

THE U.S.-CHINA ECONOMIC RELATIONSHIP

HEARING BEFORE THE COMMITTEE ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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CONTENTS

	Page
Advisory of October 25, 2011, announcing the hearing	2
WITNESSES	
Under Secretary Lael Brainard, Under Secretary of International Affairs, U.S. Department of Treasury	41
Ambassador Demetrios Marantis, Deputy U.S. Trade Representative	48

THE U.S.-CHINA ECONOMIC RELATIONSHIP

TUESDAY, OCTOBER 25, 2011

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The committee met, pursuant to call, at 10:00 a.m., in Room 1100, Longworth House Office Building, the Honorable Dave Camp [chairman of the committee] presiding.

[The advisory of the hearing follows:]

HEARING ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

Chairman Camp Announces Hearing on the U.S.-China Economic Relationship

Tuesday, October 25, 2011

House Ways and Means Committee Chairman Dave Camp (R-MI) today announced that the Committee on Ways and Means will hold a hearing on the U.S.-China economic relationship. **The hearing will take place on Tuesday, October 25, 2011, in 1100 Longworth House Office Building, beginning at 10:00 A.M.**

In view of the limited time available to hear the witnesses, oral testimony at this hearing will be from the invited Administration witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

The United States and China both have a significant stake in restoring global economic health. Both countries have stressed the need to maintain positive economic and financial relations and to fight against trade protectionism. China's economic growth, and the resulting increase in domestic consumption in China, has created a large market for U.S. exports and created important opportunities for U.S. companies, farmers, and workers.

However, there are a number of longstanding issues that have caused friction between the United States and China. American companies, farmers, and workers still face many barriers in China. These longstanding problems include subsidies that distort competition; lack of regulatory transparency; currency misalignment and a closed capital account; harmful "indigenous innovation" policies; failure to adequately protect intellectual property; and many other barriers to U.S. exports and investment. These issues have been central themes in bilateral dialogues, such as the Strategic & Economic Dialogue and the Joint Committee on Commerce and Trade (JCCT), as well as multilateral negotiations in the G20 and World Trade Organization.

The hearing will provide an opportunity for the Administration to explain its response to China's trade-distorting practices and non-tariff barriers that prevent U.S. companies from competing on a level playing field.

In announcing this hearing, Chairman Camp said, **"The Chinese market presents enormous potential for growing U.S. exports, which support American jobs. But China purposefully makes it harder to sell our goods and services, unfairly subsidizes its own companies, and blatantly steals the intellectual property of American businesses. China's distorting trade policies are deeply troubling and cannot be allowed to stand. Its practices are costing U.S. jobs. China has benefited greatly from globalization, and it must abide by the same rules that afforded it that prosperity. The President and his Administration should continue to press China to open its markets through every available avenue. And when China has violated its international obligations, the United States must aggressively enforce its rights. I look forward to hearing the Administration's plan for addressing China's persistent barriers to U.S. exports and investment and exploring what should be done to ensure American employers and workers are treated fairly."**

FOCUS OF THE HEARING:

The hearing will focus on the significant opportunities presented by the Chinese market as well as the barriers that U.S. companies, farmers, and workers continue

to face. The hearing will explore the Administration's plans to address China's persistent barriers to trade and investment.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select "Hearings." Select the hearing for which you would like to submit, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business** on Tuesday, November 8, 2011. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225-1721 or (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and **MUST NOT** exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://www.waysandmeans.house.gov/>.

Chairman CAMP. The committee will come to order. China is both an opportunity and obstacle when it comes to our economy and American jobs. While the Chinese market is a large and rapidly growing destination for U.S. exports, China willfully disregards its international obligations and impedes fair commerce. Despite benefiting significantly from globalization and a more integrated global economy, China remains stubbornly closed to U.S. companies, farmers, ranchers, and workers.

The list of China's trade abuses is long. The record shows that China blatantly steals the intellectual property of American businesses, grossly subsidizes domestic industries, prevents U.S. farmers and ranchers from exporting through discriminatory regulations and practices that are not based on science or international

standards, blocks exports of rare earth minerals, and intervenes in its currency market, resulting in misalignment.

China has an important role to play in restoring global economic growth. To do so, China must more rapidly rebalance its economy away from export-led growth; this means sustaining meaningful RMB appreciation of its currency and complying with its obligations and commitments to open its Chinese markets to U.S. exports of goods and services.

Yet some in Congress focus on legislation to address currency manipulation as if it were a silver bullet. In doing so, they miss the many issues we have with China. I look forward to hearing from our two administration witnesses today about the full set of economic issues we face in dealing with China, including currency, and what the administration is doing and what Congress should and should not do with regard to our economic relationship with China. There is widespread agreement that part of our China strategy must include resumption of our bilateral investment treaty negotiations. Last year, Secretary Geithner testified before this committee that he was “very much in favor of moving forward, and I think these agreements have a very good record of protecting the interests of U.S. companies and workers, and it would be good to put one in place with China.”

A year later, the administration’s lack of action is perplexing. China has more than 70 BITs in place, bilateral investment treaties in place, including with many of our competitors. The EU recently announced that it would negotiate its own investment agreement with China. But the administration has been unable to form its negotiating position, allowing special interests to hamstring our ability to create jobs. I expect to hear from the administration today about when it intends to resume negotiations.

At the same time, I applaud USTR for its recent actions. Two weeks ago, the United States availed itself of WTO procedures to counternotify over 200 Chinese subsidies to the WTO, an important action that calls China out for its malfeasance.

I hope this is just the beginning of USTR’s actions on such subsidies. Furthermore, last week, USTR again utilized the WTO to publicly press China on its Internet censorship and restrictions, which creates significant barriers to U.S. services trade. And last month, the administration filed another dispute settlement case at the WTO.

I look forward to hearing from the administration about its efforts and the strategic and economic dialogue, the S&ED, and the Joint Commission on Commerce and Trade. Those forums have been important avenues for addressing Chinese practices. In fact, in conjunction with last May’s S&ED, I hosted a meeting between Ways and Means Committee members and a delegation of senior Chinese officials, led by Vice Premier Wang, China’s chief international economic official. Our Members raised many of these important issues directly with the Chinese officials, and we will continue to raise them at every juncture.

As the administration continues to engage with China through the S&ED and the JCCT, it must pay more attention to tracking China’s commitments and ensuring proper follow-through to implement them. In addition, I remain concerned that the administra-

tion is using the wrong metrics to measure progress. We must measure success not just in the number of laws and regulations overturned, but whether removing these policies will actually be effective and create U.S. sales and jobs. And I know this is a bipartisan concern.

Looking forward, the administration must aggressively pursue WTO violations when they occur. While we should not hesitate to confront China directly, the administration should also build strong coalitions to ensure maximum pressure and meaningful change. Promptly implementing the trade agreements with South Korea, Colombia, and Panama will provide us with an important counterbalance in critical regions. China's influence has grown beyond Asia, with significant Chinese investment in Latin America, Africa, and around the world. The United States must be globally engaged to counter this influence and ensure that China's destructive practices are not exported.

I look forward to the testimony. Before yielding to the ranking member, without objection, the opening statements of all members will be included in the record.

At this time, I yield to Mr. Levin for his opening statement.

Mr. LEVIN. Thank you very much.

American exports to China have been growing, and we need that export growth to help create American jobs. But at the same time, China exports four times as much as the U.S. exports to China. China's exports increasingly compete in key areas with American products, and China continues to erect barriers to our exports. The current relationship is imbalanced, unfair, and unsustainable. This trade deficit contributes to the jobs deficit in America, and the American people want Congress to take action to address it.

For many years now, the economic relationship between our two large economies was built on a Chinese economy, structured on its export platform, overwhelming the role and importance of domestic Chinese consumption, with the U.S. economy significantly built on its role as the major consumption market for Chinese products. Sensing some of the perils in that economic structure, a decade ago, when China entered the WTO, some of us in Congress understood that inclusion of a major nonmarket economy into a rules-based trading system presented unprecedented challenges. To meet those challenges, we fought for inclusion of tools to strengthen our hand in ensuring that China played by the rules.

Unfortunately, the Bush administration and the Republican Congress made clear early on they preferred a hands-off approach to China. That was reflected in acquiescing and China's making a mockery out of the special provision provided for in China's WTO accession for an annual review of whether China was meeting its obligations. Another vivid example was the failure to use the safeguard against surges in Chinese exports that harm U.S. industries and workers.

On four occasions, the ITC recommended relief. On all four occasions, the Bush administration refused. Thousands of American jobs were lost. Knowing the Bush administration preferred a hands-off approach helped embolden China to continue trade-distorting practices that target our market, our companies, and our workers. Thankfully, the Obama administration resurrected the

421 safeguard in the tires case. The administration is trying to turn the ship in the right direction. But the process is too slow and there still is too much resistance in Congress and elsewhere.

The American people expect their representatives to actively manage this trading relationship. They expect us to fight for a level playing field for American companies and workers. So I appreciate holding this hearing, asking the administration its plans at today's hearing. But let us remember that the Constitution gives Congress exclusive power over foreign trade. That means Congress must act to help end a variety of China's predatory trade practices. One of them is China's currency manipulation. House Democrats insist on action because it matters. Fred Bergsten recently described China's currency policy as, "by far the largest protectionist measure adopted by any country since the Second World War, and probably in all of history." He estimated that eliminating the misalignment would, "produce at least a million goods jobs, mainly manufacturing."

In recent years, some of our Republican colleagues have come to agree about the seriousness of this problem. And last fall, the House passed its currency bill with strong majorities of both parties voting in favor, including myself and Chairman Camp. Chairman Camp and other committee Republicans agreed with us that substantial amendments made the bill, on its face, consistent with our international obligations. The Senate has now followed the House by passing legislation to address this problem. Now it is the House's turn to act by once again passing its bill, the Currency Reform for Fair Trade Act, which is cosponsored by a majority of this Chamber, 230 Members.

Because currency is not China's only predatory and trade-distorting policy, that cannot be an excuse for a refusal to act on it. The House leadership must stop using that excuse. Nor does acting on it mean not acting on other key issues, intellectual property rights, indigenous innovation, trade-distorting subsidies, discriminatory product standards, among others. But it is alarming how difficult it is to move beyond rhetorical support to bipartisan action. That is why I and 34 other Democratic Members this year sought an additional \$3.2 million for USTR's China enforcement. Unfortunately, my Republican colleagues were unwilling to join that request.

Last week, one industry, solar panel producers, decided they could no longer wait for us to stand up for them and took action on their own. Some will decry that action as protectionist, feudal, or anti-consumer. I call it "anti-protectionist," standing up for American workers and for our future.

This committee should consider other trade-relating legislation. And for the record, there has been filed a package of such bills. In short, the American people expect us to stand up and to fight for them. They don't want us to take a hands-off approach to American competitiveness on currency or other issues. It is time to act.

[The information follows The Honorable Mr. Levin: Letter, H.R. 639, H.R. 1518, H.R. 2722, H.R. 3057]

Letter

Congress of the United States
Washington, DC 20515

May 19, 2011

The Honorable Frank Wolf
Chairman
Commerce, Justice, and Science
And Related Agencies Subcommittee
House Appropriations Committee
H-307, The Capitol
Washington, D.C. 20515

The Honorable Chaka Fattah
Ranking Member
Commerce, Justice, and Science
And Related Agencies Subcommittee
House Appropriations Committee
1016 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Wolf and Ranking Member Fattah:

As you begin work on the appropriations bills for Fiscal Year 2012, we respectfully request that you increase funding for the Office of the United States Trade Representative (USTR) by \$6.6 million for FY 2012. This request not only includes the \$3.4 million in additional funding requested by the Obama Administration for a variety of purposes, but also an additional \$3.2 million to allow USTR to expand its efforts to monitor and investigate China's industrial policies, in order to enforce World Trade Organization (WTO) rules and create a more level playing field for American workers and businesses. Simply put, we believe USTR needs to coordinate and implement a comprehensive and robust strategy to help rebalance our trading relationship with China.

We understand that USTR is working as best it can, within its current budget constraints, to focus on issues related to China, and has devoted more resources to those issues. It, however, needs additional tools and resources to confront the serious challenge of China's competing model of "state capitalism." A fact underscored by Ambassador Ron Kirk at a recent congressional hearing when he stated that USTR is "woefully short" on resources to investigate China's industrial policies, noting that USTR exhausted its entire annual translation budget in three months on a single China case.

China presents a unique enforcement challenge on at least three fronts: its laws and regulations are much more opaque than the laws and regulations of all other commercially significant WTO Members; its provinces and municipalities frequently adopt laws inconsistent with the WTO – contradicting WTO-consistent rhetoric from Beijing; and the unwillingness and/or inability of U.S. companies to help USTR develop WTO cases because they fear China will retaliate against them or because the cost of the necessary legal research into their concerns is beyond their ability to finance. Moreover, China's recently announced 12th five-year plan, and reports that China is considering investments of up to \$1.5 trillion for strategic emerging industries, such as new-generation information technology and new-energy automobiles, suggests this challenge may only grow.

A recent investigation under section 301 of the Trade Act of 1974 provides a case in point. A group of U.S. workers asked USTR to investigate a range of Chinese practices relating to the manufacture of green technologies. (U.S. companies did not challenge China.) USTR moved forward with a WTO case on one of the claims, relating to WTO-prohibited subsidies for wind

Bill Owens
Bill Owens

Bill Pascrell Jr.
Bill Pascrell

Gary Peters
Gary Peters

Chellie Pingree
Chellie Pingree

Nick Rahall
Nick Rahall

Charles Rangel
Charles Rangel

Laura Richardson
Laura Richardson

Tim Ryan
Tim Ryan

Linda Sánchez
Linda Sánchez

Jan Schakowsky
Jan Schakowsky

Allyson Schwartz
Allyson Schwartz

Kurt Schrader
Kurt Schrader

Louise Slaughter
Louise Slaughter

Adam Smith
Adam Smith

Pete Stark
Pete Stark

Betty Sutton
Betty Sutton

Paul Tonko
Paul Tonko

Rosa DeLauro
Rosa DeLauro



I

112TH CONGRESS
1ST SESSION

H. R. 639

To amend title VII of the Tariff Act of 1930 to clarify that countervailing duties may be imposed to address subsidies relating to a fundamentally undervalued currency of any foreign country.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2011

Mr. LEVIN (for himself, Mr. ACKERMAN, Mr. ALTMIRE, Mr. AUSTRIA, Mr. BECERRA, Ms. BERKLEY, Mr. BISHOP of Georgia, Mr. BISHOP of Utah, Mr. BLUMENAUER, Mr. BOSWELL, Mr. BRALEY of Iowa, Mr. BURTON of Indiana, Mr. CARSON of Indiana, Mr. CICILLINE, Mr. CLARKE of Michigan, Mr. COBLE, Mr. COHEN, Mr. CONNOLLY of Virginia, Mr. CONYERS, Mr. COSTELLO, Mr. COURTNEY, Mr. CRAVAACK, Mr. CRITZ, Mr. DAVIS of Illinois, Mr. DEFazio, Ms. DELAURO, Mr. DINGELL, Mr. DONNELLY of Indiana, Mr. DOYLE, Mr. ELLISON, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. GARAMENDI, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. HIGGINS, Mr. HINCHAY, Mr. HOLDEN, Mr. HOLT, Mr. HUNTER, Mr. JOHNSON of Georgia, Mr. JONES, Ms. KAPTUR, Mr. KILDEE, Mr. KISSELL, Mr. KUCINICH, Mr. LARSON of Connecticut, Mr. LATOURETTE, Mr. LEWIS of Georgia, Mr. LIPINSKI, Mr. LOEBSACK, Mr. MANZULLO, Mr. MCHENRY, Ms. MCCOLLUM, Mr. MCCOTTER, Mr. McDERMOTT, Mr. MCGOVERN, Mr. MCKINLEY, Mr. MICHAUD, Mrs. MILLER of Michigan, Mr. GEORGE MILLER of California, Mr. MURPHY of Connecticut, Mr. MURPHY of Pennsylvania, Mrs. MYRICK, Mr. NEAL, Ms. NORTON, Mr. PALLONE, Mr. PASCRELL, Mr. PETERS, Mr. PETRI, Ms. PINGREE of Maine, Mr. PLATTS, Mr. ROGERS of Kentucky, Mr. ROGERS of Alabama, Mr. ROHRBACHER, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. RYAN of Ohio, Ms. LINDA T. SANCHEZ of California, Mr. SENSENBRENNER, Ms. SCHAKOWSKY, Mr. SHULER, Mr. SHUSTER, Ms. SLAUGHTER, Mr. STUTZMAN, Mr. STARK, Ms. SUTTON, Mr. THOMPSON of California, Mr. TIERNEY, Mr. TONKO, Mr. TOWNS, Mr. TURNER, Mr. VISLOSKEY, Mr. WELCH, Mr. WOLF, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Ways and Means

1 as defined in paragraph (37), the dif-
2 ference between the amount of the cur-
3 rency of such country provided and the
4 amount of the currency of such country
5 that would have been provided if the real
6 effective exchange rate of the currency of
7 such country were not undervalued, as de-
8 termined pursuant to paragraph (38).”

9 (b) EXPORT SUBSIDY.—Section 771(5A)(B) of the
10 Tariff Act of 1930 (19 U.S.C. 1677(5A)(B)) is amended
11 by adding at the end the following new sentence: “In the
12 case of a subsidy relating to a fundamentally undervalued
13 currency, the fact that the subsidy may also be provided
14 in circumstances not involving export shall not, for that
15 reason alone, mean that the subsidy cannot be considered
16 contingent upon export performance.”

17 (c) DEFINITION OF FUNDAMENTALLY UNDER-
18 VALUED CURRENCY.—Section 771 of the Tariff Act of
19 1930 (19 U.S.C. 1677) is amended by adding at the end
20 the following new paragraph:

21 “(37) FUNDAMENTALLY UNDERVALUED CUR-
22 RENCY.—The administering authority shall deter-
23 mine that the currency of a country in which the
24 subject merchandise is produced is a ‘fundamentally
25 undervalued currency’ if—

1 “(i) the amount necessary to repay all
2 debt obligations of the government falling
3 due within the coming 12 months;

4 “(ii) 20 percent of the country’s
5 money supply, using standard measures of
6 M2; and

7 “(iii) the value of the country’s im-
8 ports during the previous 4 months.”.

9 (d) DEFINITION OF REAL EFFECTIVE EXCHANGE
10 RATE UNDERVALUATION.—Section 771 of the Tariff Act
11 of 1930 (19 U.S.C. 1677), as amended by subsection (c)
12 of this section, is further amended by adding at the end
13 the following new paragraph:

14 “(38) REAL EFFECTIVE EXCHANGE RATE
15 UNDERVALUATION.—The calculation of real effective
16 exchange rate undervaluation, for purposes of para-
17 graph (5)(E)(v) and paragraph (37), shall—

18 “(A)(i) rely upon, and where appropriate
19 be the simple average of, the results yielded
20 from application of the approaches described in
21 the guidelines of the International Monetary
22 Fund’s Consultative Group on Exchange Rate
23 Issues; or

24 “(ii) if the guidelines of the International
25 Monetary Fund’s Consultative Group on Ex-

1 of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.), as
2 amended by this Act.

3 **SEC. 4. APPLICATION TO GOODS FROM CANADA AND MEX-**
4 **ICO.**

5 Pursuant to article 1902 of the North American Free
6 Trade Agreement and section 408 of the North American
7 Free Trade Agreement Implementation Act of 1993 (19
8 U.S.C. 3438), the amendments made by section 2 of this
9 Act shall apply to goods from Canada and Mexico.

○

112TH CONGRESS
1ST SESSION

H. R. 1518

To amend section 310 of the Trade Act of 1974 to strengthen provisions relating to the identification of United States trade expansion priorities.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2011

Mr. CRITZ (for himself and Ms. LINDA T. SÁNCHEZ OF CALIFORNIA) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend section 310 of the Trade Act of 1974 to strengthen provisions relating to the identification of United States trade expansion priorities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Trade Enforcement Priorities Act".

SEC. 2. IDENTIFICATION OF TRADE EXPANSION PRIORITIES.

(a) IDENTIFICATION OF TRADE EXPANSION PRIORITIES.—Section 310 of the Trade Act of 1974 (19 U.S.C. 2420) is amended to read as follows:

"SEC. 310. IDENTIFICATION OF TRADE EXPANSION PRIORITIES.

"(a) IDENTIFICATION.—

"(1) IDENTIFICATION AND REPORT.—Within 30 days after the submission in each calendar year of the report required by section 181 (b), the United States Trade Representative shall—

“(A) review United States trade expansion priorities;

“(B) identify priority foreign country practices the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent; and

“(C) submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives and publish in the Federal Register a report on the priority foreign country practices so identified.

“(2) FACTORS.—In identifying priority foreign country practices under paragraph (1), the Trade Representative shall take into account all relevant factors, including—

“(A) the major barriers and trade distorting practices described in the National Trade Estimate Report required under section 181(b);

“(B) the trade agreements to which a foreign country is a party and its compliance with those agreements;

“(C) the medium- and long-term implications of foreign government procurement plans; and

“(D) the international competitive position and export potential of United States products and services.

“(3) CONTENTS OF REPORT.—The Trade Representative may include in the report, if appropriate—

“(A) a description of foreign country practices that may in the future warrant identification as priority foreign country practices; and

“(B) a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, by existing bilateral trade agreements, or as part of trade negotiations with other countries, and because progress is being made toward the elimination of such practices.

“(b) INITIATION OF CONSULTATIONS.—By no later than the date that is 21 days after the date on which a report is submitted to the

appropriate congressional committees under subsection (a)(1)(C), the Trade Representative should seek consultations with each foreign country identified in the report as engaging in priority foreign country practices for the purpose of reaching a satisfactory resolution of such priority practices.

“(c) INITIATION OF INVESTIGATION.—If the Trade Representative seeks consultations under subsection (b) and a satisfactory resolution of the priority foreign country practices involved has not been reached within 90 days after the date on which a report is submitted to the appropriate congressional committees under subsection (a)(1)(C), the Trade Representative shall initiate under section 302(b)(1) an investigation under this chapter with respect to such priority foreign country practices.

“(d) AGREEMENTS FOR THE ELIMINATION OF BARRIERS.—In the consultations with a foreign country that the Trade Representative is required to request under section 303(a) with respect to an investigation initiated by reason of subsection (c), the Trade Representative shall seek to negotiate an agreement that provides for the elimination of the practices that are the subject of the investigation as quickly as possible or, if elimination of the practices is not feasible, an agreement that provides for compensatory trade benefits.

“(e) REPORTS.—The Trade Representative shall include in the semiannual report required by section 309(3) a report on the status of any investigations initiated pursuant to subsection (c) and, where appropriate, the extent to which such investigations have led to increased opportunities for the export of products and services of the United States.”.

(b) CONFORMING AMENDMENT.—The item relating to section 310 in the table of contents of the Trade Act of 1974 is amended to read as follows:

“Sec. 310. Identification of trade expansion priorities.”.

112TH CONGRESS
1ST SESSION

H. R. 2722

To amend chapter 83 of title 41, United States Code, to increase the requirement for American-made content, to strengthen the waiver provisions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2011

Mr. LIPINSKI (for himself and Mr. ADERHOLT) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To amend chapter 83 of title 41, United States Code, to increase the requirement for American-made content, to strengthen the waiver provisions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Buy American Improvement Act of 2011”.

SEC. 2. STRENGTHENING AND SIMPLIFYING FEDERAL PROCUREMENT POLICIES.

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Administrator for Federal Procurement Policy, in consultation with the Federal Acquisition Regulatory Council, shall promulgate regulations to standardize and simplify how Federal agencies comply with, report on, and enforce chapter 83 of title 41, United States Code (commonly known as the Buy American Act). The regulations shall include, at a minimum, the following:

(1) Guidelines for determining, for the purposes of applying sections 8302(a) and 8303(b)(3) of such title, the circumstances under which the acquisition of articles, materials, or supplies mined, produced, or manufactured in the United States is inconsistent with the public interest.

(2) Uniform procedures for collecting, reporting, and making publicly available information about waivers under chapter 83 of such title, including—

(A) procedures for making a request for a waiver publicly available before granting the waiver; and

(B) procedures for providing the rationale for why a waiver is granted.

(3) Rules to ensure that projects are not disaggregated for purposes of avoiding the applicability of the requirements under chapter 83 of such title to such larger project.

(4) Procedures for investigating waiver requests.

(5) Rules for evaluating the percentage of domestic content in a manufactured end product.

(b) **GUIDELINES RELATING TO INCONSISTENCY WITH PUBLIC INTEREST.**—In the guidelines developed under subsection (a)(1), the Administrator shall consider any significant decrease in employment in the United States resulting from the granting of waivers to be inconsistent with the public interest and seek to minimize—

(1) the granting of waivers that would result in a decrease in employment in the United States in both the short- and long-term; and

(2) the granting of waivers for procurement of articles, materials, or supplies mined, produced, or manufactured in a foreign country with which the United States does not have a relevant trade agreement and which has a government that maintains, in regard to government procurement, a significant and persistent pattern or practice of discrimination against products produced in the United States.

(c) **PROCEDURES RELATING TO THE PUBLICATION OF REQUESTS FOR WAIVERS.**—In the procedures developed under subsection (a)(2)(A), the Administrator shall require the head of a Federal agency, after receiving a request for a waiver, to complete each of the

following:

(1) Publish the request for a waiver on a publicly available Web site of the agency in an easily identifiable location within 15 days after receiving such request.

(2) A waiver may not be issued before the expiration of the fifteen-day period beginning on the date on which the request for waiver is published pursuant to paragraph (1) to provide the public an opportunity for notice and comment.

(d) PROCEDURES RELATING TO THE PUBLICATION OF WAIVERS GRANTED.—In the procedures developed under subsection (a)(2)(B), the Administrator shall require the head of a Federal agency to publish the determination for why a waiver was granted and the rationale for such determination in the Federal Register and on a publicly available Web site of the agency in an easily identifiable location not later than 30 days after the head of the agency determines to issue such waiver.

(e) RULES RELATING TO DOMESTIC CONTENT.—In the rules developed under subsection (a)(5), the Administrator shall not consider as domestic content components of foreign origin of the same class or kind as those that are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(f) DEFINITIONS.—In this section:

(1) FEDERAL AGENCY.—The term “Federal agency” means any executive agency (as defined in section 133 of title 41, United States Code) or any establishment in the legislative or judicial branch of the Federal Government.

(2) RELEVANT TRADE AGREEMENT.—The term “relevant trade agreement” means—

(A) a reciprocal defense procurement memorandum of understanding, as described in section 8304 of title 41, United States Code;

(B) any trade agreement for which the President, or his delegate, has issued a blanket waiver under section 301 of the Trade Agreements Act of 1979 (19 U.S.C. 2511); and

(C) any trade agreement described in subpart 25.4 of the

Federal Acquisition Regulation.

(3) WAIVER.—The term “waiver” means, with respect to the acquisition of an article, material, or supply for public use, the inapplicability of chapter 83 of title 41, United States Code, to the acquisition by reason of any of the following determinations:

(A) A determination by the head of the Federal agency concerned that the acquisition is inconsistent with the public interest.

(B) A determination by the head of the Federal agency concerned that the cost of the acquisition is unreasonable.

(C) A determination by the head of the Federal agency concerned that the article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

**SEC. 3. INCREASING TRANSPARENCY AND ACCOUNTABILITY IN
FEDERAL PROCUREMENT.**

Subsection (b) of section 8302 of title 41, United States Code, is amended to read as follows:

“(b) REPORTS.—

“(1) IN GENERAL.—

“(A) AGENCY REPORT.—Not later than 120 days after the end of each of fiscal years 2011 through 2016, the head of each Federal agency shall submit to the Administrator of the Office of Federal Procurement Policy a report on the amount of the acquisitions made by the agency in that fiscal year of articles, materials, or supplies purchased from entities that manufacture the articles, materials, or supplies outside of the United States. A separate report is not required by a Federal agency under this subparagraph if such agency has already submitted the information required in such report for a fiscal year through the Federal Procurement Data System (as referred to in section 1122 (a)(4)(A)) or another uniform comprehensive system prescribed by the Federal Acquisition Regulation.

“(B) CONSOLIDATED REPORT.—Not later than 180 days

after the end of each of fiscal years 2011 through 2016, the Administrator of the Office of Federal Procurement Policy, in consultation with the Administrator of the General Services, shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a consolidated report that includes each report and any information submitted pursuant to subparagraph (A) and the total amount of acquisitions made by Federal agencies in the relevant fiscal year of articles, materials, or supplies purchased from entities that manufacture or produce the articles, materials, or supplies outside of the United States.

“(2) CONTENTS OF REPORT.—The report required by paragraph (1)(A) shall separately include, for the fiscal year covered by the report—

“(A) the dollar value of any articles, materials, or supplies that were manufactured or produced outside the United States, in the aggregate and by country;

“(B) an itemized list of all waivers granted with respect to such articles, materials, or supplies under this chapter, and the country where such articles, materials, or supplies were manufactured or produced;

“(C) if any articles, materials, or supplies were acquired from entities that manufacture or produce articles, materials, or supplies outside the United States due to an exception (that is not the micro-purchase threshold exception described under subsection (a)(2)(C)), the specific exception that was used to purchase such articles, materials, or supplies;

“(D) if any articles, materials, or supplies were acquired from entities that manufacture or produce articles, materials, or supplies outside the United States pursuant to a relevant trade agreement, a citation to such agreement; and

“(E) a summary of—

“(i) the total procurement funds expended on articles, materials, and supplies manufactured or produced inside the United States;

“(ii) the total procurement funds expended on articles,

materials, and supplies manufactured or produced outside the United States; and

“(iii) the total procurement funds expended on articles, materials, and supplies manufactured or produced outside the United States for each country that manufactured or produced such articles, materials, and supplies.

“(3) PUBLIC AVAILABILITY.—Not later than 180 days after the end of the relevant fiscal year, the Administrator of the Office of Federal Procurement Policy shall make the consolidated report described under paragraph (1)(B) publicly available on a Web site.

“(4) EXCEPTION FOR INTELLIGENCE COMMUNITY.—This subsection shall not apply to acquisitions made by an agency, or component of an agency, that is an element of the intelligence community as specified in, or designated under, section 3 of the National Security Act of 1947 (50 U.S.C. 401a).”.

SEC. 4. STRENGTHENING THE BUY AMERICAN ACT.

(a) REQUIREMENTS FOR WAIVERS.—Section 8302 of title 41, United States Code, is amended by adding at the end the following new subsection:

“(c) SPECIAL RULES.—The following rules apply in carrying out the provisions of subsection (a):

“(1) CALCULATION OF DOMESTIC AND NON-DOMESTIC BIDS.—

“(A) EXCLUSION OF START-UP COSTS IN CALCULATING COST OF BID.—When comparing bids between domestic entities and non-domestic entities, costs related to the start-up of a project shall be excluded from a domestic bid.

“(B) UNREASONABLE COST DETERMINATION.—

“(i) IN GENERAL.—The head of a Federal agency shall not determine the cost of acquiring articles, materials, or supplies produced or manufactured in the United States to be unreasonable under subsection (a) unless the acquisition of such articles, materials, or supplies would increase the cost of the overall project by more than 25 percent.

