so overwhelming
15 through the surveys, the seizures, the court cases
16 and so on, and they are absolutely confirmed in the
17 cases that we had of individuals and companies
18 coming to testify before the IP Commission, there
19 was an absolute correlation. I would say that, in
20 fact, when you listen to the individual stories and
21 organizations, associations, and companies we asked,
22 that did not ask to see us, we asked to see them, we

1 just found a ubiquity of the problem. It was beyond
2 our wildest concerns as we investigated it.

3 But the methodology is imperfect. We will
4 never know. But we do know the dampening effect
5 that this scale of IP infringement has on our
6 innovation, our future growth, and so on. And,
7 frankly, the middle of this country has been
8 devastated, not just the high tech ends but just
9 agricultural machinery and so on, which has been
10 virtually copied, virtually copied. Trade shows
11 assaulted. The stories we have of this stuff.

12 So the anecdotal evidence supports the
13 figures. We don't know them precisely.

14 MS. PETTIS: Good morning, Maureen Pettis
15 from the Department of Labor, Bureau of
16 International Labor Affairs.

17 This question is for Stephen Ezell. In
18 your written comments, you state that China's
19 strategy includes using state-directed M&A and
20 foreign direct investment activity to acquire
21 foreign enterprises with leading technologies in key
22 sectors from semiconductors to advanced

1 manufacturing.

2 And you cite four specific examples of
3 attempted or consummated transactions where this is
4 evident: Aixtron, Kuka, Lattice Semiconductors, and
5 Integrated Silicon Solutions. What evidence do you
6 have to support the statement that these
7 transactions were state-directed? Also, do you have
8 specific examples of Chinese SOE investments that
9 were undertaken to serve state goals?

10 MR. EZELL: Hi, yes. And in my
11 post-hearing statement I will be absolutely sure to
12 give you citations of the specific documents and
13 articles that form the basis of those numbers. But
14 there was a recent study done showing that
15 46 percent of Chinese FDI conducted in 2016 was
16 state-directed. I think it's clear that we've seen
17 -- I'm trying to find the precise quote for you. If
18 I can't, I'll submit it in my post-hearing
19 testimony. All right, I'll come back to you with
20 specific citations.

21 MS. PETTIS: Okay.

22 MR. EZELL: Including articles in the

1 public press connected to articles and citations
2 from Chinese strategic documents that show that, to
3 show you the link between the stated goal of moving
4 China up the value chain in the semiconductor sector
5 and connecting it to the transactions they have
6 pursued in global markets to make that a reality.

7 I think one thing, a specific data point
8 just to raise with you, and this comes from data
9 from the Rhodium Group. Over the past 16 years, 99
10 percent of Chinese U.S.-bound FDI in electronics and
11 95 percent in the ICT sector were for acquisitions.
12 And so I think whereas globally when companies are
13 engaged in foreign directed investment activity,
14 they are doing so (a) to try and make a profit, but
15 (b) also generally making greenfield investments
16 conducted on market-based terms trying to exploit
17 kind of synergies and efficiencies in marketplaces.
18 But all too often Chinese strategy tends to be
19 brownfield investments directed at acquiring
20 technology, know-how, and talent.

21 If you just look at the semiconductor
22 industry alone through early 2016, there are more

1 than 27 attempted, completed and/or pending
2 international M&A deals totaling \$37 billion that
3 were initiated by Chinese headquartered firms with
4 more than half of those deals financed or backed by
5 the Chinese government. And when I make my
6 submission, I'll give you the link to those specific
7 articles.

8 One point I'd like to raise in this
9 context about Chinese FDI and M&A activity, and I
10 know this has been something the panel is looking at
11 as well as those in Congress, is updating the terms
12 of the CFIUS, Committee on Foreign Investment,
13 review in the United States.

14 But one thing I think we should think
15 about is we clearly know the industries that China
16 has said are part of its Made in China 2025 strategy
17 that it wants to become globally competitive in. So
18 I think we should really think about mandatory CFIUS
19 screening for any acquisition of a technology or an
20 enterprise by a state-owned or backed Chinese
21 company in cases in which China has articulated a
22 specific industrial policy to develop that

1 technology, and put CFIUS review in a more strategic
2 context in the backdrop of what China is trying to
3 accomplish with strategies like Made in 2025.

4 MR. ELLINGS: Derek Scissors at the
5 American Enterprise Institute maintains an
6 extraordinary database on foreign investment by
7 China. So I would refer you to him and that
8 database for much insight.

9 And I would also just reiterate something
10 that was just said and that I said earlier. It's an
11 artificial distinction between -- in the sense of do
12 they fulfill Chinese interest and policy, it's an
13 artificial distinction between SOEs and other major
14 companies in China.

15 MR. DIEHL: Good morning, again. Michael
16 Diehl, Senior Director for Intellectual Property at
17 USTR. Thank you to the panelists for your
18 testimony.

19 I have another question for Mr. Ezell.
20 So we know that ITIF has been studying Chinese
21 innovation mercantilist practices for years. Have
22 you observed changes in China's approach to say tech

1 transfer, intellectual property, or innovation? And
2 that could include changes in the intensity of the
3 efforts, the methods, or the targets of economic and
4 industrial policy efforts, maybe looking back the
5 last 10 years and then maybe the last 5 years.

6 MR. EZELL: I think the way I'll try and
7 answer your question is to couch it in what we view
8 as the evolution of Chinese economic strategy over
9 the past 25 years. We'd argue that in the early
10 '80s and '90s, China really pursued what we would
11 call a technology attraction strategy, trying to get
12 foreign-headquartered companies to locate production
13 in China as a first step of kind of
14 industrialization. China was content for some time
15 with the attraction policy.

16 In the mid-2000s, we argue China evolved
17 into an indigenous innovation strategy that began to
18 focus on indigenously producing and becoming
19 competitive in more innovation, knowledge, and
20 technology-based advanced industries. And that is
21 why around the mid-2000s we started to see the
22 promulgation of an entirely new set of Chinese

1 policies such as the Indigenous Innovation Policy,
2 Chinese procurement guidelines that intended to
3 favor local producers or to transfer IP, as we
4 talked about.

5 And over the past five years, this whole
6 set of evolution of new forced IP, forced tech
7 transfers, new requirements like the MLPS,
8 Multi-Level Protection Scheme, the cybersecurity
9 laws that are really trying to get companies to
10 disclose know-how, source code, designs as a
11 condition of market access.

12 But ultimately where I think this is going
13 is an evolution from what we call an attraction to
14 compulsion to expulsion strategy. And if it
15 persists, then what's going to happen is that we're
16 just not going to be allowed to compete anymore in
17 China. And as I said earlier, domestic enterprises
18 will then, given the time to grow and flourish, and
19 then to be able to go out and compete in
20 international markets against us, so attraction,
21 compulsion, expulsion.

22 MR. ELLINGS: I think one of the most

1 interesting developments recently was China's
2 announcement that it's going to have or produce only
3 exclusively and will only allow the sale of electric
4 cars down the road. This shows their
5 self-confidence and power now. By saying that there
6 was no way -- this compels foreign leaders in this
7 industry, GM especially but the others, it compels
8 them to be in that market.

9 This is the largest car market in the
10 world. When the largest car market in the world is
11 so organized that it can tell you here's where we're
12 going; if you want to participate, this is what you
13 have to do, that's a, that's a change. That shows
14 the power of and the size of that market and the
15 retention of control over it that the state, the
16 party state maintains.

17 MR. EZELL: And I'd like to add it's
18 important for the United States to not be focused
19 solely on trade balances or tariffs, because the
20 reality is that what we're talking about is the
21 capacity of America to compete in the most
22 knowledge-based, technology-intensive, advanced tech

1 sectors. That means that the intellectual property
2 and the know-how that inform how to develop those
3 products and services becomes one of the most vital
4 things.

5 We could easily imagine a situation where
6 the United States is in balanced trade with Chinese
7 where we're importing semiconductors, aircraft, and
8 biotechnology products, and we are exporting scrap
9 metal and timber and commodities, and be hewers of
10 wood and drawers of water, as Hamilton once said.
11 So the important point is that we seek balanced
12 trade on terms that allow us to remain competitive
13 in advanced technology industries.

14 CHAIR BUSIS: This is a question for
15 Ms. Ennis. This specific question may be better
16 suited for a post-hearing submission, but I'll
17 proceed to ask it.

18 In your recent submission, you point out
19 the government licensing and approvals processes
20 provide many occasions to request technology
21 transfer or disclosure of sensitive details about a
22 product or its production process. Which government

1 agencies involved in these processes have been the
2 most aggressive in making such requests, and in what
3 sectors have you seen this?

4 MS. ENNIS: Sure. I don't know that I
5 could tell you that there is one agency that has
6 been the most aggressive. I mean the nature of
7 these requests tends to be ones that are pretty
8 consistent in many of the licensing processes that
9 go across. I mean we've seen it pop up in approvals
10 for environmental certifications of products. We've
11 seen it pop up in secure and controllable
12 requirements, or secure and reliable which it's
13 morphed into.

14 We certainly have seen some requests over
15 the years in terms of information that seems to go
16 beyond what's necessary in terms of approval for
17 licenses for pharmaceuticals and medical devices.
18 So I don't know that I could point the finger at any
19 one agency, and just note that the licensing process
20 itself seems to have a lot of requirements for
21 information that is out of line with what most other
22 international markets request for those similar

1 processes.

2 MR. McCARTIN: Thanks, Erin.

3 One more question for you. In your
4 submission, you mentioned that Chinese regulators
5 sometimes nominate panelists to expert panel
6 reviews, and sometimes those panelists come from
7 domestic competitors of the foreign company. Which
8 industry sectors have these expert panel reviews?
9 Are you aware of any of your member companies who
10 have reported instances where their know-how or IP
11 has later been disseminated or used by these
12 domestic competitors?

13 At least can you give us any information
14 at least in general terms about this problem? And
15 independent of whether you can provide specific
16 examples, just what type of effect does this system
17 have on foreign companies?

18 MS. ENNIS: Sure. I would have to go back
19 and give you a more comprehensive list. But just as
20 the illustrious example, I know that for
21 environmental reviews, that expert panels are
22 employed for those kinds of things. I know there's

1 others as well, so I'm happy to follow up with you
2 on it.

3 In terms of what impact that has on
4 companies, I mean obviously it makes you consider
5 what information you're willing to share, what meets
6 the requirement to be able to do the minimum
7 necessary to both protect your IP and to ensure that
8 your processes are protected. I do not know of a
9 specific instance of a company who can verifiably
10 say that the information was taken from an expert
11 panel and used by a competitor. But when you're a
12 company making these choices, what you are doing is
13 evaluating what the risk is.

14 And whether that actually comes to pass or
15 not doesn't mean that the risk isn't there and it's
16 something that shouldn't be addressed. It should be
17 addressed because it's an unnecessary risk. And
18 it's an obvious one where it could be addressed by
19 removing any possibility of a competitor being on
20 expert review panel.

21 MR. MITCHELL: Stevan Mitchell, DOC, with
22 a question for Mr. Herrnstadt.

1 The Made in China 2025 Plan was announced
2 in May 2015 and highlighted 10 priority sectors for
3 development in China, one of which as you know was
4 aerospace and aeronautical equipment. And so my
5 question is whether you've seen appreciable
6 differences in policies or practices in China that
7 target aerospace companies' technologies or products
8 since the announcement of that plan in 2015?

9 MR. HERRNSTADT: That's a good question
10 for the aerospace companies and the suppliers
11 specifically on that. I will say that obviously
12 China's commercial aerospace industry has grown
13 since then. And as we have noted, aerospace is one
14 of the giant industries that China has targeted with
15 respect to that.

16 We also know that western aerospace
17 companies are entering -- are continuing to enter
18 into joint ventures and to produce in China. This
19 is something that we've been talking about for the
20 past 30 years at the Machinists Union. It has gone
21 from a drip, drip, to even more so on that.

22 I would like to also say that some have

1 said that China is a long way off before it can
2 compete in the large commercial aircraft industry or
3 even the regional aircraft industry on that. That's
4 what folks had said about Europe as well going back.
5 Europe also used the transfer of technology and
6 production to assist it in the development of its
7 commercial aerospace industry. I think no one would
8 question Europe's entry into the large commercial
9 aircraft industry at this point with Airbus.

10 And we see China coming down the tracks, a
11 little different than Japan, which has focused on
12 suppliers to Boeing and to other western aircraft.
13 China looks like it's entering full-fledge into the
14 industry, as some have said, to compete directly
15 with Boeing and Airbus and anyone else who may be
16 out there.

17 Thank you.

18 MR. ELLINGS: You know the record of
19 Chinese theft of intellectual property in the
20 aerospace industry in this country is extraordinary,
21 whether it was essentially downloading the F-35 and
22 countless other systems. So just as in this

1 country, aerospace is a combination of commercial
2 and military. We do separate it out more in this
3 country. In China, it's more integrated in terms of
4 command ownership and so on. But the important
5 thing is that this is -- there is no sector that is
6 of greater interest to China than aerospace. And so
7 it is relentlessly attacked and has been with
8 extraordinary success.

9 We know this, of course, just from the
10 spectacular press reports. And I refer you to an
11 op-ed in the *New York Times* by Dennis Blair and
12 Keith Alexander a couple of months ago referring to
13 many of these extraordinary developments.

14 MR. EZELL: If could just add to that? To
15 get an extent a sense of how effective these
16 policies have been, consider that in 2003 China
17 accounted for 8 percent of the global output in high
18 tech manufacturing industries, but today accounts
19 for 27 percent, just 2 percent off the U.S. by
20 share. In fact, China is now the world's largest
21 exporter of high technology products with a
22 24 percent global share.

1 And it's not just low value-added goods.
2 A new study by the University of Sussex finds that
3 the average value China adds to its exports is
4 76 percent. You don't achieve this amount of
5 progress in that short of time if you've solely been
6 doing it by developing technology internally.

7 And if I could just for the questioner
8 from the Department of State, to answer your
9 question specifically, the question about the extent
10 of Chinese-backed SOE activity and M&A, that report
11 is "Chinese Investment in the United States: Recent
12 Trends and the Policy Agenda," prepared in 2016 by
13 the Rhodium Group.

14 CHAIR BUSIS: I think that will conclude
15 our questions for this panel. On the last question
16 we had which was about the aerospace impacts and we
17 also got some answers on technology, I think it
18 would be helpful to have, if you submit a
19 post-hearing submission to provide more details on
20 specific products that you see affected.

21 Okay, we'll have a five-minute break now,
22 and then we'll have the next panel. Thank you very

1 much.

2 MR. BISHOP: We dismiss this panel with
3 our thanks and invite the members of Panel 2 to come
4 forward.

5 (Off the record at 10:47 a.m.)

6 (On the record at 10:53 a.m.)

7 MR. BISHOP: We are ready to begin if
8 everybody could please find your seat. I would also
9 note that pictures are prohibited during this
10 proceeding, so please refrain from taking photos or
11 any video. Thank you.

