

UNITED STATES OF AMERICA
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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PUBLIC HEARING
BEFORE THE TRADE POLICY STAFF COMMITTEE
ON CHINA'S WTO COMPLIANCE

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October 7, 2015
9:30 a.m.

Office of the U.S. Trade Representative
1724 F Street, N.W.
Washington, DC 20508

PANEL MEMBERS:

EDWARD GRESSER	Chair
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TERRY McCARTIN	Deputy AUSTR for China
PHIL CHEN	Chief Counsel for China Trade Enforcement
DAN COOK	U.S. Department of Agriculture
PATRICK SANTILLO	U.S. Department of Commerce
ROBERT MANOGUE	U.S. Department of State
CHERRICA LI	U.S. Department of the Treasury

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P R O C E E D I N G S

(9:31 a.m.)

CHAIR GRESSER: This hearing will come to order. This hearing is being conducted by the Trade Policy Staff Committee, an interagency body chaired by the Office of the U.S. Trade Representative. In addition to USTR, there are representatives from the Departments of Agriculture, Commerce, State, and Treasury on the panel. Many members of the USTR staff working on China matters also will be present.

The subject of this hearing is China's compliance with commitments it made in connection with its accession to the World Trade Organization. China formally became a member of the WTO on December 11, 2001. In accordance with Section 421 of the U.S.-China Relations Act of 2000, USTR is required to submit a report to Congress each year on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and bilateral commitments made to the United States.

In addition, in accordance with Section

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1 421, and to assist in preparing this year's report,
2 USTR solicited testimony and written comments from
3 the public. Today, we will hear from eight
4 witnesses. In addition, written comments from other
5 interested parties are available for review at
6 www.regulations.gov.

7 I will now ask the panel members to
8 introduce themselves. Then Audrey Winter, the
9 Acting Assistant USTR for China Affairs, will make a
10 statement.

11 Our first panelist from the Chamber of
12 Commerce, please introduce yourself, and then we'll
13 turn to Audrey.

14 MR. WATERMAN: Jeremie Waterman, Executive
15 Director for Greater China at the U.S. Chamber, and
16 Senior Policy Advisor for Asia.

17 CHAIR GRESSER: Thank you. Audrey? Oh,
18 sorry about that.

19 MS. WINTER: Should we start with
20 introductions?

21 MR. COOK: My name is Dan Cook. I'm with
22 the U.S. Department of Agriculture, Foreign

1 Agriculture Service, Senior Policy Advisor.

2 MR. SANTILLO: Good morning. I'm Patrick
3 Santillo, the Deputy Assistant Secretary for China
4 and Mongolia at the Department of Commerce. Thank
5 you for coming.

6 MR. CHEN: I'm Phillip Chen with the U.S.
7 Trade Representative. I'm Chief Counsel for China
8 Trade Enforcement.

9 MR. McCARTIN: Terry McCartin, Deputy
10 Assistant U.S. Trade Representative for China.

11 MR. MANOGUE: I'm Bob Manogue. I'm
12 Director for Bilateral Trade at the State
13 Department.

14 MS. LI: Hi, Cherrica Li at the Treasury
15 Department, Office of Trade and Investment.

16 CHAIR GRESSER: Now we'll turn to
17 Ms. Winter.

18 MS. WINTER: Thank you, Ed. And thanks to
19 all of you for coming today. Also, thanks to my
20 colleagues from the U.S. government and those who
21 are my immediate colleagues at USTR who have
22 prepared for this hearing. My name is Audrey

1 Winter. I'm the Acting Assistant U.S. Trade
2 Representative for China Affairs at the U.S. Trade
3 Representative's Office. I'd like to make an
4 opening statement, and then we'll conduct the
5 hearing with our first witness.

6 Since China joined the WTO 14 years ago,
7 the U.S. government has worked closely with U.S.
8 stakeholders to assess China's progress in
9 fulfilling its WTO obligations. These annual
10 hearings are an important opportunity for us to
11 continue this partnership in tracking China's WTO
12 compliance.

13 This year, we again received a number of
14 submissions and appreciate them from U.S. industry
15 associations and companies. At today's hearing, we
16 will also benefit from the testimony of eight
17 witnesses, representing a range of U.S. interests.
18 We greatly appreciate the work that went into the
19 submissions and testimony. These perspectives help
20 us to better understand the situation on the ground
21 and to identify our trade priorities with China.

22 As most of you know, the U.S. government

1 seeks to resolve our trade priorities and investment
2 concerns with China cooperatively through annual
3 bilateral mechanisms such as the Joint Commission on
4 Commerce and Trade and the Strategic and Economic
5 Dialogue, as well as other bilateral dialogues and
6 meetings with China at all levels of government. We
7 also pursue our concerns through WTO committee
8 meetings and other WTO avenues, such as the biannual
9 Trade Policy Review Body meetings on China.

10 When these types of cooperative efforts do
11 not resolve important WTO compliance issues with
12 China, we have demonstrated that we will not
13 hesitate to enforce our rights through the WTO
14 dispute settlement process. To date, we have
15 brought 16 WTO cases against China. These cases
16 have addressed a wide range of Chinese government
17 policies and practices, including discriminatory
18 taxes, local content requirements, prohibited
19 subsidies, intellectual property rights enforcement,
20 market access barriers, financial information
21 services, export restraints, electronic payment
22 services, and trade remedies.

1 In our report to Congress last year, we
2 acknowledged the many benefits of the market
3 openings that followed China's accession to the WTO
4 in 2001. For example, U.S. exports of goods to
5 China totaled \$122 billion in 2013, representing an
6 increase of 535 percent since 2001 and positioning
7 China as the United States' largest goods export
8 market outside of North America. In addition, U.S.
9 services exports reached \$38 billion in 2013,
10 representing an increase of 603 percent since 2001.
11 This impressive growth in U.S. exports to China has
12 provided substantial opportunities for U.S.
13 businesses, workers, farmers, ranchers, and service
14 suppliers, while increased imports from China have
15 continued to provide a wealth of affordable goods
16 for U.S. consumers.

17 Despite these results, as we explained in
18 last year's report, the overall picture presented by
19 China's WTO membership remains complex, largely due
20 to the Chinese government's interventionist policies
21 and practices and the large role of state-owned
22 enterprises and other national champions in China's

1 economy.

2 We specifically identified a number of
3 important issues that still need to be addressed in
4 areas such as investment restrictions, intellectual
5 property rights enforcement, technology
6 localization, indigenous innovation, market access
7 barriers for U.S. beef, biotechnology product
8 approvals, export restraints, strategic emerging
9 industries, state-owned enterprises, government
10 subsidization, excess capacity, administrative
11 licensing, government procurement, taxation,
12 standards development, pharmaceuticals, medical
13 devices, cosmetics, legal services, financial
14 services, internet-related services,
15 telecommunications services, express delivery
16 services, and transparency, among others.

17 From a broader perspective, the United
18 States continues to recognize the tremendous
19 potential of the U.S.-China trade relationship, both
20 for the United States and for China, but realizing
21 this potential is predicated on economic reforms in
22 China.

1 As we stated in last year's report, if
2 China is going to deal successfully with its
3 economic challenges at home, it must allow market
4 forces to operate, which requires altering the role
5 of the state in planning the economy. It likewise
6 must reform state-owned enterprises, eliminate
7 preferences for domestic national champions, and
8 remove market access barriers currently confronting
9 foreign goods and services.

10 At the same time, economic reform in China
11 is also strongly in the United States' interest, not
12 only because the Chinese government's
13 interventionist policies and practices and the large
14 role of state-owned enterprises in China's economy
15 are principal drivers of trade frictions, but also
16 because a sustainable Chinese economy will lead to
17 increased U.S. exports and a more balanced
18 U.S.-China trade and investment relationship that
19 will help drive global economic growth.

20 At today's hearing, we would welcome your
21 assessment of what has happened during the past
22 year, including your observations on the basic

1 question here: Have you seen progress or
2 backsliding on key issues we identified in last
3 year's report? What new issues are you observing,
4 and how are they impacting you? We also would be
5 interested in your assessment of China's current
6 efforts to pursue economic reform.

7 Again, thank you for coming today, and we
8 look forward to hearing your testimony.

9 CHAIR GRESSER: Thank you. We'll now go
10 to our first panelist. Over the course of this
11 morning, we hope and ask that panelists limit
12 themselves to five minutes for oral remarks so we
13 will have ample time for questions and discussion.
14 Thank you very much, and let's start with our first
15 panelist, Mr. Waterman.

16 MR. WATERMAN: Thank you and good morning.
17 It's certainly a pleasure to be back at this annual
18 hearing on China's WTO compliance. The U.S. Chamber
19 very much appreciates the opportunity to share our
20 list of priorities for action by the U.S. government
21 in the U.S.-China commercial relationship, share our
22 recommendations for action. We thank all of you and

1 all of your agencies for your unrelenting efforts to
2 safeguard and promote the interests of American
3 businesses in our commercial engagement with China.

4 Let me say that today's hearing is
5 certainly timely. It takes place, I think as we all
6 recognize, shortly after Chinese President Xi
7 Jinping's first state visit to the United States, as
8 well as against the backdrop of ongoing significant
9 changes in the global economy. The U.S. economy is
10 still not performing as well as we would like. But,
11 looking around the globe, it is comparatively
12 stronger and more stable than most other places.

13 The United States and its TPP partners
14 have just concluded a significant agreement that, if
15 ratified, will have a major impact on trade and
16 investment flows across the Asia-Pacific region.
17 China, meanwhile, is in the midst of a difficult
18 economic transition. It remains in its early
19 stages. And the world is feeling some growing
20 pains. Europe, of course, continues to wrestle with
21 issues inside the Eurozone. And financial markets
22 in many countries are suffering volatility.

1 Amidst this backdrop, the U.S. Chamber of
2 Commerce continues to believe that expanding the
3 U.S.-China commercial relationship is essential to
4 driving needed growth in both economies and
5 stability in the global economy.

6 China is our second largest trading
7 partner, and overall it's a nearly \$600 billion
8 market for American companies, and it can and should
9 be much more. According to the American Chamber of
10 Commerce's China 2015 Business Climate Survey, the
11 majority of U.S. companies anticipated profit growth
12 this year, and China remains among the top three
13 investment destinations for global operations.

14 Meanwhile, China exported nearly
15 \$470 billion to the United States in 2014, and its
16 investment in the United States continues to
17 increase, having surpassed U.S. investment into
18 China in recent years. The U.S. Chamber of Commerce
19 welcomes and encourages increased Chinese investment
20 into the United States.

21 At the same time, our members are
22 concerned about significant uncertainty and growing

1 challenges in the commercial relationship. There is
2 uncertainty about the strength of the Chinese
3 economy. There is uncertainty about the pace and
4 direction of China's economic reforms. There are
5 challenges for our members in operating amidst
6 slowing economic growth and growing competition from
7 Chinese firms.

8 An upcoming American Chamber of Commerce
9 China and U.S. Chamber of Commerce investment
10 spotlight report on China's investment environment,
11 which I have appended to our written submission,
12 discusses a range of policy uncertainties and
13 operational challenges and offers recommendations to
14 strengthen the economic relationship.

15 In addition, the U.S. Chamber's broader
16 submission reflects the priorities and
17 recommendations drawn from input across our broad
18 membership. And we certainly hope both submissions
19 will be useful to you as you prepare for this year's
20 JCCT and your 2016 plans for engagement with China.

21 In my limited time, I'd like to focus on
22 four cross-cutting areas of concern and importance

1 to our membership. I'll try to be as brief as
2 possible.

3 First, investment and, in particular, the
4 bilateral investment treaty. The U.S. Chamber
5 continues to believe that the most decisive step we
6 can take to deepen U.S.-China economic integration
7 and increase openness between the world's two
8 largest economies is to conclude negotiations on a
9 high-standard and comprehensive bilateral investment
10 treaty as soon as possible.

11 The U.S. Chamber is certainly encouraged
12 by the progress achieved in the run-up to and during
13 President Xi's visit, but more work lies ahead. We
14 urge the U.S. government to continue to increase its
15 efforts -- or I should say to continue its efforts
16 to reduce the number of industry sectors on China's
17 -- to reduce the number of industry sectors on
18 China's negative list and to ensure that the sectors
19 on the list are narrowly defined.

20 We also strongly support efforts by the
21 U.S. government to continue its efforts to develop
22 approaches in the context of the BIT negotiations

1 that will address the unique characteristics of
2 China's political economy that impair the ability of
3 U.S. companies to access and compete in the market.
4 As Ambassador Froman said at the U.S. Chamber in
5 April, a BIT with China must address not only market
6 access but also the kinds of actions that create an
7 unlevel playing field or undermine the rules-based
8 system, such as unfair competition by state-owned
9 enterprises, the prominent role of industrial policy
10 in China's enforcement of its competition law, and
11 forced technology transfer or localization policies.

12 A level playing field for investors on
13 both sides would benefit not only consumers in both
14 countries but also help to ensure that both
15 countries are able to achieve their economic goals.
16 For China, a BIT would help it to strengthen its
17 service industries as it rebalances its economy, as
18 well as ensure a stable and supportive U.S.
19 investment environment, much like PNTR provided
20 certainty to China's exporters some 15 years ago.

21 The Chamber, therefore, urges the
22 Administration to maintain as a top priority the

1 conclusion of the high-standard, comprehensive BIT
2 with China for the remainder of its term.

3 The second issue I'd like to touch upon is
4 concerns regarding a misuse of national security
5 policy to advance commercial and other interests.
6 We urge the U.S. government to continue its efforts
7 to ensure that China applies a narrow definition of
8 national security to foreign investment reviews,
9 commercial procurement, and trade, and not use
10 national security as a cloak to advance commercial
11 and other goals.

12 We continue to have concerns about China's
13 comprehensive definition of national security, which
14 includes economic and nontraditional security
15 criteria, in a range of current and future laws and
16 regulations, or I should say draft laws and
17 regulations, including a number that appear on the
18 State Council's 2015 legislative plan that are set
19 to be finalized this year. These laws include the
20 draft Counter-Terror Law, draft Cybersecurity Law,
21 and the draft Foreign NGO Management Law. China
22 also finalized in June, as we all know, a new

1 National Security Law immediately following this
2 year's Strategic and Economic Dialogue, which
3 contains a comprehensive definition of national
4 security.

5 The Chamber welcomes as an important step
6 forward the commitment announced during President
7 Xi's recent visit that China will apply a narrow
8 definition of national security and limit the scope
9 of national security reviews of foreign investments
10 to this narrow definition.