“(ii) RULE OF CONSTRUCTION.—Nothing in this

subparagraph shall be construed as reducing the percentage increase required as of the date of the enactment of the Buy American Improvement Act of 2011 for a determination of unreasonable cost applicable to projects under Department of Defense contracts.

“(2) USE OUTSIDE THE UNITED STATES.—

“(A) IN GENERAL.—Subsection (a) shall apply without regard to whether the articles, materials, or supplies to be acquired are for use outside the United States if the articles, materials, or supplies are not needed on an urgent basis or if they are acquired on a regular basis.

“(B) COST ANALYSIS.—In any case in which the articles, materials, or supplies are to be acquired for use outside the United States and are not needed on an urgent basis, before entering into a contract an analysis shall be made of the difference in the cost of acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies in the United States (including the cost of shipping) and the cost of acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies outside the United States (including the cost of shipping).

“(3) DOMESTIC AVAILABILITY.—The head of a Federal agency may not make a determination under subsection (a) that an article, material, or supply is not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory quality, unless the head of the agency has determined that—

“(A) domestic production cannot be initiated without significantly delaying the project for which the article, material, or supply is to be procured; and

“(B) a substitutable article, material, or supply is not available in reasonable quantities and of satisfactory quality from a company in the United States.”.

(b) DEFINITIONS; INCREASING DOMESTIC CONTENT REQUIREMENT.—Section 8301 of title 41, United States Code, is amended—

(1) by adding at the end the following new paragraphs:

“(3) EXCEPTION.—The term ‘exception’ means, with respect to the acquisition of an article, material, or supply for public use, the inapplicability of chapter 83 to the acquisition by reason of any of the following:

“(A) Use outside the United States (described in section 8302(a)(2)(A)).

“(B) Procured under a contract with an award value that is not more than the micro-purchase threshold (described in section 8302(a)(2)(C)).

“(C) Specifically excepted for information technology (as defined in section 11101 of title 40) that is a commercial item (as defined in section 103).

“(D) A relevant trade agreement.

“(4) FEDERAL AGENCY.—The term ‘Federal agency’ means any executive agency (as defined in section 133) or any establishment in the legislative or judicial branch of the Federal Government.

“(5) RELEVANT TRADE AGREEMENT.—The term ‘relevant trade agreement’ means—

“(A) a reciprocal defense procurement memorandum of understanding, as described in section 8304 of title 41, United States Code;

“(B) any trade agreement for which the President, or his delegate, has issued a blanket waiver under section 301 of the Trade Agreements Act of 1979 (19 U.S.C. 2511); and

“(C) any trade agreement described in subpart 25.4 of the Federal Acquisition Regulation.

“(6) SUBSTANTIALLY ALL.—Articles, materials, or supplies shall be treated as made substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, if the cost of the domestic components of such articles, materials, or supplies exceeds 75 percent of the total cost of all components of such articles, materials, or supplies. Such percentage shall not include intellectual property rights, legal fees, and any cost not related to physical

production or transportation.

“(7) WAIVER.—The term ‘waiver’ means, with respect to the acquisition of an article, material, or supply for public use, the inapplicability of this chapter to the acquisition by reason of any of the following determinations:

“(A) A determination by the head of the Federal agency concerned that the acquisition is inconsistent with the public interest.

“(B) A determination by the head of the Federal agency concerned that the cost of the acquisition is unreasonable.

“(C) A determination by the head of the Federal agency concerned that the article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.”; and

(2) by reordering paragraphs (1) and (2) and the paragraphs added by paragraph (1) of this subsection in alphabetical order based on the headings of such paragraphs and renumbering such paragraphs as so reordered.

(c) CONFORMING AMENDMENTS.—Title 41, United States Code, is amended—

(1) in section 8302(a)(1), by striking “department or independent establishment” and inserting “Federal agency”; and

(2) in section 8303—

(A) in subsection (b)—

(i) in paragraph (2), by striking “department or independent establishment” and inserting “Federal agency”; and

(ii) in paragraph (3), by striking “department or independent establishment” and inserting “Federal agency”; and

(B) in subsection (c), by striking “department, bureau, agency, or independent establishment” and inserting “Federal

agency”, each place it appears.

(d) INFLATION ADJUSTMENT EXCLUSION.—Section 1908(b)(2)(A) of title 41, United States Code, is amended by striking “chapter 67” and inserting “chapters 67 and 83”.

SEC. 5. GAO REPORT AND RECOMMENDATION.

Not later than one year after the date of the enactment of this Act, the Comptroller General shall report to Congress on the extent to which, in each of fiscal years 2007, 2008, 2009, 2010, and 2011, articles, materials, or supplies acquired by the Federal Government were manufactured, mined, or produced outside of the United States. Such report shall include for each Federal agency the following:

(1) A summary of total procurement funds expended on articles, materials, and supplies manufactured—

(A) inside the United States;

(B) outside the United States; and

(C) outside the United States—

(i) under each type of waiver (as defined under section 2(f) of this Act);

(ii) under each category of exception (as defined in section 8301 of title 41, United States Code); and

(iii) for each country that manufactured or produced such articles, materials, and supplies.

(2) An analysis of the impact of eliminating the exception for acquisitions for information technology (as defined in section 11101 of title 40) that is a commercial item (as defined in section 103).

SEC. 6. UNITED STATES OBLIGATIONS UNDER INTERNATIONAL AGREEMENTS.

This Act, and the amendments made by this Act, shall be applied in a manner consistent with United States obligations under international agreements.

112TH CONGRESS
1ST SESSION

H. R. 3057

To prevent the evasion of antidumping and countervailing duty orders, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 23, 2011

Mr. LONG (for himself, Mr. NUNNELEE, Mrs. EMERSON, Mr. LUETKEMEYER, Mr. AKIN, Ms. LINDA T. SANCHEZ of California, Mr. BACHUS, Mr. MANZULLO, Mr. CHANDLER, Mr. CRITZ, Mr. CONYERS, Mr. STARK, Mr. CARNAHAN, and Mr. LIPINSKI) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To prevent the evasion of antidumping and countervailing duty orders, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Enforcing Orders and Reducing Customs Evasion Act of 2011”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROCEDURES

Sec. 101. Procedures for investigating claims of evasion of antidumping and countervailing duty orders.

Sec. 102. Application to Canada and Mexico.

TITLE II—OTHER MATTERS

- Sec. 201. Definitions.
- Sec. 202. Allocation of U.S. Customs and Border Protection personnel.
- Sec. 203. Regulations.
- Sec. 204. Annual report on prevention of evasion of antidumping and countervailing duty orders.
- Sec. 205. Government Accountability Office report on reliquidation authority.

TITLE I—PROCEDURES

SEC. 101. PROCEDURES FOR INVESTIGATING CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

(a) IN GENERAL.—The Tariff Act of 1930 is amended by inserting after section 516A (19 U.S.C. 1516a) the following:

“SEC. 516B. PROCEDURES FOR INVESTIGATING CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

“(a) DEFINITIONS.—In this section:

“(1) ADMINISTERING AUTHORITY.—The term ‘administering authority’ has the meaning given that term in section 771(1).

“(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Finance and the Committee on Appropriations of the Senate; and

“(B) the Committee on Ways and Means and the Committee on Appropriations of the House of Representatives.

“(3) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner responsible for U.S. Customs and Border Protection.

“(4) COVERED MERCHANDISE.—The term ‘covered merchandise’ means merchandise that is subject to—

“(A) an antidumping duty order issued under section 736;

“(B) a finding issued under the Antidumping Act, 1921; or

“(C) a countervailing duty order issued under section 706.

“(5) ENTER; ENTRY.—The terms ‘enter’ and ‘entry’ refer to the entry, or withdrawal from warehouse for consumption, in the customs territory of the United States.

“(6) EVADE; EVASION.—The terms ‘evade’ and ‘evasion’ refer to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.

“(7) INTERESTED PARTY.—The term ‘interested party’ has the meaning given that term in section 771(9).

“(b) PROCEDURES FOR INVESTIGATING ALLEGATIONS OF EVASION.—

“(1) INITIATION BY PETITION OR REFERRAL.—

“(A) IN GENERAL.—Not later than 10 days after the date on which the Commissioner receives a petition described in subparagraph (B) or a referral described in subparagraph (C), the Commissioner shall initiate an investigation pursuant to this paragraph.

“(B) PETITION DESCRIBED.—A petition described in this subparagraph is a petition that—

“(i) is filed with the Commissioner by any party who is an interested party with respect to covered merchandise;

“(ii) alleges that a person has entered covered merchandise into the customs territory of the United States through evasion; and

“(iii) is accompanied by information reasonably available to the petitioner supporting the allegation.

“(C) REFERRAL DESCRIBED.—A referral described in this subparagraph is information submitted to the Commissioner by any other Federal agency, including the Department of Commerce or the United States International Trade Commission, indicating that a person has entered covered merchandise into the customs territory of the United States through evasion.

“(2) DETERMINATIONS.—

“(A) PRELIMINARY DETERMINATION.—

“(i) IN GENERAL.—Not later than 90 days after the date on which the Commissioner initiates an investigation under paragraph (1), the Commissioner shall issue a preliminary determination, based on information available to the Commissioner at the time of the determination, with respect to whether there is a reasonable basis to believe or suspect that the covered merchandise was entered into the customs territory of the United States through evasion.

“(ii) EXTENSION.—The Commissioner may extend by not more than 45 days the time period specified in clause (i) if the Commissioner determines that sufficient information to make a preliminary determination under that clause is not available within that time period or the inquiry is unusually complex.

“(B) FINAL DETERMINATION.—

“(i) IN GENERAL.—Not later than 120 days after making a preliminary determination under subparagraph (A), the Commissioner shall make a final determination, based on substantial evidence, with respect to whether covered merchandise was entered into the customs territory of the United States through evasion.

“(ii) EXTENSION.—The Commissioner may extend by not more than 60 days the time period specified in clause (i) if the Commissioner determines that sufficient information to make a final determination under that clause is not available within that time period or the inquiry is unusually complex.

“(iii) OPPORTUNITY FOR COMMENT; HEARING.—After making a preliminary determination under subparagraph (A) and before issuing a final determination under this subparagraph with respect to whether covered merchandise was entered into the customs territory of the United States through evasion, the Commissioner shall—

“(I) provide any person alleged to have entered the merchandise into the customs territory of the United States through evasion, and any person that is an interested party with respect to the merchandise, with an

opportunity to be heard;

“(II) upon request, hold a hearing with respect to whether the covered merchandise was entered into the customs territory of the United States through evasion; and

“(III) provide an opportunity for public comment.

“(C) **AUTHORITY TO COLLECT AND VERIFY ADDITIONAL INFORMATION.**—In making a preliminary determination under subparagraph (A) or a final determination under subparagraph (B), the Commissioner—

“(i) shall exercise all existing authorities to collect information needed to make the determination; and

“(ii) may collect such additional information as is necessary to make the determination through such methods as the Commissioner considers appropriate, including by—

“(I) issuing a questionnaire with respect to covered merchandise to—

“(aa) a person that filed a petition under paragraph (1)(B);

“(bb) a person alleged to have entered covered merchandise into the customs territory of the United States through evasion; or

“(cc) any other person that is an interested party with respect to the covered merchandise; or

“(II) conducting verifications, including on-site verifications, of any relevant information.

“(D) **ADVERSE INFERENCE.**—

“(i) **IN GENERAL.**—If the Commissioner finds that a person that filed a petition under paragraph (1)(B), a person alleged to have entered covered merchandise into the customs territory of the United States through evasion, or a foreign producer or exporter, has failed to cooperate by not acting to the best of the person's ability to comply with a

request for information, the Commissioner may, in making a preliminary determination under subparagraph (A) or a final determination under subparagraph (B), use an inference that is adverse to the interests of that person in selecting from among the facts otherwise available to determine whether evasion has occurred.

“(ii) ADVERSE INFERENCE DESCRIBED.—An adverse inference used under clause (i) may include reliance on information derived from—

“(I) the petition, if any, submitted under paragraph (1)(B) with respect to the covered merchandise;

“(II) a determination by the Commissioner in another investigation under this section;

“(III) an investigation or review by the administering authority under title VII; or

“(IV) any other information placed on the record.

“(E) NOTIFICATION AND PUBLICATION.—Not later than 7 days after making a preliminary determination under subparagraph (A) or a final determination under subparagraph (B), the Commissioner shall—

“(i) provide notification of the determination to—

“(I) the administering authority; and

“(II) the person that submitted the petition under paragraph (1)(B) or the Federal agency that submitted the referral under paragraph (1)(C); and

“(ii) provide the determination for publication in the Federal Register.

“(3) BUSINESS PROPRIETARY INFORMATION.—

“(A) ESTABLISHMENT OF PROCEDURES.—For each investigation initiated under paragraph (1), the Commissioner shall establish procedures for the submission of business proprietary information under an administrative protective order that—

“(i) protects against public disclosure of such information; and

“(ii) for purposes of submitting comments to the Commissioner, provides limited access to such information for—

“(I) the person that submitted the petition under paragraph (1)(B) or the Federal agency that submitted the referral under paragraph (1)(C); and

“(II) the person alleged to have entered covered merchandise into the customs territory of the United States through evasion.

“(B) ADMINISTRATION IN ACCORDANCE WITH OTHER PROCEDURES.—The procedures established under subparagraph (A) shall be administered, to the maximum extent practicable, in accordance with administrative protective order procedures under section 777 by the administering authority.

“(C) DISCLOSURE OF BUSINESS PROPRIETARY INFORMATION.—The Commissioner shall, in accordance with the procedures established under subparagraph (A), make all business proprietary information presented to, or obtained by, the Commissioner during an investigation available to the persons specified in subparagraph (A)(ii) under an administrative protective order, regardless of when such information is submitted during an investigation.

“(4) REFERRALS TO OTHER FEDERAL AGENCIES.—

“(A) AFTER PRELIMINARY DETERMINATION.—Notwithstanding section 777 and subject to subparagraph (C), when the Commissioner makes an affirmative preliminary determination under paragraph (2)(A), the Commissioner shall, at the request of the head of another Federal agency, transmit the administrative record to the head of that agency.

“(B) AFTER FINAL DETERMINATION.—Notwithstanding section 777 and subject to subparagraph (C), when the Commissioner makes an affirmative final determination under paragraph (2)(B), the Commissioner shall, at the request of the head of another Federal agency, transmit the complete

administrative record to the head of that agency.

“(C) PROTECTIVE ORDERS.—Before transmitting an administrative record to the head of another Federal agency under subparagraph (A) or (B), the Commissioner shall verify that the other agency has in effect with respect to the administrative record a protective order that provides the same or a similar level of protection for the information in the administrative record as the protective order in effect with respect to such information under this subsection.

“(c) EFFECT OF DETERMINATIONS.—

“(1) EFFECT OF AFFIRMATIVE PRELIMINARY DETERMINATION.—If the Commissioner makes a preliminary determination in accordance with subsection (b)(2)(A) that there is a reasonable basis to believe or suspect that covered merchandise was entered into the customs territory of the United States through evasion, the Commissioner shall—

“(A) suspend the liquidation of each unliquidated entry of the covered merchandise that is subject to the preliminary determination and that entered on or after the date of the initiation of the investigation under paragraph (1) and, pursuant to the Commissioner’s authority under section 504(b), extend liquidation of each unliquidated entry of the covered merchandise that is subject to the preliminary determination and that entered prior to the date of the initiation of the investigation under paragraph (1);

“(B) review and reassess the amount of bond or other security the importer is required to post for each entry of merchandise described in subparagraph (A);

“(C) require the posting of a cash deposit with respect to each entry of merchandise described in subparagraph (A); and

“(D) take such other measures as the Commissioner determines appropriate to ensure the collection of any duties that may be owed with respect to merchandise described in subparagraph (A) as a result of a final determination under subsection (b)(2)(B).

“(2) EFFECT OF NEGATIVE PRELIMINARY DETERMINATION.—If the Commissioner makes a preliminary determination in accordance

with subsection (b)(2)(A) that there is not a reasonable basis to believe or suspect that covered merchandise was entered into the customs territory of the United States through evasion, the Commissioner shall continue the investigation and notify the administering authority pending a final determination under subsection (b)(2)(B).

“(3) EFFECT OF AFFIRMATIVE FINAL DETERMINATION.—If the Commissioner makes a final determination in accordance with subsection (b)(2)(B) that covered merchandise was entered into the customs territory of the United States through evasion, the Commissioner shall—

“(A) suspend or continue to suspend, as the case may be, the liquidation of each entry of the covered merchandise that is subject to the determination and that enters on or after the date of the determination and, pursuant to the Commissioner’s authority under section 504(b), extend or continue to extend, as the case may be, the liquidation of each entry of the covered merchandise that is subject to the determination and that entered prior to the date of the determination;

“(B) notify the administering authority of the determination and request that the administering authority—

“(i) identify the applicable antidumping or countervailing duty assessment rate for the entries for which liquidation is suspended under paragraph (1)(A) or subparagraph (A) of this paragraph; or

“(ii) if no such assessment rates are available at the time, identify the applicable cash deposit rate to be applied to the entries described in subparagraph (A), with the applicable antidumping or countervailing duty assessment rates to be provided as soon as such rates become available;

“(C) require the posting of cash deposits and assess duties on each entry of merchandise described in subparagraph (A) in accordance with the instructions received from the administering authority under paragraph (5);

“(D) review and reassess the amount of bond or other security the importer is required to post for merchandise described in subparagraph (A) to ensure the protection of revenue and compliance with the law; and

“(E) take such additional enforcement measures as the Commissioner determines appropriate, such as—

“(i) initiating proceedings under section 592 or 596;

“(ii) implementing, in consultation with the relevant Federal agencies, rule sets or modifications to rules sets for identifying, particularly through the Automated Targeting System and the Automated Commercial Environment, importers, other parties, and merchandise that may be associated with evasion;

“(iii) requiring, with respect to merchandise for which the importer has repeatedly provided incomplete or erroneous entry summary information in connection with determinations of evasion, the importer to submit entry summary documentation and to deposit estimated duties at the time of entry;

“(iv) referring the record in whole or in part to U.S. Immigration and Customs Enforcement for civil or criminal investigation; and

“(v) transmitting the administrative record to the administering authority for further appropriate proceedings.

“(4) EFFECT OF NEGATIVE FINAL DETERMINATION.—If the Commissioner makes a final determination in accordance with subsection (b)(2)(B) that covered merchandise was not entered into the customs territory of the United States through evasion, the Commissioner shall terminate the suspension of liquidation pursuant to paragraph (1)(A) and refund any cash deposits collected pursuant to paragraph (1)(C) that are in excess of the cash deposit rate that would otherwise have been applicable the merchandise.

“(5) COOPERATION OF ADMINISTERING AUTHORITY.—

“(A) IN GENERAL.—Upon receiving a notification from the Commissioner under paragraph (3)(B), the administering authority shall promptly provide to the Commissioner the applicable cash deposit rates and antidumping or countervailing duty assessment rates and any necessary liquidation instructions.

“(B) SPECIAL RULE FOR CASES IN WHICH THE PRODUCER OR EXPORTER IS UNKNOWN.—If the Commissioner and

administering authority are unable to determine the producer or exporter of the merchandise with respect to which a notification is made under paragraph (3)(B), the administering authority shall identify, as the applicable cash deposit rate or antidumping or countervailing duty assessment rate, the cash deposit or duty (as the case may be) in the highest amount applicable to any producer or exporter, including the 'all-others' rate of the merchandise subject to an antidumping order or countervailing duty order under section 736 or 706, respectively, or a finding issued under the Antidumping Act, 1921, or any administrative review conducted under section 751.

“(d) SPECIAL RULES.—

“(1) EFFECT ON OTHER AUTHORITIES.—Neither the initiation of an investigation under subsection (b)(1) nor a preliminary determination or a final determination under subsection (b)(2) shall affect the authority of the Commissioner—

“(A) to pursue such other enforcement measures with respect to the evasion of antidumping or countervailing duties as the Commissioner determines necessary, including enforcement measures described in clauses (i) through (iv) of subsection (c)(3) (E); or

“(B) to assess any penalties or collect any applicable duties, taxes, and fees, including pursuant to section 592.

“(2) EFFECT OF DETERMINATIONS ON FRAUD ACTIONS.—Neither a preliminary determination nor a final determination under subsection (b)(2) shall be determinative in a proceeding under section 592.

“(3) NEGLIGENCE OR INTENT.—The Commissioner shall investigate and make a preliminary determination or a final determination under this section with respect to whether a person has entered covered merchandise into the customs territory of the United States through evasion without regard to whether the person—

“(A) intended to violate an antidumping duty order or countervailing duty order under section 736 or 706, respectively, or a finding issued under the Antidumping Act, 1921; or

“(B) exercised reasonable care with respect to avoiding a violation of such an order or finding.”.

(b) TECHNICAL AMENDMENT.—Clause (ii) of section 777(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)(1)(A)) is amended to read as follows:

“(ii) to an officer or employee of U.S. Customs and Border Protection who is directly involved in conducting an investigation regarding fraud under this title or claims of evasion under section 516B.”.

(c) JUDICIAL REVIEW.—Section 516A(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1516a(a)(2)) is amended—

(1) in subparagraph (A)—

(A) in clause (i)(III), by striking “or” at the end;

(B) in clause (ii), by adding “or” at the end; and

(C) by inserting after clause (ii) the following:

“(iii) the date of publication in the Federal Register of a determination described in clause (ix) of subparagraph (B),”; and

(2) in subparagraph (B), by adding at the end the following new clause:

“(ix) A determination by the Commissioner responsible for U.S. Customs and Border Protection under section 516B that merchandise has been entered into the customs territory of the United States through evasion.”.

(d) FINALITY OF DETERMINATIONS.—Section 514(b) of the Tariff Act of 1930 (19 U.S.C. 1514(b)) is amended by striking “section 303” and all that follows through “which are reviewable” and inserting “section 516B or title VII that are reviewable”.

SEC. 102. APPLICATION TO CANADA AND MEXICO.

Pursuant to article 1902 of the North American Free Trade Agreement and section 408 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3438), the amendments made by this title shall apply with respect to goods from Canada and Mexico.

TITLE II—OTHER MATTERS

SEC. 201. DEFINITIONS.

In this title, the terms “appropriate congressional committees”, “Commissioner”, “covered merchandise”, “enter” and “entry”, and “evade” and “evasion” have the meanings given those terms in section 516B(a) of the Tariff Act of 1930 (as added by section 101 of this Act).

SEC. 202. ALLOCATION OF U.S. CUSTOMS AND BORDER PROTECTION PERSONNEL.

(a) **REASSIGNMENT AND ALLOCATION.**—The Commissioner shall, to the maximum extent possible, ensure that U.S. Customs and Border Protection—

(1) employs sufficient personnel who have expertise in, and responsibility for, preventing the entry of covered merchandise into the customs territory of the United States through evasion; and

(2) on the basis of risk assessment metrics, assigns sufficient personnel with primary responsibility for preventing the entry of covered merchandise into the customs territory of the United States through evasion to the ports of entry in the United States at which the Commissioner determines potential evasion presents the most substantial threats to the revenue of the United States.

(b) **COMMERCIAL ENFORCEMENT OFFICERS.**—Not later than 30 days after the enactment of this Act, the Secretary of Homeland Security, the Commissioner, and the Assistant Secretary for U.S. Immigration and Customs Enforcement shall assess and properly allocate the resources of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement—

(1) to effectively implement the provisions of, and amendments made by, this Act; and

(2) to improve efforts to investigate and combat evasion.

SEC. 203. REGULATIONS.

(a) **IN GENERAL.**—Not later than 240 days after the date of the enactment of this Act, the Commissioner shall issue regulations to carry out this title and the amendments made by title I.

(b) **COOPERATION BETWEEN U.S. CUSTOMS AND BORDER PROTECTION, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, AND DEPARTMENT OF COMMERCE.**—Not later than 240 days after the

date of the enactment of this Act, the Commissioner, the Assistant Secretary for U.S. Immigration and Customs Enforcement, and the Secretary of Commerce shall establish procedures to ensure maximum cooperation and communication between U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and the Department of Commerce in order to quickly, efficiently, and accurately investigate allegations of evasion under section 516B of the Tariff Act of 1930 (as added by section 101 of this Act).

SEC. 204. ANNUAL REPORT ON PREVENTION OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

(a) **IN GENERAL.**—Not later than February 28 of each year, beginning in 2012, the Commissioner, in consultation with the Secretary of Commerce, shall submit to the appropriate congressional committees a report on the efforts being taken pursuant to section 516B of the Tariff Act of 1930 (as added by section 101 of this Act) to prevent the entry of covered merchandise into the customs territory of the United States through evasion.

(b) **CONTENTS.**—Each report required under subsection (a) shall include—

(1) for the fiscal year preceding the submission of the report—

(A) the number and a brief description of petitions and referrals received pursuant to section 516B(b)(1) of the Tariff Act of 1930 (as added by section 101 of this Act);

(B) the results of the investigations initiated under such section, including any related enforcement actions, and the amount of antidumping and countervailing duties collected as a result of those investigations; and

(C) to the extent appropriate, a summary of the efforts of U.S. Customs and Border Protection, other than efforts initiated pursuant section 516B of the Tariff Act of 1930 (as added by section 101 of this Act), to prevent the entry of covered merchandise into the customs territory of the United States through evasion; and

(2) for the 3 fiscal years preceding the submission of the report, an estimate of—

(A) the amount of covered merchandise that entered the customs territory of the United States through evasion; and

(B) the amount of duties that could not be collected on such merchandise because the Commissioner did not have the authority to reliquidate the entries of such merchandise.

**SEC. 205. GOVERNMENT ACCOUNTABILITY OFFICE REPORT ON
RELIQUIDATION AUTHORITY.**

Not later than 60 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate congressional committees, and make available to the public, a report estimating the amount of duties that could not be collected on covered merchandise that entered the customs territory of the United States through evasion during fiscal years 2009 and 2010 because the Commissioner did not have the authority to reliquidate the entries of such merchandise.

Chairman CAMP. Thank you. We will now turn to our panel of administration witnesses. And I want to welcome Under Secretary Lael Brainard, Treasury Under Secretary for International Affairs, and Ambassador Demetrios Marantis, Deputy United States trade representative. Thank you both for being with us today.

You will each have 5 minutes to present your testimony with your full written testimony being part of the record. Ms. Brainard, we will begin with you. You have 5 minutes.

STATEMENT OF LAEL BRAINARD, UNDER SECRETARY FOR INTERNATIONAL AFFAIRS, UNITED STATES DEPARTMENT OF THE TREASURY

Ms. BRAINARD. Chairman Camp, Ranking Member Levin, distinguished Members of the Committee, thank you for the opportunity to testify today on our economic relationship with China.

Since the outset, President Obama has placed a high priority on actively pursuing a more balanced and fair economic relationship with China. With American households saving more and with demand weak in Europe and Japan, our exports increasingly will be directed at fast growing emerging markets if we are to achieve the President's goal of doubling exports in 5 years in order to create good jobs with good wages.

Indeed, over the next decade, China is expected to be the single biggest source of demand growth in the global economy. Since 2009, U.S. exports to China have grown nearly twice as fast as our exports to the rest of the world and it is now our third largest export market. We are seeing double-digit gains in sectors ranging from agriculture to machinery to chemicals.

Yet despite this progress, the playing field is still uneven. In order to derive a better balance of benefits from trade and investment opportunities with China, we need to see progress on three key challenges: First, China must shift to a pattern of growth that can be sustained, drawing on homegrown consumption rather than excessive dependence on exports.

This requires that China bring its exchange rate into alignment with market fundamentals. Second, in many sectors in which the United States is competitive globally, China must address a range of discriminatory policies, including those that favor domestic state-owned enterprises.

Third, China must address the rampant theft of intellectual property that stymies innovation. On these issues, the administration has worked tirelessly to make progress with China, through fora such as the Strategic and Economic Dialogue and the Joint Commission on Commerce and Trade, and we have worked with international partners who share our concerns. When engagement has proven insufficient, the administration has and will continue to be aggressive in using safeguards, enforcement actions, and trade remedies to address the particular problem, consistent with our international obligations.

On the exchange rate, a faster rate of appreciation on its own will not erase the trade deficit, but allowing the exchange rate to fully adjust is the most powerful near-term tool available to the Chinese Government to achieve two of its top economic goals: Combating inflation and shifting the composition of its demand towards domestic consumption.

At the G-20, surplus-emerging markets, such as China, have committed to accelerate the rebalancing of demand and to move towards more market-determined exchange rates through exchange rate flexibility. There has been progress. China's trade surplus has

declined from 7.7 percent of GDP in 2008 to below 4 percent in 2010, and even further in the first half of this year.

Since China resumed exchange rate adjustment in June of last year, the currency has appreciated nearly 7.5 percent against the U.S. dollar and closer to 10 percent in real terms, adjusting for inflation. China's currency has appreciated nearly 40 percent against the dollar over the past 5 years in real terms. But the real exchange rate remains misaligned and a faster appreciation rate is needed.

Second, at the most recent S&ED, after commitments made during the January state visit of President Hu and the JCCT, China pledged to rescind all of its government procurement, indigenous innovation catalogs, including by provincial and municipal governments. So far, the central government has repealed four key measures that underpinned the indigenous innovation product accreditation system and a number of local governments have taken positive steps. Third, China has pledged to increase inspections of government computers to ensure that agencies use legitimate software and to improve its high level government coordination and leadership mechanisms to enhance long-term enforcement of intellectual property.

Opening up China's financial sector remains a key priority. China now allows foreign banks to underwrite corporate bonds and is creating more opportunities for financial services firms to manage investments in China as well as to manage Chinese investments abroad. And at the most recent S&ED China committed to allow foreign firms to sell mutual funds, provide custody service, and sell mandatory auto liability insurance. China's current headline growth rate may look enviable right now, but China faces daunting challenges in coming years. The way China grew in the last two decades will not get them to the next stage of development. With slowing labor force growth, massive capital investment, with a misaligned exchange rate and distortions in credit allocations and without improving the environment for innovation, China could face what economists call the middle income trap. We have a tremendous stake in ensuring that China deals with those challenges in a way that fundamentally reorients its growth pattern through greater balance and fairer competition. I look forward to working with members of this committee on those challenges.

Chairman CAMP. Thank you very much.

[The prepared statement of Ms. Brainard follows:]

Dr. Lael Brainard
Under Secretary for International Affairs, U.S. Department of the Treasury
Before the House Committee on Ways and Means
Hearing on the U.S.-China Economic Relationship
October 25, 2011

Chairman Camp, Ranking Member Levin, distinguished members of the Committee, thank you for the opportunity to testify today on our economic relationship with China.

Challenges and Opportunities

Since the outset, President Obama has placed a high priority on pursuing a more balanced and fair economic relationship with China. This is central to our goal of doubling exports in five years and supporting several million U.S. jobs. And, indeed, since 2009, U.S. exports to China have grown by 61 percent, nearly twice as fast as our exports to the rest of the world. Despite this progress, the playing field is still uneven. To secure the future for our children, the Administration will continue working hard to get the economic relationship right.