12 Mr. Chairman, Panel 2 has been seated.
13 Our first witness on this panel is Juergen Stein
14 with SolarWorld Americas.

15 Mr. Stein, you have five minutes.

16 MR. STEIN: Thank you. Members of the
17 Section 301 Committee, thank you for the opportunity
18 to testify before you today. My name is Juergen
19 Stein. I am the CEO of SolarWorld Americas located
20 in Hillsboro, Oregon.

21 In May 2014, a grand jury convened by the
22 Department of Justice and its U.S. Attorney's Office

1 for the Western District of Pennsylvania indicted
2 five members of the Chinese military for hacking,
3 identity theft, and economic espionage. For your
4 information, we put copies of the indictment at the
5 table in the back. Among the six U.S. targets of
6 the state-sponsored hacking was my company,
7 SolarWorld Americas.

8 SolarWorld was the victim of these hackers
9 who, and I quote from the Justice press release,
10 "stole thousands of files including information
11 about SolarWorld's cash flow, manufacturing metrics,
12 production line information, costs, and privileged
13 attorney-client communications relating to ongoing
14 trade litigation, among other things." According to
15 the Justice Department, such information would have
16 enabled a Chinese competitor to target SolarWorld's
17 business operations aggressively from a variety of
18 angles.

19 At the time of the Chinese
20 government-sponsored hacking and espionage of
21 SolarWorld Americas, it should be noted that my
22 company was litigating an ongoing anti-dumping and

1 countervailing duty trade case against China.

2 I want to focus today on the economic
3 espionage and the direct impacts of the thefts on
4 SolarWorld's competitive technology advantage in the
5 solar market. As a background, for many years the
6 standard architecture of crystalline-silicon solar
7 cells, the thin photo-electric building blocks of a
8 solar panel, has been Al-BSF, which stands for
9 aluminum back-surface field. The term refers to a
10 method of using aluminum to coat the backside of the
11 photosensitive silicon cells. This cell
12 architecture was used and sold by every Chinese
13 solar cell manufacturer.

14 Meanwhile, SolarWorld, which had innovated
15 a variety of significant solar advances during its
16 more than four decades in the marketplace, sought
17 new efficiency to stay ahead of our Chinese
18 competitors. We turned to academic research from
19 the University of New South Wales to develop a
20 method to better capture and harness photons along
21 the complete light spectrum. This method became
22 best known in the market today as passivated emitter

1 rear contact, or PERC for short.

2 Already in 2004, our scientists at
3 SolarWorld began studying various approaches to
4 PERC. Starting in 2008, we developed a small pilot
5 line of PERC cells in our R&D lab. It was not until
6 2012, however, that industry economics would prompt
7 SolarWorld Americas to become the first worldwide
8 manufacturer to invest in PERCs industrialization.
9 At that time, billions of dollars of subsidized and
10 dumped Chinese solar panels were flowing into the
11 U.S. market. These imports were largely based on
12 multi-crystalline silicon solar cells, a less
13 expensive but lower power technology compared with
14 the mono-crystalline silicon technology that
15 SolarWorld mainly produced.

16 For competitive and survival reasons,
17 SolarWorld determined to heighten its power
18 advantage with PERC. The advanced-cell architecture
19 would add up to 10 watts or more to a solar panel's
20 total output, helping to counter artificially low
21 prices of illegally dumped, lower-quality Chinese
22 solar technology.

1 The SolarWorld PERC industrialization
2 project kicked off in laboratory and pilot
3 conditions in November 2011. And beginning in
4 February/March 2012, our Hillsboro, Oregon facility
5 undertook the work of implementing equipment and
6 conditions for mass production of PERC. By October
7 2012, the company had produced its first modules
8 based on the PERC cell architecture. In all, the
9 first industrialization of PERC would cost more than
10 \$45 million from 2012 to 2014 alone.

11 But those efforts to stay ahead of the
12 Chinese wave of illegally dumped and subsidized
13 lower power and quality imports were thwarted by the
14 hacking and theft of proprietary information about
15 the PERC process that we had innovated. Between May
16 and September 2012, exactly the time we brought this
17 technology to mass production, SolarWorld's IT
18 system was hacked 13 times by Chinese military
19 hackers. Now, armed with our proprietary data and
20 armed with our cost data, we saw our Chinese
21 competitors leap overnight into PERC technology that
22 we had innovated and with economic information that

1 would unfairly enhance their positions in price
2 negotiations.

3 By early 2014, a prominent Chinese-based
4 solar rival, JA Solar, announced it was converting
5 to PERC technology, and it began mass production of
6 PERC in May of that year. By early 2015,
7 Chinese-based Trina announced its own PERC
8 conversion and came to the market later that year
9 with a comparable PERC technology.

10 While the five Chinese military hackers
11 have never been brought to justice in this country,
12 we firmly believe that were it not for their
13 economic espionage and theft from SolarWorld
14 Americas, Chinese solar producers like JA Solar and
15 Trina would have taken far longer to make the leap
16 into PERC technology. State-sponsored hacking and
17 theft by China greatly weakened SolarWorld's
18 first-mover status and again left SolarWorld
19 vulnerable to China's relentless effort to take over
20 the U.S. solar industry through the sale of solar
21 cells and panels below the cost of production.

22 In conclusion, SolarWorld Americas didn't

1 merely rely on trade cases to rectify the harm from
2 predatory Chinese trade practices. We innovated and
3 risked capital to also stay ahead technologically.
4 Those efforts were wiped out by cyber theft by
5 Chinese military personnel.

6 I thank you for the opportunity to testify
7 today and look forward to cooperating with the
8 Commission's investigation.

9 MR. BISHOP: Our next witness on this
10 panel is Daniel Patrick McGahn with the American
11 Superconductor Corporation.

12 Mr. McGahn, you have five minutes.

13 MR. McGAHN: Good morning, everyone, and
14 thank you for the opportunity to present our unique
15 story today, a story that we hope is never repeated
16 and considered by some, specifically U.S. Attorney
17 John Vaudreuil, as attempted corporate homicide.

18 American Superconductor, AMSC, is a
19 publicly traded American energy technologies company
20 based in Massachusetts. AMSC provides wind turbine
21 electrical controls and systems and designs and
22 engineering services that reduce the cost of wind

1 energy. We also provide the engineering planning
2 services and advanced grid systems that optimize
3 network reliability, efficiency, and performance.
4 AMSC offers engineering and technical services to a
5 broad customer base, including the U.S. Navy. The
6 company's solutions are now powering gigawatts of
7 renewable energy and enhancing the performance and
8 reliability of power networks across the United
9 States and in more than a dozen countries around the
10 globe.

11 Founded in 1987, AMSC has operations in
12 Massachusetts, Wisconsin, and Washington State, as
13 well as across Asia, Australia, and Europe.

14 In 2007 AMSC began supplying core
15 electrical components and software to Sinovel Wind,
16 a little-known Chinese state-owned enterprise.
17 AMSC's components can be thought of as the brains
18 and nerve system of a wind turbine, the computer
19 control hardware, software, and operating system of
20 the turbine. By 2010, propelled by AMSC's
21 technology, Sinovel emerged as China's largest wind
22 turbine manufacturer and the world's second largest

1 wind turbine manufacturer. Both companies enjoyed
2 financial success as a direct result of this
3 partnership.

4 Everything changed in March of 2011, when
5 Sinovel's senior executives conspired against AMSC.
6 Sinovel abruptly refused a contracted shipment worth
7 \$75 million and refused to pay for \$70 million worth
8 of shipments already delivered and accepted.
9 Overnight, AMSC lost approximately half of its
10 market capitalization and as of 2017 over 96 percent
11 of its stock value.

12 A few months later, an AMSC field service
13 engineer in China noticed Sinovel's wind turbines
14 operating with control-system functions not yet
15 released by AMSC. AMSC opened an independent
16 investigation and quickly learned that an employee
17 had been bribed by Sinovel, stolen AMSC's technology
18 from a server in the United States, and sold the
19 technology to Sinovel.

20 In many IP cases, evidence regarding the
21 original development of software or material can be
22 subjective. In this case, the evidence is black and

1 white. AMSC has emails that include the actual IP
2 transfer and Skype messages indicating that senior
3 level Sinovel officials ordered the theft of AMSC IP
4 and understood the devastating impact it would have
5 on AMSC. In addition, the now former AMSC employee
6 confessed, was tried and convicted, and served jail
7 time in Austria for his crime.

8 We believe that over 8,000 wind turbines,
9 an estimated 20 percent of China's fleet, are now
10 running on AMSC's stolen software. AMSC has not
11 been compensated for its losses. Most of these wind
12 turbines are owned by large state-owned enterprises.

13 In response to the theft of its IP, AMSC
14 has pursued legal action through the Chinese legal
15 system. In September 2011, AMSC filed for
16 arbitration with the Beijing Arbitration Commission
17 and three civil cases in Beijing and Hainan courts
18 seeking an aggregate of approximately \$1.2 billion
19 in damages.

20 In the arbitration, AMSC is seeking
21 damages of nearly \$800 million for goods received,
22 as well as for damages from the nonperformance of

1 contracts in place at the time of Sinovel's refusal
2 of delivery. The three civil cases include a
3 \$450 million trade secret infringement case, which
4 we understand is the largest trade secret case in
5 China today, and two smaller copyright infringement
6 cases.

7 Sinovel turbines running on AMSC's stolen
8 software are not limited to deployment in China.
9 Sinovel also supplied several wind turbines to the
10 United States, all of which are located in
11 Massachusetts where AMSC is headquartered. In June
12 of 2013, following an investigation by the FBI, the
13 U.S. Department of Justice indicted Sinovel, two
14 members of its senior management team, and AMSC's
15 former employee for the theft of AMSC's trade
16 secrets.

17 Sinovel has stalled this case through a
18 series of appeals and requests for extensions. The
19 criminal trial originally scheduled for December
20 2016 has been delayed twice at Sinovel's request and
21 is now scheduled for January of 2018.

22 In addition to pursuing claims through the

1 U.S. legal system, AMSC has pursued its claims
2 through the Chinese court system in good faith, in
3 the belief the company would receive fair and
4 equitable consideration and resolution of its
5 claims. However, copyright infringement actions
6 brought by AMSC have been dismissed by the courts in
7 China for lack of evidence.

8 CHAIR BUSIS: If you could please try to
9 finish up?

10 MR. MCGAHN: The Beijing and Hainan
11 courts' dismissal are particularly troubling given
12 the fact that both the U.S. government and the
13 Austrian government found sufficient evidence to
14 pursue criminal charges against and ultimately
15 indict several individuals for the theft of trade
16 secrets.

17 In conclusion, we believe that over 8,000
18 wind turbines, more than \$8 billion of equipment,
19 mostly owned by large Chinese state-owned
20 enterprises, currently are operating on stolen AMSC
21 IP. I personally believe that such actions should
22 have consequences. The negative impact of Sinovel's

1 IP theft on the financial health of AMSC has been
2 dramatic and well-documented. AMSC has lost
3 \$1.6 billion in company value and 70 percent of its
4 workforce since March of 2011.

5 Nevertheless, AMSC will continue to pursue
6 its claims in good faith through the Chinese court
7 system in belief that a fair and equitable outcome
8 is still possible.

9 AMSC appreciates this opportunity to share
10 its experience to date regarding stolen IP and the
11 Chinese legal system. In light of our unique
12 experience, we respectfully urge the U.S. Trade
13 Representative to work with the Chinese government
14 to ensure mutual recognition of and respect for
15 protection of intellectual property rights and fair
16 adjudication of IP-related claims.

17 Thank you for the opportunity to present
18 our comments.

19 MR. BISHOP: The final witness on this
20 panel is William Mansfield with ABRO Industries.

21 Mr. Mansfield, you have five minutes.

22 MR. MANSFIELD: Thank you, Mr. Chairman

1 and the Commission. Thank you very much for
2 allowing me to testify.

3 My name is William Mansfield. I'm the
4 Director of Intellectual Property for ABRO
5 Industries, Incorporated. I'm here to describe my
6 personal experience in successfully working within
7 the Chinese IP protection system.

8 ABRO is a small company with only 25
9 employees based at our location in South Bend,
10 Indiana. We have a wide variety of products
11 produced under a brand name ABRO: glue, tape, things
12 of that nature. About half our products are made in
13 the United States, and the other half are made in
14 China. None of our products, however, are sold in
15 the United States. Instead, all are sold overseas,
16 mostly in developing nations such as Nigeria,
17 Ecuador, Pakistan, and others.

18 For a variety of reasons, ABRO has long
19 faced serious threats from counterfeit versions of
20 our products. I have spent the last 10 years
21 fighting against these counterfeits and protecting
22 our brand name so that we can continue to offer good

1 quality products at competitive prices.

2 As one might expect, many of the
3 counterfeit versions of our products are made in
4 China. As such, I've spent a great deal of time in
5 China over the past decade. ABRO has developed an
6 incredibly effective anti-counterfeiting approach
7 for China, an approach that has worked very well. I
8 am speaking here today because I feel that too often
9 attempts like this to gather information regarding
10 China and intellectual property protection are
11 unfairly skewed towards a viewpoint that claims that
12 there is no viable option for IP enforcement in
13 China. We have found this to be completely untrue.

14 As I noted, most of the fake versions of
15 our products are produced in China. I believe that
16 most brand owners face a similar situation. I can
17 see why a reasonable person might look at this fact
18 and think that China is doing something or failing
19 to do something that makes them more attractive for
20 counterfeit production than other countries.
21 Certainly, this is an argument put forward by many
22 in the U.S. and Western Europe.

1 At first glance, this makes sense. But
2 the view falls apart when you remember that while
3 most fakes are made in China, most of everything is
4 made in China. China is where you go to have
5 products made. So it is absolutely no surprise that
6 this is also where you go to have products made that
7 violate other people's intellectual property rights.

8 And, of course, even if there is nothing
9 specific to China that causes them to be used as a
10 manufacturing point by counterfeiters, they still as
11 a nation have to deal with the fact that many fake
12 products are being made and shipped from there.
13 This they do, and I believe this from my own
14 experience, that they do this as well as any nation
15 on earth. Unfortunately, they get virtually no
16 credit for their efforts.

17 The problem most western brand owners have
18 is not that the Chinese have a bad system, but that
19 the brand owners often don't know how to make that
20 system work. Like all government officials, Chinese
21 anti-counterfeiting officials have very limited
22 resources and unlimited requests for their help.

1 ABRO goes directly to these officials in order to
2 make our case for why they should expend some of
3 their limited resources in protecting our brand as
4 opposed to other things they could do. After all,
5 there is no immediate positive impact for their area
6 and it would be reasonable for their tax base to
7 question why they are spending their money helping
8 outsiders who don't pay taxes there.

9 But we have almost always found common
10 ground with these officials in two areas, the
11 importance of legality and the value of commerce.
12 Chinese officials strongly value the role that the
13 law plays in keeping society well functioning. They
14 are bothered by a violation of law, even if the
15 consequences of that violation take place in another
16 nation. They didn't end up in their profession by
17 accident, and they do not look kindly on a known
18 violator of the law regardless of shared
19 nationality.

