

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

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MICHAEL DIEHL	Office of Intellectual Property and Innovation
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P R O C E E D I N G S

(9:33 a.m.)

MR. BISHOP: Will the room please come to order.

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

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

Before we begin the hearing, I will 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 valuated 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.

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Dominico Quattrociochi  
Official Reporter

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