China needs to take action at an accelerated rate, so that the potential of our relationship translates into real near-term benefits for our companies and workers. China's leaders understand that China must shift to domestic consumption-led growth, provide a secure environment for the protection and enforcement of intellectual property rights, level the playing field between state-owned and private enterprises—domestic and foreign, and liberalize the exchange rate and financial markets. China needs to take these actions to sustain its own growth, as well as to address the concerns of its trade partners. On these issues, we have actively pressed China to accelerate the pace of reform in order to achieve more balanced growth and create fairer competition, and there has been some progress, but there are strong interests within China that favor a go-slow approach.

In the wake of the financial crisis, with American households saving more and demand weak in Europe and Japan, our exports increasingly will be directed at the fast-growing emerging markets if we are to create the good jobs with good wages that we need to grow our economy. For the next decade, China is expected to be the biggest source of demand growth in the global economy. The International Monetary Fund (IMF) forecasts that China's growth will average 9.4 percent per year over the next five years, and the Organization of Economic Cooperation and Development (OECD) estimates that China's share of global imports will increase from six percent in 2008, to over nine percent in 2012. This is a market opportunity that we must seize.

Foreign investment also is playing an increasingly important role in supporting jobs in the United States, and we expect this trend to continue. In 2009, majority-owned U.S. affiliates of foreign companies were an important contributor to U.S. economic activity, employing approximately five percent of the U.S. private workforce and 17 percent in the U.S. manufacturing sector. In the decade ahead, China will be a fast-growing source of foreign direct investment among major economies. Indeed, the stock of Chinese foreign investment in the United States more than doubled last year alone. Protecting national security is always our first concern, but where Chinese investment does not affect national security, we should welcome it. To create jobs here

at home, it matters whether Chinese investment ultimately ends up in Anhui province, Argentina, or Alabama.

In order to derive a better balance of benefits from trade and investment opportunities with China, we need to see progress on three key challenges. First, in many sectors in which the United States is competitive globally, China must address a range of discriminatory policies, including those that favor domestic state-owned enterprises through barriers to foreign goods, services, and investment, as well as the provision of subsidies and preferential access to raw materials, land, credit, and government procurement. Second, rampant theft of intellectual property in China lowers the return to investments in research and development and innovation that represent a fundamental source of our country's national competitive edge. Third, China must shift to a pattern of growth that can be sustained, drawing on home-grown demand rather than excessive dependence on exports. This requires that China bring its exchange rate into alignment with market fundamentals.

China's Reforms

China's current headline growth rate may look enviable right now, but China will face daunting challenges in coming years. We have a tremendous stake in ensuring that China deals with those challenges in a way that fundamentally reorients its growth pattern through greater balance and fairer competition.

China has had remarkable success in lifting hundreds of millions of its citizens out of poverty. But it has come at some cost, including large-scale environmental degradation and an economy that spends much more on investment than goods and services for its people. Chinese leaders understand that, with per capita income of around one-tenth of that of the United States in 2011,¹ and per capita household spending less than one-twentieth of that in the United States, the way China grew in the last two decades will not get them to the next stage of development. Instead, China will face what economists call the "middle income trap."

China's excessive dependence on growth driven by exports to advanced economies and investment will need to change. During the 2008-2009 global crisis, China was able to sustain growth through a massive credit-fueled investment boom. This will leave a financial hangover for years. China risks repeating the experience of other fast growing Asian economies that experienced sharp falls in growth soon after their investment-to-gross domestic product (GDP) ratios peaked. With investment reaching an all-time high of almost 48 percent of GDP, however, China's peak is higher than other Asian economies.

China already is seeing rapidly slowing labor force growth, and the number of workers in China soon will be on the decline. While China maintains many advantages, a study by KPMG concluded that rising labor costs in China are shifting a rising market share of light manufactured goods to other producers in Asia.² A recent study by the Boston Consulting Group similarly concluded that China's cost advantage is rapidly eroding.³

¹ September 2011 IMF World Economic Outlook Database, using market exchange rates.

² KPMG International, *Product Sourcing in Asia Pacific 2011*, pp. 7-9.

³ Boston Consulting Group, *Made in America, Again*, August 2011, p. 5.

In the face of overinvestment and rising wages, China will need to move up the value chain. But China's weak protection and enforcement of intellectual property rights threaten to retard the development of Chinese innovation and Chinese brands.

And the adjustment process – whether to greater consumption-led growth, higher value services, or innovation-intensive activities – is hampered by China's continued excessive reliance on administrative controls, such as credit quotas to maintain price stability and intervention to temper exchange rate adjustment, that are subject to political determinations and thus leave policy making behind the curve. These controls are reflected in a financial system that fails to offer Chinese households financial assets that keeps up with inflation, let alone economic growth, and starves China's most innovative firms and sectors of capital, despite massive domestic savings, while also depriving foreign competitors of the opportunity to offer a full range of products and services. Relying more on market-based prices, such as exchange and interest rates that facilitate adjustment to changing conditions, would make China's growth more resilient, and avoid an excessive build-up of foreign exchange reserves.

For sustained growth, China wants greater access to U.S. technologies and high-tech dual use exports, to make progress on bilateral investment, and wants their exports to be accorded the same terms of access as exports from other market economies. We are willing to make progress on these issues, but our ability to move will depend in part on how much progress we see from China on issues that are important to us.

U.S. Engagement and Enforcement

We have worked tirelessly across the Administration to pursue a tight set of priorities with China – using the Strategic and Economic Dialogue (S&ED), as well as the Joint Commission on Commerce and Trade (JCCT). And since many other countries share our concerns, we also pursue these issues through multilateral channels, such as the G-20, the IMF, and the World Trade Organization (WTO), which are critical complements to our bilateral engagement. To advance our goals, whether it is faster appreciation of the exchange rate or reduced barriers to U.S. exports, we need to work smartly with our partners around the world and with China. And when engagement proves insufficient, this Administration will continue to be more aggressive than any of its predecessors in using all appropriate tools to address the particular problem, such as going after China's unfair trade practices by taking China to the WTO and vigorously applying U.S. trade remedy laws.

While we face substantial challenges, and our job is far from finished, we have made important progress towards leveling the playing field and making the bilateral relationship more beneficial for American companies and workers. China's trade surplus has declined from 7.7 percent of GDP in 2008, to 3.9 percent in 2010, and has declined further in the first half of this year compared to the same period last year, though an important part of the decline was due to slower growth in China's export markets. In both its latest Five-Year Plan and the recent S&ED, China committed to targets to promote consumption-led growth, including raising household incomes, increasing minimum wages, and increasing services relative to GDP.

On the exchange rate, since China resumed exchange rate adjustment in June 2010, the renminbi has appreciated about seven percent against the U.S. dollar and about ten percent taking into

account China's higher rate of inflation relative to inflation in the United States. China's currency has appreciated nearly forty percent against the dollar over the past five years in real terms. But the continued rapid pace of foreign reserve accumulation and the ongoing decline in the share of Chinese consumption in GDP indicate that the real exchange rate of the renminbi remains misaligned despite recent movement, and a faster pace of appreciation is needed.

Renminbi appreciation on its own will not erase our trade deficit. But allowing the exchange rate to adjust fully to reflect market forces is the most powerful near-term tool available to the Chinese government to achieve two of its top economic goals: combating inflation and shifting the composition of demand towards domestic consumption. By contrast, persistent misalignment holds back the rebalancing in demand needed to sustain the global recovery both in China and the world, and gives rise to substantial international concerns and ultimately to trade frictions. Further, emerging markets that compete with China resist appreciation of their own currencies to maintain their competitiveness vis-à-vis China.

At the G-20 earlier this month, surplus emerging markets such as China committed to accelerate the rebalancing of demand towards domestic consumption, and to move toward more market-determined exchange rates through greater exchange rate flexibility.

We also are making progress on our bilateral trade and investment priorities, in close collaboration with the Office of the U.S. Trade Representative and the Department of Commerce. At the most recent S&ED, after commitments made during the January state visit of President Hu and the prior December JCCT, China pledged to rescind all of its government procurement indigenous innovation catalogues, including by provincial and municipal governments. So far, the Central government has repealed four key measures that underpinned the indigenous innovation product accreditation system, and a number of local governments have taken positive steps. China also pledged to increase inspections of government computers to ensure that agencies use legitimate software, and to improve its high-level government coordination and leadership mechanisms to enhance long-term protection and enforcement of intellectual property rights. And last year, China met its S&ED pledge to raise the threshold for central government review of foreign investments from \$100 to \$300 million, leaving more foreign investment approvals to the mayors and governors who better understand the benefits of foreign direct investment.

Reforming and opening up China's financial sector also remains a key priority. This not only would provide Chinese households with savings and insurance products to meet their financial goals without having to save so much of their income, but also would level the playing field with China's state-owned enterprises for access to credit. We will continue pushing hard to address market access barriers in China's financial sector, and we are seeing modest signs of progress. China now allows foreign banks to underwrite corporate bonds and is creating more opportunities for our financial services firms to manage investments in China as well as manage Chinese investments abroad. At the most recent S&ED, China committed to allow foreign firms to sell mutual funds, provide custody services, and sell mandatory auto liability insurance.

In short, while we will stand up to unfair and discriminatory practices and demand change, we will continue to engage with and encourage China as it pursues its reforms. And to meet this generational challenge, we must continue to work to strengthen the multilateral system that

governs trade and finance, and not turn away from it. I believe this is the best way to promote American interests.

Thank you.

Chairman CAMP. Ambassador Marantis, I will now recognize you for 5 minutes.

**STATEMENT OF AMBASSADOR DEMETRIOS MARANTIS,
DEPUTY, UNITED STATES TRADE REPRESENTATIVE**

Mr. MARANTIS. Thank you Chairman Camp, Ranking Member Levin, and members of this committee. I appreciate the opportunity to testify today.

Since China joined the WTO in 2001, U.S. goods exports, including semiconductors, aircraft, and chemicals, have quadrupled. Agriculture exports are up 800 percent, led by soybeans and cotton. Services exports are up nearly 300 percent on growing sales of business, education, and financial services. And American job-creating investment in China has grown 400 percent. America's trade relationship with China has tangible benefits, but just as real are the persistent concerns that threaten to undermine the potential of this relationship. Intellectual property theft in China costs U.S. companies \$48 billion every year. China's industrial policies, like indigenous innovation, discriminate against U.S. products, services, innovators, and investors. China's subsidies raise deep concerns and can lead to unfairly traded imports that affect our trade deficit. Investment restrictions limit the ability of U.S. companies to compete effectively in China and to create jobs here at home. Unfair barriers to U.S. agricultural imports hurt our beef, poultry, and pork producers; and weak enforcement and lack of transparency undermine U.S. exporters and investors. President Obama is determined to make our relationship with China work better for working Americans, to tap its potential to support American jobs, and to grow our economy. This administration's coordinated approach is focused on vigorous enforcement, results-oriented dialogue, and strengthening global trade roles.

First, enforcement. In the WTO, the Obama administration has initiated five strategic and systemic disputes against China. We challenged China's exports restraints on industrial raw materials in a case unprecedented in size and importance. For the first time since China joined the WTO, we accepted a Section 301 petition which brought China to the WTO to answer for prohibited subsidies in the wind sector. We have challenged China's regulation of electronic payment services to address the apparent creation of a homegrown monopoly that blocks competition. We brought two WTO cases to address the apparent misuse of trade remedy investigation to restrict U.S. exports to China. And for the first time ever, we brought a Section 421 case and imposed duties to combat a surge of Chinese tire imports.

The Obama administration will not hesitate to bring additional enforcement actions as appropriate. But litigation alone isn't enough. Results-oriented dialogue, like the Joint Commission on Commerce and Trade and the Strategic and Economic Dialogue, also yield swift and lasting benefits. Last year, as Under Secretary Brainard mentioned, our engagement led to new measures to increase legal use of software in China. We also obtained China's agreement not to discriminate against foreign intellectual property in its procurement policies and to address agriculture concerns by eliminating unfair bans on our poultry exports and some key restrictions on our pork. For this year's JCCT, USTR continues to work intensively together with the Commerce Department to secure results, focusing on intellectual property rights, indigenous in-

novation, investment restraints, industrial policy, and other issues. Aside from the structured dialogue, we are also engaging China directly on its adherence to trade rules regionally and globally. This month, for the first time, as Chairman Camp mentioned, the United States submitted in the WTO a subsidy counter-notification to call China out on over 200 subsidies that it had not notified as required.

Similarly, we have called on China to share detailed information on measures that limit the supply of services over the Internet and hinder the ability of our companies to effectively compete. Outside the WTO, we are working to strengthen trade rules across the global trading system through efforts including the Trans-Pacific Partnership and Anti-Counterfeiting Trade Agreement. The Obama Administration is working hard so that the United States can compete with China on a level playing field and so American businesses and workers can prosper. Progress will occur if we recognize the value of this relationship and address the challenges of the work ahead. Thank you.

Chairman CAMP. Thank you very much for your testimony.
[The prepared statement of Mr. Marantis follows:]

**Testimony by Ambassador Demetrios J. Marantis
Hearing on the U.S.-China Economic Relationship
Before the House Committee on Ways and Means
October 25, 2011**

Chairman Camp, Ranking Member Levin, distinguished Members of the Ways and Means Committee:

Thank you for the opportunity to testify today. The United States' trade and investment relationship with China is one of the most important in the world. Over the past decade, our bilateral ties have yielded job-creating benefits for our economy, and future development holds enormous promise. Yet, persistent concerns, negative developments, and emerging issues also threaten to undermine our current and future achievements.

Given what is at stake, it is imperative we get the U.S.-China relationship right. I am pleased to testify before you today to discuss this Administration's view on our economic and trade relationship with China, and our plan to make sure it strengthens the U.S. economy and our workers, farmers, ranchers, and service providers. The Obama Administration's ongoing dialogue with you and your colleagues, including our discussion today, informs our approach and is critical to achieving our common goals.

Every day, the Chinese market grows in importance to U.S. exporters and companies operating in China and the American workers they employ. Since joining the World Trade Organization (WTO) in 2001, China has made many important reforms in its economy, removed trade barriers, and opened its markets to U.S. exports. This reform and liberalization have created new job-supporting opportunities for Americans across the country. U.S. manufactured goods exports to China have quadrupled since 2001. Agriculture exports are up 800 percent. Services exports are up nearly 300 percent, and investment in China has grown 400 percent.

More recently, thanks to China's strong recovery from the global recession, U.S. exports to China are growing by double digits across a variety of sectors, from high-end manufactured goods and chemical products to agricultural goods like soybeans. U.S. goods and services exports to China totaled \$113 billion in 2010, with agricultural product exports alone up 33 percent over 2009, and China is now our third largest export market for goods. In fact, since 2001, our exports to China have been growing faster than to any other major market in the world. These exports create well-paying American jobs. The Department of Commerce estimates that every \$1 billion in goods exports supports 6,000 jobs here at home, and services exports support many additional jobs. With China's economy set to grow three times faster than economics in the developed world, these opportunities promise to continue and grow.

KEY CHALLENGES

But those positives present just half the picture. Although China's opening has helped to grow our exports, other Chinese policies now are hobbling market prospects for many American exporters, innovators, and investors, and diminishing the benefits that they could derive from

open competition for goods and services. Experienced businesses and other stakeholders are speaking out about Chinese policies that harm prospects for sales of U.S. goods and services, limit and undermine our investments, and ultimately threaten job-creation in the United States. Many of these troubling policies reflect China's strengthening of state control over its economy and a retreat from its initial strong push to liberalize markets in the first years after its World Trade Organization accession.

Our challenges run the gamut and are familiar to many of you and your constituents. Five key challenges include enforcement of intellectual property rights (IPR), problematic industrial and subsidies policies, agricultural policies that are not science-based, investment restrictions, and an opaque legal and regulatory system and weak rule of law.

Intellectual property theft is one of the most serious concerns in China, and the lack of effective IPR enforcement remains an enormous challenge for U.S. creators and innovators. According to the independent U.S. International Trade Commission (ITC), U.S. firms reported total losses of \$48.2 billion in 2009 due to IPR theft in China. Penalties for IPR infringement generally are not severe enough to deter potential violators from breaking the law. For example, very often, the machines used to make the counterfeit or pirated products are not seized and destroyed, allowing infringers to resume their operations as soon as law enforcement officers have left their premises. Enforcement also varies among the provinces and cities – in some cases stronger, and in some cases much too weak. And at a more systemic level, we need to ensure that China quickly translates into effective action its growing awareness of how important IPR protection and enforcement are to its own economic development.

China's growing use of problematic industrial policies – including so-called “indigenous innovation” policies – is another category of concern. These indigenous innovation policies in many cases discriminate against U.S. products, services, innovators and investors. They mandate or encourage substitution of domestically developed and produced goods for imports from the United States and elsewhere, in an effort to pressure foreign companies to manufacture in China and transfer technology. Some policies require foreign firms to enter into joint ventures with Chinese firms, and other policies require these joint ventures to develop intellectual property and core technologies in China.

To give one example, we see just these kinds of policies emerging regarding electric vehicles, known in China as New Energy Vehicles (NEVs), which are manufactured using cutting edge technologies where American innovators have been in the forefront. China has targeted NEVs for substantial government support in the current 12th Five-Year Plan, and we are alarmed by reports indicating that China is imposing requirements on foreign automakers to transfer core NEV technologies to their China joint ventures and to establish Chinese brands in order to participate in this promising market.

China's subsidies policies are also problematic. During the ten years that China has been a member of the WTO, U.S. investigatory efforts have led the United States to launch three WTO cases on prohibited subsidies, including one within the past year. At the same time, U.S. companies, including U.S. steel, textiles, chemicals, tires and paper industries, among others,

have expressed serious concerns about subsidized Chinese products and have had to petition for import relief under U.S. trade remedy laws.

China's investment restrictions also pose serious problems, crimping opportunities for a wide range of U.S. industries. U.S. investment in China has a significant positive impact on U.S. production, employment, research and development, and earnings. But China bans or severely limits foreign investment in certain sectors reserved for state-owned enterprises (SOEs), and restricts foreign investment in many other sectors of its economy, especially where China is seeking to cultivate national champions. Foreign investors are subject to equity restrictions that keep them from controlling their own investments, and licensing systems that severely restrict operations. A foreign investor with a foothold in a market may face restrictions on expanding the scope of its business, and China has launched a new "security review" system used to screen foreign investments that goes far beyond what genuine national security concerns would seem to require. The web of measures China has put in place has hampered U.S. industries providing telecommunications services, financial services, express delivery services and logistics services, as well as steel firms, credit card companies and pharmaceutical manufacturers, not to mention mining companies and media firms.

China's SPS barriers to U.S. agricultural imports are opaque and raise deep concerns about whether they are science-based. A ban on U.S. beef exports to China has been in place since 2003, even though international guidelines recognize our beef as safe. China is also using unreasonable sanitary standards to restrict imports of raw meat and poultry from the United States. In addition, in the name of health, China has imposed lengthy bans – in some cases lasting several years – on poultry from various U.S. states, even though the science seems to offer no support for these restrictions.

The operation of China's legal and regulatory system also creates market barriers, due to weak enforcement or inconsistent application of laws and regulations, failure to use best international practices, and lack of transparency about even what the rules are. For example, China's use of its trade remedy laws lacks transparency in key respects, raising serious questions about the fairness of the process to U.S. exports. Transparency in rule-making, a key priority in the United States, has been a source of great concern in China. A number of Chinese ministries do not reliably publish their draft regulatory measures for public comment, and others provide such short comment periods that foreign companies have no realistic opportunity to participate.

ACTION AND RESULTS

These are just some of the challenges we face. None of them is simple to solve. But the Obama Administration is engaging strategically. We are coordinating with other trading partners wherever we can. We are working day and night, and we are determined to make a difference. Our approach is founded on proven, vigorous enforcement and results-oriented dialogue. At the same time, we are also committed to an approach that strengthens trade rules more broadly and buttresses our China policy with robust engagement of the region as a whole.

From day one of this Administration, President Obama has made trade enforcement a priority. Indeed, this Administration has taken unprecedented actions to enforce our rights under our trade agreements. In this Administration, we have initiated five WTO disputes against China, each of

which addresses important systemic concerns about China's economic and trade policies. Of the 14 WTO disputes brought to date against Chinese policies by all WTO parties, the United States has initiated 12.

In 2009, the Obama Administration took a major case to the WTO challenging China's export restraints on nine categories of key industrial raw materials. This case attacks the severe distortive effects of China's industrial policies on the prices and supply of these inputs worldwide -- a dynamic that can also place enormous pressure on foreign companies to move their operations and technology to China. We have won at the WTO panel and await the results of China's appeal. We also brought China to the WTO to answer for prohibited wind power equipment subsidies worth hundreds of millions of dollars, which China has now terminated. This case arose from a section 301 investigation into China's policies affecting trade and investment in green technologies, and was the first 301 investigation into Chinese policies by any Administration since China joined the WTO. Our pending WTO dispute challenging China's regulation of electronic payment services deals with our deep concerns about China's apparent creation of a Chinese national champion that blocks competition in China's huge and rapidly growing credit and debit card processing market. We are also pursuing two WTO cases stemming from concerns about the apparent misuse by China of trade remedy investigations to restrict U.S. exports to China.

Furthermore, in the U.S. market, the Obama Administration has acted -- in an unprecedented manner -- by imposing duties to combat a disruptive surge of Chinese tire imports pursuant to Section 421, the product-specific safeguard negotiated as part of China's accession to the WTO. Although China challenged this action at the WTO, the WTO soundly rejected China's claims. In this case, the President took unparalleled action to provide needed relief to U.S. firms and workers. Since September 2009, the relief provided by the 421, combined with the economic recovery, has resulted in substantial new investments and employment growth in the U.S. tire industry.

The Obama Administration has also actively enforced U.S. trade remedy laws, with the Commerce Department imposing antidumping and countervailing duties on imports of numerous unfairly traded Chinese products when dumping or subsidies and injury have been demonstrated. Since January 2009, the Commerce Department has issued 15 countervailing duty orders and 22 antidumping orders on 22 different products imported from China, including nine steel products, eight miscellaneous manufactured products, three chemical products, two textile and apparel products, and one metals product.

Going forward, we are committed to working with Congress, industry, labor, and other stakeholders to identify and pursue other needed enforcement initiatives.

Results-oriented dialogue works hand in hand with this vigorous enforcement. A core component of this productive engagement is the USTR and Commerce Department-led Joint Commission on Commerce and Trade (JCCT), with other important dialogue on trade and investment taking place through leaders' and other high-level visits and the Treasury and State Department-led Strategic and Economic Dialogue. Action through established bilateral discussions can often have quicker results than WTO or other enforcement actions. In the JCCT,

for example, we have removed numerous barriers to U.S. companies' success in China's market, including in the areas of intellectual property rights, and indigenous innovation policies.

We believe dialogues achieve success when they involve comprehensive, government-wide engagement, well-focused and regularly refined for maximum impact and leverage. Take IPR, for example. Each year in the JCCT, IPR issues feature as a priority focus for action. We identify and work on important problems through dialogue at multiple levels, including direct, high-level engagement on issues between Ambassador Kirk and the Commerce Secretary and their counterpart, Vice Premier Wang Qishan. In the JCCT IPR Working Group that I lead with the Director of the Patent and Trademark Office (PTO), our interagency team includes USTR, several agencies within the Commerce Department, including PTO, the International Trade Administration and the National Institute of Standards and Technology, the Copyright Office, the Department of Justice, the State Department, the Department of Homeland Security's Customs and Border Protection and Immigration and Customs Enforcement, and the Federal Trade Commission. This approach yields results.

For example, we have pressed China hard to eliminate the use of illegal software in the government sector and in enterprises. In response, China agreed at the 2010 JCCT to establish software asset management systems at government agencies, to allocate budgets for software purchases, and to promote the use of licensed software at enterprises. At the 2011 State Visit of President Hu, China further bolstered its commitment to software legalization by agreeing to conduct financial audits focused on the use of legal software in government agencies and to publish the audit results. At this May's S&ED, China also agreed to strengthen physical inspections to ensure the effectiveness of software legalization efforts.

During the 2009 and 2010 JCCTs, we negotiated several other new Chinese commitments to enforce intellectual property rights that will protect American jobs, including through steps to create more effective rules for addressing Internet piracy, to crack down on landlords who rent space to counterfeiters in China, and to address piracy of electronic journals. At the May 2011 S&ED, China also agreed to improve its high-level government coordination and leadership mechanisms to enhance long-term IPR protection and enforcement.

We have taken a similar tack and seen similar successes in addressing China's industrial policies. Specifically, USTR, together with other U.S. agencies, has worked over the past two years to move China to abandon its National Indigenous Innovation Product Accreditation System. This system gave government procurement preferences to products with Chinese IP produced in Chinese firms – stifling major opportunities for U.S. enterprises in China's huge and growing government procurement markets. Beginning in late 2009, we pressed China in bilateral meetings to abandon this system. We also coordinated closely with several trading partners, including the EU and Japan, as well as with industry. Indigenous innovation then became a priority at the 2010 S&ED, where China agreed to key open innovation principles, and later in the year at the JCCT, where China specifically committed not to discriminate against foreign intellectual property in its procurement policies.

Faced with U.S. pressure, extensive industry comments and general international outcry, China finally agreed to stop its Indigenous Innovation Product Accreditation System for government

procurement. In January 2011, at the summit between President Obama and Chinese President Hu Jintao, President Hu committed not to link China's innovation policies to government procurement preferences. China later agreed at the 2011 S&ED to eliminate all of its government procurement indigenous innovation product catalogues. This past summer, the Chinese central government repealed four key measures underpinning the product accreditation system, and a number of Chinese provinces and municipalities have also stopped implementation of their local measures. While more work needs to be done, our efforts have produced a significant positive outcome.

Like IPR and industrial policies, opening China's lucrative government procurement market is another area of positive progress for results-oriented dialogue. For example, at the 2010 JCCT, China agreed to accelerate its accession to the WTO's Government Procurement Agreement by submitting a robust revised offer of coverage before the end of 2011, and President Hu committed in January to include sub-central entities in that offer. China also agreed to revise its major equipment catalogue listing heavy machinery and industrial equipment eligible for many government preferences, to ensure that there is no discrimination against foreign suppliers. In addition, in the important area of standards and technology development, China agreed to adopt a stance of technology neutrality on 3G and future technologies, as well as on the billions of dollars of cutting edge technologies for smart grids.

As a result of our engagement through the S&ED, China also moved to improve transparency, a cornerstone for improving the rule of law, one of industry's top concerns. Due to the efforts of USTR, the Department of Commerce, and the Treasury Department at this year's S&ED, we were able to secure a positive commitment from China: China's State Council will issue a measure in 2011 to implement the requirement that most draft rules must be published for at least a 30-day public comment period on a website maintained by the State Council.

We believe that dialogue works, and we are working to build on these successes through the remainder of the year. In preparation for the 2011 JCCT plenary this fall, Commerce Under Secretary Sanchez and I have repeatedly engaged our Chinese counterparts – twice in the last 30 days alone. Our goals are ambitious. More than a dozen JCCT working groups are focused on eliminating problems ranging from barriers to foreign investment in services sectors to ensuring a level playing field for U.S. exports and enterprises as China implements aspects of its 12th Five-Year Plan.

Another very important concern that we are pressing vigorously is China's deeply troubling export restraint policy, which affects numerous raw materials, including rare earths. In close cooperation with like-minded trading partners, we have been using both bilateral and multilateral fora in a concerted effort to move China away from these market-distorting policies. In addition to the JCCT and other bilateral discussions, we also have been working multilaterally through the WTO and other international organizations to push for a closer examination of market-distorting policies – like China's export restraints – that run contrary to the reality of global interdependence when it comes to raw materials.

We are also focused on eliminating indigenous innovation requirements now cropping up outside the government procurement context. Using government benefits as a lever to dictate the

transfer of IP rights to Chinese entities interferes with commercial decisions and increases the risk that a U.S. company's core intellectual property – often its greatest asset – will be stolen or subject to a government-coerced license. We are therefore continuing to press China not to link any government preferences to the place where IP is owned or developed, and not to require parties to license IP to a Chinese entity. Indigenous innovation will remain a top priority on our trade agenda with China, with China's NEV policies and measures restricting commercial information security products as prime examples.

Our JCCT work on agricultural barriers has led China to eliminate unfair bans on our poultry exports and some key restrictions on our pork products, although many real challenges – including a ban on U.S. beef exports – still remain. We are working hard to address these challenges, and in fact, just last week my colleague, Ambassador Siddiqui, USTR's Chief Agricultural Negotiator, and his delegation were in Beijing discussing the full slate of agricultural trade irritants.

This Administration will continue to pursue these policy priorities in tandem with its efforts to resolve ongoing market access concerns for the full range of U.S. goods and services, as we have in the past. For example, in response to U.S. pressure, last year China committed to investigate and shut down fake express delivery websites, a malicious practice that was depriving U.S. companies of business and their good reputation. As one of the few useful changes to its draft Foreign Investment Catalogue, China will now allow foreigners to establish wholly foreign-owned hospitals and clinics. And the United States will continue to press China for a specific, near-term date by which it will implement its 2011 S&ED commitment to push forward with the opening of mandatory third party liability auto insurance to foreign-invested insurance companies.

Outside of the context of enforcement and results-oriented dialogue, we are also working to better utilize and strengthen trade and investment rules both globally and regionally. These efforts will help keep our bilateral relationship with China on track. For example, for the first time, the United States engaged at the WTO to submit a counter notification listing over 200 subsidies that China had not notified over the years. The United States submitted the counter notification after repeated failure by China to notify its subsidies. The purpose of USTR's WTO filing is to put pressure on China to provide the detailed information on its subsidies practices that WTO rules require. With increased transparency, the United States can better assess the legality of particular subsidy programs. This proactive step will help us address these subsidies using the best tools we have in our trade toolbox.

The United States is also engaging with China bilaterally through the WTO regarding the commercial impact of restrictions on information flows over the Internet. Policies in China that limit access to Internet-based services can hinder U.S. companies' ability to effectively compete in that market. Therefore, invoking China's WTO transparency obligations, we recently formally asked China for detailed information on Chinese measures that affect the supply of services over the Internet to Chinese customers. Greater transparency regarding these measures will allow us to have a more productive dialogue regarding any trade implications.

Also in the WTO, we recognize that we must continue to press for a stronger trading system, and as part of that objective, we need China to make a meaningful contribution in the Doha Round –

a contribution in keeping with China's responsibilities as a leading global trading nation. We remain of the firm view that there can be no successful conclusion of this negotiation without robust market access commitments from China and other emerging economies.

Our efforts to build strong, rules-based trade extend beyond the WTO to our work on efforts including cutting edge, twenty-first century free trade agreements like the Trans-Pacific Partnership Agreement and innovative agreements like the Anti-Counterfeiting Trade Agreement. We will engage with like-minded trading partners to enhance trade with rules that increase fair and strong competition, creating expectations for how other players in the international trading system, including China, will need to operate.

The Obama Administration is working so that Americans can prosper and compete with China on a level playing field, without artificial barriers or unfair constraints. We recognize the benefits achieved and the opportunities to come. We see our significant challenges for what they are, and we know that we have a steep and difficult road ahead. For all of this, we have a plan that is comprehensive, strategic, and flexible. And an integral part of this plan is in action today – hearing from you and gaining your insights, and those of America's workers, farmers, ranchers, manufacturers and service providers. President Obama has said that "one country's success need not come at the expense of another. Our progress can be shared." That shared progress is only possible through a shared understanding of both the value of the U.S.-China relationship and the challenges inherent in the work that lies ahead, which I know is the spirit of today's hearing.