20 Chinese officials are often also swayed by
21 arguments of the importance of IP protection for the
22 proper functioning of international commerce. More

1 than any other officials I have dealt with globally,
2 and I have had occasion to travel and meet with
3 officials in over 50 countries, Chinese officials
4 understand the central importance that international
5 commerce plays in their domestic prosperity. They
6 are prepared to work to protect the economic driver
7 that is international commerce, even when there is
8 no immediate payoff for their own region. This sort
9 of farsightedness is sadly lacking in many nations.

10 Our strong position in China comes from
11 our focus on working with the Chinese as equals. In
12 fact, the most valuable step we take is that ABRO
13 comes to China respectfully asking for help. There
14 is, frankly, an ugly strain of neo-imperialism that
15 often pops up when I hear other brand owners discuss
16 China. An undertone of this is the idea that China
17 just needs to do what we tell them to, and that if
18 they do not do it, it is only because they are not
19 as clever as us.

20 This is sometimes framed as helping China
21 because they are a "developing nation." But let us
22 not forget that the Chinese civilization is over

1 5,000 years old. We are viewing them through a
2 framework of a 100-year temporary disruption in a
3 relatively unbroken line of high culture that has
4 lasted for 5 millennia. They are a sovereign nation
5 with the right to develop and adopt their own rules
6 and systems, just as we are and just as we do. It
7 is beholden to us as brand owners to adapt to them,
8 not for them to adapt to us.

9 CHAIR BUSIS: If you could please finish
10 up? Thank you.

11 MR. MANSFIELD: Sure. Which brings me to
12 this hearing and the recent focus on attacking the
13 Chinese government for its intellectual property
14 protection system. We must not make the mistakes of
15 the past. We are not the English Empire. The world
16 doesn't need another Treaty of Nanjing. And the
17 time for gunboat diplomacy has long since passed.

18 The current Administration's bellicose
19 tone towards China may serve the short-term
20 interests of the President's base, but it does not
21 serve the long-term interests of America, nor is it
22 based in fact or reality. The Chinese intellectual

1 property protection system isn't perfect. No system
2 made by humans is. But the only productive way
3 America can and should attempt to influence it is by
4 approaching the Chinese as equals and in the spirit
5 of mutual advantage. To do otherwise is doomed to
6 failure.

7 MR. BISHOP: Mr. Chairman, that concludes
8 direct testimony from this panel.

9 CHAIR BUSIS: Thank you.

10 Mr. McCartin, would you like the first
11 question?

12 MR. McCARTIN: Yes, thank you, Bill.

13 I understand that the focus of your
14 testimony is on the theft of IP or trade secrets or
15 traditional counterfeiting. It seems to me that
16 your problems have been very public. At the same
17 time, we've heard from some industry and company
18 representatives that they have concerns about
19 retaliation or other harm to their business
20 interests in China if they were to speak out in this
21 proceeding or other similar proceedings.

22 So my question to you is has this been a

1 concern of your companies in other contexts? And my
2 second question is what is your perspective on the
3 dilemma faced by some companies when considering
4 whether to speak up?

5 MR. McGAHN: I think a big piece of this
6 is that in any society there are bad actors and good
7 actors. And I don't think we can blanket whitewash
8 and say that in China everybody is a bad actor. I
9 think the Chinese have an opportunity to try to use
10 its own system, its own series of laws to weed out
11 those bad actors and have there be consequences. In
12 many cases, what we're ultimately after in the West
13 is to find a way to work with the Chinese, allow
14 them to enforce the rule of law. The laws are on
15 the books to allow for enforcement.

16 The question I think is, is China able
17 today or ready today to be able to enforce its own
18 laws. That's up to it to do. We can help it by
19 helping understand and support them in developing
20 ways to deal with trade and deal with the theft of
21 IP.

22 MR. MANSFIELD: Certainly, ABRO 10 years

1 ago was in a very different position. We had had an
2 existential threat from a counterfeiter in China,
3 and we had gone through a very similar situation.
4 We had been involved in a variety of lawsuits. The
5 current leader -- the leadership of ABRO at the time
6 was very outspoken and frankly anti-Chinese.

7 When I came in, I argued we should have a
8 more cooperative approach. I went to China
9 originally expecting a lot of pushback. They had --
10 our company had been very loud about it, and I've
11 never encountered that. In general, I saw a group
12 of officials that were interested in working to
13 resolve problems. And when we were willing to do
14 our part, they were more than happy to do theirs.
15 So certainly from our own experience, we were in a
16 position where we could have reasonably encountered
17 some pushback, and we never saw any of that.

18 MR. STEIN: Juergen Stein from SolarWorld.
19 Obviously, as a solar company, our core of the
20 business is sustainability. So that was also the
21 reason that we very early stood up and said
22 something is going wrong in the solar market

1 globally. And we put in processes of trade to look
2 after that in Europe, where our headquarters was
3 SolarWorld AG, but also in the U.S., and we started
4 that already in the years 2011.

5 For us, it's pretty -- I have to say it's
6 comparably easy to continue on that path and stand
7 up and say this -- here is something going wrong in
8 this industry, this is not sustainable what we are
9 doing. We are not risking any business in China
10 because we cannot have any business in China. China
11 built up a capacity in our industry which is larger
12 than the global demand is. They put it in their
13 Five-Year Plan in the year 2006 to 2010. That was
14 the 11th Five-Year Plan. It was addressed there.
15 They want to lead solar globally. And with the
16 capacity they built up over the last years, they are
17 dominating the market.

18 They put it in the 12th Five-Year Plan
19 again and identified our market, our industry as the
20 strategic industry. So, therefore, for us it's easy
21 to continue on that path. And we will not stop to
22 speak up because the practices we have seen here I

1 think not -- we cannot solve that with trying to
2 stay in communication and hope it's getting better.

3 We have seen that there were many, many
4 countervailing and other actions in Europe and in
5 the U.S. to work around the trade rules that we have
6 implemented. So we will continue on that path.

7 CHAIR BUSIS: One of our witnesses spoke
8 about the experience in Chinese courts. I wonder if
9 Mr. McGahn and Mr. Stein can address that, and
10 Mr. Stein, whether you considered going to a Chinese
11 court?

12 MR. STEIN: We did not go to the Chinese
13 court because it was difficult to know whom to
14 address. We had five Chinese military people doing
15 that, so where to go and I think there was no chance
16 for us for success there. So we didn't even start
17 it.

18 MR. MCGAHN: In our case, we felt we were
19 playing by the rules, and a lot of what we talk
20 about is all we want to do is to find ways to help
21 China to continue to enforce its rules. We went
22 over to help develop business with wind companies

1 that were emerging. We were successfully able to do
2 that. What we had to do is we had to litigate
3 within the Chinese court system because the
4 contracts are in Chinese. The currency is
5 denominated in RMB. And the contract is legally
6 between our Chinese entity and the Chinese state-
7 owned entities.

8 Many people in the West looked at us and
9 said why would you ever try to pursue something in
10 the Chinese court system; you're testing them to
11 fail. And I don't believe that to be true. From
12 what we have learned from our counsel, what we've
13 seen in the proceedings, albeit very slow, the speed
14 of Chinese justice is much slower than it is in
15 America or what we see in the West. But I think
16 they're trying to learn their way.

17 And I think in many ways the western
18 governments, particularly the American government,
19 has a unique position to try to help them understand
20 why enforcement of their own rules is particularly
21 important. If the sanctity of IP either developed
22 domestically or imported is able to go through the

1 rule of law and through the court system as we're
2 trying to do, it only benefits China in the long run
3 and certainly benefits American interests as well.

4 MR. MANSFIELD: Mr. Chairman, if I could
5 answer? The matter I spoke about 10 years ago, we
6 filed a variety of suits, and in the end we won them
7 all. It was a long, slow process, longer than would
8 take in America. But if you've been involved in
9 litigation in America, that takes a long time as
10 well, certainly much quicker than happens in other
11 countries.

12 Part of the problem we faced was just the
13 reality everybody faces when they're the victim of a
14 crime, that proving it and getting compensation for
15 it always happens well after suffering the damage
16 for it. So by the time we would have proved it and
17 got paid and blah, blah, blah, blah, blah, we would
18 have suffered so much damage as a company it might
19 have put us out of business. But that's hardly to
20 the blame. That's the nature of human justice, not
21 any particular nation's legal system.

22 CHAIR BUSIS: My colleague from Commerce

1 has a question.

2 MR. MORRIS: Great, thank you. John
3 Morris, Associate Administrator for the National
4 Telecommunications and Information Administration at
5 Commerce.

6 My question is for Mr. Stein. Mr. Stein,
7 the information contained in your testimony and
8 submission focuses on the circumstances surrounding
9 the 2014 indictment of the five members of the
10 People's Liberation Army of China in connection with
11 alleged appropriation of SolarWorld information.
12 Can you elaborate for us what impact any intrusions
13 have had on the present state of the U.S. solar
14 market?

15 MR. STEIN: So the information -- Juergen
16 Stein. The information that was taken because of
17 that hacking of our IT system was quite, quite
18 large, some technical information, production
19 information. We ramped up the new PERC technology,
20 but also about cost, about our markets. We had lots
21 of information in there about our customer structure
22 at that time and how we wanted to address the market

1 besides the trade case information which was going
2 until that time.

3 It's difficult to now bring it to the
4 point to how this information relates to the
5 conditions the solar industry is in today. But if
6 we go along, that technology we innovated and
7 brought to the market to that time is today let's
8 say the mainstream or is going to be the mainstream
9 technology from the Chinese competitors.

10 We have seen that the trade case we filed
11 in 2011-2012, the first trade case against China,
12 had not the impact we all hoped it to have because
13 there was circumvention immediately. They were
14 pretty much prepared to channel everything through
15 Taiwan, and then the Taiwanese cells came into the
16 U.S. market. Therefore, we had to file another
17 trade case in 2013-14 to also stop that.

18 We have seen the industry since then
19 shrinking and shrinking. You're aware that we are
20 in the process of the 201 filing in that industry,
21 because at the end of the day, the solar industry,
22 the manufacturing part and the manufacturing sector

1 of the solar industry in the United States is more
2 or less down. We are the last standing company
3 producing cell and modules. All the others are
4 either gone or only producing modules and buying the
5 cells somewhere else in the world.

6 So besides that, I want to mention that
7 during that overall process was not only the solar
8 cell and module manufacturing impacted. After the
9 first duties against Chinese cells and modules,
10 there was then in return a duty for U.S. polysilicon
11 into China, so based on dumping. So we see that
12 there is always a kind of reaction on that which
13 then tries to equalize the power in that overall
14 situation, rather than working on the solutions for
15 cell and module in that case and the dumping we have
16 seen during that time.

17 Does that answer your question?

18 MR. THOMAS: Yeah. No, that's very
19 helpful. Thank you.

20 MR. STEIN: Thank you.

21 CHAIR BUSIS: Mr. Stein, for any
22 post-hearing comments, we would ask that you

1 elaborate on the types of losses you've sustained
2 and continue to sustain as a result of the
3 situation.

4 MR. STEIN: We will do that in the
5 post-hearing brief.

6 CHAIR BUSIS: Next we have a question for
7 Mr. McGahn. Mike?

8 MR. DIEHL: Right, Mike Diehl here.

9 So you've walked us through your very
10 adverse experiences in China, but before that there
11 were four years of successful collaboration. Do you
12 have any insight as to what the seeming change of
13 direction -- were you given to understand that this
14 was part of something bigger, something directed by
15 the state or having to do with partnerships in
16 emerging technology areas?

17 MR. McGAHN: There was about two years of
18 prosperity for both companies. We tried to work as
19 closely as we could with the Chinese government and
20 officials to get them to understand our situation
21 and also to get them to understand that remedying
22 our situation was actually in the long-term interest

1 of China.

2 We brought a lot of advanced technology
3 over to China. Most large wind turbines today
4 utilize in some form a piece of our technology. So
5 we felt as we went to China, we were helping China
6 solve one of its biggest problem, which is energy
7 production and the pollution issues that China has
8 had to undergo with its industrialization. So we
9 went over with the mindset that, you know, I was a
10 self-described Sinophile at the time. We were very
11 learned in trying to understand what we thought
12 would work.

13 At the time, we were heralded actually as
14 an example of tech transfer. If you think of our
15 model, to use a Russian analogy, if you know what a
16 Russian matryoshka doll is, it's the nested wooden
17 doll. Our strategy was simple. We wanted to sell
18 at a very low price the outer technology, the
19 turbine technology to the Chinese, get them to be
20 able to produce wind turbines, but then be able to
21 control the core operating system and hardware
22 controller.

1 So our content, rather than going and
2 trying to do 100 percent, our strategy was to give
3 them access to 95 percent but keep that 5 percent
4 core intact. So think of us more like Intel and
5 Microsoft as opposed to a Dell or a Hewlett Packard.
6 We want to try to have as many entrants come into
7 the market to be able to utilize advanced
8 technology.

9 In our case, I think it all turned because
10 of the political position that the company was in.
11 And I think -- I don't know if I can describe this
12 as being unique to the company, but it was a company
13 that was financed originally by the son of the
14 former Premier. They had very strong political
15 ties. They grew very rapidly. So they went from
16 2007 when we were really getting started here, they
17 went to 2008 they were doing 1,000 megawatts a year,
18 which is bigger historically than many, many markets
19 globally. This is with one entrant.

20 When we announced the first large contract
21 with them, it was a half a billion dollars. And the
22 industry couldn't process it because it represented

1 more than 10 gigawatts of wind turbines in a market
2 that had never produced 10 gigawatts of wind
3 turbines.

4 So I think where things turned, over time
5 in a market like China, your worth diminishes. And
6 I think when I try to counsel other public CEOs, you
7 have to realize that the way the rules are set up
8 today in China enable or foster western technology
9 to come over, but then stay persistent and change
10 the brand to be manufactured by a Chinese
11 manufacturer. We've seen this in power. We've seen
12 this in transportation, like trains where it's
13 happened to a number of companies that come over.

14 And it's really over a 5- to 10-year
15 period where you are of value because you are
16 bringing in the advanced technology. But once they
17 are able to get it and control it, you know, one of
18 the things that we did to protect ourselves is
19 everything that we do within the turbine is fully
20 encrypted. And the kind of lemonade from the lemons
21 that was made is we realized that they couldn't
22 break the encryption. They could not reverse

1 engineer what we brought forth. The way that we set
2 up controls within the company, they could not
3 naturally access information. An actual crime by
4 Chinese law had to be committed.

5 I think what's unique about our situation
6 is we're not screaming about the factories that
7 they're setting up down the street that's making
8 copies and the reverse engineering. What we're
9 taking issue with is they're breaking their own
10 laws. And in order for China to continue to mature
11 as a member of the WTO, we have to find ways to help
12 align their interest with the enforcement of their
13 own laws.

14 CHAIR BUSIS: I think the Small Business
15 Administration, Ms. Bonner, has a question.

16 MS. BONNER: Yes, thank you. This is for
17 Mr. Mansfield. You make non-electronic consumer
18 products. To your knowledge, in your industry, are
19 the products that you make in these non-high tech
20 sectors, are they targeted in any way in Chinese
21 industrial plans?