11 We note, however, that the ultimate
12 measure of this commitment will rest on changes to
13 existing and draft Chinese laws and regulations,
14 including but not limited to the draft Foreign
15 Investment Law. Other laws, regulation, and
16 normative guidance, from the just released Guiding
17 Opinions of the CPC Central Committee and the State
18 Council on Deepening Reform of State-Owned
19 Enterprises, to the State Secrets Laws and related
20 regulations on commercial secrets, contain a broad
21 definition of national security.

22 The U.S. Chamber, joined by the American

1 Chambers of Commerce in China and Shanghai, have
2 submitted comments on the full range of recent
3 Chinese laws and measures tied to national security,
4 and we hope forthcoming drafts will continue to be
5 open to broad public comment.

6 Ultimately, we hope the relevant
7 authorities will appropriately balance the
8 legitimate objective of protecting national security
9 with the equally important objective of maintaining
10 substantial openness to foreign investment and
11 trade. China's adoption and application of a
12 narrower definition of national security will be
13 critical to U.S. business as we work to support more
14 ambitious bilateral and regional agreements that
15 would more deeply integrate our two economies,
16 including a BIT.

17 Just a few words about banking guidelines.
18 We certainly commend the efforts of both governments
19 that led to a stay in the implementation of the CBRC
20 guidelines issued last year that would have required
21 the adoption of secure and controllable technologies
22 in China's financial system. We note that Chinese

1 regulators have indicated plans to issue in 2016
2 revised Implementing Guidelines and are actively
3 soliciting input from U.S. industry.

4 We also note that China is expanding the
5 use of secure and controllable criteria in other
6 sectors and in new policies, including medical
7 devices -- ranging from medical devices, to
8 telecommunications, to cloud computing. We remain
9 concerned that the secure and controllable
10 formulation will lead to policies that unnecessarily
11 and unfairly significantly reduce market access for
12 U.S. ICT and other firms in the China market.

13 We welcomed commitments at the S&ED and
14 during President Xi's state visit on this issue. We
15 urge the U.S. government to expand existing
16 commitments, including at the upcoming JCCT, to
17 ensure that secure and controllable does not
18 encompass requirements to use indigenous
19 intellectual property, transfer intellectual
20 property, or conduct R&D onshore.

21 Third, as it relates to Chinese industrial
22 policies which are affecting a variety of sectors

1 from semiconductors to pharmaceuticals, to energy,
2 to agriculture, and other forms of advanced
3 equipment, the Chamber is continuing to closely
4 monitor implementation of policies, such as China's
5 recently released Guiding Opinions on Deepening
6 Reform of State-Owned Enterprises, plans to
7 cultivate strategic emerging industries, and the
8 State Council's "Made in China 2025" plan. That
9 plan, in particular, encourages among other things
10 indigenous innovation in a number of sectors,
11 including agricultural equipment, and may be linked
12 to discriminatory domestic subsidies.

13 Let me just add finally that lest there be
14 any question about the objective of China's SOE
15 reforms, the Guiding Opinions make clear that the
16 purpose of reform is to "remove institutional
17 obstacles and resolutely enable state-owned
18 enterprises to become stronger, better, and bigger,"
19 and give full play to the role of state-owned
20 enterprises, SOE, Party organizations as the
21 political core.

22 The final area I'd like to touch on is

1 rule of law. And, certainly, beyond the objectives
2 and policy support tied to industrial policy plans,
3 the Chamber remains concerned and focused on certain
4 Chinese practices and the application of laws to
5 protect and promote domestic industries and
6 individual domestic competitors.

7 For example, in the area of Anti-Monopoly
8 Law enforcement, the Chamber is continuing to
9 monitor China's use of the Anti-Monopoly Law as a
10 tool to pressure our members to license or sell
11 assets, including intellectual property and equity
12 stakes, in exchange for regulatory approvals for
13 global mergers and acquisitions, and for reasons
14 that appear to have little to do with legitimate
15 antitrust principles and appear to be rooted instead
16 in assisting Chinese companies in designated
17 strategic sectors to strengthen their
18 competitiveness.

19 We believe the U.S. government has an
20 opportunity through the BIT negotiations to require
21 substantially enhanced transparency, due process,
22 and procedural fairness in antitrust enforcement in

1 China and, thereby, minimize such challenges for our
2 members.

3 The U.S. Chamber is also continuing to
4 monitor China's approach in developing new IPR abuse
5 guidelines under the Anti-Monopoly Law, and our aim
6 is to ensure that the legitimate intellectual
7 property rights of our members are protected and
8 that China "avoids the enforcement of competition
9 law to pursue industrial policy goals," as agreed
10 during President Xi Jinping's state visit.

11 The Chamber, together with the American
12 Chamber in China, appreciates the recent opportunity
13 to submit comments to a National Development and
14 Reform Commission questionnaire on IPR abuse in
15 anticipation of NDRC's issuing new IPR abuse
16 guidelines in 2016. And, certainly, we urge the
17 U.S. government, both the antitrust and trade
18 agencies, to continue to engage their counterparts
19 in China to ensure that the outcomes of China's
20 enforcement of its AML are not tied to industrial
21 policy and reflect sound enforcement with the aim of
22 promoting consumer, not producer, welfare.

1 I can see I'm running out of time. Just
2 briefly on the issues of cyber and intellectual
3 property, we certainly welcome the outcomes, I think
4 the significant outcomes on both of those issues
5 during President Xi's visit. But, as always,
6 implementation will be the measure of those
7 commitments. Certainly, we are very much aligned
8 with the U.S. government in its efforts to address
9 the issues.

10 I would note as well that on the issue of
11 intellectual property, we urge -- beyond the issues
12 of cyber and trade secrets, we urge the U.S.
13 government to continue to engage China at the
14 highest levels to ensure meaningful implementation
15 of China's commitments to protect biopharmaceutical
16 innovation; this includes regulatory data
17 protection, data exclusivity, made at the 2012 JCCT,
18 and data supplementation commitments in 2013.

19 Transparency, finally, remains a priority
20 issue for us. There have been some improvements in
21 transparency, but there are still very much in our
22 view a scatter shot approach taken by Chinese

1 government bodies, both on the legislative side and
2 administrative side, in terms of soliciting broad
3 public comment and posting measures on relevant
4 websites.

5 We urge the U.S. government to continue to
6 make transparency a priority. The issues regarding
7 transparency are not just an end, but a means to
8 ensure sound administrative licensing practices, for
9 example, critical in the electronic payments area
10 and many other areas that are reliant on licensing
11 -- many other sectors that are reliant on licensing
12 to gain market access. This is an important issue
13 as well. You alluded to the biotech issue as well,
14 and certainly the issue of transparency, their
15 adherence to the law, due process, and procedural
16 fairness, all of those issues are critical to our
17 members.

18 So I will just conclude by saying that we
19 hope the input that we have provided in our written
20 submission is helpful to you as you prepare for the
21 JCCT. The BIT is the greatest opportunity, we
22 believe, to address many of the issues that we have

1 highlighted in our submission. We see at the
2 Chamber a continuing need for more high-level
3 engagement that includes as much as possible the
4 private sector, and certainly President Xi's visit
5 underscores that regular, sustained, and high-level
6 engagement can and does lead to progress.

7 We appreciate all of your efforts and look
8 forward to your questions.

9 CHAIR GRESSER: Thank you very much.
10 Let's now go to questions and turn to Ms. Winter to
11 begin.

12 MS. WINTER: Thank you very much, Jeremie,
13 for your testimony and also for your thorough
14 written submission. Every year we come together and
15 we see the evolution of the issues, but there is a
16 clear direction and you can tie those together year
17 to year, and I think we are making progress. But,
18 as you pointed out, we have a long way to go.

19 In your submission and in your testimony,
20 you have talked about China's national security
21 policies and national security review mechanism that
22 includes an overly broad definition, and this ranges

1 across a number of laws and still draft laws.

2 One of the things that we're interested in
3 is how you see the commitment we just received from
4 or negotiated with the Chinese in the context of
5 President Xi's visit here with the summit, how you
6 see that potentially helping and what we need to do
7 to take further steps to make sure that that
8 commitment actually is implemented according to how
9 the United States views its own national security,
10 which is true national security concerns. Although
11 the definition is not extremely clear, it's one that
12 we respect in a way that I think the practice shows.

13 And so how can we encourage China, better
14 encourage China to follow a very narrow-narrow
15 definition of national security, and what can we do
16 across the range of agencies in China that are in
17 the process of either already having adopted laws by
18 the National People's Congress ultimately or have
19 draft laws that could undermine U.S. interest? And
20 can you give us some idea of how U.S. industry is
21 already now dealing with these concerns because some
22 of the laws are already on the books? What

1 practices are you seeing emerging now that we need
2 to get ahead of? Thanks.

3 MR. WATERMAN: Thank you for the question.
4 I think the first thing I would say is the
5 commitment that was made during President Xi's state
6 visit is, in our view, a significant one because at
7 least to our knowledge, to my knowledge, the Chinese
8 have never made a commitment in any way to suggest
9 they are willing to narrow the scope of their
10 definition of national security to take out issues
11 like economic security with regards specifically to
12 foreign investment. There is also some very good
13 language about addressing the role of third parties,
14 which is something that's enshrined the role of
15 third parties in providing recommendations to the
16 regulators in China that can -- in opposition to a
17 foreign -- to investment.

18 So I think it is a significant commitment.
19 But as we have seen with some other commitments,
20 whether they be at the presidential -- during
21 presidential level visit or S&ED or JCCT, the
22 commitments require follow-up. In this case, the

1 follow-up is really about ensuring that, first, the
2 laws themselves, the laws and regulations in China
3 reflect the commitment that you have secured on
4 paper during President Xi's visit. As we've
5 discussed obviously, the draft Foreign Investment
6 Law is an important law, but there are other
7 measures, including the recently passed National
8 Security Law that put forward this very
9 comprehensive definition of national security.

10 Once the legal regime in China is clearer
11 with regard to the definition of what should be
12 considered in the context of national security,
13 there is then the issue of how the law is applied.
14 And I think you correctly point out that the U.S.
15 definition is not necessarily an air-tight one, but
16 there is enough, at least in our view, there is
17 enough -- there are enough CFIUS cases, and there
18 are plenty of examples of investment that would
19 indicate the U.S. government clearly does not
20 consider issues like economic security or industrial
21 policy or helping a domestic champion in the context
22 of reviewing foreign investment. I think that is

1 the same kind of approach we want to ensure that
2 China takes.

3 Now, we're talking about national
4 security, so discussions are going to take place
5 behind closed doors. So I would say two things are
6 required: one is you need to have the legal --
7 clarity in the legal environment, and then, two,
8 there needs to be monitoring of how the law is
9 applied in practice.

10 I would finally note that there are very
11 few examples of China actually applying its national
12 security review to foreign investors. To be frank,
13 they haven't needed to in the past because they have
14 had other mechanisms in their foreign investment
15 regime, foreign investment approval regime, a range
16 of mechanisms from licensing, to the Guiding
17 Catalogue, to other criteria that have -- and, of
18 course, more recently the Anti-Monopoly Law, that
19 have allowed them -- have given them other tools to
20 regulate foreign investment.

21 CHAIR GRESSER: Thanks. For our next
22 question, to Mr. McCartin.

1 MR. McCARTIN: Thank you. Jeremie, thank
2 you for joining us again this year. We always
3 appreciate the Chamber's input. You have certainly
4 again identified a whole array of issues that China
5 presents for us in the trade sphere.

6 We don't have time to cover all of them,
7 but I just wanted to focus in on the document that
8 you mentioned in your testimony today, the Guiding
9 Opinions on Deepening Reform of State-Owned
10 Enterprises that was issued a couple of months ago
11 by the Central Committee of the Communist Party and
12 the State Council.

13 From your testimony, I understand your
14 perspective that this document is more focused on
15 industrial policy than on actual economic reform of
16 the state-owned enterprises. Can you give us a
17 sense, in your view, how significant this document
18 is? And from your perspective, what might be
19 lacking in the way of announced reforms, what may be
20 unwelcome in the way of announced reforms, and then
21 what aspects of it do you actually see as positive?
22 And for those, what barriers do you see facing the

1 Chinese government as it tries to implement those
2 more welcomed reforms?

3 MR. WATERMAN: Thank you, Terry. Just to
4 clarify, I offered a perspective in terms of what
5 the ultimate goals are of the -- what appear to be
6 the ultimate goals of the Party in the context of
7 the document. And, certainly, it's very clear in
8 the document and borne out by, in the context of
9 recent consolidation of industries like the nuclear
10 industry or the rail industry and others that are
11 being considered for consolidation, the goal is to
12 make in many areas SOEs larger.

13 It's also very clear, though, that there
14 is a desire for reform, and you can certainly see
15 that in the context of governance, in the context of
16 capital allocation. There are a range of reforms
17 that this document puts forward. And I think the
18 hope is to make state-owned enterprises,
19 particularly those -- they divide them into two
20 categories, those for profit, sort of profit-making,
21 and those that are sort of said to provide public
22 goods.

1 Now, what constitutes a public good in
2 China is something that we really don't have clarity
3 on. And I think it would be interesting in the
4 context of follow-up discussions for the U.S.
5 government to try to get clarity, more clarity
6 around these definitions and how China sees
7 distinctions between profit-making and enterprises,
8 as state-owned enterprises, and those that are
9 providing public goods. In addition, you have even
10 under the category of profit-making enterprises, you
11 have a category, almost a subcategory reserved for
12 those enterprises that are vital to China's national
13 security.

14 So I think clearly reform, clearly they
15 want to improve governance. I think critical to
16 improving governance in their -- based on our
17 reading of the document is injecting new sources of
18 capital, new sources of management into these
19 enterprises, making them more market oriented, but
20 not making them -- not privatizing them or
21 subjecting them firmly to the disciplines of the
22 market.

1 I think ultimately that is a critical
2 threshold question as the Party continues to
3 exercise control and as these enterprises continue
4 to exist in an environment where there is
5 significant industrial policy objectives set by the
6 Party. Will those enterprises at the end of the day
7 be operating solely for the purpose of, you know --
8 will they be operating in accordance with commercial
9 considerations, to use the technical terminology,
10 and for the purpose of being profit -- of making
11 profit and not to fulfill some other objective,
12 whether it be political or industrial policy
13 objectives set by the Party? I think in reading the
14 document, there are still significant questions
15 about where China is headed in that regard.

16 Moreover, I would just add, as you all
17 have concluded the TPP, we haven't seen obviously
18 what's in the TPP on state-owned enterprises, but
19 there is a question in our mind as to whether or not
20 this reform plan brings us closer to being in a
21 place where the U.S. and China can engage together
22 either bilaterally or regionally in the context of a

1 TPP or other agreement, given what is likely to be
2 new language and new disciplines on state-owned
3 enterprises in the TPP. So that is an open
4 question.