Thank you, Chairman Camp, Ranking Member Levin, and Members of the Committee, for the opportunity to appear before you today. I look forward to answering your questions.

Chairman CAMP. I will start out with a question that I would like both of you to address.

It is clear that for a long time, China has allowed unacceptably high rates of piracy across all technologies. For example, U.S. copyright industries estimate that 85 to 95 percent of members' copyrighted works in China are pirated. And despite repeated assur-

ances and promises from the Chinese that they will step up enforcement, there still is a huge problem there. And many members of this committee have heard from employers that the losses to the U.S. are in the billion of dollars. And they are not limited just to software and music and movies, but other intellectual property as well. So when those products are then exported to the U.S., they have an unfair advantage over U.S.-made goods that follow the law. So there is this sense that the Chinese are simply ignoring the rules to their advantage.

What is the administration doing to address this major barrier to trade between our countries? And does the administration have the tools it needs to continue to do that? So, Ambassador, if you want to start; and then Under Secretary Brainard can respond.

Mr. MARANTIS. Thank you, Chairman Camp. This is a huge problem. I.P. infringement, as you mentioned, causes significant losses to the U.S. economy. In the copyright industry alone, the ITC estimates that we lose \$23 billion to copyright piracy. This is a huge problem and this is a huge priority. We are taking action on all fronts, through the JCCT, through the S&ED, and we have actually made significant progress over the past year. We have made progress on software legalization. We have made progress in rolling back some very problematic indigenous innovation measures. We have made progress in securing commitments from China to step up its enforcement of electronic journals, and to hold landlords liable when their tenants sell counterfeit products. These issues continue.

And as you point out, what is critically important is to make sure that China is enforcing the good commitments that it made over the past year. We are seeing in certain respects implementation of these commitments, and where we are not, we are pushing very hard to ensure that China does.

Chairman CAMP. And even the government is using pirated software and pirated technologies. What progress are you making on a government-to-government basis?

Mr. MARANTIS. Sure. So as part of the S&ED and the JCCT, we focused on software legalization to address the issue that you raise, the use of pirated software both in government agencies as well as pirated software in state-owned enterprises. As part of the various dialogues, China made commitments to institute of software asset management program to budget for purchases of legal software, to institute a pilot program for state-owned enterprises, to ensure that these enterprises are using legal software. We are making progress. We are beginning to notice a small uptick in sales. But again, it is a real problem, and we don't think China is doing enough. And this is a priority area of work for us in this year's JCCT and S&ED.

Chairman CAMP. Do you feel you have the tools you need to continue to address this problem?

Mr. MARANTIS. We have worked very hard to leverage our resources across the U.S. Government in close cooperation and coordination with the Department of Treasury, with the Department of Commerce, and with our other agencies to make sure that we use our resources in the most effective way possible.

Chairman CAMP. Under Secretary Brainard, if you could comment as well.

Ms. BRAINARD. I want to underscore the importance of this issue.

Intellectual property really goes to the heart of America's competitive advantage. And for us to be able to grow and to continue to make sure that Americans have good jobs at good wages, we need to be able to earn returns on those investments and innovations around the world and importantly in one of our fastest growing markets, in China.

We are working very tightly across the administration. We have a very tight list of priorities that are developed in consultation with you, in consultation with the business community, with the labor community, and intellectual property has been right at the top of the list alongside currency and distortionary practices. And we have, as Ambassador Marantis said, made some progress, very important progress in dismantling the indigenous innovation preferences that were being built into China's system, very important progress initially in getting a high-level mechanism in place so that the State council would be responsible for monitoring enforcement at the local level. We need to get that renewed because our business community thinks that has been helpful to them. And some progress on the software legalization issue, where we are just going to have to keep at it.

But the other thing I think ultimately that we have emphasized in our discussions with the Chinese and in pushing forward on these priorities, is that if they don't get this right, they are not going to make it to the next level of development. And I think increasingly, there is recognition within China that they have to get a handle on their own lack of enforcement and inability to achieve enforcement at the local level in order for them to move away from a model that has been very resource-intensive, very focused on labor force and massive capital investment to a growth model that is more like ours, very focused on innovation, on high value-added.

So we have I think a moment where their own growth objectives and the key priorities we have for U.S. businesses are going to move increasingly in the same direction. So we think we need to work very closely with them to improve their intellectual property protection.

Chairman CAMP. All right. Thank you.

Moving on to another issue. There is no doubt that China's currency policy is a significant problem. And the real question is, what should Congress do or not do about it? And last year, when Secretary Geithner was here before the committee, he set forth a two-part test and said that any legislation needed to be, one, effective, and, two, consistent with our international obligations. And in light of this test, Ms. Brainard, what is the administration's view of the Senate bill, S. 1619, the legislation that recently passed the Senate, as well as H.R. 639, Ranking Member Levin's bill?

Ms. BRAINARD. Let me just say first that the President shares very strongly Congress' objective of taking aggressive action to provide a level playing field with China for our workers and our companies. We know they can compete successfully with anyone in the world if the competition is fair. The President shares very much

the frustration of many Americans with China's exchange rate. Despite recent progress, China's exchange rate has been, will be among our very top economic priorities, and we are going to continue to press China to appreciate faster, consistent with market forces.

Aspects of pending legislation do, however, raise concerns about consistency with our international obligations, and we are discussing these issues with Members. Obviously if legislation were to advance, those concerns should be addressed.

Chairman CAMP. Is there any chance you could highlight for this committee what those concerns are?

Ms. BRAINARD. I think we are very willing to engage and have been engaging with Members on particular aspects of legislation. We have been—and will remain, I think, reluctant to discuss particular aspects of legislation because, of course, at the end of the day, we want to make sure that we are in a strong capacity to defend whatever legislation becomes law. But again, I think, as you said earlier, you know, the test for us, the simple test is, will we be able to have something that is both effective and consistent with our international obligations? And we are very willing to work with Members of Congress on that front.

Chairman CAMP. All right. Mr. Levin may inquire.

Mr. LEVIN. Well, first of all, I think we need to provide a sense of urgency to this issue. I think there is a tendency to avoid that, to talk about progress and not to emphasize the extent of the problem.

I remember when the predecessor USTR would come here with charts showing how our exports were growing. There were never any charts on the extent of imports that were coming in from China that were so much larger than the number and the amount of our exports there. We have a historically high trade deficit with China. And I think to simply either shrug shoulders or find excuses for inaction, neither is satisfactory for the people of this country.

I will ask either of you, is there today a level playing field with China? I think you can probably say "yes" or "no."

Mr. MARANTIS. Mr. Levin, you raised an urgent point. We have an incredibly large trade deficit with China and there is no one cause to that deficit and there is no one solution. But we need to take action on a variety of fronts, imports as well as exports. We have our trade remedy laws to deal with imports. However, as you have pointed out, and as others have pointed out to us, trade remedy laws kick in only after there is injury. That is why it is incumbent upon us to address the types of trade distorted policies inside of China, like subsidies, that give rise to unfairly traded imports. We are working on all fronts to do that. We filed a WTO case last year on wind subsidies. The counter-notification that we filed just earlier this month in the WTO is designed specifically to give us more information so that we are able to assess the types of trade distorted subsidies that give rise to unfairly traded imports.

Mr. LEVIN. So I think your answer is, today there is not a level playing field?

Mr. MARANTIS. We need to work to ensure that we have a level playing field for our workers, our exporters; and working on the issues that you have just mentioned is a critical aspect of that.

Mr. LEVIN. Secretary Brainard.

Ms. BRAINARD. I think, Mr. Levin, we share very much your sense of urgency, your sense that there is not a level playing field, and that we need to work with China to accelerate the pace of reform, accelerate the pace of appreciation, accelerate the pace at which they tackle their inadequate protection of intellectual property, their uneven market access.

Mr. LEVIN. Well, I really think we need to just say “yes” or “no.” I mean, there isn’t a level playing field, and we are endeavoring to bring it about, isn’t that true? Yes?

Ms. BRAINARD. Yes.

Mr. MARANTIS. Yes, Mr. Levin.

Mr. LEVIN. The solar industry filed a petition recently, and I think everybody in this country had better—we all need to face up to it, including my colleagues on the Republican side. Essentially that petition says, with this new energy technology, that if we allow China to rig the playing field, we are going to lose that industry. It was our technology. It was our technology. And if we don’t act, if we don’t use our laws, if we don’t stand up for our producers, we are going to lose them. And it is one example and it is why there is such sensitivity in this country. It isn’t bashing China. It is essentially saying, play by the rules. Don’t rig the playing field. And I think everybody needs to start in our questions, if I might say so today, understanding that there is not a level playing field. It isn’t the only cause of the deficit but it is one of the causes. There isn’t any single cause, whether it is currency or others. But to say we don’t act on any single one because there are others is totally unacceptable.

Chairman CAMP. Mr. Johnson is recognized.

Mr. JOHNSON. Thank you, Mr. Chairman. Thank you both for being here. We appreciate your presence.

And while I agree that the currency issue and IPR are two items of great importance, I think there is another elephant in the room that we need to talk about. I find it alarming our deficit is being financed by countries such as China, our biggest holder of U.S. Government debt. Equally important, a former Chinese military official suggested the Chinese should consider dumping U.S. treasuries in response to some of our recent military decisions regarding Taiwan. While I believe foreign investment in America shows that outsiders view our country as a safe and solid investment, I have serious concerns about the full implications of overleveraging our debt to outside forces. I also feel the current level of transparency regarding China’s holding of U.S. Government debt is inadequate.

To raise awareness of the threat to our economy and national security from our exploding deficit and debt, I have introduced the Foreign-Held Debt Transparency and Threat Assessment Act. That bill will require a better accounting of debt held by foreign countries and, more importantly, will require the President to submit a plan to cut spending should either a particular foreign creditor or the overall debt pose a risk to the security interests of America. I feel we must not let any other country hold our national and economic interests hostage.

That being said, let me ask you two this simple question: How big of a problem do you think it is that China holds so much of our

debt? And what steps do you think we should take to address it? Either one of you first.

Ms. BRAINARD. Let me just say, as you mentioned, obviously we have the deepest, most liquid government security markets in the world, the deepest, most liquid financial markets in the world; and I think for all those reasons, it is no surprise that there is strong demand for U.S. securities both here and around the world. That said, over time, we do have, as a Nation, a big challenge in addressing our medium-term deficit and debt path, and that is why the President has put on the table additional measures, \$4 trillion of measures over the next 10 years that would help to put the debt on a declining path relative the size of GDP, why the Budget Control Act was so important. But of course, all of that is premised on the very important near-term challenge of getting people back to work and growing the economy, which is why so many provisions in the Jobs Act are important.

So I could not agree with you more that, as a Nation, we need to get on a path of declining debt, declining deficits once our recovery is well secured. And we all, I think, want to work together to accomplish that important goal.

Mr. JOHNSON. Thank you. Ambassador, do you have a comment?

Mr. MARANTIS. The only thing I would add is, on the trade side, one of the fundamental aspects that we are working on is how do we continue to boost our exports to China? It is important to note that our export growth to China is faster than any other region of the world. Our exports to China grew 32 percent last year versus to the rest of the world where it has grown by 16.7 percent. So what we are doing with respect to exports, both with respect to China and elsewhere, is a fundamental part of the President's efforts to continue to bring jobs to the American economy.

Mr. JOHNSON. Thank you. Let me ask you another question, Ambassador. I understand China is in the process of instituting an environmental certification program known as China Ross. There are concerns that the program could become a barrier to U.S. goods entering the market. What steps is USTR taking to address these concerns?

Mr. MARANTIS. Mr. Johnson, I am not familiar with that particular measure. We have an active environmental dialogue with China in the JCCT and as part of the S&ED. And I will follow up to get information on that particular measure that you raised.

Mr. JOHNSON. I appreciate that. Thank you, Mr. Chairman.

Chairman CAMP. Thank you. Mr. Rangel is recognized for 5 minutes.

Mr. RANGEL. Thank you, Mr. Chairman. I have been on this committee for so long that every time one of our Representatives talk with the people in China, I can almost write the press release myself: That they are cooperating, that progress has been made; that we appreciate that the legislative body is an independent agency. We don't encourage you to legislate, but we are not opposed to anything that you might do that could give us leverage. And whatever you want to do, it can't hurt us because, after all, the Constitution does provide for a separation of powers.

Having said all of that, if, indeed, as Congressman Levin has said, that we can identify the technology that they are stealing, that this is having a severe impact on our ability to compete, why don't we just identify what it is and put a tariff on that? The best they can do is take us to the WTO, where we want to go anyway. Why can't we do that? Ambassador?

Mr. MARANTIS. Mr. Rangel, we have a whole variety of tools at our disposal to make progress. And I don't dispute at all with you that we have severe challenges in China that we need to continue to work to address.

Mr. RANGEL. That is the speech I just gave. I am just saying that, suppose we know that there is a technology that they just put their finger up their nose and say, Hey, that is pretty good. I am going to use it, and I am going to include it in something that your people want to buy cheaper. And we say, No, you don't. We are not going to buy back our technology. You have got to pay for our research and development. And zap. And it is going to be outrageous. They are going to be angry. And if they are not angry, we score in the tariff. If they do get angry, we are in the WTO. Now that is the same question I asked just a minute ago. So you are not going to give me a chance to ask the same question a third time.

Why can't we do it? I accept that you are a diplomat and we are legislators. But you would not get angry with us if we mandated it, right?

Mr. MARANTIS. Mr. Rangel, we have imposed duties, for instance, in the Section 421 case.

Mr. RANGEL. Why can't we do more of it? Why can't we get their attention? Why can't we cause a fight and not threaten a trade war, but threaten to bring honesty, sincerity, and equality to the World Trade Organization, where a lot of us voted to allow them to get in because they promised to do these things. Now, is the answer to that, you don't want to offend them at the executive level? What is the answer? It just seems so easy to do.

Name something that our manufacturers are particularly concerned about. What technology does the whole world know that they stole from us? Could you help me?

Mr. MARANTIS. Yes. On this very issue, Mr. Rangel, with respect to electric cars right now—

Mr. RANGEL. Electric cars is good. They want partnerships with it. We are afraid they are going to steal our technology. If they did do that, then we put a ban on anything that looks like our technology and a high tariff, ridiculously high. Then what can they do about it? They either pay the tariff or go to the WTO. Now there is something wrong with my argument. But I am trying to find out, what is it?

Mr. MARANTIS. Mr. Rangel, we have our own international obligations that we have to abide by. But we take action on every front to counter whatever issue China puts in front of us, whether it is in the area of green technology, whether it is in the area of subsidies—and we have done, I think, a pretty good job, particularly over the past 2½ years, of using our enforcement tools, like the 421—

Mr. RANGEL. We don't need any legislation. You are pretty proud of the job you are doing diplomatically with China. And so

you are just listening to us rant and rave. But quite frankly, you have got a handle on this thing, right?

Mr. MARANTIS. This is a cooperative endeavor between you and us, and the concerns that you raise are the concerns that we push with our Chinese counterparts.

Mr. RANGEL. So we don't need the Congress' input into this. You are satisfied as every official, Republican and Democrat, when they come back, that they have got a long way to go, but they are making progress. And they do owe them a lot of money.

Mr. MARANTIS. Our consultations with you sets our agenda. So this hearing today is an integral part of helping us inform ourselves—

Mr. RANGEL. What do you think our attitude is bipartisanly here, as it relates to Chinese currency and intellectual property? What do you think it is?

Mr. MARANTIS. Very serious concern.

Mr. RANGEL. No. It is outrage.

Mr. MARANTIS. We share that. And that is why we are doing everything we can and are using all of our tools on all issues to make progress.

Chairman CAMP. The gentleman's time has expired. Mr. Brady is recognized for 5 minutes.

Mr. BRADY. Thank you, Mr. Chairman. I will submit my opening statement for the record.

Chairman CAMP. Without objection.

[The information follows: The Honorable Mr. Brady]

Trade Subcommittee Chairman Kevin Brady,
Committee on Ways & Means

Hearing on the U.S.-China Economic Relationship

October 25, 2011

The United States has many frustrations with the U.S.-China economic relationship, but China remains among the most important U.S. export markets. Last year U.S. companies exported more than \$90 billion worth of American goods to China. U.S. exports to China increased by 32 percent in 2010, whereas exports to the rest of the world increased by only half that rate. And since 2000, U.S. exports to China have increased *eight times* faster than U.S. exports to the rest of the world. Those exports translate to U.S. jobs.

Sustaining this growth is critical to the President's efforts to double exports. But a number of pernicious barriers are inhibiting U.S. companies from exporting to and investing in China. These restrictions reduce U.S. exports and cost the United States good-paying jobs. When U.S. companies are able to compete on a level-playing field, they win, but they can't if they are never given the chance.

The list of Chinese barriers is long and includes: WTO-inconsistent subsidies such as directed lending policies and the provision of land, electricity, raw materials, and other goods at below cost; China's theft of U.S. intellectual property rights; China's protection certain sectors from competition through various investment restrictions; restraints on the export of raw materials and rare earth minerals; various and sundry regulatory barriers; unscientific restrictions on U.S. agriculture exports; and of course its closed capital account and the undervaluation of the RMB.

I look forward, in particular, to hearing from the Administration on what it believes Congress should or should not do to address these barriers. Last year, in testimony before this Committee, Secretary Geithner set forth a two-part test: any legislation must be (i) effective and (ii) consistent with our international obligations. I think that test perfectly articulates the standard that we should use to evaluate any legislative proposals, including proposals to address China's currency policy, such as H.R. 639 or S. 1619. I look forward to hearing from the Administration as to whether it believes that legislation satisfies Secretary Geithner's test.

Last year I voted against currency legislation because I did not believe that it satisfied that test. I oppose the current Senate bill for the same reason. Let me be clear. There is no doubt that China's currency policy is a problem. However, legislation may not be the

best solution. The Administration's input on the value of legislation is important, and I expect it to provide such input at this hearing.

In my view, some of the most effective tools for addressing these concerns are through multilateral engagement with China. While the United States should never hesitate to file a WTO case, where appropriate, its efforts are often greatly enhanced through the development of a coalition. A great example of this is the strong cooperation between the United States, the European Union, and Japan on China's export restraints. The United States and the European Union filed a case together at the WTO against China's restraints on certain minerals. They secured a significant victory at the WTO dispute settlement panel stage and are working together closely to respond to China's appeal. Similarly, the United States, the EU, and Japan have worked closely together to bring multilateral pressure on China to remove its export restraints on rare earth minerals. This has resulted in meaningful progress, although the issue remains unresolved.

Multilateral engagement should also take place through APEC and the G20. These are important forums for raising our concerns, along with our allies. Next month, the President will host APEC in Hawaii. I look forward to hearing from the Administration about how it intends to use this meeting to advance its agenda.

The United States has made good progress through various bilateral mechanisms as well. I'm looking forward to how the Administration is working to make our bilateral engagement with China more effective, including through the Strategic & Economic Dialogue (S&ED) and the Joint Commission on Commerce and Trade (JCCT).

We are watching implementation of commitments made through the JCCT and the S&ED very closely. Many U.S. companies have expressed concerns that China has stalled or not fully implemented its commitments in a timely manner. I very much share those concerns. It is also important that we measure progress not simply by the number of barriers removed but also the effect on U.S. companies' ability to do business in China. The real proof of success will be in new market access by U.S. companies, and the resulting sales that are created.

Finally, I think it is important to reiterate that our approach to China should not be to erect new protectionist barriers to match China, but rather, to tear down China's barriers. We will never win a battle to "out-protectionist" China. Rather, we must continue – and enhance – our efforts to tear down China's walls to U.S. exports and investment.

Mr. BRADY. I want to congratulate Ambassador Marantis for the hard work the U.S. Trade Representative Office did with the White House with Republicans and Democrats in Congress to pass the recent sales agreements with Korea, Colombia, and Panama. If anyone in America wonders if Republicans and Democrats can work with this President to pass a real jobs bill, this was the real proof that we can. And there is bipartisan support in Congress that China, and agreement that China must play by the rules, that their currency must appreciate. But that is not the only trade barrier our companies and workers face in China.

If you listen to our agriculture, our manufacturing, our technology services, even the defense industries, there is a broad range of barriers that are as important, or perhaps to them more important that we tear down. On the agriculture silos, sanitary standards, manufacturing, IPR-directed subsidies, Earth subsidies, directed lending technology, indigenous innovation services, regulatory barriers, defense, rare and raw earth materials, on and on and on, our companies tell us they can't get through those trade barriers.

I think it is a mistake to have a currency-only focus from Congress, that we need to tear down all those trade barriers. And I would think we need to be smart about addressing the currency issue. We want to make sure we follow our own obligations. Second, we make sure it doesn't undermine our efforts to tear down the full range of barriers that we face in China.

And then finally, to make sure legislative efforts don't boomerang back and actually cost American jobs. So we need to be smart about the approach. And I am not sure every problem has a legislative solution.

Under Secretary Brainard, implicit in the criticism you are hearing today is the belief that the White House is not doing enough; that in effect, Congress is saying, we can't wait for the White House on China. Do you think, given your testimony on the broad range of issues you tried to address in a number of different forms—and as you said, you have made real progress on some of these issues—do you think that criticism of the White House is fair?

Ms. BRAINARD. Let me just say Mr. Brady that since day one, making the U.S.-China economic relationship work better for American workers, for American companies, for American farmers has been a top priority for the President, and it has been a top priority across the entire administration. I would say that we have a more coordinated effort than I think we have ever seen before. We, at every moment, have a very tight list of priorities because we know that if we go after 20 things, we probably won't get one. If we go after four at a time, we will get them done and move to the next. And we work very consistently with the White House.

When the President meets with President Hu, he goes through the list of issues. When we meet with our counterparts, we are always synched up with USTR, with Commerce, with the State Department, we work very closely, and we have made progress. We are as frustrated as Members here are, and as many Americans that we hear from about, concerns as we travel the country. But as you said, we are also making progress. We have very important

stakes in terms of the export markets that we have penetrated effectively in China.

China is our third-largest export market. That would not have happened without an aggressive enforcement approach, without fully using the trade remedies, the safeguards. As Mr. Levin said earlier, the first time ever use of 421. So we use the tools we have available to us very aggressively. We plan to continue to do that. We want to continue to work in a way that is effective, that is consistent with our international obligations.

Mr. BRADY. Under Secretary, may I ask that—and thank you for that summary. It was very clear in your testimony as well. Does the White House support the Senate currency legislation as it stands today?

Ms. BRAINARD. The White House supports very strongly the goal of the legislation, which is to create a more level playing field for our workers and our firms. The White House shares very strongly, as do I, the frustration with the pace of currency appreciation has not been sufficient to bring China's currency into full alignment with market fundamentals. Aspects of the legislation that do, however, raise concerns about consistency with our international obligations. And as I said earlier, we are working with Members of Congress. If the legislation were to advance, we would want to see those addressed.

Mr. BRADY. I am not trying to push. But respectfully, as the legislation stands today, as it came out of the Senate, is the White House supporting that legislation?

Ms. BRAINARD. The White House is very much supporting the goal of the legislation. There are aspects of the legislation that raise concerns about international consistency.

Chairman CAMP. The gentleman's time has expired. Mr. Stark is recognized.

Mr. STARK. Thank you, Mr. Chairman. Secretary Brainard, have you heard about the Bridge to Nowhere? No? Ambassador, have you ever heard about the Bridge to Nowhere?

Ms. BRAINARD. Yes.

Mr. STARK. Yes, you have? He is nodding yes. Well, have you ever heard about the bridge from Nancy Pelosi's congressional district to my congressional district? It is a \$6.4 billion bridge that replaces the San Francisco Bay Bridge. Have you ever been to San Francisco? Have you seen the Bay Bridge? It is a monument, right? Well, there is a new one, plopped right down there, coming into my district. It has used 43,000 tons of steel. It had a 525-foot tower, 28 steel deck sections. And that was made in Shanghai. And another Shanghai company made a mile-long cable for the bridge. All of this work was done in China, using Chinese engineers, Chinese welders, Chinese steel. And some of those laborers earned as much as a couple dollars a day. They outsourced the project to China. Outsourcing it reportedly saved us Californians \$400 million. That is kind of nice. But doesn't the President's job bill include spending for our Nation's highways and bridges? Yes? Speak up. Is that correct?

Mr. MARANTIS. Yes, sir. Yes.

Mr. STARK. Secretary, we do plan to spend money, do we not? Isn't that in the plan of the administration, to put people to work? Yes? You don't know?

Ms. BRAINARD. Of course. Yes.

Mr. STARK. You are saying yes. Okay. Thank you. Well, does the President intend then to insist on a "buy American" clause? Could I hear the administration or the Treasury's position on that?

Ms. BRAINARD. I actually—I am very familiar with the President's plans to—and proposals to move forward with much stronger infrastructure spending. I think the Buy America issues are still ones that would be addressed in consultation with Congress. Obviously, we have had Buy America provisions in the American Recovery Act in ways that were consistent with our international obligations. So there is precedent there.

Mr. STARK. Well, what do our international obligations have to do with this darn bridge being built in my district and putting all of these Americans out of work?

Ms. BRAINARD. Obviously, we are signatories and huge beneficiaries of the Government Procurement Agreement under the WTO. So, of course, our previous Buy American provisions in the American Recovery Act were consistent with that.

Mr. STARK. If China were in the WTO, could they still sell us bridges under the government procurement agreement?

Ms. BRAINARD. One of the key priorities with China is actually to bring them into the Government Procurement Agreement. But they are not currently protected by it because they are not signatories.

Mr. STARK. They don't seem to need any protection in San Francisco. They are doing quite well by all by themselves, thank you very much, without much interference from the administration. And I guess, I go back to my question, you know, I hear a lot of talk from the President about this, that and the other thing, but no action. No action. And the labor unions in my district are disappointed in the President's lack of action. A lot of talk. No action.

What about insisting on Buy American? Would that be a good thing for the administration to do, in your opinion?

Ms. BRAINARD. Let me just reiterate that I can't speak to the particular path forward, but I will say that there are mechanisms that Congress has passed with strong support from the President that provided for Buy American in the context of the American Recovery Act that were consistent with our international obligations.

Mr. STARK. But they are not being enforced, are they?

Ms. BRAINARD. Yes.

Mr. STARK. Where? What Buy American have we ever in the last month or two insisted on?

Ms. BRAINARD. I don't know whether there is a particular provision in the last month or two, but I am happy to check and come back to you on that.

Chairman CAMP. The time has expired. Mr. Tiberi is recognized.

Mr. TIBERI. Thank you very much, Mr. Chairman, and thank you both for being here today. I think the chairman did a really good job of outlining the concern and frustration in a bipartisan way that members of this committee have and this Congress have regarding the overall issue of our relationship with China, and I

look forward to one day to the Secretary and the Ambassador coming to talk to us as well.

Let me just kind of, I guess, dovetail on what Mr. Brady and Mr. Rangel were saying with both of you. Under Secretary, you mentioned sharing that frustration, and you also mentioned that the administration supports the goal of the legislation and that we are as a country making progress.

That part, I think, there is not a lot of belief up here that we are actually making progress. In fact, in my district in central Ohio, a manufacturer who has been doing business with China for over a decade is so frustrated, not with just currency, by the way, that is probably actually kind of down the line, so frustrated with China that they are actually taking their investment out of China and moving to another Asian country because of their frustration. Some of that is occurring as well.

So, my question to you is, you in response to Mr. Rangel and in response to Mr. Brady mentioned, Under Secretary, that you share the goals of the legislation. You believe that you all have the tools necessary to deal with this administratively with the international community, with the WTO. Why aren't we moving quicker? Is there a concern of retaliation?

Ms. BRAINARD. Well, let me just say, Congressman, first of all, that the phenomenon you mentioned with companies reconsidering their investment in China is more widespread than just companies from your district. That increasingly, I think, we are going to find China, and this has been the finding both of the recent Boston Consulting Group study and a KPMG study, China is going to face challenges of its own. It has got a slowing labor force growth and ultimately very soon a declining labor force, a very rapidly rising wage cost, passive capital over investment, a very poor environment for innovation, for entrepreneurship, a very distorted credit allocation system, and a misaligned exchange rate that is preventing them from fundamentally reorienting their economy towards unleashing the very substantial potential of domestic consumption that they have in China.

Mr. TIBERI. Does the administration have the tools necessary to deal with these concerns?

Ms. BRAINARD. We, I think, are doing what we can. We are working with those within China who can see that they need to move, that they need to move faster. There are, within the Chinese system, obviously, those that fundamentally understand how market exchange rates should work and want to move in that direction. So we are directing our engagement with them to try to help strengthen those who want to push for faster appreciation, faster rebalancing of the economy, a more level playing field.

Mr. TIERNEY. Do you need more tools from us?

Ms. BRAINARD. And so we are using the tools that we have. Again, you know, to the extent that there are mechanisms that would be effective, that would be consistent with our international obligations, obviously we would be very interested in consulting with you on those and those will remain the kind of key tests.

Mr. TIERNEY. Can you deal with this legislation that passed the Senate? Can you deal with that without legislation in an administrative way?

Ms. BRAINARD. We are working very hard to try to push forward on the exchange rate front. Obviously, the legislation that has been pending does, I think, articulate, try to advance a very important goal.

Mr. TIBERI. Thank you.

Ambassador, a quick question. So if this legislation passes, is there a concern from the administration that there will be retaliation, that when my constituents visit a toy store, a department store, an electronics store, that the cost of goods to them in this tough economy will go up?

Mr. MARANTIS. I think, as Under Secretary Brainard said, there are aspects of the legislation that raise concerns about consistency with our international obligations, and if it were to move forward, we would want to address those.

Mr. TIBERI. Would it cause that concern from the administration, products going up to our constituents, costs of products because of tariffs or a trade war?

Mr. MARANTIS. I think there are always concerns regardless of what action we take, whether it is on this front or whether it is IP or whether it is with respect to our 421, concerns have always been raised that the Chinese may retaliate. But we need to use the tools that we have to address concerns so that we make progress.

Mr. TIBERI. Thank you.

Chairman CAMP. The time has expired. Thank you.

Mr. McDermott is recognized.

Mr. MCDERMOTT. Thank you, Mr. Chairman.

I come from Seattle, and we are the fourth largest exporter in the United States. We are the closest port to Asia. Half our exports go to China. And one of our little companies is Microsoft. The CEO, Mr. Ballmer, noted that Microsoft revenues from China are about 5 percent as compared to the revenues from the United States, even though we have an equal number of computers. That means that 95 percent of those PCs that are going to China, they are not putting any software on them or else they are stealing it. That is the only way you explain what is going on. The Software Alliance says that 78 percent of all PC software in China is pirated. That is a polite word for steal, stolen, okay?

Now, I listened to your testimony, and, you know, by the way, when Mr. Brady tries to nail you in the corner about whether the President will sign this bill before we pass it out of the House, that is the Speaker's hiding behind that. The Speaker isn't asking the President about all these EPA changes, will the President sign those bills before he passes them out of here. He does what the Constitution says, is the Congress acts and the President decides how he is going to respond to it. He can veto it.