22 MR. MANSFIELD: I could take a look at

1 that and respond more fully in the comments
2 afterwards. I will look at that, though.

3 MS. BONNER: I also have a question for
4 Mr. McGahn. Public comments from other U.S.
5 companies, small and small start-ups, have
6 highlighted or reported that government -- Chinese
7 government linked entities are stealing trade
8 secrets. What more could the Chinese government do
9 to ensure that state-owned enterprises treat U.S.
10 companies fairly and equitably?

11 MR. MCGAHN: I think as I said before, the
12 laws exist. We've looked at it through our local
13 Chinese counsel. The rules are there. I think one
14 of the things that you can sense with the crowd
15 today, the activities of this Commission are going
16 on notice, and you can see that as either fear or
17 hope that there is a path forward that the countries
18 can work together.

19 If we can try to get or use direct or
20 indirect methods of leverage to get the Chinese to
21 understand that be it a foreign-owned entity, a
22 state-owned entity, a public company over in China,

1 that we all should be subject to the same rules, and
2 that when bad actors do bad things, there should be
3 consequences for that.

4 Is there maybe a better degree of
5 organization among the Chinese? Yeah, I think
6 that's true in many disciplines. We have a separate
7 commercial sector. We have a separate government
8 sector. We have a separate judicial branch. These
9 are three separate rails in our society. All too
10 often we try to take our way of thinking and impose
11 it upon the Chinese. We have to understand there,
12 there really is only one rail, and that is neither
13 bad nor good. It just is. And we have to find a
14 way to work within their system with them to be able
15 to bring about impactful change.

16 I think in our case, we represent a unique
17 opportunity for the Chinese to do what's right. The
18 evidence is overwhelming and clear. I think that
19 maybe in the past, a lot of the finger wagging and
20 berating almost like a parent to a child isn't
21 necessarily helpful. I think we have to find ways
22 where we can use our rules and our system to impose

1 leverage on the Chinese to get to understand in the
2 long term this is really in their advantage.

3 If we want to continue to have American
4 investment and innovation, there has to be a
5 realization of value and return on that investment.
6 If that piece of the global economy starts to break
7 down, that's the engine. Not only does it affect
8 our economy, but it affects all the other economies
9 of the world. If we don't continue to innovate,
10 there's nothing left for people to be able to, if we
11 want to be flippant, steal our copy. That if our
12 system breaks down -- we are mutually dependent upon
13 each other to make progress globally, particularly
14 as we both sit here.

15 Energy was a clear target. It was on the
16 shopping list back in these plans. I think we have
17 to learn as well that these multi-year plans are
18 literally technology shopping lists, and the Chinese
19 want to find ways to have access to these
20 technologies. How do we work with them in a way
21 that benefits American interest as well?

22 CHAIR BUSIS: Mr. McGahn, your testimony

1 mentioned some figures on damages. For any
2 post-hearing submission, it would be helpful if you
3 explained the derivation of that figure and whether
4 it was all of those related to the issues in this
5 investigation or were there other factors as well.
6 So that would be helpful for you --

7 MR. McGAHN: Yes, limit it specifically to
8 the case, and the technology that was absconded was
9 unique to the turbines that they utilize in China.
10 We'll provide the --

11 CHAIR BUSIS: So it would be helpful in
12 your post-hearing submission --

13 MR. McGAHN: Yes, sir.

14 CHAIR BUSIS: -- if you could provide us
15 more details on that. Okay, I think our final
16 question for this panel will be from the State
17 Department. Ms. McNulty?

18 MS. McNULTY: Thank you. This question is
19 for Mr. Mansfield. You indicate that as a leading
20 manufacturer, it's to be expected that China should
21 also engage or should we see a lot of substantial
22 counterfeiting in China. However, we've noted that

1 other submitters as well as other sources of
2 information indicate that China is the origin of
3 88 percent of U.S. Custom counterfeit seizures.

4 In that context, should we view China's
5 counterfeiting operations as normal and expected?

6 MR. MANSFIELD: First, I'd like to say
7 that this is literally my mother's dream that I'm
8 being asked a question by the State Department at a
9 hearing. So thank you very much.

10 MR. McGAHN: And you're not under trial.

11 MR. MANSFIELD: And I'm not under any
12 indictment. Yes, okay.

13 No, I don't think -- I guess what I'm
14 trying to say, I'm not saying it's expected or
15 should just be accepted or whatever. But a lot of
16 stuff is made in China. And I think if you take the
17 "a lot of counterfeit stuff is made in China" alone,
18 it could cause you to say there must be some sort of
19 issue there specific to China about counterfeiting.

20 This has been years ago, but sometimes
21 I've heard brand owners talk and that takes on an
22 almost like there is a problem with the Chinese, the

1 Chinese culture, it loves imitation, can't produce
2 original stuff, things like that, foolishness. But
3 it's very different if you look at it in the context
4 of a lot of everything is made in China. If you
5 were choosing to have anything made, one of the top
6 places you might consider having it made is China.

7 So it's not to say that counterfeits are
8 just expected or we should accept them. Our company
9 certainly doesn't accept them. We fight like hell.
10 But it's not a surprise that manufacturers of
11 counterfeits choose to manufacture in China just
12 because that's where people manufacture. If
13 everything was made on the moon, counterfeits would
14 be made on the moon. It's just where you go to make
15 things.

16 MR. MCGAHN: One parting note: I think
17 one of the things I want to make sure that you all
18 understand is I believe in Mr. Stein's case and my
19 company's case, we clearly need your help. We have
20 gotten to a level of legality of effect of damages
21 to the point we need government-to-government
22 assistance in trying to come to a positive

1 resolution for companies that have been affected.

2 But going forward, how do we find ways to
3 work with the Chinese in a way where there aren't
4 more companies like us 5 years, 10 years from now?
5 And if we're able to work together with the Chinese
6 in ways that we have been able in the past, can we
7 limit the types of companies or the number of
8 companies that are affected by these practices?

9 Thank you.

10 CHAIR BUSIS: Thank you, Mr. McGahn. And
11 thank you for all the witnesses on Panel 2.

12 We'll now have a short break before we
13 start Panel 3.

14 MR. BISHOP: We release this panel with
15 our thanks and invite the members of Panel 3 to
16 please come forward and be seated.

17 (Off the record.)

18 (On the record at 11:42 a.m.)

19 MR. BISHOP: Madam Chairman, Panel 3 has
20 been seated. Our first witness on this panel is
21 Scott Partridge with the American Bar Association,
22 the Intellectual Property Law Section.

1 Mr. Partridge, you have five minutes.

2 MR. PARTRIDGE: Thank you very much, and
3 thank you for the opportunity to appear before you
4 this morning in connection with this important
5 investigation. The views that I am expressing this
6 morning are those of the Intellectual Property Law
7 Section of the American Bar Association and not of
8 the ABA as a whole.

9 The Section is the largest intellectual
10 property organization in the world and the oldest
11 substantive section of the ABA. It has been a rich
12 forum for perspectives and balanced insight on a
13 full range of intellectual property issues over the
14 years.

15 First, it is critically important to
16 recognize that the Chinese government has taken many
17 actions in recent years to improve enforcement of IP
18 rights in China. That said, many concerns regarding
19 the appropriation by Chinese entities of U.S.
20 intellectual property remain. Reports indicate that
21 through the application of various laws, policies,
22 and practices, the Chinese government forces U.S.

1 companies to transfer technology to Chinese entities
2 as a requirement for doing business in China.

3 One of the ways in which the Chinese
4 government mandates technology transfer is through
5 its application of the Regulations on Technology
6 Import and Export Administration, which impose
7 mandatory licensing terms with respect to foreign
8 technology, licensed or transferred, within China.
9 Other forced technology transfer policies include
10 requirements that foreign companies develop certain
11 IP in China, others that require companies to
12 transfer their IP to Chinese entities as a condition
13 of access to the Chinese market, and others mandate
14 that Chinese entities be granted ownership of any
15 improvements made from licensed foreign technology.

16 The USTR and this Committee should urge
17 the Chinese government to amend these regulations
18 and such laws, policies, and practices that the
19 Chinese government employs to force such technology
20 transfers.

21 While the Chinese government recently took
22 a positive step in amending its General Provisions

1 of Civil Law to make clear that trade secrets are a
2 subject of civil IP protection, trade secret theft
3 is still a significant problem in China. The
4 Chinese government must do much more to improve
5 trade secret protections.

6 We agree with recent USTR recommendations
7 found in its Special 301 Report that the Chinese
8 government should develop standalone trade secret
9 legislation, issue judicial guidance to improve
10 consistency in the application of trade secret laws,
11 enact reforms to promote greater use of preliminary
12 injunctions, and address obstacles to criminal
13 enforcement while preserving the technology
14 innovator's secrets.

15 The U.S. Department of Homeland Security
16 recently reported that 88 percent of counterfeit
17 goods seized in the U.S. during fiscal year 2016
18 originated from China and Hong Kong, and that has
19 been generally the case over the last decade, 80 to
20 90 percent of counterfeit goods.

21 As to trademark laws, the Section has
22 concerns that enforcement measures are inadequate,

1 penalties are too weak, bad faith registrations and
2 the unauthorized use of well-known marks are a
3 problem, and systemic counterfeiting and widespread
4 piracy still needs to be addressed. China's
5 trademark registration system has enabled bad actors
6 to misuse it by granting priority to Chinese
7 applicants over U.S. entities, even including those
8 instances in which marks are well-known in China.
9 The Chinese government should develop solutions to
10 stop these abuses as well.

11 For U.S. creators and producers of
12 copyrightable works, the marketplace in China has
13 been growing in recent years in several important
14 sectors, particularly the film industry which is a
15 good example of that. Chinese investment, the
16 introduction of improved content protection
17 technology, and an improved environment for filing
18 legal actions and receiving larger awards are all
19 positive signs. Increased administrative
20 enforcement is also a positive sign.

21 However, piracy remains unacceptably high,
22 particularly in the digital marketplace, and more

1 needs to be done to address illicit streaming device
2 piracy, piracy of scientific, technical, and medical
3 articles, unfettered distribution of circumvention
4 devices, as well as hard goods piracy. In addition,
5 China's copyright laws are in need of major reform.
6 Copyright protection is needed for sports
7 broadcasts, current criminal liability thresholds
8 are either too high or unclear, and the "for purpose
9 of making profit" standard is too difficult for
10 prosecutors to prove. Repeat infringers are also
11 not properly addressed, and civil damage awards are
12 still way too low.

13 The Chinese courts have increased damage
14 awards for patent infringement in several recent
15 cases, but those damage awards are still relatively
16 low and need to be increased significantly.
17 Effective discovery mechanisms of reasonable scope
18 are necessary. Courts must increase the frequency
19 with which they grant motions for preliminary
20 injunction, and courts must apply the law
21 consistently across China.

22 Compulsory license rules and the

1 significant discretion vested in the SAIC in
2 applying those rules undermine the fundamental right
3 of patent holders to exclude others from using their
4 inventions. These practices raise significant
5 concerns for U.S. companies. We urge the USTR to
6 press forward on these issues in its discussions
7 with the Chinese government.

8 Thank you very much for the opportunity to
9 present our comments this morning, and I look
10 forward to your questions.

11 MR. BISHOP: The next witness is Scott
12 Kennedy with the Center for Strategic and
13 International Studies.

14 Mr. Kennedy, you have five minutes.

15 MR. KENNEDY: Thank you. I am honored by
16 the opportunity to testify before this Committee to
17 share my views about Chinese policies and behavior
18 related to intellectual property rights. I want to
19 make four basic points which are elaborated in my
20 written testimony.

21 The first is that China has gradually
22 developed a complex legal framework and institutions

1 to protect IPR. However, China's core strategies
2 and policies towards IPR are not rooted in an
3 unbending commitment to rule of law. Rather, in
4 strategic sectors, China's policy is driven by a
5 plan to promote industrial upgrading and technology
6 acquisition that results in Chinese companies
7 occupying higher rungs of the value-added chain
8 across the full spectrum of industries both in China
9 and other markets. Chinese policy is also dictated
10 in certain areas by its national security concerns,
11 not just a commitment to rule of law.

12 Many are familiar with the Made in China
13 2025 Plan, which has set high domestic content goals
14 for a range of sectors. That said, the plan is just
15 one of a large number of detailed industrial
16 policies and the more encompassing 13th Five-Year
17 Plan, China's most important economic blueprint.

18 China's economic goals are backed up not
19 only by a long list of policy documents, but by a
20 full range of policy tools, including financing, tax
21 benefits and holidays, distinctive technology
22 standards, competition policy, government

1 procurement, market access, outward investment,
2 trade remedies, and yes, IPR. In this context, IP
3 is not simply a basic legal concept or means to
4 protect individual inventors, but is an instrumental
5 tool that is part of a larger context of economic
6 power to be wielded by Chinese companies in the
7 country as a whole.

8 Secondly, Chinese companies and other
9 organizations have become leading filers of IPR,
10 including patents, copyrights, and trademarks. But
11 the commercial value of this IPR is stunted because
12 of the weak enforcement of IP and the relatively low
13 quality of the underlying IP. By several measures,
14 China has become a leading IP country if you look at
15 the number of patents they file, but there are
16 several ways that we measure the low value of
17 this IP.

18 If you look for example at China's
19 licensing market, the Chinese economy is half the
20 size of the U.S. economy, but its licensing market
21 in IP is 1/100th the size of the United States'
22 market. China also has a huge deficit in IP

1 licensing trade.

2 Second, in mergers and acquisition deals,
3 the value of patents and broader IP portfolios of
4 Chinese entities is almost always extremely low and
5 has only a modest effect on the overall price and
6 valuation of a company's assets. And third, in
7 patent infringement cases in China, the average
8 award of a winning plaintiff is a paltry
9 98,000 renminbi. By contrast, in the United States,
10 the average award is over \$7 million.

11 Why is this commercial value so low? It's
12 possibly because of the condoning of IP theft and
13 insufficient vigorous enforcement of IP rights, but
14 it's also this low quality of the underlying IP.
15 This leads to several important consequences, the
16 most important of which is that there is a premium
17 now placed on the acquisition of existing
18 technologies, domestic and foreign, through legal
19 and illegal means. This is done by Chinese
20 companies, by Chinese authorities that approve
21 investment deals, as well as by testing and
22 certification organizations in China.

1 Thirdly, China's market size gives it
2 enormous power to shape the trajectory of industries
3 and the value of IP globally. If China debases the
4 value of IP, it threatens the health not only of
5 individual competitors but the supply chains and
6 business models of entire sectors. Conversely, if
7 China provides vigorous protection to IP, both
8 Chinese and non-Chinese alike, and encourages
9 innovation-based success in advanced technologies,
10 this will spur a virtuous cycle of positive
11 competition that will yield higher quality
12 technologies, products, and services, which will
13 redound to producers and consumers alike.