5 CHAIR GRESSER: Thank you. Now we'll turn
6 to our colleague, Mr. Santillo, from the Commerce
7 Department.

8 MR. SANTILLO: Thank you, Jeremie, for the
9 time you and your team put into your submission and
10 for being here with us today and the support
11 throughout the year as we work to identify issues of
12 concern to the U.S. business community. I certainly
13 appreciated the opening and the balanced approach,
14 including presentation of American Chamber of
15 Commerce's 2015 Business Climate Survey. It's clear
16 that companies see opportunities, but they also see
17 challenges, and some of the policies and procedures
18 that are being put in place threaten that
19 opportunity. I think it's useful for us to hear
20 about that balance.

21 I'd like to burrow into one part of your
22 submission, and that's on government procurement

1 agreement. In your written submission, you mention
2 the need for China to make improvements to its WTO
3 Government Procurement Agreement offer. What are
4 your members' priorities in that regard?

5 And also I know that the U.S. companies
6 currently have some access to China's government
7 procurement market. How much more access would a
8 successful GPA accession for China mean to your
9 members, and can you quantify it at all in terms of
10 value? And, finally, what recommendations would you
11 have for us on how we can help move China's
12 accession negotiations to a successful conclusion?
13 Thank you.

14 MR. WATERMAN: Good questions, Patrick,
15 but not easy questions.

16 MR. SANTILLO: That's why I have them for
17 you.

18 MR. SANTILLO: Yeah. Let me take the easy
19 -- the first part of your question in terms of
20 priorities. I think we've long said we'd like to
21 see coverage for additional entities, including
22 state-owned enterprises. We'd like to see lower

1 thresholds. We'd like to see China add, you know,
2 provide additional sub-central coverage. And I
3 think we're of like minds with the U.S. government
4 in terms of the approach that you have taken in the
5 GPA negotiations in Geneva.

6 In terms of ongoing challenges that our
7 companies face, I think we continue to receive
8 reports, including one very recently that -- from
9 our members that notwithstanding the fact that our
10 companies have localized in certain areas, they have
11 high local content that meet all of the requirements
12 under China's government procurement regime, there
13 are still -- they have not localized enough, in
14 essence. And they are still -- and I'm not talking
15 in this instance about the information, the ICT
16 sector; I'm talking about in other sectors where our
17 companies continue to be excluded, in their view,
18 unreasonably or unjustifiably from procurement
19 opportunities.

20 We also continue to see reports of
21 challenges related to indigenous innovation and
22 informal, I would say, conditioning of procurement

1 on indigenous innovation criteria, which of course
2 the U.S. government expended considerable energy and
3 we all took much to our happiness and happiness of
4 our members to address those issues in 2011. So I
5 think there remain a number of challenges.

6 In terms of quantifying how much, I think
7 there have been some efforts, not by the U.S.
8 Chamber -- I'm not sure that any U.S. business
9 organization has quantified the overall GP
10 opportunity, but I know the European Chamber of
11 Commerce in China, a number of years back, did do
12 some work to quantify the overall opportunity.

13 That's the most recent assessment that I'm
14 aware of. And that included not only opportunities
15 under the Government Procurement Law, but also
16 opportunities under the NDRC Tendering and Bidding
17 Law. As you all know, there are still these two
18 regimes that exist, both of which are, in essence,
19 government procurement.

20 In terms of what to do going forward, this
21 is an area where I think to some degree we are at
22 the mercy of the pace that the Chinese want to move

1 forward at. It seems that they are just not ready
2 to move forward with the kind of ambitious or at
3 least an offer consistent with what other countries
4 who are signatories to the GPA have put forward,
5 particularly given the importance of government
6 procurement, given the importance of government
7 procurement in a broad sense, including SOE
8 procurement in the China market.

9 I'm not sure I have an answer for you
10 other than to keep working at it, to keep engaging,
11 to keep trying to highlight the importance in terms
12 of they want to have better procurement, they want
13 to address corruption, they want access to, in their
14 own economy, more efficiency, access to better
15 products, better technology, and they want access to
16 markets in the U.S. and other markets around the
17 world. And, hopefully, those arguments will be
18 helpful.

19 I would finally note that I think there is
20 a lesson with regard to the BIT, in terms of the GPA
21 commitment that was secured back at the time of
22 China's WTO accession, and that is that if there are

1 critical issues in the negotiations that need to be
2 addressed, it's probably best to address them at the
3 time of the negotiation and not leave them
4 outstanding for the future, because I think there is
5 a recognition that the language, the commitment on
6 GPA back at the time of accession was not all that
7 it needed to be. And that has obviously, you know,
8 as soon as possible, has turned out not to be very
9 soon with regard to GPA accession.

10 CHAIR GRESSER: We will now turn to our
11 colleague from the State Department, Mr. Manogue.

12 MR. MANOGUE: Thank you very much. Thank
13 you, Mr. Waterman, and thank you for the Chamber for
14 your thoughtful and comprehensive submission. As
15 regards to foreign investment, in your submission
16 you list a variety of a number of priority areas
17 where you'd like to see new market access, areas
18 like cloud computing and data services, express
19 delivery services, energy sector, telecom services,
20 and so forth. What reforms would the Chinese
21 government need to make in order to foster these
22 kinds of market openings?

1 MR. WATERMAN: Again, a really good
2 question, I think. Certainly, we recognize that the
3 Chinese government is making progress in reorienting
4 its foreign investment regimes, certainly starting
5 with the commitment back in 2013, in the context to
6 advance the BIT negotiations, to adopt a negative
7 list approach, pre-establishment, national
8 treatment, that those were significant changes. And
9 the Chinese have followed up on those commitments
10 with some changes to their investment regime largely
11 in areas of domestic interest, in terms of
12 eliminating red tape and changing the sort of
13 registration system for investment approvals. And
14 so there has been some progress.

15 But as we look forward, obviously the
16 critical thing in terms of opening these sectors,
17 first you start with the negative list. And the
18 negative list needs to be, with regard to these
19 sectors, it needs to be, you know, we need to ensure
20 that those sectors where we want to see opening are
21 not included on China's negative list. And to the
22 extent there are sectors included, we need to be

1 very clear and the language needs to be crafted in a
2 very detailed manner so it is not ambiguous and we
3 don't end up in a situation like we did post-WTO
4 accession with regard to telecommunication services,
5 where we all thought that value-added
6 telecommunication services would be open in China
7 and the Chinese adopted then sort of their own
8 definition of value-added telecom services, and much
9 of the market, in essence, remained closed or with
10 significant limitations for U.S. investors.

11 I would finally note that the licensing
12 piece of all of this is critical in all of these
13 sectors. It's about what the licensing criteria
14 area, as we know, and as you all know as you work on
15 the issue of electronic payments and access for
16 those companies in the market. It's about the
17 criteria, but it's also about the number of licenses
18 that will be issued. Of course, it's about
19 understanding, as well, all of the licensing
20 criteria that may exist across the full scope of the
21 Chinese system. And, finally, it's about
22 accountability for regulators, what is the

1 accountability, what kind of transparency is there
2 around the decisions that a regulator may make in
3 the context of licensing. There are significant
4 deficiencies and concerns in all of those areas.

5 Finally, I would just note national
6 treatment is a great standard, but it's, you know,
7 what you really need in China is the best. We need
8 for our companies to be given the treatment, the
9 best treatment that China accords to its companies.
10 Whatever that best treatment is, that is the
11 treatment that our companies need to ensure that
12 there is not discrimination.

13 So, to some extent, I would say all of
14 those issues, there is a lot of knowledge about
15 those issues. We know that the European Commission
16 has looked at these issues in great detail. They
17 are continuing to look at these issues. We know the
18 U.S. government is looking at these issues, as well.
19 We would encourage, given that they are also
20 negotiating a BIT, that you work together as much as
21 possible and address as many of these issues,
22 because the devil is in the -- when you talk about

1 issues like telecom services, cloud computing,
2 express delivery, and others, the devil is in the
3 details, really in the licensing, can you get your
4 license, can you operate in the market? And that's
5 not always a straightforward issue in China.

6 CHAIR GRESSER: Treasury Department?

7 MS. LI: Good morning, and thank you so
8 much for your testimony this morning, and for the
9 four cross-cutting issues that you raised. On
10 electronic payment services, as you just mentioned,
11 the licensing issue, in your written submission you
12 note that China has made some progress on this issue
13 of market access for foreign electronic payment
14 firms and that any prudential conditions in the
15 draft regulation should be pro-competition,
16 pro-innovation, and not overly burdensome, including
17 immediate market access.

18 From your view, what provisions would you
19 look for in the draft regulation to indicate that
20 China is ready to open the bank card clearing
21 business to both domestic and foreign investors?

22 MR. WATERMAN: I think we have not

1 commented, but I know others have commented on the
2 measures that came out of the State Council, and
3 obviously we're waiting for -- I think our members
4 are waiting for that clear pathway. And then,
5 obviously, there will come the question about
6 licensing and who gets a license.

7 We have received some reports and input
8 including from the Chinese government related to
9 suggestions that foreign companies should be looking
10 to partner with domestic Chinese companies. One of
11 the issues in the context of licensing, will our
12 companies be able to enter the market on their own,
13 in a manner of their choosing, assuming they meet
14 the criteria. I think that's a critical issue, as
15 it is with all service industries. I think that's
16 something that we're looking at very closely in
17 terms of is China going to issue one license, is
18 China going to issue five licenses. I think these
19 are questions that we don't know the answers to yet.

20 The other point I would note on the issue
21 of electronic payments is we are hearing that China
22 has stopped issuing cards, you know, China UnionPay

1 is no longer issuing approvals for international
2 cards for our electronic payments providers. So we
3 hope that you all can continue to work with the
4 Chinese government to ensure that there is
5 nondiscriminatory treatment of foreign payment
6 networks on cross-border transactions. The other
7 side is there perhaps appears to be some effort to
8 trying to leverage China UnionPay's standing
9 globally.

10 MR. McCARTIN: Thank you, Jeremie, for
11 your response. I just want to make clear that the
12 U.S. government, our position is firm that China
13 should not be imposing any quantitative limits on
14 the number of licenses that are issued in the EPS
15 sector or imposing joint venture requirements on
16 foreign suppliers.

17 CHAIR GRESSER: Okay. Thank you very much
18 for your testimony and your extensive answers to
19 these questions, Mr. Waterman. We will welcome you
20 back hopefully next year.

21 And now perhaps Ms. Hampl from the U.S.
22 Council for International Business could come up for

1 her testimony? Thank you very much.

2 MS. HAMPL: Good morning. My name is Eva
3 Hampl. I am Director of Investment, Trade, and
4 Financial Services at the U.S. Council for
5 International Business. We at the USCIB understand
6 the significance of China to U.S. industry, and I
7 welcome the opportunity to contribute to this
8 important dialogue by providing remarks today, in
9 addition to our written testimony which -- our
10 written comments which we have submitted on behalf
11 of our members.

12 I am pleased to provide USTR with USCIB
13 priorities and concerns based on member feedback
14 regarding China's fulfillment of its WTO commitments
15 related to several key issues, including
16 intellectual property enforcement, regulation, and
17 standards.

18 As you may know, USCIB works to promote
19 open markets, competitiveness and innovation,
20 sustainable development and corporate
21 responsibility, supported by international
22 engagement and regulatory coherence. Our members

1 include top U.S.-based global companies and
2 professional services firms from every sector of the
3 economy, with operations in every region of the
4 world.

5 As the U.S. affiliate to the International
6 Chamber of Commerce, the International Organisation
7 of Employers, and the Business and Industry Advisory
8 Committee to the OECD, USCIB has a unique global
9 network through which it provides business views to
10 policymakers and regulatory authorities worldwide,
11 and works to facilitate international trade and
12 investment.

13 USCIB and its members, therefore,
14 understand and appreciate that U.S.-China economic
15 relations are complex and multifaceted, and American
16 business holds a direct and important stake in this
17 relationship and its success. USCIB commends the
18 U.S. and Chinese governments for important and
19 consistent work in ongoing bilateral dialogues like
20 the JCCT and the S&ED, as well as working
21 relationships between U.S. and Chinese agencies
22 which provide invaluable opportunities for

1 exchanging information, technical exchanges, and
2 addressing agency-specific issues.

3 USCIB also supports the U.S. negotiators
4 in their efforts to conclude a high-standard
5 U.S.-China bilateral investment treaty, and we hope
6 the negotiations expeditiously move forward on the
7 remaining issues.

8 We also urge both countries to utilize the
9 full range of multilateral forums in addition to the
10 WTO, including the APEC forum and the OECD, to work
11 toward improved commercial relations. USCIB and its
12 members strongly support continued and strong U.S.
13 efforts to engage China.

14 We appreciate the significant efforts
15 China has made since joining the WTO in 2001 to meet
16 its obligation under the Accession Agreement.
17 However, there still remain significant concerns for
18 our members. Our written submission includes both
19 cross-sectoral issues in the first half as well as
20 those addressing individual specific sectors
21 addressed in the second half of the submission.

22 I will share today priority issues of

1 concern to our members regarding China's WTO
2 commitments including market access, national
3 treatment, the regulatory environment, certification
4 and licensing barriers, IT security, and
5 intellectual property rights, all hopefully within
6 five minutes.

7 Market access restrictions inhibit the
8 ability of USCIB members to access and expand in
9 China's market and build thriving businesses to
10 satisfy consumer demand. In many sectors, as
11 demonstrated in the second half of our submission,
12 USCIB members call on China to open its market to
13 any firm able to meet objective, nondiscriminatory
14 criteria. Market access should not be hindered
15 through licensing, as my colleague has already
16 mentioned, systems that are subject to arbitrary
17 government decisions. Recent efforts and
18 initiatives to reduce or make more challenging
19 existing market access for foreign companies are
20 particularly alarming. It is important that market
21 access be promoted for both physical and digital
22 goods and services.

1 Specifically, this year, China introduced
2 a draft Foreign Investment Law aimed at updating its
3 investment rules for foreign entities. China should
4 ensure that as it proceeds with its reform, existing
5 investments are not negatively impacted and that
6 opportunity for future investment is as open as
7 possible and not encumbered by unnecessary joint
8 venture requirements or other burdensome
9 limitations.