The same is true on currency. The House is sitting and hiding behind the fact they can't get the President to say, oh, yeah, I am eager to sign it. He doesn't have to say that. He votes last. Remember that.

But when you sit here and talk, I listened to all the things you have said. You said it is our highest priority, this trade problem with China. It is only after injury can we act. Ha. When will you notice the injury? Well, I guess you have noticed it. Then you said, we are using all our tools and we have to be consistent with our

international obligations. That sounds like fancy words for we don't want to do it.

Now, what you are getting from this committee on both ends of the dais is where is the enforcement? You say, well, there is a little up-tick. I heard that. There is a little up-tick in the amount of currency or whatever. When are you going to start—you don't think there is a war? Are you afraid to start a war?

They have declared war on our software industry and you are sitting back—I feel, I mean, maybe you don't see Chinese celebrations like I do in Seattle all the time. They have a dragon that comes out made out of paper and everybody waves it around and it jumps around and firecrackers go off. You remind me of that tiger, jumping around, meaning nothing. There is a brunch of firecrackers over in the bushes, but nothing is going on. And you say you don't need anything from us. When is this piracy going to stop? When is it going to get down to 75 percent is pirated, or 50 percent, or 40, or 30? Or is all hope lost? It sounds to me what you are saying, we are doing everything we can and nothing is happening. So what do we do?

I would like to hear you tell me how it is going to get better with all these tools you said we have, and we are doing everything we can, and there has been an injury. So when?

Mr. MARANTIS. Mr. McDermott, this administration has been vigorous in terms of enforcement. We filed five WTO cases. We have done a 421. We have accepted a 301 case. On the issue that you raise on software, it is a huge concern. And what I have outlined in my testimony is that we have made progress with China. Is it enough? No, not by any stretch of the imagination.

Mr. MCDERMOTT. Tell me how much progress you have made if 78 percent is still being pirated?

Mr. MARANTIS. Mr. McDermott, the changes in China are not going to happen overnight, and we have to make progress on a step-by-step basis and we are doing that.

Mr. MCDERMOTT. The industry has been around for 15 years. Come on. What is "overnight?"

Mr. MARANTIS. And in the last year, China has made more substantial commitments in this area than they have ever before. But you are absolutely right. The proof is in the pudding, and it is all about enforcement. And has China done everything it promised us to do? No, they haven't fully implemented their 2010 JCCT commitments, and we are on them and we are working in close cooperation with the industry to make sure that they do implement their commitments.

We keep pushing and we are going to use all the tools that we have. It is an urgent priority. Piracy rates are unacceptable. The losses to our industry are unacceptable.

Chairman CAMP. Time is expired. Mr. Davis is recognized.

Mr. DAVIS. Thank you, Mr. Chairman.

I would like to move into the strategic realm if we could for a moment and then get your insight, first Ambassador Marantis.

I wonder if you could speak to China's bilateral and regional trade agenda. I am particularly interested with the geopolitics. China is doing some very, obviously important things for their own strategic priorities in terms of growing to protect trade relation-

ships, their access to routes on the ocean, what they are doing with Navy, investing in countries that are resource rich, anticipating some of these demographic and environmental inevitabilities that are going to take place.

I was wondering if you could comment on their influence and impact in the region based on these agreements, and also if you could compare China's trade relationships in the region to ours, just to highlight the differences and where you think they are going to ultimately end up.

Mr. MARANTIS. Thanks, Mr. Davis. China has been extraordinarily active in the region, including trade and investment agreements, and that is why it is incumbent upon us to do what we are doing—which is to increase our engagement in the Asia Pacific region.

We are doing this through a whole variety of fronts. We are doing it in the context of APEC. We are doing it in the context of the Trans-Pacific Partnership. We are doing it in the context of our bilateral trade and investment work that we do with our partners. It is a real challenge.

Our competitive share in the Asia Pacific has declined as China's competitive share in the region has increased. When I was testifying before this committee with respect to Korea, we used to be the number one—we used to have the number one share of Korea's market. We now are number three.

As our rates in Korea's market went from 21 percent to 9 percent, China's went from 7 to 17. We have got to reverse that trend. And that is why it was so important for Congress to pass, and the President to sign, the U.S.-Korea Trade Agreement last week, and that is why the initiatives we are pursuing, for instance, in the Trans-Pacific Partnership, are really vital to maintaining our economic competitiveness in the region as China continues to conclude more and more agreements with partners in the region.

Mr. DAVIS. Secretary?

Ms. BRAINARD. Well, I think that the dynamic that you are pointing to is very real. I think the passage of the U.S. Korea Free Trade Agreement puts us in a much stronger position in the region because we are now in a position where many potential trade partners with much stronger disciplines in areas like intellectual property, investment, exchange rates, now will see us as a potential free trade partner. The Trans-Pacific Partnership discussions that are underway I think are critically important for that reason.

As we move to build stronger disciplines and stronger trade relationships with surrounding countries, that is part of the overall strategy to pull China to where we want to be in terms of intellectual property, market-based exchange rates, a level playing field. So it is a critically important part of the overall U.S. strategy in the region.

Mr. DAVIS. I would ask just a follow-up from your perch at Treasury. You mentioned the challenges that China will be facing due to demographics, environment, a number of other issues. Let's fast-forward to 2030. And I know it is always dangerous to ask people to make predictions, but just from a standpoint of we have plenty in the United States that are pronouncing again the doom

of America, as was happening in regards to our relationship with Japan competitively back in the 1980s.

If you would fast-forward 15 or 20 years, what do you think the relationship looks like if we stay generally on the current paths of policy?

Ms. BRAINARD. It is, as you said, very risky to project into the future, but I will say we have our challenges. China has some challenges. I would far rather have our challenges. I have huge confidence in the resilience of this economy, in the strength of our entrepreneurial culture, our innovative capacity, our dynamism, our ability to adapt.

China, again, while their current growth rate looks enviable, it is going to need to move to where we want them to be on intellectual property, on market-based exchange rates, on level playing fields, in order to overcome the very substantial challenges they face in the coming years.

Mr. DAVIS. Thank you. I yield back, Mr. Chairman.

Chairman CAMP. Thank you.

Mr. Neal is recognized.

Mr. NEAL. Thank you very much, Mr. Chairman.

For our panelists, for those of us, as Mr. Rangel noted, who have been on focus with this issue for a long time, the question would be what does Nick Brady, Lloyd Bentsen, Bob Rubin, Paul O'Neill and Tim Geithner, all have in common? And that is that they have assured this committee that they could manage the Chinese currency issue without congressional intervention.

Now, the medical technology industry, they are very concerned about price controls that the Chinese government has proposed. It reduces market access for small and medium-sized companies. China pledged to open its mandatory third-party liability auto insurance market to foreign insurers. It talked about it, but haven't really made much progress on it. And the United States International Trade Commission recently published an important report on the effects of intellectual property theft on the U.S. economy.

Those numbers are pretty staggering across-the-board in terms of job loss. In the financial sector, as you know, because of forced partnerships, they have diminished the enthusiasm that they once impelled in front of this committee for a normal trading relationship. That enthusiasm that was previously there has caused some of them to not only retreat, but to leave, because they have found that the impediments to growth have been so limited.

Actually, I have offered four quick questions there, but I want to revert to the frustration that my friend, Mr. Tiberi, mentioned a few moments ago until suggesting that the frustration is really bipartisan in nature, and it has been the repeated assurances of successive administrations, Democrat and Republican, who have suggested just leave it alone, which raises the suspicion here that the reason that we have been fairly tepid in our response has been because they hold an awful lot of American debt.

Would you like to hold forth on those questions?

Mr. MARANTIS. On the trade and investment front, Mr. Neal, we share the frustration that you have expressed, the bipartisan frustration. We have got to make more progress in our relationship with China. It is clear. There are issues that you raise with respect

to IP, with respect to investment restrictions, with respect to slow liberalization of the financial services sector, and it is our job to keep China's feet to the fire on this, and as Congress is doing, keeping our feet to the fire to ensure that the commitments that we tell you we are securing from China we are actually securing implementation of.

I am not going to sit here and pretend that everything is great and rosy. It is not. But we are making progress and working with you. We will continue to do so.

Mr. NEAL. The problem with sovereign capitalism is that if you suggest that you can only accept a partnership up to 49 percent of the corporation, the difficulty is that it allows our trading relationship to be diminished because they get all of the best technology advancements, research and development, and then they control the outcome. And it causes not only great consternation for American companies, but at the same time, it also limits their ability to grow in a market that they once believed was the panacea for many of their opportunities. Would you care to comment, either one of you?

Mr. MARANTIS. Yes. And at the same time, though, I don't want to diminish the fact that we are deriving benefit from this relationship, as well, in terms of our exports across the board.

Mr. NEAL. No question. That is not in dispute. But what I heard Ms. Brainard say that they have allowed their currency to appreciate by seven percent over the last 5 years, a decade, not really a note of accomplishment, is it?

Ms. BRAINARD. No. Let me just state that China's currency has appreciated against the dollar 40 percent over five years, 10 percent—

Mr. NEAL. You used the number 7 percent, I thought.

Ms. BRAINARD. Seven percent in nominal terms over the last 15 months; 10 percent adjusted for inflation, which, of course, is the meaningful measurement. They are moving. Our exports are growing faster to China than to anywhere else in the world, nearly twice as fast. The third largest export market. We are seeing progress. It is not adequate, but we are seeing progress.

And I just have to say, we are up here with you, with your staff, with your constituents, every day, working on what our priorities are together as Americans, vis-à-vis our trade partners, in particular China. We have been working aggressively. We have taken more enforcement cases. We have taken a 421, which the previous administration chose not to do. We have a host of trade remedies across a variety of products that are imported from China, and we will continue to work very aggressively with you to pursue American interests. We are very committed to doing that.

Mr. NEAL. Thank you, Mr. Chairman.

Chairman CAMP. Thank you. Dr. Boustany is recognized.

Mr. BOUSTANY. Thank you, Mr. Chairman, and thank you both for being here today.

My home State of Louisiana is a maritime state and we depend very heavily on trade and exports. In fact, we have gone from eighth among the 50 States to fourth just in the past year, and over the past 2 years, we have seen annual growth in exports to China ranging around 50 to 55 percent. Significant growth. And

China now is our number one export market and increasingly we are seeing small businesses, mid-sized firms involved in this.

There has been discussion about whether or not we have the necessary tools in place during the course of this discussion today. One thing that has not come up except for the chairman's mention of it in his opening comments is that of the Bilateral Investment Treaty and getting a status report on what is going on with this now. This is clearly an important tool. We know that the EU is, at least, approaching or in negotiations now with China. China has some 70 BITs in place now.

What is going on on our end? Secretary Geithner, at the very beginning of the year, testified in front of this committee and emphasized that it is a very important piece we need to put in place, and yet we haven't heard much back from the administration on this issue. So could you bring us up-to-date?

Mr. MARANTIS. Sure. As you point out, a high standard BIT can very much help level the playing field for our investors. President Obama and President Hu, at the summit earlier this year, reaffirmed their commitment to negotiating a BIT. We have engaged in six rounds of technical consultations with them. We have not yet completed our BIT review, and I know that there is frustration amongst some that—

Mr. BOUSTANY. What is the holdup there?

Mr. MARANTIS. There are a variety of things that we are looking at. We want to make sure that the BIT is able to address the challenges, new challenges that our investors face, including in markets like China that are dominated by state-owned enterprises. We are working hard on it and we hope to complete it.

Mr. BOUSTANY. Thank you. Secretary Brainard, do you want to comment on this?

Ms. BRAINARD. No. I would just say that we have a history of bilateral investment treaties, advancing the interests of American workers and companies. Obviously we have enormous interest in getting high standard protections for Americans in China. The question, of course, is whether and when China going to be able to come to the high level of standards that we would want to pursue. That is, I think, what we have to ascertain before we can really move forward in a more accelerated pace on the Bilateral Investment Treaty. We want to make sure it is a good deal for our workers and companies.

Mr. BOUSTANY. Shifting gears, when President Hu was in Washington, there was a discussion about delinking indigenous innovation from government procurement. And I was in China in April, had conversations with the vice premier there about that same issue. He said done. We have taken care of it. But my understanding is that there has been uneven application of this into the provinces and so forth.

What kind of progress are we really making with this and what are our metrics? How are we monitoring it?

Mr. MARANTIS. We are not done, but we are making progress. The Chinese side made a number of commitments on indigenous innovation last year, including the one that you mentioned at the summit last January.

As Under Secretary Brainard mentioned in her opening testimony, China has repealed already four measures with respect to its product accreditation system. At the state and the local level, in some provinces and in some municipalities, they have stopped implementation of measures that are on the books. This is a huge priority for us in this year's JCCT to ensure that the commitments that they made, i.e., getting rid of these measures, are actually implemented.

Mr. BOUSTANY. So looking at the WTO government procurement agreement progress, clearly China is dragging its feet, and I know that has been a top priority in these discussions. So work continues, I suppose.

Mr. MARANTIS. Yes. And again, as Under Secretary Brainard mentioned, this was a big priority for us in the S&ED and in the JCCT. We expect by the end of this year, as President Hu committed to President Obama, that China will submit a revised offer that will include, for the first time, coverage of sub-central entities, which will be an important advance.

Mr. BOUSTANY. Do we expect that by the end of the year from China?

Mr. MARANTIS. We do.

Mr. BOUSTANY. Thank you. I yield back.

Chairman CAMP. Thank you.

Mr. Becerra is mention recognized.

Mr. BECERRA. Thank you, Mr. Chairman. Thank you very much for being here.

Let me make sure we are clear on what we are talking about with regard to currency manipulation. There are three major issues that I can tell from a country manipulating its currency to its advantage. One, it artificially raises the prices of our exports to that market, in this case, we are talking China; two, it suppresses the prices of Chinese imports into the United States; and, three, that manipulation of their currency places U.S. exporters at a very competitive disadvantage vis-à-vis Chinese exporters into other country markets.

So, whether it is unfair competition of Chinese imports coming in looking like a cheaper product because of the currency downgrade, or whether it is our products to China costing more because the currency in China is valued at less, or whether it is our American companies trying to compete with Chinese exporters in another country, in either case we lose.

So would either of you disagree with those three points that I just raised with regard to the issue of currency manipulation?

Ms. BRAINARD. Let me just—

Mr. BECERRA. And I don't want a treatise. I just want to know if you agree that those are three distorting effects of currency manipulation?

Ms. BRAINARD. Let me just say that China's exchange rate has appreciated against the dollar over the last 15 months more much rapidly than it has against any other country in the world, I think in part, because—

Mr. BECERRA. Ms. Brainard, I understand that point. I am just trying to find out if the problems with currency manipulation are

as I have just stated. Maybe there are others, but I have noted three—

Ms. BRAINARD. I think when we look at misalignment of the exchange rate, failure to—

Mr. BECERRA. Let me move on to a different question if you are not going to answer that one. I am just trying to find out if you disagree that the problems with manipulating currency causes us issues because the country that is doing the manipulation is taking advantage of an artificially suppressed currency value. Okay.

The issue becomes one of whether we are willing to take action. Some have raised the specter of a trade war, that, oh my goodness, if we were to try to take some concerted steps to stop China from manipulating its currency, which, by the way, a recent survey of economists said, 96 percent of them said that they believe that China was indeed suppressing its currency's value, but that this trade war might damage us. On the other hand, there is some, and I agree with these folks, who say we already see a trade war underway, and it is a one-sided trade war where only one side is fighting, and that is the Chinese.

I don't blame the Chinese. They are doing everything they can as aggressively as they can to help make their country prosperous, and to the degree that any country lets them, that is that other country's fault. I don't blame the Chinese for trying to lift themselves up. They should go to it as best they think. But if there are rules out there in the world, and if we are abiding by those rules, we should try to make sure that we fight on the same terms, to make them abide by those rules.

Another point. If an American wishes to buy a toy for his or her child in this country and it cost a few extra cents more to buy that toy because we have asked China to live by the rules, or we forced China to live by the rules, I think that is actually pretty good, because the chances are we may see a few more of those toys or cups or whatever else it might be with a label that says "made in America," because these days, most of those things aren't made in America, and unfortunately, some 1 to 2 million Americans the estimates will tell us that don't have their jobs today because of China's currency manipulation.

Now, is it true that China exports four times as much to us as we export to them, Ambassador?

Mr. MARANTIS. Our trade deficit with China is \$273 billion. Last year we exported roughly \$92 billion, and I don't have the number in front of me of what China—I think they exported \$65 billion to us.

Mr. BECERRA. So almost a four to one advantage that the Chinese have over the U.S. when it comes to exports. Now, if the Chinese were to say if you want to engage in a trade war, we are going to go at it, they stand to lose four times as much as we do, because they send four times as much to us as we send to them. I doubt that they are going to want to engage in a war when they stand to lose four times as much as we do.

So the bottom line is, we have got the Senate which took a 63-35 vote to support legislation to deal with currency manipulation, we have a House where a majority of the members have supported the legislation that can't get through the House, and it is time that

we do something. So it is either do nothing or do something, and I think members here are saying let's do something. So we appreciate your being here and look forward to having something passed through.

Chairman CAMP. Before I go to Mr. Roskam, I just have one question, Mrs. Brainard. On October 15, the Treasury Department was scheduled to submit its biennial report on China's currency to the Congress, but it did not. When can we expect that report?

Ms. BRAINARD. We issued the last report mid-May, and we postponed the report, as you know, because we are engaged in a series of very important summits where we will have an opportunity, the President will have an opportunity to continue to press this issue with President Hu. So we want to give those processes a chance to move forward, in particular, G-20, APEC and East Asia Summit, which go through the middle of November.

Chairman CAMP. The middle of November. Thank you. Mr. Roskam is recognized for 5 minutes.

Mr. ROSKAM. Thank you, Mr. Chairman.

Mr. Chairman, I am going to resist the temptation to yield my time to Mr. Rangel, although I think he was pretty well articulating the frustrations that members on both sides of the aisle are feeling that issue. I don't know if I am going to get to a question, so relax, and if my voice goes up at end it will be a question, but maybe more of a statement.

But it seems to me that we are really dealing with a nation, China, that from an economic point of view, is predatory and they are operating in their interests. Mr. Becerra a minute ago said that he understood their motivations. But it is predatory and it is game-on in terms of how they are approaching this.

I have got a situation—we have talked at length so far about currency manipulation. I have a manufacturer in suburban Chicago, Fellowes Manufacturer, the manufacturer of bankers boxes and shredding equipment and so forth, that has been through a shameful nightmare. It is like the wild west from an intellectual property point of view, highly manipulated. The Chinese officials have been yea-yeaing American official also for months and months and months, and Fellowes Manufacturing is really no better off than it was today.

I was with Congressman Smith earlier this year, along with Congressman Sensenbrenner and Congressman Rush, and we were in West Africa, and one of the things that became clear to us, and particularly to me, was the way in which the Chinese are pursuing natural resources around the world. Not going in with the best interests of other nations oftentimes the way the West does. Instead, going in to grab hold and to control and to manipulate natural resources in complicity with governments that are doing shameful things in some cases, not in West Africa, but in other venues around the world.

So I think that there is a couple of things that we need to do. One is we need to have clear relationships with our allies. One would be to move forward, and we have not talked about this today, but the nature of the security relationship with Taiwan, for example. We need to be sending a very strong signal that the F-16-CD sales should move forward. The administration hasn't

agreed on that. But I think that this is an area where we send a very clear, strong message that tells China what? It tells China we going to stand with our friends. We are not going to create ambiguity with long-time strategic allies in the region.

I think another thing that we can do, and you alluded to this a minute ago and we have different views on how to do this, but the deficit issue is massive. Mr. Johnson mentioned this in his opening remarks. I sat last year with a South Korean official, one of their legislative leaders. I had a very lengthy conversation. At the end of the conversation I said, what advice would you give to the United States as we interact with China? You have been living in a relationship with China on the Korean peninsula for centuries and centuries and centuries. What advice would you give? And with no sense of irony, this South Korean official said, and I am paraphrasing, well, Congressman, the first thing I would do is I would stop borrowing their money. That is for sure.

So I think we create this vulnerability where 47 percent of our debt is held by foreign interests, and the Chinese are playing a very, very big role there. And I think there is things that we can do proactively to take on this threat.

So, getting towards a question, I suppose, and that is this: Chairman Camp mentioned earlier some of the economic components to the intellectual property issues, and Mr. McDermott alluded to this a minute ago when he talked about Microsoft.

Microsoft's CEO came in to see me several months ago basically laying out the same thing, and these numbers are staggering. The U.S. International Trade Commission recently conducted an analysis that would determine the economic impact of IP protection in China if it were done the same as we do it in the U.S. It would increase sales by \$21 billion and it would create 2.1 million jobs. Now, think about that. 2.1 million jobs in the U.S. created if China simply honored the same commitments that we have.

What is the metric by which the administration is figuring whether it is succeeding or failing? Well, you can't answer that, because I used up all of your time. Maybe we could continue this exchange, because I think it is very important.

Thank you, Mr. Chairman.

Chairman CAMP. Thank you.

Mr. Thompson is recognized.

Mr. THOMPSON. Thank you, Mr. Chairman. Thank you for having the hearing and thank you to both witnesses for being here.

I am interested, Ambassador, specifically on some agricultural issues that are happening in this unlevel playing field relationship we have with the Chinese. A lot of ag goods face some pretty stiff barriers, arbitrary bans, ever-changing safety measures. Wine, in particular, which is very important to my State and my district, they face a 14 percent tariff for bottled wine, a 20 percent tariff on bulk, and that is on top of a 10 percent consumption tax and a 17 percent value added tax. So you add this all up, and it is about a 50 to 60 percent hit to the wine industry.

In addition to that, these guys are still involved in some pretty dishonest practices. They continue to use this "Nava Valley" label. About every week I get complaints from people where they have some sort of California designation on their wine labels. They drain

California wine bottles and refill them with their wine. They take our bulk wine and water it down with wine that they have.

Now, I know you just got back from a round of trying to negotiate some better dealings with the beef guys. And I want to know what you are going to do to help improve all of the ag trade issues, specifically wine, and what are you going to do to get them to quit violating the law and ignoring of the rules that are in place. And I am talking about this wine stuff that I have talked to you guys about, I have talked to the past administration about, and it just seems to be getting worse all the time.

Mr. MARANTIS. Thanks, Mr. Thompson. Agriculture is an interesting story. On the one hand, our exports are growing phenomenally. China has just become our number one export market.

Mr. THOMPSON. I am not interested. We can stipulate all that. We covered it in the past. I am talking about specifically these issues.

Mr. MARANTIS. We have serious problems with China on agriculture, on sanitary and phytosanitary measures, and on opaque, non-transparent measures put in place that either block our exports or somehow tamper with them.

Ambassador Siddiqui, who is my colleague at USTR, the chief agriculture negotiator, and USDA's Acting Under Secretary Michael Scuse were in Beijing last week to go through the range of issues that we have with China on the agriculture front. I will get back to you to let you know on the wine issues specifically that you raised on where we are with them.

Mr. THOMPSON. Please do. I would like to know specifically about those two issues. One of them is just a blatant violation of the rules and the law, and I would like to know how we are going to monitor this and make sure it stops, because it has been an ongoing issue. It is not just with this administration, but with the past administration as well.

The other question I have is the solar industry in this country has just filed an illegal subsidies case against China. They are selling solar cells here at below market prices, and I am told it is because of very, very lucrative Chinese grants, discounted raw materials, discounted costs on prices on land, power, water and export assistance levels that are far beyond what the WTO allows. And this is technology that we developed and invented here in our country, and yet we are just getting overrun by Chinese imports. Our American businesses and our renewable energy industry is going to do nothing but suffer under the weight of this very unfair and weighted practice.

What can we do to deal with this and what are the pro specs of this case moving forward?

Mr. MARANTIS. On green subsidies specifically, I think one of the problems we are having is lack of transparency in being able to actually know what specific kinds of subsidies China is providing. That is why at the WTO, earlier this month, we filed a counter-notification to basically call China out on over 200 subsidies that it is providing, many of which are in the green technology sector. That will help us to be able to assess the legality, the WTO consistency, of these measures, and help determine what steps we should take to address these very real problems.

Mr. THOMPSON. And you will keep the committee posted so we know what we can do, because this is an emerging technology that is really important in getting our economy going and we really need to take whatever efforts we can to make sure this is resolved.

Mr. MARANTIS. Absolutely, Mr. Thompson.

Chairman CAMP. Thank you. Mr. Gerlach is recognized.

Mr. GERLACH. Thank you, Mr. Chairman.

Ambassador, going through your testimony, I wanted to really ask you a few more specific questions based on what you have in here, and you were very good about outlining what you call five key challenges to our trade relationship with China, including intellectual property theft, indigenous innovation policy problems, China's subsidies of their industries, the Chinese ban on foreign investment for state-owned enterprises, and barriers to ag imports. All of those are very important problems we have.

How are you measuring the frequency or the quantity or the number of unfair trading activities in those various areas over a specific period of time? How are you measuring that in all of those areas?

Mr. MARANTIS. The way we measure it is really in consultation with you all as well as our stakeholders, who will help us identify and prioritize the problems that they are facing in the variety of baskets.

Mr. GERLACH. Do you get individual complaints? Can a company that faces some problem or some barrier fill out a form at your office complaining about a certain problem they have experienced, and do you collect those complaints, and if so, how do you investigate the validity of those complaints?

Mr. MARANTIS. It is done in close cooperation with other agencies. Companies, SMEs, labor unions, business associations will raise problems with us, with the Commerce Department, with the Treasury Department, and we will work together on an interagency basis to be able to identify the specific issue and then determine what are our best steps to do so.

Mr. GERLACH. How many complaints or problems have been identified to date relative to intellectual property?

Mr. MARANTIS. There are a lot.

Mr. GERLACH. How many? 100? 1,000?

Mr. MARANTIS. I would say they would fall into five categories: software legalization, Internet piracy, counterfeiting, trade secrets, and then there is sort of the basket of other—that mainly our IP complaints will fit into.

Mr. GERLACH. And how many of those would you estimate exist in terms of complaints, all those total?

Mr. MARANTIS. How many specifically?

Mr. GERLACH. Yes.

Mr. MARANTIS. I don't know, Mr. Gerlach. A lot. There are really serious concerns in each one of those areas. On trade secrets—

Mr. GERLACH. You certainly may not be prepared with a specific number and I appreciate that. Can you give me a ballpark estimate? More than five, more than 100, more than 1,000? How many of those kind of complaints, intellectual property, are out there?

Mr. MARANTIS. Oh, I think again it will range, as for the different problem, on the software side, there are huge problems with respect to piracy. On the trade secret side, we have heard—

Mr. GERLACH. How about how many? Can you estimate how many?

Mr. MARANTIS. I would say upwards of 50.

Mr. GERLACH. How about in the indigenous innovation policy category?

Mr. MARANTIS. The indigenous innovation policy category, the good news there is that we have rolled back a lot of the new problems, and the new problem that is coming up in indigenous innovation that we really need to address this year is with respect to electric cars.

Mr. GERLACH. Okay. How about in their subsidy policies and in their ban of foreign investment and in the agricultural import area. How many problems are existing that you are investigating and trying to get a handle on?

Mr. MARANTIS. Sure. On subsidies, our counter-notification identified 200-plus subsidies that we want more information on from the Chinese to determine what our next step should be. On agriculture, the key problems that we face are in the area, I would say, of beef, pork, poultry—

Mr. GERLACH. California wine.

Mr. MARANTIS. Apples, strawberries, wine.

Mr. GERLACH. The reason I asked for some broad estimate of all this, because I also notice in your testimony that to date we have only, as a country, brought 12 complaints, WTO complaints against China, and all of these complaints being raised, from Members of Congress to those in the private sector, to all the work you are doing in your agency and all the other agencies, a total of 12, total?

Mr. MARANTIS. The WTO is one way that we resolve problems. We also resolve a vast amount of problems through the JCCT and the S&ED. So there are different tools that we use depending on what the problem is. In the WTO, our disputes that we have filed usually go at strategic and systemic issues, but we also try to solve the nitty-gritty problems that our businesses will have through the JCCT.

Mr. GERLACH. Well, you are making efforts obviously to do that, but it sounds as if those efforts may not be as productive as they ought to be when you continue to get the number of complains that you get. And then ultimately to really bring this to a high level of adjudication in the WTO, our country has only filed 12 complaints since that organization was founded. It doesn't seem like a lot of aggressive action on our part.

Chairman CAMP. Thank you.

Mr. Pascrell is recognized.

Mr. PASCRELL. Thank you, Mr. Chairman.

Mr. Chairman, it has become quite obvious if you listen to both sides of the aisle that we are pretty much in agreement. Just check the questions that have been asked. I want to identify myself and associate myself with the gentleman from Pennsylvania who just asked his questions. It is pretty difficult to get answers. But it was no different 10 years ago, 8 years ago, 6 years ago on these issues.

So if you keep it up in the air, you don't know the specific answer, nobody knows what is really going on.

But I think we can conclude, I don't think this is hyperbole, and I want to thank the panelists for being here today, that we have become China apologists. And I remember the issue when I first came into the Congress when Chris Smith, my brother from New Jersey, a Republican, was pursuing the path of intolerance of religious differences in China. Some people paid attention. Some people did not. Administrations on both sides were a little reluctant to be difficult or tough, say a lot of tough words. But as you pointed out in your questioning, action is more important.

Secondly, I think that both sides of the aisle also, and correct me if I am wrong, believe that we need to reestablish Article I, Section 8. The rush to get into free trade agreements has minimized the power of the House of Representatives, not only the Ways and Means Committee, but it has minimized our power in trade deals. It is interesting when you see people who want to be fundamentalists about the Constitution of the United States, when it comes to trade, all of a sudden they have amnesia, or maybe something else.

So this is serious. This is a very important problem. We are dealing with a county that subsidizes many of its industries.

Last evening, last evening, Mr. Marantis, a friend of mine who is in the marble business in New Jersey, Paterson, New Jersey, one T, called me and said something that he had told me at least 10 times in the last 6 or 7 years, and that is that he can no longer survive in his business. He can no longer compete with China. He has a good product. He tried everything possible. So what I have concluded, and maybe I am wrong, maybe I am right, it doesn't matter who the President is, not only doesn't the Congress control trade agreements, the President doesn't control trade agreements.

It is very interesting in the Chamber of Commerce, and my Chambers of Commerce and I get along very well, they are making the decisions about the big cats, and those small businesses which are across the landscape of the greatest country of the world have suffered the consequences. Suffered.

In fact, the trade deficit, I have heard you both say, things are getting better. Well, we had, in August, a \$29 billion trade deficit, the highest we have ever had. And if you go back to testimony in the past, you will hear the same kind of things, things are getting better. Things are getting wonderful. We are making changes. That is all we have heard. Our trade deficit with China has ballooned from \$84 billion in 2001 to \$278 billion, and we are losing jobs continually.

Now, this idea about getting our product into China sounds wonderful, but if you don't change the currency and keep up with the times, it means nothing. And you were asked specifically from people from both sides of the aisle specific questions, and all I heard was "I share your frustration."

I am not frustrated, I want you to know that, and you are not going to get me frustrated. We are out of excuses. We haven't sent this legislation, we haven't sent that legislation to the President.