14 Finally, the United States needs to use an
15 all-of-the-above strategy to effectively counter IP
16 practices and industrial policies that damage
17 American interests. These include engaging in
18 extended bilateral dialogue and negotiation with
19 Chinese government and industry, utilizing the WTO
20 and other international tribunals to enforce
21 existing commitments, strengthening multilateral
22 rules via the WTO and other fora, collaborating with

1 American allies and others who are in harm's way as
2 well, utilizing American trade laws to investigate
3 and penalize China when necessary. Strategies that
4 lack any one of these components will not be
5 successful.

6 So unilateral penalties, should they be
7 warranted, will not be enough on their own to
8 reshape Chinese behavior in a way more consistent
9 with American and global interests. In addition, if
10 the United States does not prioritize the challenge
11 with China and more effectively work with its allies
12 and others facing similar problems, any unilateral
13 action is likely to leave the United States, not
14 China, isolated, not to mention more vulnerable to
15 Chinese retaliation.

16 In sum, my advice is proceed, but proceed
17 with caution. Thank you.

18 MR. BISHOP: The final witness on this
19 panel is Jin Haijun with the China Intellectual
20 Property Law Society.

21 Mr. Jin, you have five minutes.

22 MR. JIN: Thank you for allowing me to

1 testify on behalf of the China Intellectual Property
2 Law Society, CIPL. I am a professor of the Renmin
3 University of China and also a council member of the
4 CIPL.

5 CIPL is a national academic society in
6 China and has the greatest -- largest members who
7 are law professors, lawyers, and others all
8 specialized on IP matters.

9 Today, I would like to provide my
10 testimony from the following three aspects: history,
11 present, and dialogues.

12 First, history: As Justice Holmes once
13 said, a page of history is more than a volume of
14 logic. So we can start with the history. We cannot
15 forget China didn't have any IP laws or regulations
16 around 40 years ago. It is also interesting to note
17 that the formation of IP regime in China is closely
18 tied to the bilateral relations between China and
19 the United States. Some early bilateral agreements
20 between the two countries, including Science and
21 Technology Cooperation Agreement and the Trade
22 Relations Agreements in 1979, all touched upon IP

1 issues.

2 Over the past 30 years, we have witnessed
3 significant and profound transformation of the IP
4 landscape in China. In 1980s, a number of IP basic
5 laws, including patent law, copyright law, and the
6 trademark law, were issued. In 1990s, significant
7 resources were invested to the enforcement of such
8 IP laws and regulations. All IP laws and
9 regulations were reviewed for their consistency with
10 international norms and practices when China joined
11 the WTO in 2001.

12 It is probably fair to say that no other
13 country in the world has paid more attention to the
14 build-up and the strengthening of IP protection than
15 China in such a short period of time.

16 Second, present: When we look at today,
17 in 2016, we have seen over 136,000 IP lawsuits filed
18 before the courts of different levels in China.
19 Among them, around 2,000 cases involved foreign
20 parties, and the majority of them are from the
21 United States. This is only a fraction of cases as
22 many other cases are being handled by administrative

1 or criminal authorities. This clearly shows that
2 the demand for stronger IP protection is from both
3 domestic and foreign companies operating in China.

4 China has launched a number of reforms to
5 respond to these new challenges. For example, China
6 established specialized IP courts in Beijing,
7 Shanghai, and Guangzhou in 2014, and specialized IP
8 tribunals in 10 other cities this year. Beijing IP
9 courts has also piloted a guiding case system, which
10 is similar to the *stare decisis* system in common law
11 jurisdictions. Evidence rules and damages rules are
12 also being considered for reforms in order to
13 provide more convenience and power to the IP owners.
14 The Chinese courts continue to follow the rule of
15 law and offer equal protection to both domestic and
16 foreign parties. One report shows that foreign IP
17 owners can have around 80 percent win rates before
18 some IP courts in China.

19 As far as we understand, the Chinese
20 government encourages R&D, innovation and technology
21 collaboration, but never intervenes in any cross-
22 border technology transfer among private parties.

1 As a member to WTO, China is committed to complying
2 with all WTO obligations.

3 Third and the last one, dialogues: The IP
4 regime in China has benefited from bilateral and
5 multilateral dialogues between China and other
6 countries in the past 30 years. China continues to
7 have IP working group and dialogue mechanisms with
8 both the U.S. and the EU to facilitate communication
9 of any issues concerning all the stakeholders.

10 On the academic side, CIPL has also
11 participated at the U.S.-China IP Dialogues with its
12 counterparts in the U.S., including a panel led by
13 the former USPTO Commissioner David Kappos. All
14 these discussions have been productive and fruitful.

15 In our view, any unilateral actions may
16 only trigger more friction and are not helpful to
17 resolve issues that require more mutual
18 understanding and discussion from both sides.

19 As legal scholars, we are confident that
20 China will continue to address any emerging IP
21 challenges and strive to maintain business-friendly
22 environment for all investors in China.

1 Thank you.

2 MR. BISHOP: Madam Chairman, that
3 concludes direct testimony from this panel.

4 MS. LINTON: Thank you very much. My name
5 is Katherine Linton from the Office of the U.S.
6 Trade Representative. I believe I've spoken to many
7 of you as we've gotten ready for this hearing, and I
8 thank you all for your participation. There are
9 also some other new faces here from the government,
10 so if you would take a minute and introduce yourself
11 if you have not been on our panel yet.

12 MR. WHITLOCK: Joseph Whitlock from the
13 Office of the U.S. Trade Representative.

14 MS. LANGBURD: Nataliya Langburd from the
15 Council of Economic Advisers.

16 MS. GREWE: Maureen Grewe from the
17 Department of the Treasury.

18 MR. BOBSEINE: William Bobseine from
19 Department of Commerce, International Trade
20 Administration.

21 MS. LINTON: Thank you.

22 Mr. McCartin?

1 MR. McCARTIN: Thank you, Kate. I wanted
2 to follow up on a point that Scott Kennedy raised in
3 his testimony. Scott described a tension within
4 China's system when it comes to IPR enforcement, and
5 I think you can see the same tension in other areas,
6 whether it's Anti-Monopoly Law enforcement or
7 contract law enforcement or other areas.

8 And here's the tension. On the one hand,
9 China has developed a complex legal framework rooted
10 in the rule of law when it comes to IPR enforcement.
11 On the other hand, China also has industrial
12 policies, and these industrial policies sometimes
13 conflict with IPR enforcement, the rule of law.

14 So my question is when these two conflict,
15 which one prevails? Is it the rule of law or the
16 industrial policy? I'd be interested in your
17 insights.

18 MR. PARTRIDGE: I'll take the first stab
19 at that. I think prior to the establishment of the
20 three specialized IP courts, one might say the
21 industrial policies, particularly in various
22 provinces where industries existed, and there was an

1 inclination to protect them, that that was probably
2 the case.

3 The creation of these three specialized
4 courts and now the creation of additional ones has
5 led to a more objective approach in terms of the
6 resolution of those cases. I think the Beijing,
7 Shanghai, and Guangzhou courts have done a much
8 better job than existed prior to the formation of
9 those courts. There is still a problem with
10 consistency amongst those courts and consistency in
11 terms of application of the law in general. And
12 maybe that will be made worse by having more of
13 these courts because there is no national federal
14 court of appeals to clarify the law where there are
15 differences of view.

16 So I think the resolution of the question
17 that you have asked is still in the process of
18 working its way out. These courts are called pilot
19 courts. It's a pilot program, so I think we still
20 have to wait and see how it's going to play out
21 longer term.

22 MR. KENNEDY: My guess is, based on my

1 experience, is that by and large industrial policy
2 trumps basic rule of law most of the time in
3 strategic sectors, in the most strategic sectors.
4 What is strategic? That changes over time. I think
5 as we heard on the last panel, China's approach
6 towards wind and other renewables has changed over
7 time, and I think that partly explains why these
8 companies face these challenges more than others.

9 It's not that everything then becomes the
10 Wild East in those high tech sectors. Companies
11 still have lawyers that help them, that write good
12 contracts, that engage intensively with their
13 Chinese counterparts, and they take a whole variety
14 of means from technical like encryption to not
15 bringing their most advanced crown jewels to China.
16 But that's the place where the law is most
17 vulnerable to being abused.

18 MR. JIN: So from my understanding,
19 industrial policy and the rule of law looks not so
20 conflicting as someone may say because the two areas
21 look like they support each other. Basically, we
22 can say that in the process people depend on reform.

1 In China currently, every reform and activities,
2 including industry policies, will be developed under
3 the rule of law. So I don't think there is big
4 conflict with that.

5 MR. PARTRIDGE: May I add one further
6 thought? I've always been a bit troubled by the
7 fact that the anti-monopoly guidelines with respect
8 to intellectual property are worded in a way that is
9 negative with respect to intellectual property.
10 They are actually called the Anti-Monopoly
11 Guidelines on Abuse of Intellectual Property Rights.
12 Does that lend some perspective to the question that
13 you've asked? And it's troubled me as these
14 guidelines have been in the process of development
15 over the last five or six years. And it has been a
16 long time that consideration of these guidelines has
17 been underway in China, but it has troubled me as to
18 whether or not that underscores a potential answer
19 to your question.

20 MS. LINTON: Thank you. Mr. Whitlock?

21 MR. WHITLOCK: Thank you.

22 I have a two-part question that relates to

1 Chinese government involvement in the transfer of
2 technology. The first part: Can you identify any
3 particular laws, policies, and practices that the
4 Chinese government employs to pressure the transfer
5 of technology? And the second part of my question:
6 Are there any examples you can share to illustrate
7 how this happens in practice?

8 MR. KENNEDY: If it's okay if I go first?
9 I'll just mention two, and I think at least one was
10 already mentioned earlier this morning. The
11 requirement for forming joint ventures in certain
12 industries inevitably, as Erin Ennis from the
13 US-China Business Council said, gives a lot of
14 leverage to the Chinese party, and that
15 collaboration usually requires some amount of
16 technology sharing. Whether that's considered
17 voluntary or smart strategic choice, you'd have to
18 go talk to the individual companies to say.

19 The second area has to do with policies
20 regarding secure and controllable technologies which
21 are adopted at least explicitly for national
22 security reasons but may also have the consequence

1 of leading to the leakage of technology and
2 acquisition by Chinese and government or in
3 industry.

4 I think in terms of providing specific
5 examples, I'd probably feel more comfortable doing
6 that in an off-the-record situation.

7 MR. PARTRIDGE: A brief answer to the
8 question from our perspective is that in most
9 countries around the world, if you have intellectual
10 property rights, take patents, for example, you have
11 a right to exclude others from making, using, and
12 selling products, services that would infringe upon
13 those particular rights. In China, there is a
14 compulsory licensing system that is in place. It's
15 not unique to China. You have found it over the
16 years in developing countries around the world.

17 Whether one considers the second largest
18 economy in the world still developing, I would
19 challenge that. And usually what happens as
20 countries become more developed and more -- become
21 leaders throughout the world economy is that they
22 switch that practice from mandatory compulsory

1 licensing, and that hasn't happened yet. And so
2 that forces a transfer of intellectual property
3 rights in the process of doing business in China.
4 It's part of the access to the marketplace. There
5 are more specifics that we've provided in our
6 written submission with respect to that.

7 Again, I'd refer you to the USTR 301
8 Report earlier this year, which I think nails this
9 pretty well. It's a pretty good explanation of this
10 particular issue.

11 MS. LANGBURD: This is a question for
12 Mr. Kennedy. Have you pursued any quantification of
13 the harm that may occur over all shifts in supply
14 chains and business models?

15 MR. KENNEDY: I haven't. I've depended on
16 the estimates that others have made. For example,
17 we heard this morning the estimate from Richard
18 Ellings of 250 to 600 billion, or the Business
19 Software Alliance's annual estimate of the amount of
20 installed software, pirated software on Chinese
21 computers of somewhere around 8 billion per year.
22 That's part of ongoing research that we're trying to

1 do that looks at not only what this means for on-
2 the-ground activities in China, but of course
3 Chinese also operate abroad. They invest in the
4 United States, Israel, Europe, and other places,
5 which need to be part of the calculation as well.
6 But that's something that we're working on.

7 MS. LANGBURD: Would it be possible to
8 submit any of that initial work in the
9 post-submission comments?

10 MR. KENNEDY: I'll do my best.

11 MS. PETTIS: Mr. Kennedy, you mentioned in
12 your written comment statement that the value of
13 Chinese patents and IP is low by any measure,
14 including licensing, patent litigation awards, and
15 patent portfolios in M&A transactions. If China
16 continues to pursue industrial policies that include
17 acquisition of foreign technologies to move its
18 economy up the value-added chain, how do you expect
19 the value of China's IP to change? And what impact,
20 positive or negative, do you expect these policies
21 to have on U.S. companies?

22 MR. KENNEDY: That's an excellent

1 question. I think in these instances -- and I don't
2 think it's across the board. Again, I think it's a
3 mixed picture, as I painted in my -- tried to
4 describe in my testimony. But in those instances
5 where they're just simply paying for technology or
6 stealing it, that debases the value in China and
7 elsewhere. It's just simply math. Given China's
8 size, the consequences of what it does because of
9 its market share and its ability to manufacture, its
10 scale, it's going to lower the value of that IP.

11 Overall, it's going to affect individual
12 companies, as we've heard earlier this morning, and
13 then also supply chains as well. And then that
14 reduces profits that can go back into R&D, which
15 then challenges productivity. And if productivity
16 is an important part of growth, and I think it
17 should be, it must be, then that's going to have a
18 deleterious effect on not just China but the global
19 economy.

20 But it's a mixed picture, and we need to
21 tackle that part of the problem, the part of the
22 issue that is leading to that type of behavior.

1 MS. GREWE: This is a question for
2 Mr. Partridge. Can you elaborate on the Chinese
3 patent cases that have found in favor of foreign
4 rights holders? In the information you have seen,
5 are they the exception or the norm? And are these
6 typically well-known companies that are found in
7 favor of, or are foreign SMEs also assured the same
8 protections?

9 MR. PARTRIDGE: I think that what we've
10 seen especially in the last three years since these
11 pilot courts have been created is that there is more
12 interest on the part of U.S. companies to file
13 patent infringement cases in China. We have seen
14 that increase. There are even instances of certain
15 U.S. companies that manufacture in China and their
16 competitors manufacture in China where filing a
17 patent infringement case in a Chinese court is more
18 attractive than even filing in the United States
19 because there is the possibility of getting an
20 export injunction, which would have -- even though
21 the damage awards are small, an export injunction
22 would be a very powerful mechanism if your

1 competitors are manufacturing in the United States.

2 So there has been of late some shift on
3 the part of some companies in perspective, U.S.
4 companies in their perspective on whether or not to
5 make use of the Chinese courts as an alternative for
6 enforcement of intellectual property portfolios,
7 worldwide portfolios, so some of that is happening.

8 But I think there is a -- the answer to
9 your question really varies a lot from industry to
10 industry. It really depends. If you are there and
11 manufacturing there, and your competitors are there
12 manufacturing as well, that's a different analysis
13 than if you're in a different industry where the
14 manufacturing is spread around the world; do you go
15 to a Chinese court to try to enforce?