10 Chinese authorities also continue to use a
11 variety of policy tools and regulatory measures,
12 like the Anti-Monopoly Law enforcement, technology
13 standards policies, IPR enforcement practices, and
14 licensing and investment reviews, to compel transfer
15 of U.S. IP or technologies to Chinese entities at
16 below market rates, and to exclude U.S. companies
17 from full and equal participation in the Chinese
18 market. USCIB members continue to call on China to
19 abide by their WTO commitments of national treatment
20 and nondiscrimination and ensure a competitive
21 market that allows for foreign business
22 participation on a level playing field with domestic

1 Chinese firms.

2 China should further fairly and
3 transparently develop, promulgate, and enforce
4 regulations and other legal norms. USCIB members
5 continue to experience business obstacles related to
6 institutions, frameworks, and regulatory
7 enforcement, including regulatory notice periods.
8 Improved coordination among regulators in China
9 would create a more transparent and predictable
10 framework.

11 USCIB, as the American affiliate to the
12 Business and Industry Advisory Committee to the
13 OECD, regulatory provides input to the OECD's
14 Regulatory Review in China. Businesses, through
15 this process, have called on the OECD to work with
16 the government of China to improve government
17 accountability at all levels of government, increase
18 the transparency and predictability of the rules,
19 rigorously enforce laws and contracts, fully respect
20 property rights, develop and implement more
21 cost-effective regulatory frameworks, and strongly
22 commit to fighting bribe solicitation and

1 corruption.

2 In a number of areas, the Chinese
3 government has imposed certification, licensing, and
4 testing requirements on products, services, and
5 production materials. In most cases, these
6 requirements involve government review and approval
7 of in-scope products and materials before they are
8 allowed to enter the market. Even where such
9 pre-market requirements apply equally to domestic
10 and international origin items, the fact is that
11 China's system for checking imports is more onerous
12 than the system for checking products and materials
13 already within China. This renders these
14 requirements discriminatory in effect and
15 exacerbates the negative effects of any pre-market
16 requirements on imports into China.

17 These requirements affect a broad
18 cross-section of U.S. industry, such as the chemical
19 registration regime, the battery registration
20 regime, the imported pharmaceuticals program, the
21 regime for restricting the material content of
22 electronic products, the mandatory entry/exit

1 inspection and quarantine authority inspections for
2 wearing apparel, and the cybersecurity certification
3 requirements for information technology products.
4 Specifically, our members have found the CIQ import
5 registration order fulfillment and service logistics
6 model to be incongruous with existing international
7 models.

8 In the area of information technology,
9 Chinese policymakers and regulators have recently
10 proposed or enacted a variety of trade-restrictive
11 and discriminatory requirements on IT under the
12 guise of protecting security, as has already been
13 discussed. These measures, many of which require
14 the use of IT products that are "secure and
15 controllable," disadvantage U.S. firms by requiring
16 Chinese IT users to purchase Chinese products or
17 suppliers, imposing domestic R&D or content
18 requirements, requiring the transfer and disclosure
19 of source code and other IP, restricting
20 cross-border data transfer, and in other ways.

21 We urge the U.S. government to continue to
22 press for full suspension of all existing and

1 proposed measures involving trade-restrictive
2 requirements, such as the restriction of
3 cross-border flow of data, and the establishment of
4 a transparent and consultative mechanism to develop
5 privacy and cybersecurity-related measures that
6 reflect global best practices and disadvantage or
7 otherwise have discriminatory impacts on suppliers.

8 Finally, addressing intellectual property
9 rights, USCIB and our members acknowledge that China
10 has improved most of its IPR laws and has made
11 partial progress in combating copyright piracy and
12 trademark counterfeiting since acceding to the WTO.
13 However, despite these improvements, USCIB members
14 have IPR-related concerns on a variety of issues
15 that negatively affect foreign competitiveness,
16 including but not limited to copyright, and
17 trademark and counterfeiting, particularly regarding
18 software.

19 Main issues in recent years have concerned
20 unlicensed software use, optical media products,
21 trademark protection of high-quality goods and
22 services, domain name registrars and defrauders, as

1 well as inadequate implementation of the TRIPS
2 Agreement.

3 This concludes my comments for today on
4 China's compliance with its WTO commitments. We
5 appreciate the opportunity to highlight these issues
6 of concern to our members, and we would be pleased
7 to elaborate further on any area of interest to
8 USTR. Additionally, we look forward to engaging
9 with you on these issues surrounding the ongoing
10 bilateral dialogues. Thank you very much, and I
11 look forward to your questions.

12 CHAIR GRESSER: Thank you. Perhaps
13 Ms. Winter may begin.

14 MS. WINTER: Thank you. And thank you
15 very much for your testimony and for your
16 organization's comments. You do a lot globally to
17 improve standards in terms of global trade and
18 investment, so just thank you generally for your
19 organization's contributions.

20 In your written submission, you state that
21 the anti-monopoly enforcement in China has been used
22 to benefit Chinese companies, and you mention a

1 couple of sectors: commodities and high
2 technologies. Can you elaborate how this is
3 occurring in terms of the use of the Anti-Monopoly
4 Law in this sort of industrial policy way? And do
5 you have any suggestions, because I know you and the
6 BIAC organization that you are involved with, and
7 the OECD in particular but also elsewhere, do you
8 have any suggestions on how the global community can
9 address China's overzealous use of the Anti-Monopoly
10 Law that affects market access? Thank you.

11 MS. HAMPL: Thank you very much for the
12 question. The Anti-Monopoly Law is certainly one of
13 those points that demonstrate a lot of the issues
14 that our companies are having. We acknowledge that
15 in the most recent S&ED, there have been a lot of
16 clarifications and commitments regarding the
17 Anti-Monopoly Law regarding transparency and
18 nondiscrimination, and we certainly appreciate those
19 efforts and look forward to continued developments
20 in that direction.

21 As my colleague from the Chamber
22 mentioned, a lot of it hinges then, of course, on

1 what happens after the commitment is made on the
2 enforcement side of things. As it currently stands,
3 several of our U.S. IT companies have been subject
4 to very nontransparent procedures in the context of
5 merger and unilateral conduct reviews. So that is
6 why we are mentioning these specific sectors and
7 where the AML is used to distort the market, and
8 that creates competitiveness problems for our
9 companies.

10 These sectors, this is where we have heard
11 from our members, and we're a very member-driven
12 organization, so this is not the exclusion of other
13 sectors. It could very well be happening in other
14 areas as well, but this is what we have focused on
15 based on the comments we have received. We're happy
16 to check back with our membership to see if they
17 have seen this in any other areas as well, if that
18 would be helpful.

19 But, in terms of where to go from here,
20 what we see as important is to consider continuing
21 ensuring procedural transparency. That seems to be
22 at the core of these issues, to ensure procedural

1 standards like due process norms, independence of
2 regulators, and the opportunity to respond, those
3 kinds of things.

4 So, in general, we would say that
5 nondiscrimination is certainly essential in order to
6 have adequate market access for our companies.
7 Thank you.

8 CHAIR GRESSER: Thank you. Mr. McCartin?

9 MR. McCARTIN: Thank you. And welcome,
10 Eva. I have two questions focused on foreign
11 investment in China. The first one is what can you
12 tell us about your members' priorities when it comes
13 to new market openings? And the second one is
14 looking at the way in which China currently
15 regulates foreign investment, what other issues do
16 you see as critical for us to address from your
17 members' perspective?

18 MS. HAMPL: Thank you very much for that
19 question. Investment is certainly one of our key
20 issues for our membership, even broader than just
21 China, but obviously especially regarding China
22 given the size of the market. Since USCIB is

1 cross-sectoral, our members have a variety of issues
2 in a variety of sectors that are too many to mention
3 at this time. Again, I'd be happy to go back to
4 membership and see if there are any specific sectors
5 that have any particular problems in this regard.

6 The U.S.-China BIT is what we are really
7 focusing on in this regard. That is a top priority
8 for our members. We certainly appreciate USTR's and
9 State's efforts in moving these negotiations
10 forward. We're encouraged by the step forward
11 regarding the negative list. And, in general, we
12 are looking for a comprehensive, high-standard BIT
13 with narrowly drawn NCM restrictions. As my
14 colleague from the Chamber already mentioned,
15 certainly those sectors that are particularly
16 restricted we would like to see not on this list
17 that China is putting forth.

18 Without a BIT, the investment relationship
19 between U.S. and China is thoroughly imbalanced from
20 our view. So we are really looking forward to this
21 moving forward. The BIT also provides opportunity
22 to, in various sections, raise standards and address

1 some of these issues like transparency and
2 discrimination for an ongoing dialogue, and also to
3 just set some rules. So we're looking forward to
4 further developments in that regard.

5 CHAIR GRESSER: Thank you. Maybe we can
6 turn to the Treasury.

7 MS. LI: Thank you so much, Eva, for your
8 comments. We continue to push for the
9 liberalization of China's telecom services sector.
10 But rather than opening this sector, it seems like
11 China's regulatory regime is becoming more
12 restrictive, including with China's classification
13 of many computer services as telecom services. Can
14 you elaborate on how these computer services relate
15 to U.S. industries' priority interest?

16 MS. HAMPL: Thank you very much for that
17 question. Yes, this is certainly one of the main
18 issues that we are seeing as well. As has been
19 discussed, the problem is that basic, online
20 services are being treated as value-added telecom
21 services, which creates -- it essentially, to the
22 extent that cloud computing services are included in

1 this definition, and it looks like it is moving in
2 that direction more and more, is a significant issue
3 for our companies, especially those companies that
4 rely on cross-border flow of data and rely on these
5 online services. This is a market access issue
6 essentially. It is a form of forced localization if
7 you can't move data where you need to move it and
8 you house it where you want to house it. So from
9 that perspective, yes, I would say that that is one
10 of our priority issues as well. Thank you.

11 CHAIR GRESSER: Thank you. Mr. Manogue?

12 MR. MANOGUE: Well, thank you very much.

13 I have a question that relates to worker rights.
14 Workers in China are still not guaranteed either by
15 law or in practice full worker rights in accordance
16 with international standards, including rights to
17 freedom of association and collective bargaining.
18 At the same time, we're hearing reports that due to
19 shifting labor, and economic and demographic
20 conditions, workers may be gaining some leverage in
21 industrial relations in China and that they have
22 become more assertive in securing their rights. To

1 what extent are the changes in industrial relations
2 in China posing challenges or creating opportunities
3 for your member companies?

4 MS. HAMPL: Thank you very much for that
5 question. We didn't address the issue of labor in
6 our submission, as you may know. So given that we
7 are driven by member input, I would be happy to
8 check back with my members about this issue. I am
9 certain that this has come up in conversation in the
10 last year or two. I am not specifically the person
11 who focuses on labor, and it hasn't come up through
12 our China submission from our members. However, it
13 certainly is something that is on our radar, and I'd
14 be happy to get back to you with more information on
15 that.

16 MR. MANOGUE: Thank you very much. We
17 would appreciate that.

18 CHAIR GRESSER: Other questions from our
19 panel? If not, Ms. Hampl, thank you very much. We
20 appreciate your testimony.

21 Perhaps now Mr. Metalitz from the
22 International Intellectual Property Association may

1 come up.

2 MR. METALITZ: Good morning, everyone.
3 I'm Steve Metalitz, and I'm glad to have this chance
4 to appear here as counsel to the International
5 Intellectual Property Alliance, a coalition of five
6 member associations, each representing a significant
7 segment of the U.S. copyright industry.

8 You've heard from some cross-sectoral
9 groups, and I'm going to narrow the focus a little
10 bit, not too much, though. We are still a big
11 sector. We contribute over a trillion dollars to
12 the U.S. economy. We're responsible for 5½ million
13 good U.S. jobs. And we're a leading exporter and
14 foreign sales generator for the U.S. economy.

15 The chair asked in her opening statement
16 that we focus on whether there has been progress or
17 backsliding. I think I can report there has been
18 some of both, and also a disturbing level of stasis,
19 areas where really nothing much seems to have
20 changed in the China market.

21 Let me start with the improvements. There
22 certainly have been some successful enforcement

1 actions against leading online piracy services. We
2 give some examples in our written statement. And
3 there are now a much larger number of licensed
4 online music services. It's starting to be the same
5 in the video streaming space as well, which is
6 certainly positive. In terms of theatrical
7 exhibition of films, under the China Film Agreement,
8 there have been some improvements and greater access
9 to that booming Chinese theatrical exhibition
10 markets, but U.S. producers aren't still fully able
11 to access that market, and I'll say a little bit
12 more about that later.

13 A lot of these trends do reflect a higher
14 level of compliance with WTO obligations, as well as
15 implementation of the WTO cases that culminated in
16 2009 that the chair made some reference to at the
17 outset. But, at the same time, this huge market
18 remains far too closed to the U.S. copyright
19 industries. Some of the reasons for that we think
20 are linked to inadequate, incomplete, or delayed
21 implementation of those WTO cases and WTO
22 obligations in general.

1 So our testimony really focuses on four
2 areas, which I'll just list here, and I'll be glad
3 to answer questions about them. First, shortfalls
4 in the development of a robust Chinese licensing
5 marketplace for U.S. copyright works online. We
6 stress online because China has more internet users
7 than any other country in the world, over
8 630 million. This should become a burgeoning
9 marketplace for U.S. content, and we've looked at
10 some of the reasons why it hasn't been.

11 One is there are some deficiencies in the
12 current enforcement regime. As I mentioned, there
13 have been some notable cases, but a lot more needs
14 to be done. Second is the unaddressed legacy of
15 years of minimal compliance with TRIPS obligations,
16 put bluntly, and I'll say a little bit more about
17 this. The Chinese market has become so used to free
18 pirated content that the market value of content is
19 artificially depressed and, therefore, in many
20 sectors, even where there are license services, U.S.
21 content providers are not making very much money.

22 Third, the rules of access to the Chinese

1 online marketplace still are nontransparent in some
2 cases. In some cases, they are clear and they are
3 clearly discriminatory against foreign right
4 holders, and we give the example of the online video
5 streaming regulations that came out recently; it's
6 in our testimony.

7 And, finally, there has been some
8 inadequate adaptation to the challenges of new forms
9 of piracy. Just to give one example, if you look at
10 all the films that are available online in pirated
11 versions before they have even left the theaters,
12 that's due to camcording in theaters, and China has
13 an inadequate legal regime for dealing with that.
14 So the online marketplace is one area of concern.

15 A second is the continued market access
16 barriers to theatrical distribution of films. And I
17 think our focus there today would be not on the
18 revenue-sharing films, but on those that come in on
19 a flat fee basis. Those numbers unfortunately have
20 been declining since the agreement was entered into
21 or at most have been flat. And so that's due to a
22 lack of the competition that agreement was supposed

1 to bring in, competition to the state-owned
2 enterprises, which really has not occurred.