Let me ask you this question, Ms. Brainard—Dr. Brainard—I am sorry. How fast do you believe our exports to China could have grown had Chinese consumers, Chinese consumers, had the in-

creased international purchasing power that would come with an accurately valued currency? I want to hear this. Or do you simply want to say you share my frustration? I don't have any frustration. I asked a question.

Mr. HERGER [presiding]. The gentleman's time has expired, but I would request if the Under Secretary could respond in writing to the gentleman?

Ms. BERKLEY. Mr. Chairman, are we down to 3 minutes apiece?

Mr. HERGER. No, we are at 5 minutes, and I think the gentleman's time went about 25 seconds over.

Mr. PASCARELL. I was just asking could I get a response?

Mr. HERGER. Could you respond in writing to the gentleman and to the committee, please.

Mr. PASCARELL. She can't tell us verbally?

Mr. HERGER. Pardon?

Mr. PASCARELL. She can't respond now?

Mr. HERGER. Each one of us has 5 minutes, and you went about 5 minutes and 20 seconds. So we are trying to hold it down so each member having the same amount of time.

The gentleman, Mr. Buchanan, is recognized for 5 minutes.

Mr. BUCHANAN. I want to thank Chairman Camp and our witnesses for being here today.

I represent Florida, and we are very, very excited in Florida about the past three trade agreements. There might be some question—it was bipartisan, but there might be some people that feel it was fair. In general, looking at it myself and obviously in Florida, a lot of people thought they were pretty fair in terms of what each country exported to each other. I think there is just a general feeling, I have seen it for a lot of years. I was in China back 6–7 years ago, in Beijing, but there is just a general feeling, that sense of free trade, but it is not fair. It is not just here on the panel.

I have been in business 30 years. I have heard it from a lot of businesses all over the country. I did a town hall, my last town hall a couple of days ago, and it gets brought up. This sense of there is not the fairness, that we are being played as a country, a lot of people feel that strong about it, and I think it is something we have to get a lot tougher on.

We touched on the idea of intellectual properties, and someone made that point, and that is what I was going to say. I was there with the U.S. Chamber, the CEO at the time, he is still CEO today, and we were there 7 or 8 years ago. We were talking about intellectual property back then and it was gigantic problem. So this isn't a Democratic administration or a Republican, we just have not done a very good job, in general, of getting this thing where it gets some sense of fairness.

I can just tell you, it is not, like I said, just the business community or just Members of Congress. Everybody sees it other than we just don't seem to deal with it and take any action. And as I mentioned, my colleague mentioned earlier, if we were able to equalize that a little bit just on the intellectual properties, we are talking about 2 million more jobs in America, and I think the number is \$67 billion additional in exports in terms of the report that came out of The New York Times.

One question that got brought up, and I don't know if it was answered, because I remember leaving that room and as an American, I really didn't feel very good about when we were pressing them on some of the issues that got brought up today, intellectual property and other things. We were with the vice premier in China at the time, and someone looked out as we were walking out, we were pressing them pretty good on behalf of the U.S. Chamber and the business community, and he said, well, we are buying your debt.

And I guess one of the questions I have is how much of a factor is the fact that we owe \$1.6 trillion to the Chinese in terms of our ability to get tougher on some of these issues? I know you touched on it, but I would like to hear it from Madam Secretary, your feeling. As this debt continues to grow there and become a bigger concern, how much of a problem is that in terms of negotiating with the Chinese? We can start with you, Madam Secretary.

Ms. BRAINARD. Let me just say, we are pursuing our strong interest in a faster rate of appreciation exchange rate in a very clear eyed and direct manner and will continue to do so.

Our Treasury securities, very attractive to holders in this country, holders all around the world. As you know, deepest, most liquid financial markets in the world. And, you know, over the medium term, obviously as a country, we are going to face this challenge that we need to start grappling with now of living within our means and seeing our debt-to-GDP fall. And that is why the President has put forward some proposals. We have the supercommittee meeting right now to come forward with some proposals on a bipartisan—those are absolutely critical things to do.

Mr. BUCHANAN. Let me ask you, because we are limited on time. Ambassador, would you like to add? How much of a factor is that? Does that impede our ability to get tougher on negotiation and get the sense of fairness? How big of a factor do we owe to the Chinese \$1.6 trillion?

Mr. MARANTIS. Mr. Buchanan, enforcement is our number one priority. The concerns are broad, and I know that there is tremendous frustration on this committee. We share it as well. We do everything that we can with the tools that we have in front of us to address the challenges. The challenges in IP, as you point out, are vast. Yes, we are making progress. No, it is not enough. We have got to continue pushing and pushing and pushing at every level, and we will continue to do so.

Mr. BUCHANAN. And Madam Secretary, what can the Congress do to help you be more successful quicker? I think that a lot of people just feel like there is not enough progress being made. These deficits continue to skyrocket. Everybody is concerned about that. And I guess my time has expired. I yield back.

Mr. HERGER. Mr. Blumenauer is recognized for 5 minutes.

Mr. BLUMENAUER. Thank you very much, Mr. Chairman.

Your words are echoing in my ears. I love the fact that enforcement is your number one priority. That is, in fact, why I supported putting China in the WTO so that we would be able to actually fight to have a level playing field.

Now, I must admit that I am mystified that we are still—your answer to my friend Mr. Stark's question about how we are ship-

ping hundreds of millions of dollars of business to the Chinese, that they are able to use, evidently, the procurement regime when they are not a signatory.

Now, can you tell me exactly why we have to give them special rights when they are not a signatory to the agreement? Which, if memory serves me correctly, they promised to promptly ratify. Why do we have to give reciprocity when they are not doing what they said they would do?

Mr. MARANTIS. You are correct, Mr. Blumenauer. We do not have obligation towards China with respect to government procurement. And we won't until they join the government procurement agreement. It is in our interest that they join it as quickly as possible so that they don't discriminate against us and we have access to their huge procurement market. But no, we don't have obligations.

Mr. BLUMENAUER. So we could deny them contracts like the Bay Bridge?

Mr. MARANTIS. Again, we don't have obligations to China. We don't have a nondiscrimination obligations to China for government procurement.

Mr. BLUMENAUER. I would like to just have, if I could, some sort of written assessment of where exactly we are in this drama that has been going on for years which they promised they would do, and then get a sense of what we could do to just deny them access to government projects unless and until they are a signatory. But since I am a little slow on the uptake on this, I would benefit by having that in writing.

Mr. MARANTIS. We will get that for you, Mr. Blumenauer. China promised in 2001 that they would join the government procurement agreement as soon as possible. It is 10 years later. We are still waiting for China's second revised offer, which it promised by the end of the year. We have to get its accession to the government procurement agreement right, and that means coverage of sub-central entities and—

Mr. BLUMENAUER. I am looking for it in writing. What I would like to have in there is what prevents, or how can we deny them access to government procurement in this country unless and until they do what they said they would do 10 years ago.

Ms. BRAINARD. Can I just note that, as I was saying earlier, under the Buy American provisions in the American Recovery Act, in fact, they were not eligible because they are not signatories. I think that the bridge in question was built without Federal funds, and that explains the difference there. But we will look into that and get you specifics on that. But under Buy America, because they are not signatories, they are disadvantaged. There is no reciprocity there.

Mr. BLUMENAUER. The bridge in question is linked to Federal investments. And I think we ought to look a little more broadly at who benefits and who loses from this so that we don't have some people at the local level doing things on the cheap that actually disadvantages American workers and ultimately disadvantages China because everybody is going to be better off if we play under the rules.

But I would like to turn to one other area because we are watching an awful lot of effort—I mean, would identify very strongly with my friend Mr. Thompson’s observations about the solar industry. But there is one area that I am particularly interested in pursuing, and that is how we give you appropriate resources so it doesn’t fall to an individual union or business to do something that appears to me to be the responsibility of government to make sure that our trade laws are enforced. I noticed with interest an amendment that added a little bit of money to help do that. But can you give me a sense of what do we need to do so that you can, in fact, have the resources and we don’t put this burden on a union for a company?

Mr. MARANTIS. Thanks, Mr. Blumenauer. You are absolutely right. We need to make sure that we have adequate resources to address the really tough challenges that we face in China. I think the President’s budget reflects that. And what we do, as you know, small little USTR is we work to leverage our resources with other agencies. We work very closely with the State Department, with the Treasury Department, with the USDA, with the Department of Commerce, to try to maximize our ability to solve problems for America’s workers, service providers, farmers, ranchers et cetera.

Mr. BLUMENAUER. Thank you, Mr. Chairman. This is one area that I hope the committee’s oversight could extend to make sure—you know, the notion that it is a little, tiny USTR. Well, the Federal Government is bigger than any company or union. And I think we need to make sure that the resources are there to make sure that these trade laws are in place.

Mr. HERGER. I thank the gentleman. The gentlelady from Kansas, Ms. Jenkins, is recognized for 5 minutes.

Ms. JENKINS. Thank you Mr. Chair. And I thank Chairman Camp for having you all in today. Thanks for being here.

Currently there is a 50 percent cap on foreign ownership and life insurance in China. Life insurers. Though the cap is not inconsistent with China’s WTO commitments, by lifting the foreign direct investment cap, companies can more easily bring in capital to hire workers, deploy world-class service platforms, and invest in Chinese capital markets. Lifting a cap also would allow foreign insurers to increase their capital in a life insurer in China, even if a Chinese partner were not in a position to increase its own capital.

Has the Chinese Government shown any sign that they would be willing to raise the FDI cap in life insurance? And is lifting that cap a priority for the U.S. Government?

Mr. MARANTIS. Thank you for raising that. We are frustrated with the remaining restrictions that China imposes in the foreign investor sector. Insurance is one important area. China recently issued its foreign investment catalog, and we were very disappointed that it didn’t go farther in lifting many of these restrictions. We work together in the context of our investment forum with China. We have an insurance dialogue with China and we have our JCCT where we push exactly the issues, Ms. Jenkins, that you raised so that we can make progress.

Ms. JENKINS. Thank you. Madam Secretary?

Ms. BRAINARD. I would just say that life insurance is one particularly egregious example. Of course, you are right, that this is their WTO commitment. But we are pushing them across financial services to go beyond their WTO commitments. And you know, they have said that they want to open up their services sector, expand it. We have the strongest, most competitive financial services insurance providers in the world. And so we are going to keep pushing really hard on these equity caps.

Ms. JENKINS. Thank you. Along that same line, at the conclusion of the Strategic and Economic Dialogue back in May, China pledged to study and push forward the opening of the mandatory third-party liability auto insurance market. And despite this public commitment, we have heard nothing about the issue since the S&ED. As you know, China is now the world's largest automobile market. Liability insurance for drivers is mandated, but it remains closed to non-Chinese companies. What steps have the Chinese taken towards fulfilling this commitment? And what metrics is the U.S. Government using to evaluate this process?

Ms. BRAINARD. The press reporting is that the China Insurance Regulatory Commission has actually put forward a proposal to follow through on that commitment to the State Council. We haven't seen it yet. We are obviously going to follow up and try to get a copy of that as soon as we can. But we will continue to raise it in every bilateral discussion we have. And obviously, this will be prominent also in the JCCT.

Ms. JENKINS. Okay. And China's 12th 5-year plan calls for a 4 percent growth in services GDP over 5 years to 47 percent of the total GDP. Mr. Ambassador, I think you mentioned that; however, in China's draft foreign investment catalog, there was very little in the way of service investment liberalization. Of the 32 industries listed in that encouraged catalog, only three are directly related to investment in services. And a few aspects of those services industries included in the encouraged list are new to the 2011 catalog from the previous 2007 catalog.

Recognizing that U.S. economic growth and domestic job growth rely in significant measure on access to key international service markets, including China's, what can the U.S. Government do to encourage China to permit more U.S. investment in its domestic services industry?

Mr. MARANTIS. One of the positives in their revised catalog was their lifting of ownership restrictions for hospital and clinics. And that was a big advance. But they have not gone nearly as far as we want them to go in the area of service sector liberalization. It is an important priority for us across sectors, whether it is financial services, express delivery, or telecom. This is one of the issues, one of the many issues, that we continue to press for more progress—both on the ability of our service suppliers to supply services from here to China, as well as our service suppliers to be able to invest in China with a majority-owned ownership structure that supplies services in that market.

Ms. JENKINS. Thank you. I yield back.

Mr. HERGER. The gentlelady from Nevada, Ms. Berkley, is recognized for 5 minutes.

Ms. BERKLEY. Thank you, Mr. Chairman. And thank you both for being here. We appreciate it. The unemployed workers in my State of Nevada can't afford for Washington to continue to sit on its hands, especially in the face of the illegal trade tactics of the Chinese government. This is fairly simple to me. The unfair practices of the Chinese government are cheating American workers out of their jobs. Since 2001, just by the manipulation of their currency, that has cost approximately \$2.8 million American jobs. In my home State of Nevada, who has been hit particularly hard by our economic recession, we have lost nearly 15,000 jobs due to the Chinese currency manipulation. That is unacceptable. My State has the highest unemployment rate in the Nation.

Every day, I hear from people who say they have never missed a day of work in their lives, yet they have lost their jobs and now they are losing their homes and they are looking to us for help. They need our country's leaders to focus every day on job creation and getting the economy back on track. That means to me that we have to fight against policies that continue to shift good-paying American jobs overseas, that continue to harm our American workers. I call on our leadership in Congress to drop its opposition to closing taxpayer-funded loopholes that encourage corporations to ship American jobs overseas. That is not enough. We all need to fight the Chinese government's unfair tactics that are cheating American workers out of their jobs.

The Chinese government is not just supporting their Chinese businesses. They own them. They are them. And they are manipulating their currency to help the companies that they control to the extreme disadvantage of American corporations and businesses. The idea that we are somehow afraid of a trade war with the Chinese is a joke to me. We are already in a trade war with the Chinese, and I am afraid that we are losing this war. We need to stand up on behalf of the unemployed workers in Nevada and the Nation as a whole and say, Enough is enough. We can't do this anymore. You can't do this anymore. And this is why I urge the Congress and our administration, who you are here representing, to change course, stand up to the Chinese government on behalf of American workers and American businesses. I think we need to stop worrying about what the Chinese government's reaction is going to be, stop standing up for the Chinese government, and start fighting to create jobs for American workers here and home.

The U.S. has lost \$23 billion, estimated, on pirated software and intellectual property theft on counterfeit products by the Chinese. We have lost countless billions more on their currency manipulation and countless billions more on trade distorting measures that are not contained in the other two. You said earlier that you are using all of the tools available to you to fight for American workers, to fight for our economy, to stand up to the Chinese. I think there is a common belief that we are not doing enough. What tools do you need from us that can help you, that can add to your arsenal so that you can protect our economy and the American workers and businesses from the overt illegal tactics of the Chinese government? What can we do to help you to help us?

Mr. MARANTIS. Thank you. Let me give you a really concrete example of one of the tools that we have and how we have used it.

Ms. BERKLEY. No. I want to know what we can do to give you more tools that you can use to actually do the job.

Mr. MARANTIS. I think the cooperation that we have—this hearing is an example of something that is very important. It is very important for our counterparts in China to hear that Congress and the administration are working hand in hand to address the concerns, whether it is on IP, whether it is on subsidization. Oftentimes I think that our counterparts don't—they don't see the fact that the Congress and the administration have to work in very close consultation and cooperation to actually make progress. And that is why we are here today and that is why we appreciate that you are having this hearing today, because it is important also for our Chinese counterparts to hear your concerns so that when we are in front of them, we are doing it on behalf of you.

Ms. BERKLEY. With all due respect, Mr. Ambassador, I have been here in Congress 13 years. For a number of those years and in this very hearing room, they have heard us loud and clear. I think at this point, they think talk is cheap and that we are not going to enforce appropriate trade policies and rules. What do you need from us to make them listen and understand that we mean business? And that is why I like that Senate bill.

Mr. HERGER. The gentlelady's time has expired. Mr. Paulsen is recognized for 5 minutes.

Mr. PAULSEN. Thank you. And thank you for being here to testify and answer questions.

I just want to follow up a little bit on the line of questioning we have already had. We know China is the third largest export market. That is where the opportunities are for American companies to do well. But it is pretty clear that the Chinese government is not taking seriously its responsibility of trade freely and trade fairly. And it is our hardworking American innovators that cannot make the most of the opportunities to engage in the opportunity in China to trade because of these regulatory obstacles, the subsidies, the IP protection rights that are not protected, indigenous innovation, the service sector restrictions, the currency misalignment, and on and on and on.

I do have a question that is directed at the medical device industry. The medical device industry is very concerned about the price controls that are being proposed by the Chinese government. And this is an industry where we are still a net exporter, where there is a lot of innovation happening here in the United States. And what do you view the actions that we will take to make sure that we will stay off, I guess, the Chinese government's proposal in this area that is going to strictly control the pricing of imported medical devices? This includes devices that are manufactured and invented and made here in the United States. Especially since these same devices in China would be subject to less stringent price controls under this proposed policy. Mr. Ambassador.

Mr. MARANTIS. Thanks, Mr. Paulsen. We have two, I think, serious issues on the medical device front. You raise one and that is price controls. Over the past number of years, China has been

poised to impose price controls on medical devices. We have been successful over the past 5 years in staving them off. In August, China released a proposal that suggested that it will soon implement price controls in the sector. We are working very hard to encourage the Chinese government to put a pause on that so that they don't do so. The other issue that we are working on in the medical device sector has to do with redundant regulatory requirements. Right now, China is requiring that in order to get approval in China's market for a new medical device it has to have prior approval for from our own FDA. That causes unreasonable delay in our view. It is another priority area that we are working on in the medical device area.

Mr. PAULSEN. Ms. Secretary, any further comment on that?

Ms. BRAINARD. This is an area that the USTR takes the lead, but we work across the administration in support of this short list of priorities.

Mr. PAULSEN. Mr. Ambassador, do you feel that you have the tools necessary to focus attention on those products? There has been a 5-year delay. Now there has been a new proposal in August and that you are hoping to have them pause again. But do you feel that you have the tools necessary to make sure that we are getting their attention on this?

Mr. MARANTIS. We, together with the Commerce Department, have been very vigorous in terms of medical—on the medical device front. We just had an interaction with our counterpart just the other week. Under Secretary Sánchez and I both pushed this issue with our Chinese counterparts, and we will continue to do so.

Mr. PAULSEN. Just one follow-up question. You have heard, I think, increasing concerns from the American business community that supports export opportunities. But they are concerned about backtracking on the past improvements that we have made with China opening up its economy. Do you believe that China has been backtracking on the improvements that it had made once in opening up its economy?

Mr. MARANTIS. I think our general view is, after China joined the WTO, there was a real push in China to implement its WTO obligations. I think things have slowed down, and we are facing new systemic challenges in China that we haven't faced before. That is why we are trying to target our WTO disputes on key strategic and systemic issues like our export restraints case or like the creation of an apparent homegrown monopoly to provide electronic payment services. So I think the issues have become a lot more complex over the years. But we are again, moving on all cylinders to fight those.

Mr. PAULSEN. Thank you. I yield back, Mr. Chairman.

Mr. HERGER. The gentleman yields back.

Mr. Berg from North Dakota is recognized for 5 minutes.

Mr. BERG. Thank you, Mr. Chairman. I, too, want to thank the panel for being here. Obviously, this has been an interesting hearing with a lot of concerns, a lot of passion. I wanted to really focus in on the IP.

Recently, the International Trade Commission had a report and it really provided some pretty compelling evidence. They found that the IP infringement in China costs as much as \$100 billion in sales

and exports, as we heard earlier here, over 2 million jobs in the U.S.

Really, my question gets to, what action are we taking with this information? I guess that is my first question.

Mr. MARANTIS. So we have been moving, using all of our tools to make progress. Let me give you a very concrete example. We have something that we issue at USTR called the notorious markets report which identifies problem, counterfeit, and pirate markets either online or physically. Following the release of last year's notorious markets report in February, which identified Baidu, which is China's big Internet search engine as providing links to pirated Web sites, Baidu entered into a licensing deal with U.S. music labels and is now offering legal content on its site. That was a huge advance. And it is an example of how we are trying to use the various tools that we have at our disposal creatively to address real problems.

Mr. BERG. I guess, Mr. Chairman, just to follow up, do you have all the tools necessary to address these issues? Or having worked through this, there are some gaps?

Mr. MARANTIS. I mean, I guess the way I would answer that is, we really need resources to address the very real problems we have with China. The President's budget reflects those priorities, and that is why we work so closely with our interagency colleagues and our stakeholders and the business community and our labor unions to make sure that we are able to bring all of our resources to bear and make maximum use of them to address the very real problems we face.

Mr. BERG. So kind of more specifically then, you are feeling you have the accurate tools to address this?

Mr. MARANTIS. I think we have a lot of important tools that Congress has given us over the years, and we work to make maximum use of them.

Mr. BERG. Let me ask it this way: If there were one or two other things that you would like, what would that be?

Mr. MARANTIS. I would like for us to be able to continue to make more and more progress on these issues. But I do think we have adequate tools to address the concerns-whether it is in the IP space, or whether it is in the subsidy space.

Mr. BERG. Mr. Chairman, I will yield back.

Mr. HERGER. I thank the gentleman. The gentleman yields back.

The gentleman from New York, Mr. Crowley, is recognized for 5 minutes.

Mr. CROWLEY. Mr. Chairman, I yield to the gentleman from New Jersey.

Mr. PASCRELL. Thank you, Mr. Crowley. Thank you, Mr. Chairman.

Mr. Chairman, I want to bring to your attention as well as Under Secretary Brainard and Ambassador Marantis, who have been generous with their time today, that on November 15, a report will be forthcoming from an organization that was created by the Congress of the United States 10 years ago. That organization is the U.S.-China Economic and Security Review Commission. They

report directly to the Congress of the United States, a creature of the Congress.

Last year in their report, very specific about what was recommended to the Congress to do in responding to the currency problem. That is a report that re-establishes again and again the significance of the Congress under Article I, Section 8 of what our duties and responsibilities are. And we have to look into how currency and export subsidies are hurting the workers in this country. Time and time again, that report has been pretty specific.

I have one other final question, if I might get this in. Does Customs need more tools to properly deal with the problem of Chinese goods being transshipped to South Korea? Pretty specific. 10 seconds.

Mr. MARANTIS. We work very closely with the Department of Homeland Security on this issue, to make sure that the issue that you raised, Mr. Pascrell, that there is no opportunity for transshipment for goods from China through South Korea has been addressed.

Mr. CROWLEY. Reclaiming my time, Mr. Chairman. That is a New Jersey minute.

Mr. Chairman, I appreciate today's hearing. But you know, this is the first hearing we have had in 10 months on China in this committee. The first hearing we have had. I know we are a legislative mill here. We have passed and enacted into law less than 50 bills and we haven't had time to discuss what I think is probably the most critical relationship in the world today, the relationship between the United States and China.

The fact is, some of our commercial relationships to China are beneficial to America. Our services exports to China are in a surplus and that is a good thing. But our overall trade relationship with China needs to continue to be rebalanced.

One of the frustrations we have here on the committee is, we constantly hear from American companies that are getting the run-around from China's authorities. The previous administration under President Bush did not take serious action, I don't believe, whatsoever, to defend American industries when it came to China. Even when there was evidence that American companies weren't getting a fair shake, there just wasn't a sense of urgency about trade enforcement. I use the tire dumping as an example. And I want to thank this administration for at least moving in a strong way towards enforcement with China.

Now Ambassador Kirk has mentioned to us that that they have already run out of funds when it comes to translative services with China. Is that correct, Ambassador?

Mr. MARANTIS. I am not sure, Mr. Crowley. I would have to check.

Mr. CROWLEY. Well, if you could find out for us, because I think that is critical for this committee to understand and for the Congress to understand that our USTR needs to have every tool in its quiver so that it can address the issues of challenging the Chinese when they go off-track and hold them accountable at the WTO. And I think that is a critical and very, very important point. And if we can get back from the administration, we need to help

you help us and the American people by giving you the tools you need to fight this.

Now Ambassador Marantis, I was very pleased USTR challenged China's prohibition on foreign suppliers for processing payment card transactions in China in order to create what is known as a national champion. Can you discuss why this case violates China's WTO commitments and what the status of that case is, if you can briefly?

Mr. MARANTIS. This is a very important case because it is emblematic of concerns we see in China generally—its efforts to create a homegrown national champion, a monopoly to supply a particular service. We have worked really hard in developing and in bringing the electronic payments case. It is now before a WTO panel, and we would expect a ruling from the WTO some time next year.

Mr. CROWLEY. I thank the gentleman.

Mr. Chairman, I think it is important—coming back to the original point. I know my time is coming to an end—that we need to help this administration. They are confronting enormous challenges when it comes to making sure and ensuring that the Chinese are playing in a fair way when it comes to the WTO and the commitments that they have made.

I didn't support WTO for China nor do I support PNTR for China. But now that we are in the situation, we need to make sure that our administration, regardless of party affiliation, has the resources and tools, including translative services, so that we can do this in a fair and balanced way and one that helps to benefit the American people. I thank you, and I yield back the balance of my time.

Mr. HERGER. The gentleman yields back. And I would say that I agree with the gentleman from New York. I know Chairman Camp does. And I might mention, just as a quick response, we have had Ambassador Kirk here. We have had Secretary Geithner. We have had FTAs so trade has come up numerous times here on this committee.

With that, I yield 5 minutes to the gentlelady, Mrs. Black.

Mrs. BLACK. Thank you, Mr. Chairman. Again, I thank both of you for being here today. I know you have had a lot of conversation about currency misalignment and subsidies and protecting IP, all of these are very important. But I want to turn our attention to something that hasn't been spoken about. And that is that China has been restraining exports on rare earth minerals to the United States and Japan. Of course, this type of action does raise serious concerns and issues underneath the WTO agreements.

Just last week, China's largest rare earth producer suspended production of rare earth minerals for 1 month in a very transparent effort to maintain artificially high prices. The United States has worked well with all of our allies, in particular, Japan and Europe, to address this issue in the past, but this new action, of course, is very concerning. And if you could provide us an update on what is currently being done on this issue?

Mr. MARANTIS. Yes. And we are very concerned about China's export restraint policy, which affects numerous raw materials, including rare earths. We have been cooperating very closely with other trading partners on this particular issue to raise it with the

Chinese at the highest levels. We are raising this in the context of the JCCT. We are working very closely with third parties. And we are in the process right now of conducting some extensive research in an effort to consider next steps. On a separate track, we have a WTO case that we filed on export restraints. These don't affect rare earth specifically, but they affect other raw materials. We won that case before the WTO panel, and it is pending before the appellate body right now. And that is another example of a huge WTO challenge that tackles systemic problems that we face in our relationship with China. And export restraints is an example of that.

Mrs. BLACK. Ms. Brainard, do you want to comment on that as well?

Ms. BRAINARD. Just to agree with the importance of this issue and to say that it is something that has caught our attention from the very start. As Ambassador Marantis said, we have a cross-agency working group focusing on this issue. The WTO challenge I think was very significant. And more broadly, I think USTR has taken WTO enforcement actions very strategically in those areas where the judgment is that it will have the biggest overall impact in setting precedent for other barriers. So the win that we had in that area, I think, is extremely important and hopefully that will help accelerate progress on rare earths issue.

Mrs. BLACK. Well, that was the second part of my question, so I appreciate your answering that. And from that, I take it that maybe we will be able to move quickly on this and actually be able to bring some resolution to what is going on here with our rare earth minerals. Do you feel that way, Ambassador?

Mr. MARANTIS. This is a key priority for us. And as I mentioned, we are in the process of actively gathering facts so that we can consider what our next steps will be.

Mrs. BLACK. Thank you. I yield back my time.

Mr. MARANTIS. Thanks.

Mr. HERGER. The gentlelady yields back. Mr. Marchant is recognized for 5 minutes.

Mr. MARCHANT. Thank you, Mr. Chairman. As I travel around my district, one of the big subjects that comes up among my constituents is our trading relationship with China. The perception is that trade with China is a one-way street, with China sending hundreds of billions of dollars of goods and services to the United States and with us sending very little back.

The general belief among my constituents is that China has more control of our trading environment and our economy than we have. My staff has done some research in the last few days and found out some very interesting things about the three counties that I represent. We got most of these figures from the U.S.-China trading council. In Dallas, Denton, and Tarrant Counties, its estimated growth in exports to China has rose 454 percent in the last 10 years. In these three counties, the top exports to China in 2010 were \$513 million in chemicals; manufacturing, \$511 million; computers and electronics, \$441 million; machinery, \$215 million; and transportation equipment was \$129 million.

How will the efforts of Congress to intervene in the valuation of the Chinese currency, how will that affect these exports that are

coming out of my district into China? I would like for both of you to answer, please.

Ms. BRAINARD. Well, Mr. Marchant, I think your district is fairly representative of many parts of the country that have seen double-digit growth in exports in just the last 2 years to China across a very wide range of sectors. And China, by many estimates, is expected to be the biggest, fastest growing source of demand in the global system. So as we are working to expand jobs, as we are working to grow our economy, exports are going to be a bigger piece of that than has been true in any previous recovery, and exports to China figure permanently. Nonetheless, we have quite substantial challenges in terms of an unlevel playing field, in terms of a misaligned, persistently misaligned currency.

So we are going to continue to get up every day and stand up to China and make sure that China moves faster in reforming its system, in allowing its exchange rate to move to reflect market forces, to put in place fairer trade practices. I think we can do that in a way that is smart. We can do it in part by working with other trade partners. And that is why consistency with our international obligations is helpful. We can do it by recognizing China is not a monolithic system. There are interests in China that get it, that imports from the U.S. are a very good thing; that giving their consumers greater purchasing power through an aligned exchange rate is a good thing. So we are going to try to work smart as we pursue these goals.

Mr. MARCHANT. I don't have a lot to add other than to underscore the point that Under Secretary Brainard made about how important China is for us for our exports. As I mentioned earlier, our exports to China grew 32 percent last year versus 16.7 percent to the rest of the world. So our exports to China are growing faster than they are to any other region of the world. And we face extreme challenges, as we have discussed today at this hearing. But our exports to China are a very important aspect of the President's goal of realizing, through the National Export Initiative, his goal of doubling exports over the next 4 years.

Mr. MARCHANT. Thank you, Mr. Chairman. I yield back.

Chairman CAMP. The gentleman yields back. Mr. Reed is recognized for 5 minutes.

Mr. REED. Thank you, Mr. Chairman. And it is getting lonely up here. But you are at the finish line so that is the good news.

I want to focus on maybe a little area that hasn't been given as much attention today. But I do firmly believe that the United States must confront China whenever it violates its international obligations. But I don't believe we can just play defense when there is a violation. We need to play offense. And a good way, in my opinion, to do that is to adopt free trade agreements and really push the trade agenda so that we have an open world market that is fair and operating under those agreements. South Korea obviously is a classic example of that. And right now, we are dealing with the TPP, and I believe that agenda and those negotiations need to go forward.

So I am very interested, Ambassador, in knowing what you view or what the USTR views as the role of free trade bilateral agree-

ments with China, negotiation with China, what role that plays in dealing with this issue.

Mr. MARANTIS. It is very important that we are actively engaged on the trading and investment front throughout the Asia Pacific region, in part to counter the competitive erosion that we have experienced over the years. I am really excited about, as you mentioned, the TPP. Our negotiators are in Lima this week conducting the ninth round of TPP negotiations as we lead to accomplish what the trade ministers from the TPP countries have asked us to accomplish by the APEC leaders meeting in Honolulu—which is to achieve the broad outlines of a TPP agreement.