16 Generally speaking, the results of these
17 three courts over the last few years have been
18 pretty much consistent between success rates amongst
19 Chinese entities bringing those cases and foreign
20 entities bringing those cases. So I would say
21 that's a positive step. These three courts have
22 been a positive step. Whether that will continue or

1 not as they add more courts to this pilot program,
2 we will have to wait and see.

3 MR. WHITLOCK: I have another question for
4 Mr. Partridge. Your submission highlights concerns
5 about the Chinese government's authority to impose
6 compulsory licenses or mandate terms for licensing
7 in the anti-trust context. And you've touched on
8 that today as well. Can you provide more detail on
9 why China's imposition of compulsory terms in the
10 anti-trust context may raise concerns for U.S.
11 businesses or rights holders that do not exist in
12 other jurisdictions?

13 MR. PARTRIDGE: That's a difficult
14 question that I probably would feel more comfortable
15 answering in a supplemental written submission. I
16 do think there is a variation in the answer to that
17 question depending on, for example, whether or not
18 an enterprise is one that's engaged in standard
19 essential patents and how those might be treated,
20 and what the procedures are in China with respect to
21 standardization as compared to what takes place in
22 other parts of the world.

1 So I think the answer is different
2 depending on the industry. If you don't mind, my
3 preference would be to consult with others within
4 the organization and give you a more complete answer
5 in a follow-up written submission.

6 MS. McNULTY: Hello, this question is for
7 Mr. Jin. Your submission states that because you
8 have not found judgments or publicly reported
9 disputes arising from Article 24 of TIER, it is
10 difficult to say whether that article has had a real
11 adverse impact on cross-border technology transfer.
12 But isn't it the harm in the unequal terms of the
13 contract itself, whether or not it leads to a court
14 case, that is essential here? Additionally, doesn't
15 a burden arise when those unequal terms discourage a
16 U.S. firm from participating in China's market?

17 Thank you.

18 MR. JIN: Okay. We provided the
19 explanation of your question in our written
20 comments. But I want to emphasize the difference
21 between Chinese contract law and TIER Article 24.
22 First, one, we understand that such requirements are

1 consistent with international practices. We give
2 some examples like the judgment in Germany and the
3 UCC in the United States and the draft code in the
4 United Nations.

5 Second to that, such requirements were
6 also not just enforced against parties from
7 particular countries. So that means the parties
8 from every countries will apply this article.

9 Third, it's not identified in a single
10 contract case in China so far. That means that
11 involves -- not involve the dispute related to
12 Article 24.

13 That's it.

14 MS. LINTON: Would anyone else like any
15 other questions?

16 Thank you all very much and we look
17 forward to the next panel.

18 MR. BISHOP: We dismiss this panel with
19 our thanks and invite the members of Panel 4 to come
20 forward and be seated, please.

21 (Off the record at 12:18 p.m.)

22 (On the record at 12:22 p.m.)

1 MR. BISHOP: I will remind the room that
2 photography is prohibited within the room of these
3 proceedings. Please do not take pictures or video.
4 Thank you.

5 Will the room please come to order?

6 Madam Chairman, the members of Panel 4
7 have been seated. Our first witnesses are
8 representatives from the Chinese Chamber of
9 International Commerce.

10 You have five minutes for your direct
11 testimony.

12 MR. CHEN: Thank you, Madam Chair. My
13 name is Chen Zhou, Vice President of China Chamber
14 of International Commerce, or CCOIC. First of all,
15 I would like to thank you for the opportunity to
16 testify today.

17 Founded in 1988, CCOIC is a national
18 chamber of commerce consisting of enterprises,
19 associations, and other organizations which engage
20 in international commercial activities in China.
21 The reason CCOIC submitted written comments and
22 requested to appear at this hearing is that we are

1 quite confused and greatly concerned about
2 initiation of this Section 301 investigation. We
3 are particularly concerned about the potential
4 unilateral determinations and unilateral actions
5 after the investigation which may trigger a trade
6 war between the United States and China and bring
7 great loss to businesses and ordinary people in both
8 countries.

9 Now I would like to take a few minutes to
10 highlight some of the main points in our written
11 comments.

12 First, the protection of IPR and the
13 business environment in China have been
14 substantially improved. For example, China has
15 established a specialized National Leading Group on
16 the Fight Against IPR Infringement and
17 Counterfeiting, which is led by a vice-premier,
18 holds quarterly working conferences and formulates
19 detailed national action plans for fighting against
20 IPR infringement and counterfeiting every year. And
21 the State Council requires that domestic and foreign
22 investor enterprises shall be treated equally

1 without discrimination in terms of application of
2 policies.

3 Second, we believe the two countries are
4 capable of resolving differences and disputes
5 through dialogue and consultation. The longstanding
6 China-U.S. JCCT and SED both have yield numerous
7 positive outcomes. Moreover, the present Section
8 301 investigation, although initiated under Section
9 301(b), remains subject to the disciplines set forth
10 in the WTO agreements.

11 Third, with respect to the specific issues
12 mentioned in USTR's Notice of Initiation, we are of
13 the view that there is no basis for determination
14 that the relevant laws, policies, or practices of
15 China are unreasonable or discriminatory, and nor is
16 a conclusion that it is appropriate to take actions
17 against China justified.

18 Madam Chair, we believe that the views and
19 information provided in our written comments will
20 provide a more comprehensive picture on the issues
21 involved in the investigation. We sincerely hope
22 the U.S. government can properly handle these issues

1 in a manner that is consistent with the laws of the
2 multilateral trading system, the larger context of
3 China-U.S. economic and trade relations, and the
4 interests of enterprises in both countries and
5 millions of consumers and workers.

6 Thank you for your attention.

7 MR. BISHOP: Our next witnesses are
8 representatives from the China General Chamber of
9 Commerce.

10 You have five minutes for your direct
11 testimony.

12 MR. XU: Thank you. Good morning,
13 everyone. My name is Chen Xu, and I am Chairman of
14 the China General Chamber of Commerce, CGCC. I
15 appreciate this opportunity to appear before this
16 panel representing my organization and to provide my
17 comments on the U.S. government's Section 301
18 investigation of China's acts, policies, and
19 practices related to technology transfer,
20 intellectual property, and innovation before this
21 panel.

22 CGCC is a nonprofit organization in the

1 United States to represent Chinese investors here.
2 We were founded with a mission to promote Chinese
3 investments into the U.S. and to facilitate the
4 collaboration and the communication between the
5 Chinese and the U.S. business communities. Today,
6 we are proud to have over 1,500 members throughout
7 the U.S. Our members range from SOEs to private
8 companies across sectors of business. Together, we
9 have made approximately \$100 billion in investments,
10 contributed billions in tax revenue, and have
11 created over 200,000 American jobs.

12 As a unified voice for the Chinese
13 investments in the U.S., we are much concerned about
14 the recent memorandum issued by President Trump on
15 August 14, 2017, requesting the U.S. Trade
16 Representative initiate Section 301 investigation
17 into whether the acts, polices, and the practices of
18 the Chinese government are reasonable or
19 discriminatory, burdensome or restrictive to U.S.
20 commerce as it relates to technology transfer,
21 intellectual property, and innovation. We believe
22 President Trump's memorandum is misguided in many

1 ways.

2 As a developing economy, China keeps
3 improving the practices of IP protection. The
4 Chinese government has taken many strides in
5 reversing its laws to protect IP rights and to
6 foster innovation, especially after joining the WTO.
7 Recent changes in the patent and trademark laws are
8 good examples of what China has done in expanding
9 coverage of the laws, increasing penalties on
10 violators, stricter enforcement measures, etc.
11 Additionally, China has set up special IP courts for
12 the sole purpose of better handling complicated and
13 often technical cases and protecting IP rights.

14 The allegation that Chinese companies are
15 directed by the Chinese government with a purpose of
16 acquiring or stealing intellectual property from the
17 U.S. is unfounded. Actually, going abroad as one of
18 the national strategies is indeed encouraged by
19 Chinese government. But every specific acquisition
20 deal is decided by the companies based on their own
21 business strategy and market opportunities, even
22 though some of the Chinese companies have shares of

1 government ownership.

2 Especially so far, most of the former
3 Chinese major SOEs have been listed in the domestic
4 and overseas stock markets or issue bonds
5 internationally. They all have set up the required
6 good corporate governance subject to the scrutiny of
7 the markets, similar to those in the U.S. All the
8 major corporate decisions must be made in compliance
9 with robust governance.

10 Additionally, according to the statistics
11 in 2016, the Chinese private sector has become the
12 main driving force in the overseas M&A trend. The
13 amount of transactions by Chinese private
14 enterprises has grown threefold than a year earlier
15 and much exceeded that of SOEs. The statistics of
16 the first quarter of this year stated 83 percent of
17 overseas M&A deals were initiated by the private
18 sector.

19 According to our released survey, most of
20 our member companies have their plan to further
21 expand their market and product offerings in the
22 years to come. One of the efficient ways is

1 certainly through acquisition of the existing assets
2 as per the international practice. During the
3 process, technology and other intellectual property
4 are part of the targeted assets that was fairly
5 valued by various third-party due diligence firms
6 and accepted by all relevant parties of the
7 transaction. All is based on transparent and
8 mutually agreed terms pursuant to the related laws
9 and regulations.

10 Furthermore, to the concern that the
11 Chinese public procurement process is unfavorable to
12 the U.S., we do not believe this is unreasonable.
13 It is not uncommon for countries to provide
14 preferential treatment to domestic goods, services,
15 and suppliers. The United States is also no
16 exception to such preferential treatment.

17 For example, on April 18, 2017, President
18 Trump released a Presidential Executive Order on Buy
19 American and Hire American, which clarifies in
20 Section 2 that it is the policy of the Executive
21 Branch to maximize, consistent with law, through
22 terms and conditions of federal financial assistance

1 awards and federal procurements, the use of goods,
2 products, and materials produced in the United
3 States.

4 This act shows the U.S. government does
5 not deem government procurement practices favoring
6 domestic products as biased or unreasonable.

7 Similarly, many countries, developed or developing,
8 regard it as reasonableness to have the rules and
9 regulations that help protect their own national
10 security. The key is, to our best knowledge,
11 Chinese has no special policy discriminating against
12 American competitors.

13 Lastly, since nowadays U.S. and China, as
14 the world's largest markets, are economically
15 complementary and supplementary, we must raise the
16 concern that the proposed actions of the President
17 as a result of this Section 301 investigation would
18 not only harm trade between the two countries to
19 hurt American consumers and exporters, but also harm
20 the attraction of more Chinese investments into the
21 U.S. market to create more jobs for American people
22 as one of the major commitments by the new

1 Administration.

2 As a representative of the business
3 community, we suggest this panel could carefully
4 measure all the factors before making your final
5 decision.

6 Thank you.

7 MR. BISHOP: Our next witnesses are
8 representatives from DHH Law Firm -- Law Office,
9 excuse me.

10 Gentlemen, you have five minutes.

11 MR. TANG: First, I'd like to thank this
12 panel for the opportunity to present my testimony
13 and provide my insights to this important topic. My
14 name is John Tang. I am a U.S. licensed attorney,
15 and I have been practicing for over 10 years here.
16 Right now, I am the partner at DHH Washington DC
17 Office, and I am its business director.

18 We have been established here since
19 January 2015. We have over 1,100 attorneys with
20 over 30 offices worldwide. We are a full-service
21 business firm representing clients from Fortune 500
22 companies to small and medium-sized enterprises.

1 Our DC office is focused primarily on servicing both
2 U.S. and Chinese clients in regards to their
3 business and international trade matters. We aim to
4 provide clients with smart, effective, and efficient
5 solutions.

6 DHH and myself both have a significant
7 interest in the current Section 301 investigation.
8 The outcome of this investigation may have
9 significant negative effect on our business
10 investment, and thus I come before you today.

11 Over the past couple of years, DHH has
12 invested over \$2 million and numerous man-hours into
13 developing our D.C. office. One of our main focus
14 here is facilitating the cross-border trade and
15 investment between U.S. and China. These current
16 investigations and the potential aftermath would be
17 detrimental to our practice and significantly
18 devalue our investment in the U.S. Also, I believe
19 we are not the only service providers in this
20 predicament.

21 First, as an attorney and a law firm that
22 constantly helps both U.S. and other foreign clients

1 navigate the legal landscape in China, we are in a
2 good position to comment on the current status of
3 Chinese laws as it relates to technology transfer,
4 intellectual property protection, and innovation.
5 Over the past couple of decades, we have seen the
6 Chinese legal system from its formation, growth, and
7 refinement to what it is today, a rule by law
8 nation.

9 Any legal system has its shortfalls.
10 However, the Chinese legal system is very
11 comprehensive and has incorporated those
12 requirements and standards set by the WTO. As China
13 is becoming a more developed country, its
14 intellectual property protection laws are similarly
15 being affected on a daily basis. We see this in the
16 progression of changes to China's patent, trademark,
17 and copyright laws, which continue to expand
18 protection, increase statutory damages, and
19 implement better enforcement not only for foreign
20 investors in China but also for its domestic
21 companies.

22 I'd like to stress at this point that

1 China has gone as far as passing special rules
2 specifically to protect foreign intellectual
3 property. For example, the recently passed "The
4 Action Plan for Protecting Foreign Companies'
5 Intellectual Property Rights" is aimed to take
6 action against intellectual property violations on
7 foreign companies' intellectual property in China.

8 The plan lists 11 working tasks, clarifies
9 responsibilities for each participating department,
10 calls for harsh clampdown on violations of trade
11 secret, patent right, malicious trademark
12 registration, infringing famous brand, and
13 intellectual property infringement and piracy.
14 Furthermore, it will have supervision over key
15 segments such as import/export and shipping.

16 This new plan improves interagency
17 collaboration and case handling efficiency. These
18 efforts by the Chinese government are to create a
19 market condition as well as an investment condition
20 that encourages fair competition.

21 The empirical evidence shows that
22 intellectual property cases handled by Chinese

1 registration agencies and courts have increased
2 across the board in the areas of patents,
3 trademarks, copyrights.

4 Second, as we help clients in their legal
5 matters, we handle international trade and
6 investment matters on a daily basis. From our
7 experience, Chinese companies including our firm
8 have made billions of investments in the U.S. These
9 investments are purely driven by market need. As a
10 law firm that assists with the mergers and
11 acquisitions that happen on a daily basis globally,
12 our clients approach us always with an intent to
13 solve a market need, for example U.S. market entry,
14 brand recognition, new product offerings. Never has
15 a client, Chinese or otherwise, approached us with
16 an intent to steal or unfairly attain any
17 intellectual property from the U.S. or elsewhere.

18 One important note is that even though
19 some of our cross-border mergers and acquisitions
20 are carried out by business entities that have
21 government ownership, politics does not have an
22 influence on the business decisions. Chinese

1 businesses, purely private or those with government
2 ownership, make decisions on an independent basis to
3 the best judgment of the management of those
4 businesses.