3 Our third area mentioned or discussed in
4 our testimony are the continued gaps and
5 deficiencies in China's legal regime. And then,
6 finally, there are high levels of piracy of certain
7 kinds of hard goods that are bearing U.S.
8 copyrighted material, such as printed books.

9 As far back as the 2012 round of the S&ED,
10 the Chinese government recognized the importance of
11 increasing the sales of legitimate IP-intensive
12 products and services. And so it follows that real
13 progress on these issues has to be measured based on
14 whether there have been significant increases in
15 sales and licensing of those copyright intensive
16 products and services for U.S. companies. For many
17 IIPA members, this has yet to be realized.

18 I always think that visual aids sometimes
19 help to demonstrate this process, so I went to the
20 bank yesterday and got a couple of rolls of pennies.
21 And I want to show you a little bit about what I'm
22 talking about, about the size of the market here.

1 Bear with me while I count out eight pennies here.

2 This is the per capita -- in the recorded
3 music field, you'd think China would be a huge
4 market. It's not. It is \$105 million total, all
5 forms of recorded music. That puts it below
6 Switzerland or Austria. It's about half the size of
7 the Dutch market, if that helps to provide a
8 comparison. Eight cents is the per capita spending
9 in China on recorded music, legitimate music. This
10 is even though there are now a number of licensed
11 services.

12 So how does that compare elsewhere in the
13 region? I'm going to add 2 cents more here, that
14 brings it up to 10, which is about the level of
15 Indonesia. Indonesia, of course, has a per capita
16 GDP half of China's. I'm going to add a couple of
17 more here, 12 cents. That brings it up to the level
18 of the Philippines, again less than half of the per
19 capita GDP of China.

20 So what is comparable to China in this
21 region? If you look at Thailand, its per capita GDP
22 is almost the same as China's. So I'm going to add

1 two more cents here and a roll of pennies, because
2 this is the spend in Thailand. It's 64 cents per
3 capita. In other words, it's about eight times what
4 it is in China.

5 Now I talked about the digital market, and
6 that is extremely important in China. China has
7 more internet users than any other country, so I'm
8 going to add a penny here, and you see we have
9 15 cents here that is the spending per internet user
10 on licensed recorded music in China. How does that
11 compare say to Thailand? I put two penny rolls over
12 here and a quarter. It's \$1.25 in Thailand with the
13 same GDP per capita, less internet penetration,
14 many, many fewer internet users, and yet the revenue
15 is eight times as much.

16 So this, I think, is just one example of
17 how the Chinese market, the value of intellectual
18 property has become so depressed because of years of
19 toleration of piracy that we're in a deep hole and
20 we need to try to find ways to dig out of it.

21 We appreciate the efforts already underway
22 that the government has used to develop appropriate

1 metrics and to ensure that they translate into
2 tangible results for U.S. industries and for U.S.
3 economic growth, but I think there is obviously a
4 lot more to be done. I want to thank all of you and
5 all of your agencies for your efforts, and I'd be
6 glad to try to answer any questions that you might
7 have. Thank you.

8 CHAIR GRESSER: Thank you. This is
9 probably a bit of a precedent. It's the first time
10 that I'm aware of that Thailand has been cited as a
11 model for intellectual property and copyright
12 protection, so our Thai colleagues will have kind of
13 like a red letter day today.

14 MR. METALITZ: Shows you all things are
15 relative.

16 CHAIR GRESSER: Yes. Perhaps I can turn
17 first to Mr. Chen?

18 MR. CHEN: Thank you so much for appearing
19 today and for your statement. Just to return to the
20 issue of hard goods just for a second, in your
21 written submission, you identified
22 university-sanctioned piracy as one area of piracy

1 in books and hard goods that has declined. We'd be
2 interested to understand a little bit more about how
3 or what the source of that decline is, whether it's
4 the policies or actions of the government or the
5 universities themselves, or is this even related to,
6 for example, migration to online or whether there is
7 some sort of technological potential source to that?
8 And also are there other specific areas where you
9 see sanctioned piracy, because I believe you use
10 that term in your statement, and how significant are
11 those problems? Thank you.

12 MR. METALITZ: Thank you. Yes, migration
13 online has had an effect on the level of piracy on
14 the university campuses, but I think this is a
15 long-term issue. The turning point really came in
16 2006 when the Press and Publications Administration,
17 the Ministry of Education, the National Copyright
18 Administration, and local authorities got together
19 and sent the message to Chinese universities that it
20 was no longer acceptable to have, as many of them
21 then had, textbook centers on the campus that were
22 churning out pirate editions of U.S. copyrighted

1 textbooks. This was not unusual in China at that
2 time.

3 There were some highly publicized raids on
4 those centers with fines imposed. And, ultimately,
5 I think the Chinese universities got that message,
6 and now we don't see that on campus. We do see copy
7 shops off campus that are still engaged in this, and
8 there still are enforcement challenges. It's
9 important to try to keep these government agencies'
10 attention and bandwidth focused on these issues,
11 which has been a problem over the years. But the
12 universities did not change this on their own. The
13 government got involved and helped to change that.

14 In terms of sanctioned piracy, I think if
15 we had, you know -- IIPA has been working with your
16 agencies on copyright protection in China for 30
17 years. And for most of that time, I think if I had
18 been sitting here in a similar hearing, I would have
19 said we see government agencies actively involved in
20 copyright piracy. I don't think we see that at this
21 point. I've asked and I will certainly report back
22 to you if we have any examples to give.

1 The issue now is not malfeasance as much
2 as nonfeasance by government agencies, and that, in
3 itself, is a significant problem. But we don't see,
4 as we saw 10, 15, 20 years ago, the university
5 example and others, public institutions, government
6 institutions actively engaged in copyright piracy.

7 MR. McCARTIN: My question focuses on
8 theatrical films and specifically the flat-fee films
9 as opposed to the revenue-sharing films. In your
10 written submission, you mention new and informal
11 market access barriers that may be undermining the
12 U.S.-China films MOU that was signed in 2012. Can
13 you elaborate on what those market access barriers
14 are?

15 And my second question relates to the
16 commitments that we obtained from China this past
17 summer through the Strategic and Economic Dialogue,
18 and if those commitments are fully and faithfully
19 implemented by China, how do you see the
20 implementation of those commitments affecting the
21 market access barriers that you're describing?

22 MR. METALITZ: Yes, I think in theatrical

1 exhibition, the type of barrier we're talking about
2 is what seems to be an informal quota. That means
3 that although the number of revenue-sharing films
4 increases, the total number of U.S. films that are
5 imported for theatrical exhibition either doesn't
6 increase at all or increases only very slightly, not
7 commensurate with the other form. So the result is
8 there are fewer of these flat-fee films coming in
9 and being exhibited. Exactly what the metric is for
10 that, are the Chinese trying to make sure that the
11 box office receipts for Chinese films remain higher
12 than those for foreign films, or just what, is not
13 clear. But it clearly seems, there seems to be this
14 quota that is being imposed.

15 The film agreement was supposed to do away
16 with that because it was supposed to open up the
17 market to other distributors, aside from China Film
18 Group and other state-owned enterprises, to be able
19 to go and strike their own deals without
20 interference from the China Film on bringing in
21 these movies that we think the Chinese public would
22 like to see. We imagine they would like to see them

1 because they seem to be eager to access pirated
2 versions of them. So if we could bring them in for
3 theatrical exhibition, I think there would be
4 revenue for everyone.

5 I think the main problem we see with
6 implementation of the China Film Agreement is that
7 this competition hasn't come in. China has not done
8 enough to promote independent film distribution
9 within China, out from under the thumb of the
10 state-owned enterprises.

11 The S&ED commitments, as I read them,
12 pretty much reiterate what is in the China Film
13 Agreement, possibly a little bit more explicitly in
14 some areas. So, yes, we think if those are actively
15 implemented, that will help because there will be
16 more independent film distributors. They'll be
17 striking more deals of all kinds for U.S. content,
18 and this quota will no longer be artificially
19 suppressing the numbers.

20 We are concerned that we don't think the
21 Chinese have done anything to publicize the S&ED
22 commitments within China. The would-be potential

1 distributors aren't aware of them. And so we hope
2 that perhaps your agency, and the industry is doing
3 this as well, can help to publicize this within
4 China so the potential of the film agreement can be
5 realized, the full potential.

6 MR. McCARTIN: I would just respond that
7 we are working with U.S. industry to reach out to
8 the film distributors in China to make sure that
9 they are aware of these commitments.

10 MR. METALITZ: Great. We think that's
11 important work that you have a library.

12 CHAIR GRESSER: Mr. Santillo?

13 MR. SANTILLO: Thank you very much for
14 your submission and for your comments and,
15 truthfully, for the show-and-tell and study aids.
16 It's not often that at a hearing we're able to
17 actually visualize what's happening in these very
18 complex issues, so I certainly appreciate it.

19 It's not one of the questions that have
20 been prepared and time may not allow us today, but I
21 would like to follow up with you to better
22 understand perhaps what Thailand is doing that

1 enables and what others are doing around
2 particularly the Asia region that enable it to have
3 a higher level on the music receipts.

4 But, for today, if I could, we fully agree
5 with your assessment that criminal copyright
6 thresholds are too high. Under the criminal law,
7 until the criminal law is revised, how do you think
8 that the recently issued Copyright Administrative
9 Punishment detailed measures, I don't know if you
10 have a study aid for that, will work in practice?
11 Also, would you support incorporating into the
12 criminal law the more flexible thresholds for
13 serious incidents found in these measures? Thank
14 you.

15 MR. METALITZ: Yes, the administrative
16 penalties measure we think is generally a positive
17 step. It follows in the footsteps of the criminal
18 IP opinions that were issued by the Supreme People's
19 Court and the Supreme People's Procuratorate in
20 2011. It has some different criteria for criminal,
21 excuse me, in this case for administrative
22 penalties. Basically, I think what they did was

1 they took what was in the criminal opinions and cut
2 those quantitative thresholds in half roughly.

3 It totally depends on implementation. And
4 I don't have any information about how these new
5 measures, which really just came out a couple of
6 months ago, have been implemented. I still think
7 there's concerns about whether the thresholds are
8 too high. For example, in order to attract
9 administrative penalties, it seems as though an
10 online service would have to -- there would have to
11 be evidence of 25,000 clicks in a service to
12 download music, for example, before that would
13 attract administrative penalties. But that's like
14 distributing 25,000 copies of a CD; in fact, it's
15 worse because it's in digital form, and each of
16 those copies can spawn a lot of additional copies.

17 So we think these thresholds are still too
18 high, and we don't think the administrative
19 penalties measures may do enough to deal with some
20 of the procedural problems that are being
21 encountered. This is a criminal case, but we
22 mention in our testimony the KJ Med case, involving

1 a notorious service for online dissemination of
2 pirated copies of scientific and technical journals.
3 That case has kind of stalled or floundering because
4 of procedural requirements.

5 Most countries in the world will recognize
6 that if something is published with a copyright
7 notice, there is a presumption that the copyright is
8 valid and it's owned by the person named in the
9 notice, subject to proof to the contrary obviously.
10 China seems to want to document every single aspect
11 of this. And in cases involving thousands of works,
12 that's an almost insuperable obstacle either to
13 criminal prosecution or to administrative penalties.
14 So we think more needs to be done in that area as
15 well. But, hopefully, this is a favorable sign that
16 there is a little more flexibility in how these
17 thresholds will be applied.

18 MR. SANTILLO: Thank you.

19 CHAIR GRESSER: Any other questions from
20 our panelists?

21 MR. METALITZ: Could I just say in
22 relation to your question about Thailand, we'll be

1 glad to follow up with you on that. I'm not trying
2 to hold up Thailand as a shining example.

3 MR. SANTILLO: No, no, I understand.

4 MR. METALITZ: But it just so happens it
5 seems to have -- it's about the same economic level
6 as China in terms of per capita GDP, and yet the
7 contrasts are striking.

8 MR. SANTILLO: Thank you.

9 CHAIR GRESSER: Mr. Metalitz, thank you
10 very much for your testimony. We really appreciate
11 it.

12 And perhaps now we can hear from
13 Mr. Thorn, from the U.S. Rice, Wheat and Grains
14 Council.

15 MR. THORN: Good morning, everyone.
16 Thanks for this opportunity. My name is Craig
17 Thorn, and I'm a partner at the firm DTB Associates.
18 I am here today on behalf of three trade
19 associations, USA Rice Federation, U.S. Wheat
20 Associates, and the U.S. Grains Council, to discuss
21 Chinese subsidy programs for rice, wheat, and corn
22 producers, and the consistency of those programs

1 with China's WTO obligations.

2 At the time of its accession to the WTO in
3 2001, China's support to the agricultural sector was
4 minimal. In fact, data submitted at the time
5 indicated that the level of support, calculated in
6 WTO terms, was actually negative due to Chinese tax
7 policies. However, the situation has changed
8 dramatically. Over the last decade, China has
9 pursued an aggressive policy of subsidization for
10 rice, wheat, and corn. The stated objective of this
11 policy was to achieve self-sufficiency for all three
12 crops.

13 The central pillar of China's subsidy
14 programs is government price support. Officials
15 establish support prices for each product. When
16 domestic prices weaken, the government purchases a
17 quantity sufficient to ensure that prices remain
18 above that pre-established level.

19 Chinese support prices are among the
20 highest in the world. Table 1 in my written
21 submission, there are copies out here, I don't know
22 if they have been distributed, but Table 1 in my

1 testimony shows support prices for wheat, corn, and
2 rice in comparison to U.S. reference prices for
3 those three commodities. The Chinese support levels
4 are, in every case, significantly higher than those
5 in the U.S.

6 But this comparison is actually unfair to
7 the United States. Chinese support prices act as
8 floor prices in the domestic market and incentive
9 prices to producers. By contrast, reference prices
10 in the U.S. trigger payments to producers that are
11 linked to a fixed payment base. Under the U.S. PLC
12 and ARC programs, those programs are less production
13 distorting because a producer is not required to
14 plant a specific crop in order to receive the
15 payment and cannot increase payments by increasing
16 production.

17 In addition to price support programs, the
18 Chinese government provides a generous array of
19 other subsidies, including commodity-specific direct
20 payments and subsidies for the purchase of seed,
21 machinery, fuel, and fertilizer.

22 These programs have had a significant

1 effect. According to USDA statistics, Chinese
2 production of wheat and rice have increased by
3 41 percent and 16 percent, respectively, since
4 marketing year 2004/2005, when the run-up in
5 subsidies for those products began. Corn production
6 has risen by 36 percent since 2009/2009, when China
7 implemented a price support program for that
8 commodity.