We are well on track to do that. We have negotiating texts on a whole variety of subjects: goods, services, intellectual property, the environment, labor. And just for this round, we tabled the first ever text on state-owned enterprises, which goes to address some of the very concerns we were talking about today regarding the competitive distortions that state-owned enterprises put in the international marketplace.

Mr. REED. But outside TPP and the negotiations going on there—and I would agree those negotiations are going down the right path—but what specifically are we doing in regards to relations with China, getting them to negotiate and a bilateral investment treaty, getting into the issue of Taiwan and the trade investment framework that those discussions have ceased, my understanding is, well over a year ago. Where are we going with it? What is the vision, from your perspective, sitting in the Trade Office as to where we are going with that agenda?

Mr. MARANTIS. Sure. We are moving on multiple fronts. On China, President Obama and President Hu reaffirmed their commitment to concluding a bilateral investment treaty negotiation. We just had negotiations just last week with India with respect to a bilateral investment treaty that we are negotiating with them. We are moving, for example, with the Philippines in concluding agreements on trade facilitation. It depends on the different economy in the region, but there is a lot going on on each.

Regionally, the United States is hosting APEC and we have been trying to push some very ambitious outcomes in our APEC hosts here. That will culminate in just a few weeks in Honolulu at the APEC leaders meeting, where we are focusing on promoting regulatory cooperation, where we are promoting initiatives in green growth, and where we are promoting addressing next generation trade unions.

Mr. REED. Ambassador, do you see any barriers, for example, to the Chinese bilateral investment treaty where the President and President Hu have agreed to set that as an agenda? Any barriers there that you see?

Mr. MARANTIS. It is going to be a tough negotiation. There are a lot of very difficult issues that our investors face. And the purpose of the BIT will be to level the playing field for our investors in China. And their issues, you know, regarding market access, with respect to transparency, performance requirements, they are going to be very tough to negotiate with the Chinese. But, it is something we are committed to doing because it is the right thing to do for our investors and for the jobs in the United States.

Mr. REED. And how are the Chinese negotiations? Have they been coming to the table, acting in good faith and moving the agenda forward?

Mr. MARANTIS. Both sides are committed to the negotiations.

Mr. REED. Okay.

Mr. MARANTIS. Thanks.

Mr. REED. I have two seconds. Do you want to say anything?

Ms. BRAINARD. I just think the passage of the U.S.-Korea free trade agreement, we are sort of back in the game in the region and it is extremely important that we can develop a trade agreement through the Trans-Pacific Partnership that is highest standard in that region of the world. I think, as you said, that is our strongest suit in terms of having a good offense because ultimately, China is going to want to come to where those disciplines are.

Mr. REED. Amen. With that, I yield back, Chairman. Thank you.

Mr. HERGER. The gentleman yields back.

With that, I would like to close with a comment and a question to Ambassador Marantis. I believe our approach in dealing with China should focus on how we can create the most jobs here in the United States. The International Trade Commission has done numerous reports on the impact that Chinese trade barriers have on our exports and jobs. We have heard the ITC's analysis that if China were to raise their protection of intellectual property rights to U.S. standards, 2.1 million jobs would be created. Additionally, the ITC has reported that reducing China's tariff and nontariff barriers to U.S. agricultural goods would lead to an additional \$3.9 billion to \$5.2 billion in U.S. agricultural exports to China. These new exports would support tens of thousands of good paying American jobs. I believe the record is pretty clear that Americans have a lot to gain if we can remove China's barriers and sell more American goods and services in China.

Now let's contrast that to our recent experience with adding tariffs to cheap imports from China. In 2009, the administration imposed punitive tariffs on imported low-end tires from China under Section 421 of the Trade Act. Part of the argument behind instituting this tariff is that it would create tire manufacturing jobs in the United States. However, the data from the U.S. Bureau of Labor Statistics shows that tire manufacturing employment is down 10 percent in the first half of this year compared with the same period in 2009 prior to the tariffs. In terms of job creation, Ambassador Marantis, I would like to hear your thoughts on what the better strategy is, playing offense and focusing on how we can increase our exports into China by removing their barriers, or playing defense and trying to keep out imports from China by slapping them with higher tariffs? Which strategy is more effective at creating jobs here in the United States?

Mr. MARANTIS. Mr. Herger, we have got to act on all fronts. We have got to act in terms of breaking down market access barriers. But also when we see an injurious surge like we did in the tire case, we need to act because it actually helps to promote jobs. The statistics I have actually show that before the remedy was imposed in September 2009, there was net job loss in the industry. After we imposed the remedy, there has been net job creation in the industry. There have been 11 announcements of new investments in the

tire industry worth \$2 billion since September 2009. And I think the anticipated employment gains are estimated at 3,000 jobs. So we have got to work to—I agree. We have got to work to knock down our market access barriers on the export side. But when we see an injurious surge of imports that cause market disruption, we shouldn't hesitate to use the tools that we negotiated in China's WTO accession as the administration did in the tires case.

Mr. HERGER. Well, I thank you for your comment. And again, I think the point that is bipartisan is that this is a serious issue. The American public takes it as a serious issue. We know we have some major discrepancies, and we urge you. And we, as a Congress—I believe, in a bipartisan manner—are more than willing to work with you very strongly. I think the point that I would like to make and I think many would like to make that it is very important that we stay on offense.

Mr. LEVIN. Mr. Chairman, will you yield? I want to say something.

Mr. HERGER. I will yield.

Mr. LEVIN. You finish and then I will say something.

Mr. HERGER. Well, I was just going to adjourn then.

Mr. LEVIN. Well, then, I will say something.

Mr. HERGER. The gentleman is recognized.

Mr. LEVIN. This hearing is not bipartisan, to try to attack the effort on 421. Four times, the Bush administration failed to act, although the ITC recommended it. This administration acted on the tire inflow from China, and it has had a positive impact for the United States, for its companies and for its workers. And so for you to take some data, it is simply incorrect to say that the 421 action was a mistake. And there is no use of sitting around here and asking for more enforcement and then attack an effort by this administration to, indeed, enforce our trade policies. So I don't know where you got the data. I think the Ambassador has correctly set the record straight. It is just reckless to take out after the tire 421 effort. It was an important decision this administration made.

Mr. HERGER. I would like to conclude. Again, we need to be aggressive—

Mr. LEVIN. They are being aggressive.

Mr. HERGER [continuing]. In a positive way. And the only point being made is that we consider everything we are doing.

I think this has been a very helpful hearing. I want to thank our witnesses for appearing. Again, I would like to thank both of you. Please be advised that members may have written questions they will submit to you. Those questions and your answers will be made a part of the hearing record.

And with that, the hearing is adjourned.

[Whereupon, at 12:50 p.m., the committee was adjourned.]

Member Opening Statements
The Honorable Mr. Brady

Trade Subcommittee Chairman Kevin Brady,
Committee on Ways & Means

Hearing on the U.S.-China Economic Relationship

October 25, 2011

The United States has many frustrations with the U.S.-China economic relationship, but China remains among the most important U.S. export markets. Last year U.S. companies exported more than \$90 billion worth of American goods to China. U.S. exports to China increased by 32 percent in 2010, whereas exports to the rest of the world increased by only half that rate. And since 2000, U.S. exports to China have increased *eight times* faster than U.S. exports to the rest of the world. Those exports translate to U.S. jobs.

Sustaining this growth is critical to the President's efforts to double exports. But a number of pernicious barriers are inhibiting U.S. companies from exporting to and investing in China. These restrictions reduce U.S. exports and cost the United States good-paying jobs. When U.S. companies are able to compete on a level-playing field, they win, but they can't if they are never given the chance.

The list of Chinese barriers is long and includes: WTO-inconsistent subsidies such as directed lending policies and the provision of land, electricity, raw materials, and other goods at below cost; China's theft of U.S. intellectual property rights; China's protection certain sectors from competition through various investment restrictions; restraints on the export of raw materials and rare earth minerals; various and sundry regulatory barriers; unscientific restrictions on U.S. agriculture exports; and of course its closed capital account and the undervaluation of the RMB.

I look forward, in particular, to hearing from the Administration on what it believes Congress should or should not do to address these barriers. Last year, in testimony before this Committee, Secretary Geithner set forth a two-part test: any legislation must be (i) effective and (ii) consistent with our international obligations. I think that test perfectly articulates the standard that we should use to evaluate any legislative proposals, including proposals to address China's currency policy, such as H.R. 639 or S. 1619. I look forward to hearing from the Administration as to whether it believes that legislation satisfies Secretary Geithner's test.

Last year I voted against currency legislation because I did not believe that it satisfied that test. I oppose the current Senate bill for the same reason. Let me be clear. There is no doubt that China's currency policy is a problem. However, legislation may not be the

best solution. The Administration's input on the value of legislation is important, and I expect it to provide such input at this hearing.

In my view, some of the most effective tools for addressing these concerns are through multilateral engagement with China. While the United States should never hesitate to file a WTO case, where appropriate, its efforts are often greatly enhanced through the development of a coalition. A great example of this is the strong cooperation between the United States, the European Union, and Japan on China's export restraints. The United States and the European Union filed a case together at the WTO against China's restraints on certain minerals. They secured a significant victory at the WTO dispute settlement panel stage and are working together closely to respond to China's appeal. Similarly, the United States, the EU, and Japan have worked closely together to bring multilateral pressure on China to remove its export restraints on rare earth minerals. This has resulted in meaningful progress, although the issue remains unresolved.

Multilateral engagement should also take place through APEC and the G20. These are important forums for raising our concerns, along with our allies. Next month, the President will host APEC in Hawaii. I look forward to hearing from the Administration about how it intends to use this meeting to advance its agenda.

The United States has made good progress through various bilateral mechanisms as well. I'm looking forward to how the Administration is working to make our bilateral engagement with China more effective, including through the Strategic & Economic Dialogue (S&ED) and the Joint Commission on Commerce and Trade (JCCT).

We are watching implementation of commitments made through the JCCT and the S&ED very closely. Many U.S. companies have expressed concerns that China has stalled or not fully implemented its commitments in a timely manner. I very much share those concerns. It is also important that we measure progress not simply by the number of barriers removed but also the effect on U.S. companies' ability to do business in China. The real proof of success will be in new market access by U.S. companies, and the resulting sales that are created.

Finally, I think it is important to reiterate that our approach to China should not be to erect new protectionist barriers to match China, but rather, to tear down China's barriers. We will never win a battle to "out-protectionist" China. Rather, we must continue – and enhance – our efforts to tear down China's walls to U.S. exports and investment.

The Honorable Mr. Levin
Letter

Congress of the United States
Washington, DC 20515

May 19, 2011

The Honorable Frank Wolf
Chairman
Commerce, Justice, and Science
And Related Agencies Subcommittee
House Appropriations Committee
H-307, The Capitol
Washington, D.C. 20515

The Honorable Chaka Fattah
Ranking Member
Commerce, Justice, and Science
And Related Agencies Subcommittee
House Appropriations Committee
1016 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Wolf and Ranking Member Fattah:

As you begin work on the appropriations bills for Fiscal Year 2012, we respectfully request that you increase funding for the Office of the United States Trade Representative (USTR) by \$6.6 million for FY 2012. This request not only includes the \$3.4 million in additional funding requested by the Obama Administration for a variety of purposes, but also an additional \$3.2 million to allow USTR to expand its efforts to monitor and investigate China's industrial policies, in order to enforce World Trade Organization (WTO) rules and create a more level playing field for American workers and businesses. Simply put, we believe USTR needs to coordinate and implement a comprehensive and robust strategy to help rebalance our trading relationship with China.

We understand that USTR is working as best it can, within its current budget constraints, to focus on issues related to China, and has devoted more resources to those issues. It, however, needs additional tools and resources to confront the serious challenge of China's competing model of "state capitalism." A fact underscored by Ambassador Ron Kirk at a recent congressional hearing when he stated that USTR is "woefully short" on resources to investigate China's industrial policies, noting that USTR exhausted its entire annual translation budget in three months on a single China case.

China presents a unique enforcement challenge on at least three fronts: its laws and regulations are much more opaque than the laws and regulations of all other commercially significant WTO Members; its provinces and municipalities frequently adopt laws inconsistent with the WTO – contradicting WTO-consistent rhetoric from Beijing; and the unwillingness and/or inability of U.S. companies to help USTR develop WTO cases because they fear China will retaliate against them or because the cost of the necessary legal research into their concerns is beyond their ability to finance. Moreover, China's recently announced 12th five-year plan, and reports that China is considering investments of up to \$1.5 trillion for strategic emerging industries, such as new-generation information technology and new-energy automobiles, suggests this challenge may only grow.

A recent investigation under section 301 of the Trade Act of 1974 provides a case in point. A group of U.S. workers asked USTR to investigate a range of Chinese practices relating to the manufacture of green technologies. (U.S. companies did not challenge China.) USTR moved forward with a WTO case on one of the claims, relating to WTO-prohibited subsidies for wind

Bill Owens
Bill Owens

Bill Pascrell Jr.
Bill Pascrell

Gary Peters
Gary Peters

Chellie Pingree
Chellie Pingree

Nick Rahall
Nick Rahall

Charles Rangel
Charles Rangel

Laura Richardson
Laura Richardson

Tim Ryan
Tim Ryan

Linda Sánchez
Linda Sánchez

Jan Schakowsky
Jan Schakowsky

Allyson Schwartz
Allyson Schwartz

Kurt Schrader
Kurt Schrader

Louise Slaughter
Louise Slaughter

Adam Smith
Adam Smith

Pete Stark
Pete Stark

Betty Sutton
Betty Sutton

Paul Tonko
Paul Tonko

Rosa DeLauro
Rosa DeLauro

H.R. 639

I

112TH CONGRESS
1ST SESSION**H. R. 639**

To amend title VII of the Tariff Act of 1930 to clarify that countervailing duties may be imposed to address subsidies relating to a fundamentally undervalued currency of any foreign country.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2011

Mr. LEVIN (for himself, Mr. ACKERMAN, Mr. ALTMIRE, Mr. AGUSTIA, Mr. BECERRA, Ms. BERKLEY, Mr. BISHOP of Georgia, Mr. BISHOP of Utah, Mr. BLUMENAUER, Mr. BOSWELL, Mr. BRALEY of Iowa, Mr. BURTON of Indiana, Mr. CARSON of Indiana, Mr. CICHLINE, Mr. CLARKE of Michigan, Mr. COBLE, Mr. COHEN, Mr. CONNOLLY of Virginia, Mr. CONYERS, Mr. COSTELLO, Mr. COURTNEY, Mr. CRAVAACK, Mr. CRITZ, Mr. DAVIS of Illinois, Mr. DEFAZIO, Ms. DELAURO, Mr. DINGELL, Mr. DONNELLY of Indiana, Mr. DOYLE, Mr. ELLISON, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. GARAMENDI, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. HIGGINS, Mr. HINCHAY, Mr. HOLDEN, Mr. HOLT, Mr. HUNTER, Mr. JOHNSON of Georgia, Mr. JONES, Ms. KAPTUR, Mr. KILDEE, Mr. KISSELL, Mr. KUCINICH, Mr. LARSON of Connecticut, Mr. LATOURETTE, Mr. LEWIS of Georgia, Mr. LIPINSKI, Mr. LOEBSACK, Mr. MANZULLO, Mr. MCHENRY, Ms. MCCOLLUM, Mr. MCCOTTER, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MCKINLEY, Mr. MICHAUD, Mrs. MILLER of Michigan, Mr. GEORGE MILLER of California, Mr. MURPHY of Connecticut, Mr. MURPHY of Pennsylvania, Mrs. MYRICK, Mr. NEAL, Ms. NORTON, Mr. PALLONE, Mr. PASCRELL, Mr. PETERS, Mr. PETRI, Ms. PINGREE of Maine, Mr. PLATTS, Mr. ROGERS of Kentucky, Mr. ROGERS of Alabama, Mr. ROHRBACHER, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. RYAN of Ohio, Ms. LINDA T. SÁNCHEZ of California, Mr. SENSENBRENNER, Ms. SCHAKOWSKY, Mr. SHULER, Mr. SHUSTER, Ms. SLAUGHTER, Mr. SPUTZMAN, Mr. STARK, Ms. SUTTON, Mr. THOMPSON of California, Mr. TIERNEY, Mr. TONKO, Mr. TOWNS, Mr. TURNER, Mr. VISLOSKY, Mr. WELCH, Mr. WOLF, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Ways and Means

1 as defined in paragraph (37), the dif-
2 ference between the amount of the cur-
3 rency of such country provided and the
4 amount of the currency of such country
5 that would have been provided if the real
6 effective exchange rate of the currency of
7 such country were not undervalued, as de-
8 termined pursuant to paragraph (38).”

9 (b) EXPORT SUBSIDY.—Section 771(5A)(B) of the
10 Tariff Act of 1930 (19 U.S.C. 1677(5A)(B)) is amended
11 by adding at the end the following new sentence: “In the
12 case of a subsidy relating to a fundamentally undervalued
13 currency, the fact that the subsidy may also be provided
14 in circumstances not involving export shall not, for that
15 reason alone, mean that the subsidy cannot be considered
16 contingent upon export performance.”

17 (c) DEFINITION OF FUNDAMENTALLY UNDER-
18 VALUED CURRENCY.—Section 771 of the Tariff Act of
19 1930 (19 U.S.C. 1677) is amended by adding at the end
20 the following new paragraph:

21 “(37) FUNDAMENTALLY UNDERVALUED CUR-
22 RENCY.—The administering authority shall deter-
23 mine that the currency of a country in which the
24 subject merchandise is produced is a ‘fundamentally
25 undervalued currency’ if—

1 “(i) the amount necessary to repay all
2 debt obligations of the government falling
3 due within the coming 12 months;

4 “(ii) 20 percent of the country’s
5 money supply, using standard measures of
6 M2; and

7 “(iii) the value of the country’s im-
8 ports during the previous 4 months.”.

9 (d) DEFINITION OF REAL EFFECTIVE EXCHANGE
10 RATE UNDERVALUATION.—Section 771 of the Tariff Act
11 of 1930 (19 U.S.C. 1677), as amended by subsection (e)
12 of this section, is further amended by adding at the end
13 the following new paragraph:

14 “(38) REAL EFFECTIVE EXCHANGE RATE
15 UNDERVALUATION.—The calculation of real effective
16 exchange rate undervaluation, for purposes of para-
17 graph (5)(E)(v) and paragraph (37), shall—

18 “(A)(i) rely upon, and where appropriate
19 be the simple average of, the results yielded
20 from application of the approaches described in
21 the guidelines of the International Monetary
22 Fund’s Consultative Group on Exchange Rate
23 Issues; or

24 “(ii) if the guidelines of the International
25 Monetary Fund’s Consultative Group on Ex-

1 of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.), as
2 amended by this Act.

3 **SEC. 4. APPLICATION TO GOODS FROM CANADA AND MEX-**
4 **ICO.**

5 Pursuant to article 1902 of the North American Free
6 Trade Agreement and section 408 of the North American
7 Free Trade Agreement Implementation Act of 1993 (19
8 U.S.C. 3438), the amendments made by section 2 of this
9 Act shall apply to goods from Canada and Mexico.

○

H.R. 1518

H. R. 1518 (Introduced-in-House)

Page 1 of 3

112TH CONGRESS
1ST SESSION**H. R. 1518**

To amend section 310 of the Trade Act of 1974 to strengthen provisions relating to the identification of United States trade expansion priorities.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2011

Mr. CRITZ (for himself and Ms. LINDA T. SANCHEZ OF CALIFORNIA) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend section 310 of the Trade Act of 1974 to strengthen provisions relating to the identification of United States trade expansion priorities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Trade Enforcement Priorities Act".

SEC. 2. IDENTIFICATION OF TRADE EXPANSION PRIORITIES.

(a) IDENTIFICATION OF TRADE EXPANSION PRIORITIES.—Section 310 of the Trade Act of 1974 (19 U.S.C. 2420) is amended to read as follows:

"SEC. 310. IDENTIFICATION OF TRADE EXPANSION PRIORITIES.

"(a) IDENTIFICATION.—

"(1) IDENTIFICATION AND REPORT.—Within 30 days after the submission in each calendar year of the report required by section 181 (b), the United States Trade Representative shall—

“(A) review United States trade expansion priorities;

“(B) identify priority foreign country practices the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent; and

“(C) submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives and publish in the Federal Register a report on the priority foreign country practices so identified.

“(2) FACTORS.—In identifying priority foreign country practices under paragraph (1), the Trade Representative shall take into account all relevant factors, including—

“(A) the major barriers and trade distorting practices described in the National Trade Estimate Report required under section 181(b);

“(B) the trade agreements to which a foreign country is a party and its compliance with those agreements;

“(C) the medium- and long-term implications of foreign government procurement plans; and

“(D) the international competitive position and export potential of United States products and services.

“(3) CONTENTS OF REPORT.—The Trade Representative may include in the report, if appropriate—

“(A) a description of foreign country practices that may in the future warrant identification as priority foreign country practices; and

“(B) a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, by existing bilateral trade agreements, or as part of trade negotiations with other countries, and because progress is being made toward the elimination of such practices.

“(b) INITIATION OF CONSULTATIONS.—By no later than the date that is 21 days after the date on which a report is submitted to the

appropriate congressional committees under subsection (a)(1)(C), the Trade Representative should seek consultations with each foreign country identified in the report as engaging in priority foreign country practices for the purpose of reaching a satisfactory resolution of such priority practices.

“(c) INITIATION OF INVESTIGATION.—If the Trade Representative seeks consultations under subsection (b) and a satisfactory resolution of the priority foreign country practices involved has not been reached within 90 days after the date on which a report is submitted to the appropriate congressional committees under subsection (a)(1)(C), the Trade Representative shall initiate under section 302(b)(1) an investigation under this chapter with respect to such priority foreign country practices.

“(d) AGREEMENTS FOR THE ELIMINATION OF BARRIERS.—In the consultations with a foreign country that the Trade Representative is required to request under section 303(a) with respect to an investigation initiated by reason of subsection (c), the Trade Representative shall seek to negotiate an agreement that provides for the elimination of the practices that are the subject of the investigation as quickly as possible or, if elimination of the practices is not feasible, an agreement that provides for compensatory trade benefits.

“(e) REPORTS.—The Trade Representative shall include in the semiannual report required by section 309(3) a report on the status of any investigations initiated pursuant to subsection (c) and, where appropriate, the extent to which such investigations have led to increased opportunities for the export of products and services of the United States.”.

(b) CONFORMING AMENDMENT.—The item relating to section 310 in the table of contents of the Trade Act of 1974 is amended to read as follows:

“Sec. 310. Identification of trade expansion priorities.”.

H.R. 2722

H. R. 2722 (Introduced-in-House)

Page 1 of 10

112TH CONGRESS
1ST SESSION**H. R. 2722**

To amend chapter 83 of title 41, United States Code, to increase the requirement for American-made content, to strengthen the waiver provisions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2011

Mr. LIPINSKI (for himself and Mr. ADERHOLT) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To amend chapter 83 of title 41, United States Code, to increase the requirement for American-made content, to strengthen the waiver provisions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Buy American Improvement Act of 2011".

SEC. 2. STRENGTHENING AND SIMPLIFYING FEDERAL PROCUREMENT POLICIES.

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Administrator for Federal Procurement Policy, in consultation with the Federal Acquisition Regulatory Council, shall promulgate regulations to standardize and simplify how Federal agencies comply with, report on, and enforce chapter 83 of title 41, United States Code (commonly known as the Buy American Act). The regulations shall include, at a minimum, the following:

(1) Guidelines for determining, for the purposes of applying sections 8302(a) and 8303(b)(3) of such title, the circumstances under which the acquisition of articles, materials, or supplies mined, produced, or manufactured in the United States is inconsistent with the public interest.

(2) Uniform procedures for collecting, reporting, and making publicly available information about waivers under chapter 83 of such title, including—

(A) procedures for making a request for a waiver publicly available before granting the waiver; and

(B) procedures for providing the rationale for why a waiver is granted.

(3) Rules to ensure that projects are not disaggregated for purposes of avoiding the applicability of the requirements under chapter 83 of such title to such larger project.

(4) Procedures for investigating waiver requests.

(5) Rules for evaluating the percentage of domestic content in a manufactured end product.

(b) **GUIDELINES RELATING TO INCONSISTENCY WITH PUBLIC INTEREST.**—In the guidelines developed under subsection (a)(1), the Administrator shall consider any significant decrease in employment in the United States resulting from the granting of waivers to be inconsistent with the public interest and seek to minimize—

(1) the granting of waivers that would result in a decrease in employment in the United States in both the short- and long-term; and

(2) the granting of waivers for procurement of articles, materials, or supplies mined, produced, or manufactured in a foreign country with which the United States does not have a relevant trade agreement and which has a government that maintains, in regard to government procurement, a significant and persistent pattern or practice of discrimination against products produced in the United States.

(c) **PROCEDURES RELATING TO THE PUBLICATION OF REQUESTS FOR WAIVERS.**—In the procedures developed under subsection (a)(2)(A), the Administrator shall require the head of a Federal agency, after receiving a request for a waiver, to complete each of the

following:

(1) Publish the request for a waiver on a publicly available Web site of the agency in an easily identifiable location within 15 days after receiving such request.

(2) A waiver may not be issued before the expiration of the fifteen-day period beginning on the date on which the request for waiver is published pursuant to paragraph (1) to provide the public an opportunity for notice and comment.

(d) PROCEDURES RELATING TO THE PUBLICATION OF WAIVERS GRANTED.—In the procedures developed under subsection (a)(2)(B), the Administrator shall require the head of a Federal agency to publish the determination for why a waiver was granted and the rationale for such determination in the Federal Register and on a publicly available Web site of the agency in an easily identifiable location not later than 30 days after the head of the agency determines to issue such waiver.

(e) RULES RELATING TO DOMESTIC CONTENT.—In the rules developed under subsection (a)(5), the Administrator shall not consider as domestic content components of foreign origin of the same class or kind as those that are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(f) DEFINITIONS.—In this section:

(1) FEDERAL AGENCY.—The term “Federal agency” means any executive agency (as defined in section 133 of title 41, United States Code) or any establishment in the legislative or judicial branch of the Federal Government.

(2) RELEVANT TRADE AGREEMENT.—The term “relevant trade agreement” means—

(A) a reciprocal defense procurement memorandum of understanding, as described in section 8304 of title 41, United States Code;

(B) any trade agreement for which the President, or his delegate, has issued a blanket waiver under section 301 of the Trade Agreements Act of 1979 (19 U.S.C. 2511); and

(C) any trade agreement described in subpart 25.4 of the

Federal Acquisition Regulation.

(3) **WAIVER.**—The term “waiver” means, with respect to the acquisition of an article, material, or supply for public use, the inapplicability of chapter 83 of title 41, United States Code, to the acquisition by reason of any of the following determinations:

(A) A determination by the head of the Federal agency concerned that the acquisition is inconsistent with the public interest.

(B) A determination by the head of the Federal agency concerned that the cost of the acquisition is unreasonable.

(C) A determination by the head of the Federal agency concerned that the article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

SEC. 3. INCREASING TRANSPARENCY AND ACCOUNTABILITY IN FEDERAL PROCUREMENT.

Subsection (b) of section 8302 of title 41, United States Code, is amended to read as follows:

“(b) **REPORTS.**—

“(1) **IN GENERAL.**—

“(A) **AGENCY REPORT.**—Not later than 120 days after the end of each of fiscal years 2011 through 2016, the head of each Federal agency shall submit to the Administrator of the Office of Federal Procurement Policy a report on the amount of the acquisitions made by the agency in that fiscal year of articles, materials, or supplies purchased from entities that manufacture the articles, materials, or supplies outside of the United States. A separate report is not required by a Federal agency under this subparagraph if such agency has already submitted the information required in such report for a fiscal year through the Federal Procurement Data System (as referred to in section 1122 (a)(4)(A)) or another uniform comprehensive system prescribed by the Federal Acquisition Regulation.

“(B) **CONSOLIDATED REPORT.**—Not later than 180 days

after the end of each of fiscal years 2011 through 2016, the Administrator of the Office of Federal Procurement Policy, in consultation with the Administrator of the General Services, shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a consolidated report that includes each report and any information submitted pursuant to subparagraph (A) and the total amount of acquisitions made by Federal agencies in the relevant fiscal year of articles, materials, or supplies purchased from entities that manufacture or produce the articles, materials, or supplies outside of the United States.

“(2) CONTENTS OF REPORT.—The report required by paragraph (1)(A) shall separately include, for the fiscal year covered by the report—

“(A) the dollar value of any articles, materials, or supplies that were manufactured or produced outside the United States, in the aggregate and by country;

“(B) an itemized list of all waivers granted with respect to such articles, materials, or supplies under this chapter, and the country where such articles, materials, or supplies were manufactured or produced;

“(C) if any articles, materials, or supplies were acquired from entities that manufacture or produce articles, materials, or supplies outside the United States due to an exception (that is not the micro-purchase threshold exception described under subsection (a)(2)(C)), the specific exception that was used to purchase such articles, materials, or supplies;

“(D) if any articles, materials, or supplies were acquired from entities that manufacture or produce articles, materials, or supplies outside the United States pursuant to a relevant trade agreement, a citation to such agreement; and

“(E) a summary of—

“(i) the total procurement funds expended on articles, materials, and supplies manufactured or produced inside the United States;

“(ii) the total procurement funds expended on articles,

materials, and supplies manufactured or produced outside the United States; and

“(iii) the total procurement funds expended on articles, materials, and supplies manufactured or produced outside the United States for each country that manufactured or produced such articles, materials, and supplies.

“(3) PUBLIC AVAILABILITY.—Not later than 180 days after the end of the relevant fiscal year, the Administrator of the Office of Federal Procurement Policy shall make the consolidated report described under paragraph (1)(B) publicly available on a Web site.

“(4) EXCEPTION FOR INTELLIGENCE COMMUNITY.—This subsection shall not apply to acquisitions made by an agency, or component of an agency, that is an element of the intelligence community as specified in, or designated under, section 3 of the National Security Act of 1947 (50 U.S.C. 401a).”

SEC. 4. STRENGTHENING THE BUY AMERICAN ACT.

(a) REQUIREMENTS FOR WAIVERS.—Section 8302 of title 41, United States Code, is amended by adding at the end the following new subsection:

“(c) SPECIAL RULES.—The following rules apply in carrying out the provisions of subsection (a):

“(1) CALCULATION OF DOMESTIC AND NON-DOMESTIC BIDS.—

“(A) EXCLUSION OF START-UP COSTS IN CALCULATING COST OF BID.—When comparing bids between domestic entities and non-domestic entities, costs related to the start-up of a project shall be excluded from a domestic bid.

“(B) UNREASONABLE COST DETERMINATION.—

“(i) IN GENERAL.—The head of a Federal agency shall not determine the cost of acquiring articles, materials, or supplies produced or manufactured in the United States to be unreasonable under subsection (a) unless the acquisition of such articles, materials, or supplies would increase the cost of the overall project by more than 25 percent.