5 Lastly, our law firm, as a small
6 representation of the Chinese investment in the
7 U.S., really urges this panel to consider the
8 negative effects of these investigations it has on
9 us as U.S. taxpayers and businesses. Our
10 investments in the U.S. are real. Our job creations
11 are real. Our intent to bring added value to the
12 U.S. is real. However, these investigations will be
13 detrimental to our business and our investments in
14 the U.S.

15 Thank you again for the opportunity. I
16 look forward to the questions.

17 MR. BISHOP: The final witness on this
18 panel is a representative of the Chamber of Commerce
19 of the Import and Export of Machinery.

20 Sir, you have five minutes for your direct
21 testimony.

22 MR. WANG: Good afternoon. I am Wang

1 Guiqing, Vice President of CCCME, the China Chamber
2 of Commerce for Import and Export of Machinery and
3 Electronic Products. CCCME now has nearly 10,000
4 members. First of all, I want to thank the
5 Committee for permitting me to submit testimony
6 today.

7 CCCME has been committed to promoting
8 bilateral trade and investment between U.S. and
9 China. In addition, we cooperate closely with many
10 U.S. companies. In 2012, with the support of
11 Chinese and U.S. government, a China Provinces and
12 U.S. States Joint Working Group mechanism was
13 established to promote trade and investment.

14 So far 7 working groups have been set up,
15 connecting 25 Chinese provinces and cities with 7
16 U.S. states. CCCME is the Chinese Secretariat of
17 the Chinese Provinces-California and China
18 Provinces-Michigan Working Group. We organized many
19 trade and investment promotion events in both China
20 and the U.S., which were participated by many
21 Chinese and U.S. companies.

22 The joint working groups also serve as a

1 channel through which to solve disputes between U.S.
2 and Chinese companies. However, we have not
3 received any complaints or been aware of any dispute
4 regarding the alleged issues that are the subject of
5 this proceeding over the past five years.

6 Moreover, strengthening IP protection is
7 an important part of CCCME's daily work. We have
8 collaborated with international patent
9 organizations, such as 3C and 6C alliance, to find
10 solutions for improving the protection of IP in
11 DVD-related products. We have also set up an Audio
12 and Visual Patent Work Team to assist with solving
13 patent disputes between manufacturers regarding the
14 U.S. ATSC Patent Pool Project.

15 According to our members, the IP
16 environment and protection of IP rights has greatly
17 improved. I have read the briefs submitted by the
18 U.S. companies in this investigation. They also
19 admit that the IP environment in China keeps
20 improving. In recent 10 years, more and more
21 Chinese companies are increasing R&D investment and
22 have achieved many technology breakthroughs. They

1 also want to have their IP rights protected. This
2 is shared by both U.S. and Chinese companies.

3 According to our members, the business
4 operations, investment, mergers and acquisitions,
5 and other business activities in China are
6 market-oriented. Business decisions are made based
7 on specific profit targets. Both U.S. and Chinese
8 companies can enter into contracts or choose
9 business partners freely and independently. There
10 is no intervention from the Chinese government in
11 companies' business decisions. In terms of cyber-
12 attacks, Chinese companies are also victims of
13 cyber-attacks. We strongly oppose cyber-attacks.

14 We truly hope that the Chinese and U.S.
15 governments can resolve the disputes through
16 dialogues and achieve win-win cooperation.

17 Thank you.

18 MR. BISHOP: Madam Chairman, that
19 concludes direct testimony from this panel.

20 MS. LINTON: Thank you. And thank you to
21 all the witnesses who have come to share their
22 perspectives. We very much appreciate it.

1 Mr. McCartin?

2 MR. McCARTIN: Thank you, Kate.

3 My question is for the three Chambers of
4 Commerce. As I understand it from your submissions,
5 your position is that Chinese government officials
6 do not require or pressure foreign companies to
7 transfer technologies to Chinese companies. As you
8 know, that position conflicts with other testimony
9 that we have heard today, and it also conflicts with
10 numerous submissions that we have received in this
11 proceeding.

12 So I'm trying to understand on what basis
13 you are making your statement. As I understand your
14 submissions, the chambers of commerce are
15 independent of the government. So I'm trying to
16 figure out how you would know what's transpiring
17 between Chinese government officials and foreign
18 company officials. That's my first question.

19 And, secondly, can you either now or later
20 provide evidence that supports your statement, as I
21 understand it, that Chinese government officials do
22 not require or pressure foreign companies to

1 transfer technologies to Chinese companies?

2 Thank you.

3 MR. LIU: Thank you very much for the
4 question. At the Chamber of Commerce, we have more
5 than 75,000 enterprise members. To our best
6 knowledge and to the best knowledge of our -- most
7 of our member companies, we have not yet seen any
8 laws, regulations, or policies released by the
9 Chinese government that require foreign companies to
10 transfer technology to a Chinese company. We have
11 not seen even any single document to require this.
12 Further, to our knowledge, we have not seen that
13 individual Chinese government official to require
14 foreign companies to do this.

15 To give you additional information, we
16 have seen that in the written comments provided by
17 public to your Committee, in one written comment
18 that was provided by Jack Chang; this gentleman is a
19 chairman of Quality Brands Protection Committee in
20 China. Most of their member companies are foreign
21 invested enterprises, mostly from the United States
22 or the European Union countries. Their committee

1 conducted a survey with 30 U.S. and European member
2 companies.

3 In their written comments, they mention
4 that they conducted this survey with 30 U.S. and
5 European member companies to ask them whether they
6 were experiencing forced technology transfer. In
7 their written comments, they say none of the member
8 companies confirmed positively. So all the
9 companies they conducted the survey answered that
10 there are no forced technology transfers. This is
11 our answer to you.

12 Thank you.

13 MS. LINTON: Mr. Cohen?

14 MR. COHEN: Thank you. Thank you for all
15 your testimony. My name is Mark Cohen. I'm from
16 the U.S. Patent and Trademark Office, and I'm
17 representing the Department of Commerce on this
18 panel. We just had a brief discussion about forced
19 technology transfer. I want to return to compulsory
20 terms regarding technology transfer.

21 Some of the submissions from the Chambers
22 of Commerce justified the provisions of the

1 Technology Import and Export Regulations, what we
2 call the TIER, based on the weak position of Chinese
3 companies in technology transfer negotiations. Now
4 we know today that there are many Chinese companies
5 with robust, indeed very large patent portfolios and
6 technologies.

7 Could you please explain why all western
8 companies of any size need to provide protection to
9 Chinese licensees when they transfer technologies,
10 but Chinese companies of any size are entitled to an
11 indemnity or other advantages under the Technology
12 Import and Export Regulations?

13 To make it concrete, why should a small
14 company in Silicon Valley of perhaps less than 50
15 employees have to provide an indemnity against
16 patent infringement and ownership of improvements to
17 a large company like a Huawei, a ZTE, or a Tencent?
18 Shouldn't the small company in the U.S. be entitled
19 to the same protections? Or should both sides be
20 able to negotiate freely according to market terms?
21 That's my first question.

22 MR. TANG: As an attorney practicing in

1 China, what we see right now is that the laws in
2 China are being revised so that it is more
3 equivalent between foreign companies and domestic
4 companies. As for the export and import of
5 technology, I believe there may be certain
6 industries that every nation looks at to protect for
7 national security reasons or otherwise that they
8 have. But I believe in our supplemental comments,
9 we will address your answer in a more complete way.

10 MR. COHEN: Any other responses?

11 Let me ask my second question. Several
12 submissions have stated that China has enacted
13 special rules that specifically protect foreign
14 intellectual property in China, including the
15 recently announced action plan for protecting
16 foreign companies' intellectual property rights.
17 This provision appears in the Belt and Road Portal
18 issued on September 21 and is effective only until
19 December 2017.

20 While the scope of protection is quite
21 broad, the time period of this program is only a
22 little more than three months. What will happen

1 after December 2017? Many scholars think that these
2 short campaigns have limited duration and effect,
3 and we just heard earlier about some of the
4 improvements in the courts. So I'd like to know why
5 is this particular program any different from other
6 ones before it? Why not extend it or make it
7 permanent? Or perhaps should the focus be on
8 judicial reform or other areas?

9 MR. LIU: Thank you very much. Could you
10 please -- I beg your pardon. Could you please
11 repeat your question? Thank you.

12 MR. COHEN: Long question. There was an
13 action plan announced on September 21 regarding
14 protecting foreign companies' IP rights. It's part
15 of the Belt and Road, One Belt, One Road initiative.
16 It's effective until December 2017. It's quite
17 broad in nature, but it's only three months long.

18 Many people think that special programs
19 like this have a very limited value because when
20 they expire, what comes next? We've also heard from
21 several speakers about judicial reform. Why is this
22 particular program any different from others before

1 it? Will it be extended or made permanent? Is this
2 a significant change, or should we be looking more
3 towards reform in the courts or other areas which
4 may be more permanent?

5 MR. LIU: We can address your question in
6 detail in the written rebuttal comments. But at
7 this time, we can say that we need to look at the
8 full picture of how China protects the intellectual
9 property rights. This special action or campaign is
10 just a small part of this full picture.

11 China adopted various measures to improve
12 the intellectual property rights, as just mentioned
13 by our colleagues from American Bar Association.
14 The special IP court was established, and many
15 intellectual property laws is under further
16 improvement. And judicial interpretation from
17 Supreme People's Court has been issued from time to
18 time to address specific issues that was identified.
19 And in addition, the administrative law enforcement
20 is also a strengthened.

21 So the IPR protection is always at the top
22 agenda of Chinese government under the central

1 level, under the provincial level, under even lower
2 local level. This special campaign is just part of
3 the whole picture.

4 Thank you.

5 MR. TANG: Sir, if I may, from our
6 perspective working in China over the past several
7 years and seeing the IP protection laws change, I
8 have many clients that are American. What we see
9 with the Chinese --

10 MR. BISHOP: Could you get a little closer
11 to your microphone, please?

12 MR. TANG: Sorry. Is this better?

13 What we've seen from our clients'
14 perspective is that the Chinese take an action
15 towards the way they reform their laws. It's always
16 rolled out through a pilot program first. I can't
17 speak to this particular one, but if it's like the
18 previous actions before, they are always looking to
19 perfect their IP protection laws. So when they roll
20 out short-term programs like this, it is to test to
21 see what is their best way under the legal system to
22 reform and protect IP protection in China.

1 MR. LAMBERTI: Thank you, good afternoon.
2 My name is Matt Lamberti. I'm with the U.S.
3 Department of Justice.

4 I have a question for all the chambers of
5 commerce, all the panel members. Some of the
6 written submissions and also some of the oral
7 testimony today mentioned that cyber-attacks are
8 common to both U.S. and Chinese companies. Mr. Wang
9 mentioned that he strongly opposes cyber-attacks.
10 Mr. Chen mentioned there should be more cooperation
11 in this area. We certainly agree with that.

12 Could all of you provide more details
13 about cyber-attacks that have happened to U.S.
14 companies that have been reported to you and what
15 kind of data was stolen? And also what Chinese
16 companies have reported to you that they have been
17 victims of cyber-attacks and what data has been
18 stolen from them? So what are the hackers -- what
19 kind of data are the hackers targeting from both
20 U.S. companies and Chinese companies?

21 MR. TANG: I'd like to answer that
22 question from an empirical standpoint from the law

1 firm's perspective. At this point, we actually do
2 not have any clients that have reported to us of any
3 cyber-attacks on their systems, whether that's to
4 steal technology or otherwise. Now, I understand
5 there have been written submitted comments
6 testifying to that effect, but from our firm's
7 perspective with 1,100 attorneys representing
8 clients globally, we have not had any reports within
9 our clients of any cyber-attacks.

10 MR. LIU: Thank you for the question. We
11 do not have detailed information in this regard at
12 hand, but we will be very happy to provide you more
13 information in our written response.

14 Thank you.

15 MR. WANG: Currently, I do not know what
16 U.S. companies have been subject to the
17 cyber-attacks, but I do know that Chinese companies
18 are victims to cyber-attacks. And recently our
19 members have just reported that many of them have
20 been hacked into their mailbox, and their accounts
21 have been changed, causing them large financial
22 losses. We have report this issue to the Police

1 Department of China. We do not only provide service
2 to Chinese company, but also to U.S. companies. If
3 U.S. companies will come to us and reporting their
4 incidents of being attacked by cyber-attacks, we
5 will help them also report to Chinese Police.

6 Thank you.

7 MS. BONNER: Sarah Bonner from the U.S.
8 Small Business Administration.

9 My question is for all the panelists.
10 Some assert that JV negotiations are independent of
11 government influence and undertaken freely by both
12 parties. However, if joint venture is a requirement
13 for operating in China in certain sectors of the
14 economy, particularly those with substantial
15 technology components, how can these negotiations be
16 voluntary and undertaken voluntarily on the part of
17 the U.S. company?

18 MR. LIU: Thank you for your good
19 question. Regarding this question, we have the
20 following initial observations. First, we consider
21 that a joint venture requirement is not uncommon in
22 the world. We say if we look at the most developed

1 economies, even the United States itself, it also
2 maintains some reservation regarding foreign
3 investment access. We can say there is negative
4 list in the FTA or bilateral investment treaties
5 agreed, concluded by the United States and other
6 countries.

7 There are about 20 sectors that is
8 reserved by the United States as a most -- one of
9 the most developed economies. And we also see many
10 other countries which retain reservations regarding
11 foreign investment through the means of joint
12 venture or foreign investment limitation. For
13 example, we see Japan, Canada, Australia, Korea,
14 Singapore, India, Vietnam, Malaysia, many countries
15 retain such foreign equity limitations or joint
16 venture requirement.

17 Our observation is that the level of
18 openness to foreign investment to a large extent
19 depends on the economic level of the host country.
20 A general observation is that developing countries,
21 such as India, Vietnam, Philippines, Malaysia, will
22 have more factors in which there are joint venture

1 requirements or other limitations. So this is not
2 uncommon. In many countries, this is a first
3 observation.

4 Second, if we come back to China, we will
5 see that the joint venture requirement or foreign
6 equity limitations, less and less such requirement
7 in China regarding the foreign investment access.
8 If we recall that in 1990s, there were about 90-
9 something restrictions, but now only 35, only 35
10 sectors that are subject to restrictions. And out
11 of these 35 sectors, only some of them establish
12 joint venture requirements or foreign equity
13 limitations.

14 Further, to look at these sectors that
15 joint venture requirements or foreign equity
16 limitations exist, many of the sectors are banking,
17 insurance, securities or market investigation,
18 education, health care. So this, clearly, the
19 rationale behind the joint venture requirement is
20 not to obtain or get technology of foreign
21 companies. Clearly, it is for other purposes if we
22 go to detail, to look at these other sectors.

1 Finally, even with respect to the sectors
2 where this -- even some manufacturing sectors with
3 this kind of requirement, the requirement as I just
4 mentioned is that it is depending on the economic
5 development level, the current economic development
6 level of China. For some sectors, there needed to
7 be some measures to ensure the sustainable
8 development of the economy. The purpose is not to
9 get technology of foreign companies.