9 These increases have displaced millions of
10 tons of imports. They have also resulted in massive
11 government stocks that are currently depressing
12 world market prices. Last year alone, the Chinese
13 government purchased over 60 million tons of corn.

14 More to the point, for the purposes of
15 this hearing, these policies have put China in clear
16 violation of its WTO commitments. When China
17 entered the WTO, it agreed to a zero limit for
18 domestic agricultural support. Because of the way
19 the level of domestic support is calculated under
20 the Agreement on Agriculture, China essentially
21 committed to restrict its subsidies to no more than
22 8.5 percent of value production.

1 As we have indicated in our written
2 submission, China has exceeded that threshold by a
3 wide margin for all three commodities and,
4 therefore, is in violation of Article 3.2 of the
5 Agreement on Agriculture.

6 Table 2, also in my testimony, shows our
7 calculation of China's Aggregate Measure of Support.
8 This is also in the written testimony. I won't get
9 into the complexities of the AMS calculation right
10 now, although I'm happy to answer questions if you
11 are interested. But as you can see, we calculated
12 China's AMS at between \$48 and \$109 billion. That
13 compares to a U.S. AMS limit, by the way, of \$19.1
14 billion.

15 And keep in mind that we were looking at
16 only three commodities. China has support programs
17 for other products such as pork, cotton, and
18 oilseeds, which we did not include in our
19 calculations.

20 Before I close, I want to touch on two
21 issues that we didn't cover in our written
22 submission. First, as I mentioned above, China's

1 subsidy policies have resulted in production
2 increases that have displaced millions of tons of
3 imports. A recent econometric analysis commissioned
4 by U.S. Wheat Associates quantified displacement in
5 the wheat sector and the resulting price effects. I
6 believe that this import displacement and price
7 suppression amount to serious prejudice under the
8 meaning of Article 6 of the Agreement on Subsidies
9 and Countervailing Measures.

10 Second, China also has compliance problems
11 on the import side. Imports of corn, wheat, and
12 rice are all subject to tariff-rate quotas.
13 Problems with TRQ administration have often made it
14 difficult for exports to fill those TRQs, even in
15 years when domestic prices exceed world prices by
16 large margins. Manipulation of TRQ access has made
17 it easier for the Chinese government to maintain
18 high domestic prices.

19 That concludes my testimony, and I'm happy
20 to answer any questions you might have.

21 CHAIR GRESSER: Thank you very much.
22 That's quite a total. I believe world food and

1 agricultural exports are about \$1.7 trillion a year,
2 so \$108 billion is quite a lot.

3 Perhaps turn to Mr. Chen first?

4 MR. CHEN: Thank you very much. And
5 thanks very much for your statement. Just to go
6 back to some of the points that you raised with
7 respect to subsidies, one question I had was can you
8 elaborate a little bit more on the specific types of
9 subsidies being provided? And I know you listed
10 some of them, not just the floor price, the price
11 support, but also direct payments and specific I
12 guess in-kind or other types of subsidies. Do you
13 see the distribution of those subsidies weighted in
14 a particular area or in a particular region?

15 And I guess a follow-up question to that
16 is with respect to a lot of the -- with respect to
17 the floor price issue, are there different -- are
18 there implemented -- what is the breakdown in terms
19 of looking at it regionally? Are these supports
20 equivalent across the entire region, or are they
21 depending on product, involving different types of
22 systems?

1 MR. THORN: Thank you for the question.
2 First of all, with respect to direct payments and
3 input subsidies for fuel and machinery and seeds and
4 so forth, those subsidies are generally available to
5 -- but only to producers of these three commodities.
6 So, in our analysis, since we didn't have a
7 breakdown that allocated subsidies to corn, wheat,
8 or rice, we allocated them on an acreage basis
9 because that's how they are paid, on an acreage
10 basis. And we assumed that the payments are going
11 to all producers in all regions, but only for those
12 three commodities, so obviously they have a trade
13 distorting effect. They stimulate production of
14 those three commodities, and the input subsidies in
15 particular are trade distorting because they lower
16 the cost for production and ensure profitability for
17 those crops, and they are an incentive for producers
18 to plant those crops.

19 With respect to price support, the price
20 support programs only operate in specific provinces.
21 We can give you the details of where those operate.
22 In the case, if I remember right, in the case of

1 wheat and rice, the provinces where the price
2 support program is in operation account for
3 77 percent of Chinese production. In the case of
4 corn, it's about 37 percent. We believe, though,
5 based on our analysis at the market that the price
6 support program effectively supports prices in all
7 of China. And that makes sense given the volume of
8 government purchases and observations we've made of
9 prices throughout China.

10 MR. CHEN: Thank you.

11 CHAIR GRESSER: Let me turn now to
12 Mr. Cook from the Department of Agriculture.

13 MR. COOK: Thank you for your testimony
14 and written submission. It was very helpful. In
15 your written submission, it notes that in China's
16 2015 No. 1 Document, the Chinese government appeared
17 to take a slight step back from aggressive self-
18 sufficiency objectives behind arable crop subsidies.
19 On paper, China indicated that self-sufficiency
20 should be scientifically defined and for the first
21 time acknowledged subsidy-related pricing and
22 accumulation problems.

1 Did you see any actual changes in China's
2 subsidy policies this year? Why do you think in
3 2015 the Chinese government maintained its subsidy
4 programs for wheat and rice and its support for
5 corn? What does scientifically defined
6 self-sufficiency mean for China? And, finally, in
7 your view, does China's unofficial acknowledgement
8 of subsidy-related problems suggest the Chinese
9 government will reform its subsidy programs?

10 MR. THORN: Well, I wish I knew. I'll
11 tell you what I think is going on right now. There
12 was a glimmer of hope in that No. 1 Document, the
13 last version that we saw, because for the first time
14 we saw a little bit of self-doubt. We know that
15 there has been a debate within China about the
16 possibility of reforming the corn program. It
17 hasn't happened yet.

18 And the answer to one of your questions is
19 no, we didn't see any change in policy this year. I
20 believe they refrained for the first time from
21 increasing their support price for corn, but there
22 were increases for both wheat and rice. And so they

1 have continued on the same policy trajectory.

2 I think what has happened is that the
3 officials who are administering this policy realize
4 that the policy has gotten a bit out of whack. They
5 realize that in part because of the drop in the
6 world market prices, which made clear how out of
7 step their policy was with market forces. And also
8 the purchase of 60 million tons of corn last year
9 and the accumulation of huge stocks has made them
10 realize that their policy is out of whack.

11 Now, we won't see a fundamental change in
12 policy until they decide that they are going to give
13 up their self-sufficiency quest. And I don't think
14 that they are going to make fundamental changes
15 without outside pressure. I think that it has been
16 helpful that the U.S. government and other exporting
17 countries highlighted problems in Geneva. I think
18 that we're getting almost to the point where other
19 countries realize that problems with domestic
20 support -- that the biggest distortions in
21 agricultural markets are not the result of subsidies
22 in developed countries but now subsidies in

1 developing countries. But we still haven't seen any
2 fundamental change in Chinese policy.

3 MR. COOK: Thank you. You also mentioned
4 in your oral statement and in your written
5 submission about subsidies for pork, oilseeds, and
6 cotton and how that would significantly increase the
7 total AMS value. We were wondering if you could
8 elaborate a little bit more on the types of policies
9 there. Are they as bad as for the subsidies, the
10 commodities that you spoke about, or not?

11 And then also, in your opinion, there's
12 many different ways that the Agreement on
13 Agriculture can be interpreted. Even if you used
14 the most conservative sort of estimates, would that
15 still show a violation? Even if not what we feel is
16 necessarily accurate, but assuming China were to
17 defend it and they took the most conservative option
18 available, would that still -- would those
19 methodologies still show a violation?

20 MR. THORN: With respect to subsidies for
21 other commodities, we did look at a broader range of
22 commodities back in 2012, when we did a similar

1 study. We looked at pork and soybeans and cotton.
2 And for each of those commodities, we calculated the
3 AMS, and in every case they were well above the
4 de minimis level. We calculated the AMS for pork at
5 around \$50 billion. On the order of the AMS, we
6 calculated for corn, wheat, and rice, even higher,
7 soybeans about \$5 billion, and cotton about
8 \$7 billion.

9 We haven't looked at those programs
10 recently. I assume that those figures would have
11 changed, but I think it's a fair bet they are still
12 in violation of their obligations for those
13 products, too, or if we had calculated the AMS for a
14 broader range of commodities, that the figures would
15 have been significantly higher than the figures that
16 we gave you in our written submission.

17 Now, with respect to your last question, I
18 believe that -- I believe strongly that the
19 methodology that we used for calculation of the AMS
20 in our recent study is consistent with the
21 methodology in the Agriculture Agreement. It's also
22 consistent with the way the U.S. and other developed

1 countries have done calculations of price supports
2 for AMSs, price support programs under the AMS
3 methodology.

4 There is some difference of opinion in
5 Geneva with regard to how that calculation should be
6 done. China and other developing countries have
7 submitted notifications that use a different
8 methodology; for example, several developing
9 countries including China have included in their
10 price support calculation only quantities purchased,
11 rather than all of production, to calculate the
12 effect of the price support program. We don't think
13 that that methodology is consistent with Annex 3 of
14 the Agriculture Agreement. We think if there was a
15 dispute settlement challenge, that panel or the
16 appellate body would uphold -- would rule that the
17 U.S. approach to price support calculation is the
18 correct one.

19 But even if you use China's approach and
20 do the calculation using only quantities purchased
21 in the most recent marketing year, they would be
22 well over their AMS limit. And that's because of

1 the big government purchases, especially for corn.
2 So there is no question that they're out of
3 compliance. Also, if you look at just input
4 subsidies and direct payments, they are well over
5 their de minimis threshold just for those policies.
6 So the violation seems pretty clear no matter what
7 methodology you use.

8 MR. COOK: Thank you.

9 CHAIR GRESSER: Mr. McCartin?

10 MR. McCARTIN: Thank you. Welcome, Craig.
11 I want to focus on an issue that you mentioned at
12 the end of your testimony today, and that's the
13 tariff-rate quotas on wheat, corn, and rice. You
14 noted that the fill rates for those tariff-rate
15 quotas were low, despite the fact that the market
16 prices in China are higher than the market prices
17 outside China and despite the fact that there is
18 ample demand within China for imports.

19 Can you help us understand what's going on
20 here? Why are the fill rates so low? And also
21 explain how this problem has impacted the
22 associations that you are representing.

1 MR. THORN: I don't know if I can give you
2 a complete answer. I think the most important
3 factor here is China's system for allocating import
4 licenses. For I think all three of the commodities,
5 the bulk of those import licenses go to state
6 trading enterprises. Under China's accession
7 agreement, they are required at a certain point in
8 the year, I think it's three or four months before
9 the end of the marketing year, to reallocate any
10 unused licenses to private importers. I don't
11 believe that reallocation has ever happened.

12 The reason for that requirement is
13 obvious. I was involved for a short time as a
14 government official in the China accession
15 negotiations, and we pushed for this concession
16 because we obviously didn't have confidence that the
17 state trading enterprise was going to make decisions
18 on imports based solely on market criteria, on
19 relative prices. And so that reallocation is an
20 important commitment that they have not honored.

21 I think there are other issues. I think
22 there are issues related to trading rights. There

1 are also, in I think the case of all three
2 commodities, SPS issues that -- illegitimate SPS
3 barriers that restricted access on sort of a
4 country-by-country basis, so I think there is a
5 combination of factors.

6 CHAIR GRESSER: I believe Mr. Santillo has
7 a question.

8 MR. SANTILLO: Thank you for your
9 submission. My question has to do with economic
10 impact rather than simply the -- well, let's just
11 say it has to do with economic impact. So my
12 question for you is U.S. Wheat Associates
13 commissioned an Iowa State University study in order
14 to quantify the economic impact of China's subsidy
15 programs on the United States. And I'm wondering if
16 you could provide your views regarding the magnitude
17 of loss to the U.S. economy in terms of jobs that
18 are due to China's subsidy programs in support of
19 the commodities we're talking about here.

20 MR. THORN: Yes. I'm glad you cited that
21 study. I think it's an important piece of work.
22 It's also, in my opinion, authoritative. They used

1 to do that study -- it was done by economists of
2 Iowa State University, and they used the state-of-
3 the-art econometric model in their work. They
4 estimated a significant price impact, four percent.
5 They estimated price suppression resulting from
6 subsidy policies in China, India, Turkey, and Brazil
7 at four percent, which is significant especially
8 when you're talking about a low margin business like
9 commodity trade in wheat. And the bulk of that
10 price suppression, the bulk of the price effect and
11 the trade effect came from China, the Chinese
12 policies.

13 I'd like to point out that I think that
14 figure was quite conservative, because they used the
15 base period a time when commodities prices were
16 extraordinarily high. If they used instead a more
17 recent base period, the price effect would have been
18 much greater and the trade effect. Just to focus on
19 China -- I think I have the figures here. The study
20 estimates that if the Chinese support programs were
21 removed, that Chinese imports would increase by
22 about 6 million tons. And they estimated -- no, I

1 don't have the price effect for the Chinese
2 subsidies broken out right here.

3 I think that you would see price effects
4 and production effects and net trade effects of a
5 similar magnitude if you did the same work for the
6 other commodities.

7 MR. SANTILLO: Thank you.

8 CHAIR GRESSER: Any further questions?
9 Then, Mr. Thorn, thank you very much, and thank you
10 for your contribution.

11 For our final panel, we have four
12 witnesses representing the Software & Information
13 Industry Association, the Information Technology
14 Industry Council, the Telecommunications Industry
15 Association, and the Semiconductor Industry
16 Association.

17 MR. MacCARTHY: Thank you very much for
18 this opportunity to testify. As you can tell, there
19 are a lot of us up here. USITO, as you know, is a
20 group that was founded 25 years ago or so by the
21 four trade associations you see represented before
22 you, and we're going to divide up our oral testimony

1 into various parts. I'm from the Software &
2 Information Industry Association, so I'm going to
3 talk a little bit about intellectual property
4 rights, and my colleagues will join in on other
5 topics.

6 Let me start by saying we agree with
7 Jeremie Waterman and Steve Metalitz, who earlier
8 commended the United States and the Chinese
9 government for their agreement on controlling
10 cyber-enabled theft of intellectual property. We
11 think that's a very good step forward that will
12 provide a basis for examining carefully on the
13 ground whether there is actually any improvement in
14 that area. A step forward in agreement is always a
15 good predicate for changes in conduct.

16 So IPR protection in China generally
17 remains a serious problem for our member companies.
18 It's true that China has expanded its effort to
19 address problems. They have some good, positive
20 rhetoric and the development of new policies, but
21 more needs to be done. Let me give you some
22 examples.

1 The IPR provisions in the criminal code
2 need to be revised. They need to be in full
3 compliance with TRIPS under which the Chinese
4 government should provide penalties that are
5 sufficiently deterring. More generally, the law
6 enforcement agencies that are charged with enforcing
7 this need more focus from higher authorities, more
8 training, more investment into their conduct and
9 their activities. China's criminal code also needs
10 to be revised so that the for-profit requirement
11 that's built in now for piracy and counterfeiting is
12 interpreted more similarly to the for-commercial
13 gain concept in TRIPS. Finally, we need more
14 transparency regarding the sharing of information
15 about actions that have been taken against
16 infringers. That way, we'll be able to know how
17 effective China's IPR enforcement efforts really
18 are.

19 In addition, there's some policy-related
20 issues that we think are important. China's IT
21 technical standards committees should actually make
22 sure that patents that are licensed in one patent

1 pool, for one standard, is not automatically
2 considered a commitment for sharing that in another
3 standard. In addition, China should be encouraged
4 to utilize the FRAN principles that are widely
5 adopted. That's the fair, reasonable, and
6 nondiscriminatory pricing policies.

7 China's service invention remuneration
8 regulations, as we've made clear in previous filings
9 here, should make clear that invention remuneration
10 should really be determined by employers and
11 employees. The current amendments to these
12 regulations do not make this clear and encourage
13 excessive litigation.

14 We have expressed before concerns about
15 China's utility model patents. We think China
16 should be encouraged to consult with industry and
17 other governments to find solutions to problems
18 incurred by the overly permissive UMP filings
19 regardless of their actual quality or level of
20 innovation.

21 Finally, there are some proposed patent
22 law amendments. It's undergoing its fourth

1 revision, as you know. These amendments, they focus
2 on the enforcement of patents, and that's good, but
3 they create a gap between the decisions on validity
4 by the State Intellectual Property Office and
5 decisions on infringement by courts and patent
6 administrative authorities. This could result in a
7 finding of infringement even when that patent is
8 found later to be invalid.

9 So let me stop there and ask my colleagues
10 to make their presentations as well.

11 MR. REID: Thank you. On behalf of the
12 Telecommunications Industry Association and its
13 members, I thank you for the opportunity to speak
14 here, today. TIA represents over 300 manufacturers
15 and suppliers of high tech telecommunications
16 networks in the United States and around the world.
17 TIA is also an NCO-accredited standards development
18 organization.

19 I would like to also note our support for
20 the range of issues covered in the USITO written
21 submission, which underscore the ongoing challenges
22 in the commercial environment for the global ICT

1 industry. I'm going to focus my comments on a few
2 key policies which continue to be major concerns for
3 the telecommunications industry.

4 We remain deeply concerned at the 2013
5 release of the draft revisions to China's Catalogue
6 of Telecommunications Service categories and the
7 release of the draft of Administrative Measures for
8 the Trial Operation of New Types of
9 Telecommunication Businesses. While we have not
10 seen either of these draft measures move forward,
11 they remain a major concern for the ICT industry
12 because of the potential to greatly expand MIIT's
13 regulatory oversight resulting in new market access
14 barriers that do not appear to be consistent with
15 China's WTO commitments.

16 The revisions to the Telecom Services
17 Catalogue and the Trial Operations Measures would
18 increase the regulatory scope of MIIT by broadening
19 the current licensing scheme for basic telecom
20 services and value-added telecom services to include
21 new categories of ICT services and higher levels of
22 regulatory oversight with the new types of business

1 models that use the public network to deliver
2 services.

3 Compounding our concern is that this
4 increased regulatory oversight would be accomplished
5 by inaccurately classifying a broad range of ICT
6 technologies and services as telecom services,
7 rather than as computer or business services that
8 use the internet as a delivery mechanism.

9 Examples of the types of services that
10 would be restricted under the draft amendments for
11 the Telecom Services Catalogue include cloud-based
12 computing, electronic commerce, and audiovisual and
13 application software. If these various computer and
14 business services are reclassified as telecom
15 services, some of the market restrictions that would
16 be placed on businesses include equity caps, joint
17 venture requirements, and overly high minimum
18 capitalization requirements.

19 These actions can have long-lasting,
20 harmful effects on the commercial environment and
21 innovation of these services in China, as well as
22 creating additional barriers to U.S. companies

1 looking to do business in China.

2 It is also worth noting that even in draft
3 form, the Telecom Services Catalogue amendments have
4 already impacted market access. Without clarity on
5 a timeline for approval or further revision and a
6 de facto refusal to grant licenses to foreign
7 companies, the only option for foreign companies
8 wanting to provide cloud services in China is to
9 partner with domestic companies.

10 The other issue I'd like to address is
11 network access license and type approval. China's
12 existing testing and certification regime for
13 telecom equipment is more burdensome than necessary
14 and can lack transparency. The end result is a
15 testing and certification regime that appears to be
16 unnecessarily duplicative, confusing, and opaque,
17 which leads to higher cost for products exported to
18 China and delays in getting product to the market.

19 While there have been some actions by the
20 Chinese government to streamline the testing
21 requirement for telecom equipment, China still has
22 in place three separate testing requirements, radio

1 type approval, network access license, and the China
2 compulsory certification. I would also note that in
3 the WTO accession documentation, China committed not
4 to subject imported products to more than one
5 conformity assessment.

6 We would urge the Chinese government to
7 continue to look for ways to further streamline the
8 current testing and certification regime with the
9 goal of enhancing transparency, improve notice and
10 comment periods for new type approval requirements,
11 and better engagement with the industry. We would
12 encourage the establishment of a regular public
13 stakeholder consultation process to review type
14 approval requirements and procedures, and enable a
15 continuing dialogue with industry to identify areas
16 where improvements can be made to the type approval
17 process.

18 Before concluding, I want to note the
19 additional concerns regarding China's compliance
20 with its WTO commitments on anti-dumping. Despite
21 numerous WTO panel dispute rulings against China on
22 its administration of anti-dumping cases, China

1 continues to accept cases that are inconsistent with
2 WTO obligations. China has chartered the global
3 optical fiber industry in numerous cases, all of
4 which possess substantial flaws. These flaws, all
5 subject to previous WTO cases, include failure to
6 meet WTO standards on injury or threat of injury,
7 ignoring market conditions, especially the existence
8 of market mechanisms, and failing to meet
9 transparency and disclosure requirements.

10 Thank you today for the opportunity to
11 allow the telecommunications industry to present its
12 oral statement this morning.

13 MS. KELLER: Hi, my name is Devi Keller,
14 and I am representing the Semiconductor Industry
15 Association. We are the voice of the U.S.
16 semiconductor industry, and together we represent
17 companies that -- semiconductor manufacturers and
18 designers that together account for 80 percent of
19 the semiconductor production in the United States.

20 While we support the other issues
21 highlighted in the USITO submission today, I am
22 going to cover one item of importance to our

1 industry, and that is China's development plan to
2 promote its domestic integrated circuits industry.

3 China is seeking to develop a soup-to-nuts
4 semiconductor industry independent from global
5 supply chains. In 2014 the Chinese government
6 promulgated the IC promotion guidelines that set
7 forth a plan to achieve this objective, complete
8 with specific revenue targets and technology goals.
9 The stated aim of this plan is to build an advanced,
10 world-level semiconductor industry capability in all
11 major segments of the industry by 2030.

12 One key element of China's new IC
13 promotion guidelines is massive central and local
14 Chinese government and/or state directed investment
15 funds designed to develop their semiconductor
16 industry. As part of this plan, they have
17 established a national integrated circuits industry
18 investment fund, which currently has 130 billion RMB
19 in funding, or about 21 or 22 billion U.S. dollars.

20 In addition to the National IC Fund, there
21 are also approximately two dozen local or regional
22 funds which we estimate will probably add an

1 additional 40 to 50 billion USD of funding into
2 their domestic industry. There is also an
3 11 billion fund established by Chip Core, which is
4 owned by the National IC Fund, which will invest in
5 semiconductor manufacturing and equipment. In
6 addition to this, there is also substantial
7 preferential bank loans. We estimate the investment
8 to bank loans is about one to three. So, all
9 together, we are seeing massive investments, and
10 investments on this scale will most certainly tilt
11 the scale in favor of China production and displace
12 foreign competition in the world market, as has
13 happened in other industries like solar and wind.

14 With this unprecedented infusion of
15 capital by Chinese government funds to develop
16 China's IC industry, coupled with subsidy measures
17 typically employed to support targeted industries,
18 foreign semiconductor industries will almost
19 certainly not be able to play on a level playing
20 field in the Chinese market.

21 A couple of key concerns related to trade
22 about these policies are that they are not market

1 driven. The National IC Fund, it's clear that it is
2 government established, government funded, and
3 government controlled, providing preferential
4 treatment to the Chinese semiconductor companies.
5 It is also -- the goal seems to be import
6 substitution, which is a clear goal, is to limit
7 foreign market access. This fund is structured to
8 avoid compliance to China's trade commitments.

9 The National IC Fund is established as a
10 private equity fund which allows it to operate with
11 complete opacity toward the public. It is also de
12 facto discriminating against foreign companies. To
13 date, the National IC Industry Fund has not made a
14 single investment in a foreign company. It has all
15 been in Chinese domestic companies. And no details
16 have been made publicly available regarding how a
17 foreign company can participate in the investment
18 funds.

19 So, all together, in our recommendation,
20 we recommend that more should be done to encourage
21 China to implement its IC industry policies in a
22 transparent, fair, market-driven, and

1 nondiscriminatory way. Thank you.

2 MR. LENHART: All right, thank you. Thank
3 you to all, and thank you for accommodating our
4 large group here from USITO as we all huddle
5 together up in the front. We're very happy to come
6 in and discuss some of our priorities and some of
7 our issues and concerns in the China market.

8 I am representing ITI, one of the four
9 parent associations of -- the Information Technology
10 Industry Council, one of the four parent
11 associations of USITO. We represent over 60 of the
12 global leaders in innovation and information
13 technologies across different technology sectors.

14 I think that my colleagues have very well
15 summed up a lot of some of the very specific
16 priority issues related to IPR standards,
17 semiconductor issues. So what I will be doing is
18 just going over some of the sort of overarching or
19 background concerns that our members have voiced to
20 us and some of the ways that we are viewing the
21 China market. And I will keep this very brief.

22 First of all, I would emphasize that the

1 China market is a priority market for IT companies,
2 for ICT companies. Over half of our members have
3 China as one of their top five market priorities for
4 the world. It's a market that companies are seeing
5 growing competition coming out of. There are
6 certain information technology companies coming out
7 of China that are world leaders already, just based
8 on the China market alone. And it is a market that
9 is very large in valuation, so it's an important
10 market to ICT companies.

11 In that regard, there are a number of
12 issues that are very much of concern, especially in
13 recent years. Number one, I would reiterate the
14 concerns that were already brought up by the U.S.
15 Chamber of Commerce related to national security. I
16 think what we see here is a concern with different
17 streams of where we see some of the goals of the
18 Chinese government currently. There are stated
19 interests in moving in the direction of market-
20 oriented reforms that would give the market a
21 decisive factor within the economy. But, at the
22 same time, what we also see is certain policies over

1 the last few years particularly related to national
2 security and cybersecurity that seem to be working
3 counter to those goals of reform and opening, and in
4 some ways closing the market.

5 We have seen a number of different
6 security laws that have been either released or
7 released in draft forms or pilot programs or new
8 standards that have been released, and many of these
9 hold potential to, if enacted in the way that they
10 have been written, to act as de facto market access
11 barriers for ICT companies within the China market.
12 And I'll just talk about a few of them right now.

13 The National Security Law was released and
14 has already been enacted as of July. ICT companies
15 certainly are concerned with Articles 24 and 25 and
16 how that might be interpreted. I know that this was
17 discussed earlier in the day as well, but
18 discussions of what is secure and controllable
19 technology, references to indigenous innovation,
20 these are concerns coming from such a broad-ranging
21 document.

22 The draft Cybersecurity Law has not come

1 in its final form. It has been released for public
2 comment once. There are a number of concerns
3 related to this within our industry, mainly related
4 to the broad definition of what critical information
5 infrastructure is and unclear scope of what the
6 cybersecurity review regime will be. This is
7 something that is also expounded on in our written
8 submission, so I won't get into a lot of detail
9 there, but there are concerns with what this
10 cybersecurity review might mean and what the
11 definitions are, what the process will be, and how
12 it might be implemented.

13 Most specifically, the Multi-Level
14 Protection Scheme is mentioned as a part of the
15 cybersecurity review regime within the draft
16 Cybersecurity Law document, and there is
17 discriminatory preference above Level 3 to the 2012
18 version of MLPS that we had seen previously, so
19 continue to be concerns related to that.

20 Recently, as of April of this year, new
21 standards for secure cloud computing services
22 certification were released. There are two

1 standards that have been released, and at the 2015
2 Trusted Cloud Services Forum, CAC announced four
3 third-party organizations that were named as
4 accredited institutions to certify cloud services.
5 Those are the China Information Technology Security
6 Evaluation Center, the China Academy of Information
7 and Communication Technologies, the National
8 Research Center for Information Technology Security,
9 and the China Electronic Standardization Institute.
10 All of these are quasi-government organizations or
11 organizations that have some relationship to
12 ministries, so there is some concern about how these
13 different standards might be enforced. This is
14 supposed to be built off the United States FedRAMP
15 model, but it appears to be done differently as the
16 third-party accredited institutions are all
17 quasi-government.

18 A second trend overall beyond the concerns
19 with national security would be trends in
20 localization. This is something that we have heard.
21 You read it in media articles. You also hear it in
22 discussions with Chinese academics where there tends

1 to be a trend in the thinking of policymakers that
2 localization is the direction. And when I say
3 localization, I'm referring to localization of data
4 flows, interrupting cross-border data flows, but
5 also localization of hardware, and even in the case
6 of some regulations that we've seen that have come
7 out, for example, the China Banking Regulatory
8 Commission's secure and controllable regulations
9 where literally written into regulations from the
10 start there were preference for purchase of domestic
11 technology. A direct portion of this, the draft
12 Cybersecurity Law, Article 31, has a localization of
13 data flows measure written actually right into it.
14 This direction is obviously something of great
15 concern and something that we would continue to be
16 monitoring and I'm happy to continue to discuss in
17 more detail.