10 The joint venture requirement is just to
11 say that you cannot establish a WOFE; that's it.
12 It's not to require you to transfer technology to
13 China. There is a clear difference.

14 Thank you very much.

15 MR. XU: As far as the policy of all
16 restrictions to the foreign investment, maybe
17 different countries might take different measures.
18 For example, in China, in some sectors maybe take
19 the joint venture form. But in United States, to
20 the Chinese or other countries' investments into the
21 United States market, maybe many of Chinese
22 potential investments would decline or refused by

1 American CFIUS. So different country maybe take
2 different mechanism to protect their own commercial
3 interest. So it's common in the world, I think. Of
4 course, China is deepening its reform especially in
5 some sectors, for example, in the banking or in the
6 financial sector as I know.

7 Thank you.

8 MR. WANG: Since China joined WTO, we have
9 been committing to fulfill our commitments under
10 WTO. I think this issue should be discussed and
11 then resolved through the framework of WTO. China
12 has been working diligently to fulfill our
13 commitments of WTO, and it's fair to say that we
14 have done a good job.

15 MR. TANG: And also to add to Mr. Wang's
16 comments, China under its commitments under the WTO
17 has gradually opened up its -- whether it's
18 restricted or forbidden industries as the list may
19 be. As Mr. Liu pointed out earlier, they have
20 significantly opened up many industries for foreign
21 fully owned enterprises versus joint ventures.
22 Also, as a practicing attorney, a lot of the times I

1 actually advise many clients in entering into joint
2 ventures for the benefit of entering into the
3 market. Sometimes as a foreign company, whether
4 that's U.S. company in China or vice versa, enter
5 into a joint venture is actually beneficial for that
6 company just to get the lay of the land, get the
7 understanding of the laws, opening up the market,
8 and all that.

9 MR. WHITLOCK: Thank you. Joseph Whitlock
10 from the USTR.

11 I have two questions. The background is
12 as follows. Some of the submissions state that
13 Chinese acquisitions in the United States are not
14 subject to government direction. However, Made in
15 China 2025, for example, is a government document
16 that directs Chinese companies to make acquisitions
17 and investments in specific foreign technology and
18 know-how.

19 So my two questions are as follows. Can
20 you please explain your rationale to suggest that
21 Chinese acquisitions are not subject to government
22 direction? And, two, does the Chinese government

1 provide subsidies for certain types of overseas
2 foreign direct investment?

3 Thank you very much. And this is a
4 question for all the panelists.

5 MR. XU: Let me try to answer this
6 question first because I am representing the
7 commercial field. This something to do with the
8 fact happened over the past years. For example,
9 only last year among all the Chinese investment into
10 the United States market, more than 50 percent into
11 U.S. real estate sector. So it is not only harm to
12 China's foreign exchange reserve and also harm to
13 the stability of the U.S. real estate market.

14 Of course, China's central bank and
15 China's central government, of course, will maybe
16 redirect or reconcile the direction of China's
17 investment into the U.S. market. It is very
18 necessary, I think.

19 MR. WANG: China published the development
20 plan. It's a target for development that's
21 implementation. The company has its own discretion
22 to conduct merger and acquisition and to choose

1 business partners and whether to incorporate with
2 these business partners. I know that our member
3 companies are very serious in their last minute
4 decisions because they are afraid of last minute
5 failures and the full financial losses. Because all
6 kinds of companies in China are responsible for its
7 own financial performance, if they lose this money,
8 they will go bankrupt.

9 You mentioned that -- you were asking
10 whether Chinese government is providing subsidy to
11 specific industries. I do not know that kind of
12 information. If you have that kind of information,
13 we can verify that.

14 MR. TANG: And to echo those points, the
15 China 2025 or the One Belt, One Road, that's just
16 the Chinese government saying this is the direction
17 we want to head. For businesses, whether that's
18 public or private, if there is no business benefit
19 to doing a merger, an acquisition, or an investment
20 overseas, they would not -- it's not that they're
21 following the Chinese government's direction. It's
22 that they see a benefit to making those investments

1 in those industries. The industries similarly are
2 being promoted in the U.S. I mean it's health care,
3 it's green tech, it's cloud computing. Also, you
4 see, and I think the chambers will agree, that there
5 is in the U.S. a lot of acquisitions in various
6 industries that's not listed in the China 2025 or
7 the One Belt, One Road program. These business
8 decisions are made by independent businesses on what
9 is most profitable for their shareholders.

10 *** MR. XU: And maybe everybody knows only,
11 it is only three decades after China's opening our
12 door to the outside world, and it is only more than
13 10 years after China's accession to WTO, so China's
14 enterprises are not so internationalized as the
15 western economies. It is very important for China's
16 government to set some outbound investment policies
17 to help to nationalize the Chinese companies, to
18 know the outside world; otherwise, they would be
19 maybe more randomly making investment because
20 China's foreign exchange reserve resources is very
21 limited. Also, for example, between China and the
22 U.S., China-U.S. advantages in many sectors, for

1 example, both in industrial and also agricultural.
2 China is still the most populated country in the
3 world. The middle class is emerging very quickly.
4 So the middle class need the high quality, higher
5 quality food, for example.

6 It just may be a very good combination
7 between the two countries, the advantages. China is
8 a huge market, a potential market. And United
9 States can supply higher quality agriculture product
10 to China. If China's central government maybe can
11 encourage China's importers to import more American
12 beef, for example, or American soybeans exported to
13 China, not from Australia or from large American
14 companies, of course, it's much beneficial to
15 American exporter, to American job creation. So I
16 think to some extent sometimes it's very important.

17 And the energy-related sector is a similar
18 case. For example, in the world OPEC countries for
19 example, Middle Eastern countries, Saudi Arabia, for
20 example, can provide the gas and the petroleum to
21 China, and also Texas of the U.S. also provide
22 natural resources to China. If the China

1 government, especially maybe after the visit of
2 President Trump to China in November, I believe
3 maybe China's government will maybe decide to import
4 more American beef, American energy from the U.S.
5 market. I think that is good news to U.S. market.
6 So I think the two countries, the two largest
7 countries in the world have a lot of huge potential
8 to strengthening cooperation economically in the
9 coming years. It's beneficial not only to China and
10 also to U.S. as well.

11 Thank you.

12 MR. LIU: Thank you. I would like to
13 provide some additional information regarding this
14 question. It's very clear that One Belt, One Road
15 initiative or Made in China 2025, it's not a law or
16 a regulation in China. It's not a binding law or a
17 regulation in China. It's an initiative. It's a
18 guidance for Chinese companies.

19 Some Chinese companies, as we say in the
20 United States -- I would like to give an example.
21 President Trump called for many United States
22 companies to come back to the United States, to

1 relocate their factory, their plant, come back to
2 the home, come back from China. For example, they
3 ask AMPO or some other U.S. companies.

4 Some U.S. companies will, they will see
5 that come back to United States is consistent with
6 their business interest, then they will come back.
7 But some companies think that another country, no
8 matter Malaysia, Vietnam, or China, or Korea, is
9 better consistent with their business interest.
10 Then they may remain to locate their plant in that
11 country.

12 So this is the same in China. As a market
13 economy, the enterprises, they make their own
14 decision on how to investment, where to investment,
15 to invest in wage sectors. China's government, what
16 the China's government do is to provide some
17 guidance or provide some public information.

18 As Mr. Xu just mentioned, outbound
19 investment has a short history in China. Most of
20 the companies, Chinese companies, particularly the
21 SME, they do not have the experience. So in this
22 context, it's important for a government to provide

1 some guidance, provide some public information
2 services.

3 For example, the Chinese government to
4 publish some book about the countries, for example,
5 about the United States, about Germany, what is the
6 political structure of that country? What is the
7 human capital and the economic infrastructure of
8 that country? Which sector is competitive or the
9 market lead of that sector is big or small? So just
10 to provide more information to the companies. But
11 at the end of the day, it is the enterprise who make
12 the decision.

13 Thank you.

14 MR. XU: Because China has our own
15 experience of developing our own economy over the
16 past years. Why Chinese's economy has developed so
17 quickly, much quicker than India? Just because many
18 years ago the China central government set a goal at
19 first to improve our infrastructure condition. So
20 in this regard, we have done better than India
21 government.

22 Just like One Belt, One Road initiative,

1 for example, just to take China's experience to
2 introduce into the world. And we just set up a
3 platform. All the international companies as the
4 performers can perform on the platform, both
5 including the Chinese companies and the western
6 companies as well, of course, including American
7 companies. For example, U.S. Caterpillar for
8 example, or even Boeing companies, if maybe China's
9 companies can help with developing countries to set
10 up more airports for example, of course, the
11 countries can import more Boeing aircraft from
12 United States.

13 So I think it's good news not only to
14 China's companies and also to American companies as
15 well. It's just a new market. The market, the new
16 market is just a new driving force for not only
17 Asian and Pacific countries and also for the western
18 countries as well.

19 Thank you.

20 MS. LANGBURD: This is a question for all
21 of the panelists. Some of the submissions note that
22 though some Chinese businesses have government

1 ownership, the government does not interfere in
2 daily operations. However, there have recently been
3 Chinese government statements and press articles
4 about the government asserting a more active role of
5 the Chinese Communist Party within not only SOEs but
6 also in private companies and joint ventures, and
7 even obtaining a formal role in the decision-making
8 chain. Can you reconcile your statement with these
9 developments, please?

10 Thank you.

11 MR. XU: I can't answer this question from
12 the political perspectives, but I can answer this
13 question from the business or commercial
14 perspectives. In China, why trade union is now
15 having a problem with every company including the
16 joint venture, including the private sector
17 companies, including the SOEs just because of the
18 Party's role on this side. In China, trade union is
19 cooperation with the company, with the owner of the
20 company. It's just a very important role in
21 controlling the stability of the economy and the
22 lower cost of production in China. So we have

1 different systems of politics.

2 I think don't only consider the former
3 Soviet Union happened in the history. Today's China
4 is different from history. Today's China is
5 different from the former Soviet Union. China now
6 is a market-driven country. Also, we have a
7 tendency, we have our strategy to opening wider our
8 door to the outside world as well. Our bank itself
9 not only have operations in China, and we have
10 operations in about 52 countries and regions in the
11 world. Of course, so we have to integrate China's
12 companies' characteristics into the global
13 requirements as well.

14 Thank you.

15 MR. WANG: In China, whatever form the
16 company chooses, it will have to comply with the law
17 of the companies. The company is established and
18 operates according to the law. And a board of
19 directors will be responsible to make their business
20 decisions. The general manager will be responsible
21 for daily operation. The general manager and his
22 team will be responsible for board of directors, and

1 if they did a poor job, if they cannot have a
2 satisfactory result, they may lose their job.

3 MS. LINTON: Thank you. If we have no
4 further answers to that question, I'll turn over to
5 Mr. McCartin for the last question.

6 MR. McCARTIN: Thank you. I wanted to
7 follow up on a response given by Mr. Liu of the
8 China Chamber of International Commerce when asked
9 about joint venture requirements. As I understand
10 your response, you pointed out that joint venture
11 requirements and other restrictions on foreign
12 investment are very common around the world. You
13 pointed to the United States where you said the
14 United States has similar restrictions. I think the
15 gist of your answer was that China is no different
16 from other countries in this regard.

17 I note that one of the submissions we
18 received discussed the OECD's FDI Regulatory
19 Restrictiveness Index that measures restrictions on
20 foreign investment in 62 countries around the world.
21 In its most recent rating of the 62 countries, Saudi
22 Arabia came in at the very bottom, the most

1 restrictive at number 62. The country that came in
2 next to the bottom at 61 was China. So I'm just
3 wondering if you're familiar with that index and
4 what your opinion of it is.

5 Thank you.

6 MR. LIU: Thank you very much. I take
7 note of the first part -- the first half of your
8 question, but the second half you mean the OECD FDI
9 and there is some 62 countries. So here could you
10 please repeat what is the question to me?

11 Thank you.

12 MR. McCARTIN: Sure. So this index that
13 the OECD compiles rates countries around the world
14 based on the level of restrictions that they impose
15 on foreign direct investment. And the country with
16 the most restrictive investment regime, the most
17 joint venture requirements, equity caps, etc., etc.,
18 is Saudi Arabia. So Saudi Arabia came in 62 out of
19 the 62 countries. And then China came in 61, so
20 another very, very, very restrictive investment
21 regime according to this OECD index.

22 I'm just wondering if you're familiar with

1 this index and if you have an opinion about the
2 index.

3 MR. LIU: Thank you very much. We are not
4 familiar with this index compiled by OECD. We are
5 not sure whether their methodology is accurate or
6 not. We will check again and then provide a
7 response in writing. Thank you.

8 MR. McCARTIN: Thank you very much.

9 MS. LINTON: Thank you --

10 MR. WANG: I want to say something?

11 MS. LINTON: Oh, go ahead.

12 MR. WANG: As for the restriction in
13 investments, China is one of the countries that
14 attracts the most foreign investments. If you say
15 that Chinese investment environment needs to be
16 improved, I agree with that. But if you say Chinese
17 investment environment is very poor, I don't think
18 then why so many world top class international
19 companies will come to China? China also made
20 commitments when we join the WTO, and we shall also
21 discuss this issue under the WTO framework.

22 MR. XU: And maybe you have noticed the

1 FDI, that China's outbound is only the latest two
2 years trend for China's outbound investment is size
3 of import -- inbound investment. Before 2015,
4 China's FDI, foreign direct investment, FDI was
5 higher, much higher than the ODI figure. For
6 example, to take the banking sector is concerned,
7 according to my information, a total number of
8 operations for China's banks in the United States
9 market less than -- it's less than the total number
10 of American financial institutions operations in
11 China now. In total, we have more than 22 outlet in
12 the United States market, but American financial
13 institutions have more than 30 to 40 outlet now in
14 China.

15 And also for the insurance companies
16 sector as well, no Chinese insurance company now
17 operating in U.S. market, but several American
18 insurance companies now have their operations in
19 China, including MetLife Insurance Company. They
20 have their 100 percent subsidiary, 100 percent owned
21 subsidiary now operating in China. But here no
22 Chinese insurance companies have their own operation

1 here, only have their own rep office here.

2 Thank you.

3 MS. LINTON: Thank you. And with that we
4 will bring this panel to an end and this hearing to
5 an end. We thank you very much for sharing your
6 testimony. We remind you that post-hearing comments
7 may be submitted by October 20th. Thank you.

8 (Whereupon, at 1:38 p.m., the meeting was
9 adjourned.)

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C E R T I F I C A T E

This is to certify that the attached
proceedings in the matter of:

SECTION 301 INVESTIGATION AND HEARING:
CHINA'S ACTS, POLICIES AND PRACTICES RELATED TO
TECHNOLOGY TRANSFER, INTELLECTUAL PROPERTY,
AND INNOVATION

October 10, 2017
Washington, D.C.

were held as herein appears, and that this is the
original transcription thereof for the files of the
Office of the United States Trade Representative.

Dominico Quattrociochi
Official Reporter

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