18 A third thing that I would just note
19 regarding standards, I think standards is another
20 example of an area where we see the same, the two
21 streams where there is one stream of reform and then
22 another stream of security potentially blocking or

1 hindering that reform. In the standards, there has
2 been a push by the Chinese government to try to make
3 more modern their standards-making system to try to
4 make it more transparent, more open. We are very
5 pleased in some of the outcomes that came from the
6 presidential summit between President Obama and
7 President Xi regarding standards and being done in
8 an open and transparent manner with due process. We
9 have actually found that in working with our
10 colleagues in China from the standards admissions of
11 China -- administrator of China that they are trying
12 to work at a technical level to try to make the
13 processes more open and inclusive. But there
14 continues to be concerns that there are other ways,
15 other part of the government that are potentially
16 still leaning towards specifically difficulties with
17 the term of industry standards, of enterprise
18 standards.

19 I'd like to particularly bring attention
20 to Article 13 of the draft Cybersecurity Law
21 actually mentions by name enterprise standards as
22 being something that they would encourage different

1 enterprises within China to pursue at a higher level
2 than what the industry standards or national
3 standards might be. This, obviously in the past, we
4 have seen holds the potential to be again another
5 de facto barrier to foreign companies as the
6 enterprise standard of an individual company might
7 end up becoming a national standard and exiting
8 other standards from the market.

9 Those are the main topics that I wished to
10 discuss today. Again, thank you so much for the
11 opportunity to testify here, and I look forward to
12 questions.

13 CHAIR GRESSER: Thank you all very much
14 for these insights. Perhaps turn to Ms. Winter?

15 MS. WINTER: Okay. Well, thanks very much
16 to all of you for being here and for your testimony,
17 and also the support you provide to USTR any time we
18 need to reach out and obtain views from you. I have
19 three quick questions. One, Mr. MacCarthy, you
20 talked about patents licensed for one standard
21 should not be used for another standard; have you
22 seen instances of that?

1 MR. MacCARTHY: Let me get back to you
2 with some detailed examples. We've had
3 conversations with our members about this, and they
4 tell us that these things do take place. But let me
5 get back to you with a description of particular
6 examples.

7 MS. WINTER: It would be very helpful,
8 thank you very much. And, Devi, you mentioned the
9 semiconductor funds that we've read about on
10 numerous occasions. Can you describe your
11 organization's views about the Private Equity Fund
12 and whether it is private or public?

13 MS. KELLER: Well, we believe that it
14 should be public and that the information should be
15 made publicly available. In reality, the Chinese
16 government has labeled it a private equity fund in
17 order to basically hide documents and not share
18 documents.

19 The actual agreement establishing the
20 National IC Fund has not been made public, nor have
21 the articles of incorporation. In our view, we feel
22 like these technically could be subsidies, and we

1 believe that the information should be made public.
2 But they've established it as such that they don't
3 have to follow those rules according to Chinese law.

4 MS. WINTER: Thank you. And just finally,
5 John, thank you very much for your comments. You
6 know that we have worked hard on the ICT space and
7 have got an expanded commitment from President Xi on
8 his trip here. Do you have advice for us on how we
9 should expand, if at all, on the commitment that we
10 got, just specific advice that we should look at to
11 define or help China define what secure and
12 controllable should not be?

13 MR. LENHART: Referring to security?
14 Yeah, we were very pleased to see that outcome
15 coming out, expanding on the CBRC banking regs and
16 going across the economy. I do think that this is
17 going to be one of those -- one thing that we should
18 all be ready for is that this is going to be likely
19 something that we are going to be working on for a
20 while, and it's something that we will be monitoring
21 and hoping to work as we see things or problems come
22 out related to it. So, in that respect, I think

1 what has been done to get these commitments to point
2 to for later on action is very important.

3 Beyond that, the only thing that I would
4 flag currently is specifically related to trying to
5 figure out -- we need to figure out more about the
6 cybersecurity review regime, the national security
7 review regime, more information about what these
8 are. And, specifically, as we understand it, the
9 MLPS is under revision, and that's why I was
10 referring to the version that we had seen in 2012.
11 So being able to engage while it potentially is
12 under revision and trying to figure out what the
13 definition is there, can we make it in a way that
14 would be more similar to what is done in other
15 countries would be, I think, an important step,
16 because that is one very clear discriminatory part
17 of and one of the main concerns of being a market
18 access barrier for companies that are concerned
19 about how the draft Cybersecurity Law will be
20 implemented.

21 CHAIR GRESSER: Thank you. Now turning to
22 Commerce Department?

1 MR. SANTILLO: Thank you. I have two
2 questions actually, one on patent enforcement and
3 the other on standardization reform. So, in the
4 past couple of years, China has established the
5 Patent Administration Departments, or PADs, at the
6 provincial and local levels to administratively
7 enforce patent rights. Faster proceedings and lower
8 costs are some of the advantages of this
9 administrative enforcement.

10 However, these advantages seem to be
11 counterbalanced by lower fines and discretionary
12 remedies. Are USITO members availing themselves of
13 the administrative patent enforcement? And, if so,
14 do they have a suggestion on how the administrative
15 system could be improved? Thank you.

16 MR. MacCARTHY: Let me take that question
17 and thank you for asking it. We have had some
18 conversations among our members about their use of
19 the local administrative enforcement entities, and
20 we don't have a comprehensive answer that represents
21 everybody who is involved in the organization. But
22 the companies that we have heard back from tell us

1 that they do not use those procedures, and they are
2 not likely to do so in the future.

3 They tell us that discovery is very
4 limited, that the damages are too small, and they
5 also suggest that the local administrative councils
6 and tribunals tend to be more favorable to local
7 companies than they are to international companies,
8 compared to courts.

9 But I would like to also respond in regard
10 to your question that there are some changes
11 proposed to the patent law, and I make this point in
12 our written testimony as well, that would give
13 greater authority to the local administrative
14 agencies. They would be able to conduct a full
15 range of investigations, including the ability to
16 view and to copy company contracts. And they would
17 be capable of seizing products that disrupt the
18 market order by willful infringement. And there are
19 various other authorities that this revision would
20 also have.

21 We would recommend against that change in
22 the existing patent law and urge you to join us in

1 that recommendation. The procedural safeguards are
2 just not what they should be, especially in regard
3 to copying company documents. And the key concepts
4 are not well defined. We don't know how to construe
5 what would consist of disrupting the market order,
6 and we don't even know what willful infringement in
7 this context would be. So we would urge you to join
8 us in recommending that those changes not be made to
9 patent law.

10 MR. SANTILLO: Thank you. That's very
11 helpful. And then on standardization reform, what
12 is your assessment of the standardization reform
13 that is currently taking place in China, and what
14 steps would China need to take to provide a positive
15 outcome for your members?

16 MR. REID: I think the standards issue is
17 sort of some signs of progress and hope, but there
18 is still a fair amount of concern. I think the most
19 significant issue is that you take steps to ensure
20 that China is integrated into the global standards
21 process right now and chooses to abide by
22 international norms in terms of standards

1 developments.

2 China often mandates standards sort of
3 outside this globally established process with
4 limited consultation still from the ICT industry,
5 which is a very different process than what goes on
6 here and in Europe and globally, as a general rule.
7 There is still an issue of voluntary standards sort
8 of being mandatory standards, often to the
9 conformity assessment process. That creates market
10 access barrier issues.

11 And the system still is too complex as a
12 rule for the ICT industry to move its products
13 through the system in an appropriate time frame.
14 The adoption of both mandatory and voluntary of
15 China's specific standards, national standards
16 impedes innovation by restricting the ability of
17 Chinese companies to serve other markets and for
18 foreign companies to serve the Chinese market as
19 well.

20 We strongly advocate for the rights of
21 Chinese distinguishing bodies as Chinese companies,
22 but there is no presumptive participation in Chinese

1 standards setting laws, rules, or administrative
2 regulations that would allow the Chinese government
3 to unfairly procure intellectual property of foreign
4 companies or non-market or royalty-free terms.

5 So, as I said, I think there is an
6 appreciation within some aspects of China that the
7 standards process needs to become fairer, more
8 transparent, and more globally aligned, but we have
9 not seen the progress we would like in this area, I
10 guess the speed of the progress and reforms and
11 inclusion of U.S. companies in standard-setting
12 determinations.

13 MR. SANTILLO: Thank you very much.

14 CHAIR GRESSER: Thank you. We turn to
15 Mr. Manogue.

16 MR. MANOGUE: Thank you very much. For
17 the sectors that each of your association
18 represents, how would you characterize the Chinese
19 government's industrial policy goals for the next
20 five years?

21 MR. LENHART: That is a good question.
22 Thank you. I think that when we are evaluating

1 this, there are two areas that I would highlight.
2 One is the area that I already outlined previously
3 about security and national security. I think that
4 that is a -- we know that there are regulators
5 within China, as we have seen with some of the
6 testimony from the Semiconductor Industry
7 Association, and we see it in other sectors as well.
8 I think the CBRC banking regs showed a bit of this
9 instinct where there is a preference among a group
10 of regulators to have locally grown domestic company
11 IT systems within the country. This serves a
12 domestic, economical, so the industrial policy goal.
13 It also is a byproduct probably of some of their own
14 trust concerns.

15 And so I think that in evaluating over the
16 next five years, when we are looking at priority
17 issue areas where we need to engage and ensure that
18 they are following international norms, it would be
19 the scope of national security, the scope of
20 cybersecurity, the scope of what is critical
21 information infrastructure, what are these review
22 regimes that are being done, are they done in a

1 transparent way that we can understand why decisions
2 were made in the way that they were. Those are
3 areas to keep in mind.

4 I think also, too, our members' concerns
5 continue to be related in the IPR realm where some
6 of the different decisions -- and again this is
7 something that happens on a case-by-case basis, and
8 so there are times where it seems as though there
9 are many cases that this occurs and then other times
10 where there is a more quiet period -- but ways that
11 sometimes in transparent licensing processes or
12 anti-monopoly investigations or other types of
13 procedures might be used to leverage, to create a
14 lower value for intellectual property, or
15 potentially affect royalties on patents and things
16 of that nature. That's something that really gets
17 at the heart of the way that a lot of some of our
18 members do business, and it's something that would
19 be a very big concern related to that as well.

20 CHAIR GRESSER: Other perspectives from
21 the panel on this question?

22 MS. KELLER: Just to answer that quick,

1 because the Chinese government has actually provided
2 very clear goals itself in the promotion guidelines,
3 its goal is to develop a leading semiconductor
4 industry in all aspects of the global supply chain,
5 from manufacturing to design, R&D, assembly, and
6 test. That's their goal is to become the leader in
7 worldwide market share, which is going to be an
8 incredible feat considering that the U.S. currently
9 has 51 percent market share.

10 But it's clear that they do have -- their
11 goal, like I mentioned, is import substitution.
12 They want to build their own domestic industry and
13 domestic supply. It's related to the secure and
14 controllable concept as well, that they feel that
15 domestic suppliers are more secure than foreign
16 products.

17 They are also working on basically picking
18 winners and losers. For example, SMIC, China's
19 major foundry, was previously underperforming
20 financially. It had no major R&D plan. It was
21 struggling to find customers. Now it has
22 1.3 billion in investment from the Chinese

1 government, and it is supporting government
2 objectives to bring 28 nanometers to China. And the
3 government is helping them line up key domestic and
4 overseas customers through indirect regulatory
5 pressure. So that's the goal. The goal is very
6 simple. They want to become the leading player.

7 MR. REID: I would also say that beyond
8 the semiconductor industry, that probably applies
9 more broadly to the entire sort of telecommunication
10 design, manufacturing supply chain, where there is a
11 distinct desire to create home-grown versions of ICT
12 industry products across the board. I think TIA
13 would echo the concerns of our semiconductor
14 companies as well, that this is not just a
15 semiconductor issue but really a complete ICT
16 manufacturing sector issue in terms of indigenous
17 products and preferential treatment for local
18 companies.

19 CHAIR GRESSER: Let's now turn to the
20 Treasury.

21 MS. LI: Thank you. In your written
22 submission, you described challenges that U.S.

1 industry faces with respect to China's Customs
2 practices. Could you elaborate more on those
3 challenges and the macro repercussions for China of
4 having such Customs practices, as well as how has
5 Chinese industry responded to those same challenges?

6 MR. LENHART: Thank you, appreciate that
7 question. I think on that one, the Customs issues
8 are very technical, and I think it's something that
9 we would appreciate to have a continued discussion
10 on because we would really need to be in touch with
11 the people on the ground that are doing that.

12 Some very high-level thoughts on this
13 generally would be there have been as part of
14 China's reform to licensing systems and trying to
15 simplify different processes, there have been
16 certain improvements that our membership would note
17 in Customs processes, specifically through the
18 Shanghai free trade zone or the pilot free trade
19 zone in Shanghai. Some companies have seen
20 reduction in time to get a product to market. And
21 there have been even some openings around there that
22 are things that companies are pleased with.

1 There has been movement by the Chinese to
2 say that they do support the WTO Trade Facilitation
3 Agreement. We appreciate that. There continues to
4 be issues, a lot of lack of transparency in the way
5 that things work there.

6 How does this hurt China? I think to a
7 certain extent, as China's growth slows, these lack
8 of efficiency are things that are really going to
9 affect them, and so that's something to monitor.
10 When things are growing very, very quickly, then the
11 efficiency isn't quite as big a deal. We have also
12 seen some of the safety issues involved with this,
13 too, in recent issues that could be also associated
14 with this when there is a lack of transparency and a
15 lack of data to be able to keep track. So those are
16 things that I think would also be potential problems
17 for China.

18 But on further, more detailed questions,
19 we'd be happy to discuss further.

20 CHAIR GRESSER: Are there other comments
21 on this question? Okay, with that, the last item on
22 our agenda is a closing statement by the chair.

1 So let me thank all of our witnesses, this
2 group and inclusively, for their research and
3 thoughtful presentations. Thanks to all our
4 panelists from our five agencies.

5 And on behalf of the TPSC, special
6 appreciation to the USTR China Office and our
7 Executive Secretary, Yvonne Jamison, for all the
8 preparatory work to put this together.

9 This hearing is now adjourned.

10 (Whereupon, at 12:08 p.m., the meeting was
11 adjourned.)

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1 C E R T I F I C A T E

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

4 PUBLIC HEARING

5 BEFORE THE TRADE POLICY STAFF COMMITTEE

6 ON CHINA'S WTO COMPLIANCE

7 October 7, 2015

8 Washington, D.C.

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

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Tom Bowman

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Official Reporter

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