“(ii) RULE OF CONSTRUCTION.—Nothing in this

subparagraph shall be construed as reducing the percentage increase required as of the date of the enactment of the Buy American Improvement Act of 2011 for a determination of unreasonable cost applicable to projects under Department of Defense contracts.

“(2) USE OUTSIDE THE UNITED STATES.—

“(A) IN GENERAL.—Subsection (a) shall apply without regard to whether the articles, materials, or supplies to be acquired are for use outside the United States if the articles, materials, or supplies are not needed on an urgent basis or if they are acquired on a regular basis.

“(B) COST ANALYSIS.—In any case in which the articles, materials, or supplies are to be acquired for use outside the United States and are not needed on an urgent basis, before entering into a contract an analysis shall be made of the difference in the cost of acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies in the United States (including the cost of shipping) and the cost of acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies outside the United States (including the cost of shipping).

“(3) DOMESTIC AVAILABILITY.—The head of a Federal agency may not make a determination under subsection (a) that an article, material, or supply is not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory quality, unless the head of the agency has determined that—

“(A) domestic production cannot be initiated without significantly delaying the project for which the article, material, or supply is to be procured; and

“(B) a substitutable article, material, or supply is not available in reasonable quantities and of satisfactory quality from a company in the United States.”.

(b) DEFINITIONS; INCREASING DOMESTIC CONTENT REQUIREMENT.—Section 8301 of title 41, United States Code, is amended—

(1) by adding at the end the following new paragraphs:

“(3) EXCEPTION.—The term ‘exception’ means, with respect to the acquisition of an article, material, or supply for public use, the inapplicability of chapter 83 to the acquisition by reason of any of the following:

“(A) Use outside the United States (described in section 8302(a)(2)(A)).

“(B) Procured under a contract with an award value that is not more than the micro-purchase threshold (described in section 8302(a)(2)(C)).

“(C) Specifically excepted for information technology (as defined in section 11101 of title 40) that is a commercial item (as defined in section 103).

“(D) A relevant trade agreement.

“(4) FEDERAL AGENCY.—The term ‘Federal agency’ means any executive agency (as defined in section 133) or any establishment in the legislative or judicial branch of the Federal Government.

“(5) RELEVANT TRADE AGREEMENT.—The term ‘relevant trade agreement’ means—

“(A) a reciprocal defense procurement memorandum of understanding, as described in section 8304 of title 41, United States Code;

“(B) any trade agreement for which the President, or his delegate, has issued a blanket waiver under section 301 of the Trade Agreements Act of 1979 (19 U.S.C. 2511); and

“(C) any trade agreement described in subpart 25.4 of the Federal Acquisition Regulation.

“(6) SUBSTANTIALLY ALL.—Articles, materials, or supplies shall be treated as made substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, if the cost of the domestic components of such articles, materials, or supplies exceeds 75 percent of the total cost of all components of such articles, materials, or supplies. Such percentage shall not include intellectual property rights, legal fees, and any cost not related to physical

production or transportation.

“(7) WAIVER.—The term ‘waiver’ means, with respect to the acquisition of an article, material, or supply for public use, the inapplicability of this chapter to the acquisition by reason of any of the following determinations:

“(A) A determination by the head of the Federal agency concerned that the acquisition is inconsistent with the public interest.

“(B) A determination by the head of the Federal agency concerned that the cost of the acquisition is unreasonable.

“(C) A determination by the head of the Federal agency concerned that the article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.”; and

(2) by reordering paragraphs (1) and (2) and the paragraphs added by paragraph (1) of this subsection in alphabetical order based on the headings of such paragraphs and renumbering such paragraphs as so reordered.

(c) CONFORMING AMENDMENTS.—Title 41, United States Code, is amended—

(1) in section 8302(a)(1), by striking “department or independent establishment” and inserting “Federal agency”; and

(2) in section 8303—

(A) in subsection (b)—

(i) in paragraph (2), by striking “department or independent establishment” and inserting “Federal agency”; and

(ii) in paragraph (3), by striking “department or independent establishment” and inserting “Federal agency”; and

(B) in subsection (c), by striking “department, bureau, agency, or independent establishment” and inserting “Federal

agency”, each place it appears.

(d) INFLATION ADJUSTMENT EXCLUSION.—Section 1908(b)(2)(A) of title 41, United States Code, is amended by striking “chapter 67” and inserting “chapters 67 and 83”.

SEC. 5. GAO REPORT AND RECOMMENDATION.

Not later than one year after the date of the enactment of this Act, the Comptroller General shall report to Congress on the extent to which, in each of fiscal years 2007, 2008, 2009, 2010, and 2011, articles, materials, or supplies acquired by the Federal Government were manufactured, mined, or produced outside of the United States. Such report shall include for each Federal agency the following:

(1) A summary of total procurement funds expended on articles, materials, and supplies manufactured—

(A) inside the United States;

(B) outside the United States; and

(C) outside the United States—

(i) under each type of waiver (as defined under section 2(f) of this Act);

(ii) under each category of exception (as defined in section 8301 of title 41, United States Code); and

(iii) for each country that manufactured or produced such articles, materials, and supplies.

(2) An analysis of the impact of eliminating the exception for acquisitions for information technology (as defined in section 11101 of title 40) that is a commercial item (as defined in section 103).

SEC. 6. UNITED STATES OBLIGATIONS UNDER INTERNATIONAL AGREEMENTS.

This Act, and the amendments made by this Act, shall be applied in a manner consistent with United States obligations under international agreements.

H.R. 3057

H. R. 3057 (Introduced-in-House)

Page 1 of 15

112TH CONGRESS
1ST SESSION**H. R. 3057**

To prevent the evasion of antidumping and countervailing duty orders, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 23, 2011

Mr. LONG (for himself, Mr. NUNNELEE, Mrs. EMERSON, Mr. LUETKEMEYER, Mr. AKIN, Ms. LINDA T. SANCHEZ of California, Mr. BACHUS, Mr. MANZULLO, Mr. CHANDLER, Mr. CRITZ, Mr. CONYERS, Mr. STARK, Mr. CARNAHAN, and Mr. LIPINSKI) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To prevent the evasion of antidumping and countervailing duty orders, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Enforcing Orders and Reducing Customs Evasion Act of 2011”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROCEDURES

Sec. 101. Procedures for investigating claims of evasion of antidumping and countervailing duty orders.

Sec. 102. Application to Canada and Mexico.

TITLE II—OTHER MATTERS

- Sec. 201. Definitions.
- Sec. 202. Allocation of U.S. Customs and Border Protection personnel.
- Sec. 203. Regulations.
- Sec. 204. Annual report on prevention of evasion of antidumping and countervailing duty orders.
- Sec. 205. Government Accountability Office report on reliquidation authority.

TITLE I—PROCEDURES

SEC. 101. PROCEDURES FOR INVESTIGATING CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

(a) IN GENERAL.—The Tariff Act of 1930 is amended by inserting after section 516A (19 U.S.C. 1516a) the following:

“SEC. 516B. PROCEDURES FOR INVESTIGATING CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

“(a) DEFINITIONS.—In this section:

“(1) ADMINISTERING AUTHORITY.—The term ‘administering authority’ has the meaning given that term in section 771(1).

“(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Finance and the Committee on Appropriations of the Senate; and

“(B) the Committee on Ways and Means and the Committee on Appropriations of the House of Representatives.

“(3) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner responsible for U.S. Customs and Border Protection.

“(4) COVERED MERCHANDISE.—The term ‘covered merchandise’ means merchandise that is subject to—

“(A) an antidumping duty order issued under section 736;

“(B) a finding issued under the Antidumping Act, 1921; or

“(C) a countervailing duty order issued under section 706.

“(5) ENTER; ENTRY.—The terms ‘enter’ and ‘entry’ refer to the entry, or withdrawal from warehouse for consumption, in the customs territory of the United States.

“(6) EVADE; EVASION.—The terms ‘evade’ and ‘evasion’ refer to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.

“(7) INTERESTED PARTY.—The term ‘interested party’ has the meaning given that term in section 771(9).

“(b) PROCEDURES FOR INVESTIGATING ALLEGATIONS OF EVASION.—

“(1) INITIATION BY PETITION OR REFERRAL.—

“(A) IN GENERAL.—Not later than 10 days after the date on which the Commissioner receives a petition described in subparagraph (B) or a referral described in subparagraph (C), the Commissioner shall initiate an investigation pursuant to this paragraph.

“(B) PETITION DESCRIBED.—A petition described in this subparagraph is a petition that—

“(i) is filed with the Commissioner by any party who is an interested party with respect to covered merchandise;

“(ii) alleges that a person has entered covered merchandise into the customs territory of the United States through evasion; and

“(iii) is accompanied by information reasonably available to the petitioner supporting the allegation.

“(C) REFERRAL DESCRIBED.—A referral described in this subparagraph is information submitted to the Commissioner by any other Federal agency, including the Department of Commerce or the United States International Trade Commission, indicating that a person has entered covered merchandise into the customs territory of the United States through evasion.

“(2) DETERMINATIONS.—

“(A) PRELIMINARY DETERMINATION.—

“(i) IN GENERAL.—Not later than 90 days after the date on which the Commissioner initiates an investigation under paragraph (1), the Commissioner shall issue a preliminary determination, based on information available to the Commissioner at the time of the determination, with respect to whether there is a reasonable basis to believe or suspect that the covered merchandise was entered into the customs territory of the United States through evasion.

“(ii) EXTENSION.—The Commissioner may extend by not more than 45 days the time period specified in clause (i) if the Commissioner determines that sufficient information to make a preliminary determination under that clause is not available within that time period or the inquiry is unusually complex.

“(B) FINAL DETERMINATION.—

“(i) IN GENERAL.—Not later than 120 days after making a preliminary determination under subparagraph (A), the Commissioner shall make a final determination, based on substantial evidence, with respect to whether covered merchandise was entered into the customs territory of the United States through evasion.

“(ii) EXTENSION.—The Commissioner may extend by not more than 60 days the time period specified in clause (i) if the Commissioner determines that sufficient information to make a final determination under that clause is not available within that time period or the inquiry is unusually complex.

“(iii) OPPORTUNITY FOR COMMENT; HEARING.—After making a preliminary determination under subparagraph (A) and before issuing a final determination under this subparagraph with respect to whether covered merchandise was entered into the customs territory of the United States through evasion, the Commissioner shall—

“(I) provide any person alleged to have entered the merchandise into the customs territory of the United States through evasion, and any person that is an interested party with respect to the merchandise, with an

opportunity to be heard;

“(II) upon request, hold a hearing with respect to whether the covered merchandise was entered into the customs territory of the United States through evasion; and

“(III) provide an opportunity for public comment.

“(C) **AUTHORITY TO COLLECT AND VERIFY ADDITIONAL INFORMATION.**—In making a preliminary determination under subparagraph (A) or a final determination under subparagraph (B), the Commissioner—

“(i) shall exercise all existing authorities to collect information needed to make the determination; and

“(ii) may collect such additional information as is necessary to make the determination through such methods as the Commissioner considers appropriate, including by—

“(I) issuing a questionnaire with respect to covered merchandise to—

“(aa) a person that filed a petition under paragraph (1)(B);

“(bb) a person alleged to have entered covered merchandise into the customs territory of the United States through evasion; or

“(cc) any other person that is an interested party with respect to the covered merchandise; or

“(II) conducting verifications, including on-site verifications, of any relevant information.

“(D) **ADVERSE INFERENCE.**—

“(i) **IN GENERAL.**—If the Commissioner finds that a person that filed a petition under paragraph (1)(B), a person alleged to have entered covered merchandise into the customs territory of the United States through evasion, or a foreign producer or exporter, has failed to cooperate by not acting to the best of the person's ability to comply with a

request for information, the Commissioner may, in making a preliminary determination under subparagraph (A) or a final determination under subparagraph (B), use an inference that is adverse to the interests of that person in selecting from among the facts otherwise available to determine whether evasion has occurred.

“(ii) ADVERSE INFERENCE DESCRIBED.—An adverse inference used under clause (i) may include reliance on information derived from—

“(I) the petition, if any, submitted under paragraph (1)(B) with respect to the covered merchandise;

“(II) a determination by the Commissioner in another investigation under this section;

“(III) an investigation or review by the administering authority under title VII; or

“(IV) any other information placed on the record.

“(E) NOTIFICATION AND PUBLICATION.—Not later than 7 days after making a preliminary determination under subparagraph (A) or a final determination under subparagraph (B), the Commissioner shall—

“(i) provide notification of the determination to—

“(I) the administering authority; and

“(II) the person that submitted the petition under paragraph (1)(B) or the Federal agency that submitted the referral under paragraph (1)(C); and

“(ii) provide the determination for publication in the Federal Register.

“(3) BUSINESS PROPRIETARY INFORMATION.—

“(A) ESTABLISHMENT OF PROCEDURES.—For each investigation initiated under paragraph (1), the Commissioner shall establish procedures for the submission of business proprietary information under an administrative protective order that—

“(i) protects against public disclosure of such information; and

“(ii) for purposes of submitting comments to the Commissioner, provides limited access to such information for—

“(I) the person that submitted the petition under paragraph (1)(B) or the Federal agency that submitted the referral under paragraph (1)(C); and

“(II) the person alleged to have entered covered merchandise into the customs territory of the United States through evasion.

“(B) ADMINISTRATION IN ACCORDANCE WITH OTHER PROCEDURES.—The procedures established under subparagraph (A) shall be administered, to the maximum extent practicable, in accordance with administrative protective order procedures under section 777 by the administering authority.

“(C) DISCLOSURE OF BUSINESS PROPRIETARY INFORMATION.—The Commissioner shall, in accordance with the procedures established under subparagraph (A), make all business proprietary information presented to, or obtained by, the Commissioner during an investigation available to the persons specified in subparagraph (A)(ii) under an administrative protective order, regardless of when such information is submitted during an investigation.

“(4) REFERRALS TO OTHER FEDERAL AGENCIES.—

“(A) AFTER PRELIMINARY DETERMINATION.—Notwithstanding section 777 and subject to subparagraph (C), when the Commissioner makes an affirmative preliminary determination under paragraph (2)(A), the Commissioner shall, at the request of the head of another Federal agency, transmit the administrative record to the head of that agency.

“(B) AFTER FINAL DETERMINATION.—Notwithstanding section 777 and subject to subparagraph (C), when the Commissioner makes an affirmative final determination under paragraph (2)(B), the Commissioner shall, at the request of the head of another Federal agency, transmit the complete

administrative record to the head of that agency.

“(C) PROTECTIVE ORDERS.—Before transmitting an administrative record to the head of another Federal agency under subparagraph (A) or (B), the Commissioner shall verify that the other agency has in effect with respect to the administrative record a protective order that provides the same or a similar level of protection for the information in the administrative record as the protective order in effect with respect to such information under this subsection.

“(c) EFFECT OF DETERMINATIONS.—

“(1) EFFECT OF AFFIRMATIVE PRELIMINARY DETERMINATION.—If the Commissioner makes a preliminary determination in accordance with subsection (b)(2)(A) that there is a reasonable basis to believe or suspect that covered merchandise was entered into the customs territory of the United States through evasion, the Commissioner shall—

“(A) suspend the liquidation of each unliquidated entry of the covered merchandise that is subject to the preliminary determination and that entered on or after the date of the initiation of the investigation under paragraph (1) and, pursuant to the Commissioner’s authority under section 504(b), extend liquidation of each unliquidated entry of the covered merchandise that is subject to the preliminary determination and that entered prior to the date of the initiation of the investigation under paragraph (1);

“(B) review and reassess the amount of bond or other security the importer is required to post for each entry of merchandise described in subparagraph (A);

“(C) require the posting of a cash deposit with respect to each entry of merchandise described in subparagraph (A); and

“(D) take such other measures as the Commissioner determines appropriate to ensure the collection of any duties that may be owed with respect to merchandise described in subparagraph (A) as a result of a final determination under subsection (b)(2)(B).

“(2) EFFECT OF NEGATIVE PRELIMINARY DETERMINATION.—If the Commissioner makes a preliminary determination in accordance

with subsection (b)(2)(A) that there is not a reasonable basis to believe or suspect that covered merchandise was entered into the customs territory of the United States through evasion, the Commissioner shall continue the investigation and notify the administering authority pending a final determination under subsection (b)(2)(B).

“(3) EFFECT OF AFFIRMATIVE FINAL DETERMINATION.—If the Commissioner makes a final determination in accordance with subsection (b)(2)(B) that covered merchandise was entered into the customs territory of the United States through evasion, the Commissioner shall—

“(A) suspend or continue to suspend, as the case may be, the liquidation of each entry of the covered merchandise that is subject to the determination and that enters on or after the date of the determination and, pursuant to the Commissioner’s authority under section 504(b), extend or continue to extend, as the case may be, the liquidation of each entry of the covered merchandise that is subject to the determination and that entered prior to the date of the determination;

“(B) notify the administering authority of the determination and request that the administering authority—

“(i) identify the applicable antidumping or countervailing duty assessment rate for the entries for which liquidation is suspended under paragraph (1)(A) or subparagraph (A) of this paragraph; or

“(ii) if no such assessment rates are available at the time, identify the applicable cash deposit rate to be applied to the entries described in subparagraph (A), with the applicable antidumping or countervailing duty assessment rates to be provided as soon as such rates become available;

“(C) require the posting of cash deposits and assess duties on each entry of merchandise described in subparagraph (A) in accordance with the instructions received from the administering authority under paragraph (5);

“(D) review and reassess the amount of bond or other security the importer is required to post for merchandise described in subparagraph (A) to ensure the protection of revenue and compliance with the law; and

“(E) take such additional enforcement measures as the Commissioner determines appropriate, such as—

“(i) initiating proceedings under section 592 or 596;

“(ii) implementing, in consultation with the relevant Federal agencies, rule sets or modifications to rules sets for identifying, particularly through the Automated Targeting System and the Automated Commercial Environment, importers, other parties, and merchandise that may be associated with evasion;

“(iii) requiring, with respect to merchandise for which the importer has repeatedly provided incomplete or erroneous entry summary information in connection with determinations of evasion, the importer to submit entry summary documentation and to deposit estimated duties at the time of entry;

“(iv) referring the record in whole or in part to U.S. Immigration and Customs Enforcement for civil or criminal investigation; and

“(v) transmitting the administrative record to the administering authority for further appropriate proceedings.

“(4) EFFECT OF NEGATIVE FINAL DETERMINATION.—If the Commissioner makes a final determination in accordance with subsection (b)(2)(B) that covered merchandise was not entered into the customs territory of the United States through evasion, the Commissioner shall terminate the suspension of liquidation pursuant to paragraph (1)(A) and refund any cash deposits collected pursuant to paragraph (1)(C) that are in excess of the cash deposit rate that would otherwise have been applicable the merchandise.

“(5) COOPERATION OF ADMINISTERING AUTHORITY.—

“(A) IN GENERAL.—Upon receiving a notification from the Commissioner under paragraph (3)(B), the administering authority shall promptly provide to the Commissioner the applicable cash deposit rates and antidumping or countervailing duty assessment rates and any necessary liquidation instructions.

“(B) SPECIAL RULE FOR CASES IN WHICH THE PRODUCER OR EXPORTER IS UNKNOWN.—If the Commissioner and

administering authority are unable to determine the producer or exporter of the merchandise with respect to which a notification is made under paragraph (3)(B), the administering authority shall identify, as the applicable cash deposit rate or antidumping or countervailing duty assessment rate, the cash deposit or duty (as the case may be) in the highest amount applicable to any producer or exporter, including the 'all-others' rate of the merchandise subject to an antidumping order or countervailing duty order under section 736 or 706, respectively, or a finding issued under the Antidumping Act, 1921, or any administrative review conducted under section 751.

“(d) SPECIAL RULES.—

“(1) EFFECT ON OTHER AUTHORITIES.—Neither the initiation of an investigation under subsection (b)(1) nor a preliminary determination or a final determination under subsection (b)(2) shall affect the authority of the Commissioner—

“(A) to pursue such other enforcement measures with respect to the evasion of antidumping or countervailing duties as the Commissioner determines necessary, including enforcement measures described in clauses (i) through (iv) of subsection (c)(3) (E); or

“(B) to assess any penalties or collect any applicable duties, taxes, and fees, including pursuant to section 592.

“(2) EFFECT OF DETERMINATIONS ON FRAUD ACTIONS.—Neither a preliminary determination nor a final determination under subsection (b)(2) shall be determinative in a proceeding under section 592.

“(3) NEGLIGENCE OR INTENT.—The Commissioner shall investigate and make a preliminary determination or a final determination under this section with respect to whether a person has entered covered merchandise into the customs territory of the United States through evasion without regard to whether the person—

“(A) intended to violate an antidumping duty order or countervailing duty order under section 736 or 706, respectively, or a finding issued under the Antidumping Act, 1921; or

“(B) exercised reasonable care with respect to avoiding a violation of such an order or finding.”.

(b) TECHNICAL AMENDMENT.—Clause (ii) of section 777(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)(1)(A)) is amended to read as follows:

“(ii) to an officer or employee of U.S. Customs and Border Protection who is directly involved in conducting an investigation regarding fraud under this title or claims of evasion under section 516B.”.

(c) JUDICIAL REVIEW.—Section 516A(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1516a(a)(2)) is amended—

(1) in subparagraph (A)—

(A) in clause (i)(III), by striking “or” at the end;

(B) in clause (ii), by adding “or” at the end; and

(C) by inserting after clause (ii) the following:

“(iii) the date of publication in the Federal Register of a determination described in clause (ix) of subparagraph (B),”; and

(2) in subparagraph (B), by adding at the end the following new clause:

“(ix) A determination by the Commissioner responsible for U.S. Customs and Border Protection under section 516B that merchandise has been entered into the customs territory of the United States through evasion.”.

(d) FINALITY OF DETERMINATIONS.—Section 514(b) of the Tariff Act of 1930 (19 U.S.C. 1514(b)) is amended by striking “section 303” and all that follows through “which are reviewable” and inserting “section 516B or title VII that are reviewable”.

SEC. 102. APPLICATION TO CANADA AND MEXICO.

Pursuant to article 1902 of the North American Free Trade Agreement and section 408 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3438), the amendments made by this title shall apply with respect to goods from Canada and Mexico.

TITLE II—OTHER MATTERS

SEC. 201. DEFINITIONS.

In this title, the terms “appropriate congressional committees”, “Commissioner”, “covered merchandise”, “enter” and “entry”, and “evade” and “evasion” have the meanings given those terms in section 516B(a) of the Tariff Act of 1930 (as added by section 101 of this Act).

SEC. 202. ALLOCATION OF U.S. CUSTOMS AND BORDER PROTECTION PERSONNEL.

(a) **REASSIGNMENT AND ALLOCATION.**—The Commissioner shall, to the maximum extent possible, ensure that U.S. Customs and Border Protection—

(1) employs sufficient personnel who have expertise in, and responsibility for, preventing the entry of covered merchandise into the customs territory of the United States through evasion; and

(2) on the basis of risk assessment metrics, assigns sufficient personnel with primary responsibility for preventing the entry of covered merchandise into the customs territory of the United States through evasion to the ports of entry in the United States at which the Commissioner determines potential evasion presents the most substantial threats to the revenue of the United States.

(b) **COMMERCIAL ENFORCEMENT OFFICERS.**—Not later than 30 days after the enactment of this Act, the Secretary of Homeland Security, the Commissioner, and the Assistant Secretary for U.S. Immigration and Customs Enforcement shall assess and properly allocate the resources of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement—

(1) to effectively implement the provisions of, and amendments made by, this Act; and

(2) to improve efforts to investigate and combat evasion.

SEC. 203. REGULATIONS.

(a) **IN GENERAL.**—Not later than 240 days after the date of the enactment of this Act, the Commissioner shall issue regulations to carry out this title and the amendments made by title I.

(b) **COOPERATION BETWEEN U.S. CUSTOMS AND BORDER PROTECTION, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, AND DEPARTMENT OF COMMERCE.**—Not later than 240 days after the

date of the enactment of this Act, the Commissioner, the Assistant Secretary for U.S. Immigration and Customs Enforcement, and the Secretary of Commerce shall establish procedures to ensure maximum cooperation and communication between U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and the Department of Commerce in order to quickly, efficiently, and accurately investigate allegations of evasion under section 516B of the Tariff Act of 1930 (as added by section 101 of this Act).

SEC. 204. ANNUAL REPORT ON PREVENTION OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

(a) **IN GENERAL.**—Not later than February 28 of each year, beginning in 2012, the Commissioner, in consultation with the Secretary of Commerce, shall submit to the appropriate congressional committees a report on the efforts being taken pursuant to section 516B of the Tariff Act of 1930 (as added by section 101 of this Act) to prevent the entry of covered merchandise into the customs territory of the United States through evasion.

(b) **CONTENTS.**—Each report required under subsection (a) shall include—

(1) for the fiscal year preceding the submission of the report—

(A) the number and a brief description of petitions and referrals received pursuant to section 516B(b)(1) of the Tariff Act of 1930 (as added by section 101 of this Act);

(B) the results of the investigations initiated under such section, including any related enforcement actions, and the amount of antidumping and countervailing duties collected as a result of those investigations; and

(C) to the extent appropriate, a summary of the efforts of U.S. Customs and Border Protection, other than efforts initiated pursuant section 516B of the Tariff Act of 1930 (as added by section 101 of this Act), to prevent the entry of covered merchandise into the customs territory of the United States through evasion; and

(2) for the 3 fiscal years preceding the submission of the report, an estimate of—

(A) the amount of covered merchandise that entered the customs territory of the United States through evasion; and

(B) the amount of duties that could not be collected on such merchandise because the Commissioner did not have the authority to reliquidate the entries of such merchandise.

**SEC. 205. GOVERNMENT ACCOUNTABILITY OFFICE REPORT ON
RELIQUIDATION AUTHORITY.**

Not later than 60 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate congressional committees, and make available to the public, a report estimating the amount of duties that could not be collected on covered merchandise that entered the customs territory of the United States through evasion during fiscal years 2009 and 2010 because the Commissioner did not have the authority to reliquidate the entries of such merchandise.

Member Questions For The Record

House Ways and Means Committee Hearing
October 25, 2011

Responses to Questions for Ambassador Demetrios Marantis, Deputy United States Trade Representative

Questions from Mr. Reichert

For Both Dr. Brainard and Ambassador Marantis:

Reichert Question 1: In 2009, the United States exported roughly \$15.7 billion in services to China, a surplus of \$7.5 billion. In my view, our sales should be higher, but access to the Chinese services market remains severely restricted. China imposes limitations in many key sectors, including banking, insurance, retail, express delivery, and telecom. Chinese investment restrictions have a significant effect on services companies, which often require a local presence in order to do business. Other Chinese regulatory barriers, including limitations on licenses, a lack of transparency, and discriminatory requirements also prevent services companies from gaining market share. What is the Administration doing to create new opportunities for U.S. services companies that wish to export to China and continue to expand the trade surplus in services?

A: The services sector is a major priority in the U.S. Administration's work with China. We will continue to use all avenues at our disposal to achieve additional market liberalization with China, including the Strategic and Economic Dialogue (S&ED), the Joint Commission on Commerce and Trade (JCCT), and other high-level bilateral opportunities, as well as multilateral negotiations. Although these issues are challenging, we have achieved some progress and will continue to push hard. We have a WTO dispute underway challenging a Chinese state-owned monopoly in electronic payment services that is blocking our world class debit and credit card processing companies from providing key services in China. In other areas, our efforts are yielding expanded access. Regarding financial services, China now has allowed foreign banks to compete to underwrite corporate bonds. In addition, at the 2011 S&ED, China committed to allow foreign banks to sell mutual funds and provide custody services, and pledged to advance towards allowing foreign-invested insurance companies to sell mandatory third party liability auto insurance. At the 2011 JCCT, regarding tourism services, China agreed to further expand the U.S.-China memorandum of understanding (MOU) on packaged leisure travel to the United States. Regarding telecommunications services, China agreed to publish in draft and allow public comment on the next revision of its value-added (VAS) telecommunications services catalogue, which will define the terms of access, including scope of licenses, for China's VAS sector. On transparency, to implement its S&ED commitments, China increasingly is providing a 30-day period for the public to comment on proposed trade and economic-related regulations and rules. We also do not hesitate to challenge China's restrictions on services at the WTO.

For Ambassador Marantis:

Reichert Question 1: I understand that USTR filed a new WTO case last September related to China's discrimination against U.S. electronic payment services (EPS) companies. USTR claims that China's creation of a state-owned monopoly service provider called China Union Pay violates China's obligations under the General Agreement on Trade in Services. It's my understanding that China is prohibiting our suppliers from processing payment card transactions in China so that only the state-run UnionPay can provide these services. This WTO case seems like exactly the type of strong enforcement action that we need more of. Could you provide an update on that case and explain what a victory would mean for the U.S. companies and workers that are affected?

A: Where dialogue with China does not lead to results, we will not hesitate to invoke WTO dispute settlement to address our concerns. That is what we did in the EPS case, where China's barriers appear inconsistent with its WTO commitments. This dispute is proceeding on schedule at the WTO. The second and final meeting of the dispute settlement panel was in December 2011. A confidential final decision on the merits is expected to be provided to the parties sometime in May, with a public panel report available sometime in June. A favorable decision adopted by the WTO would direct China to bring WTO-inconsistent limitations on access to its market by foreign suppliers of electronic payment services for payment card transactions into conformity with its WTO obligations. Several U.S. companies are world leaders in processing card-based electronic payment transactions. A decision against China's measures, which established the monopoly for China's national supplier, also would send a clear message that China cannot continue giving unfair advantages to favored national champions contrary to WTO rules.

Questions from Mr. Smith

Smith Question 1: I am committed to removing obstacles for U.S. exports. One of the greatest frustrations I hear from agriculture producers in my district comes from the unfounded and unscientific sanitary and phytosanitary (SPS) barriers imposed by some of our trading partners. As you know, China continues to maintain a series of regulations and restrictions on U.S. agriculture exports which are not supported by science. China must continue to work towards bringing its regulations into compliance with sound scientific principles and international standards. What is the Administration doing to remove these persistent barriers?

A: Achieving full market access for U.S. agriculture products in China remains a top priority for this Administration. The United States continues to urge China to eliminate barriers and open its market fully in a manner that is based on science, consistent with international guidelines, and is commercially viable. Intensive bilateral engagement has eliminated important SPS barriers to our pork and poultry exports and has facilitated soybean exports, but we continue to press to eliminate troubling obstacles to beef trade and other Chinese measures that harm our agriculture sector.

Smith Question 2: More specifically, my home state of Nebraska ranks first in commercial red meat production, and as you know the USTR has been working for a number of years to gain full access to the Chinese market for U.S. beef producers under international standards established by the OIE. The most recent talks in January of this year resulted in an impasse, with the Chinese insisting on conditions which are either not consistent with the OIE standards or are not commercially viable. Does your office have a plan to address beef access at the Joint Commission on Commerce and Trade meetings in December and move this important discussion forward? Also, how will you proceed with the beef market access negotiations with Japan?

A: Achieving full market access for U.S. beef and beef products in China remains a top priority for this Administration. The United States continues to urge China to reopen its beef market fully in a manner that is based on science, consistent with international guidelines, and is commercially viable.

Ambassador Siddiqui and Under Secretary Scuse visited Beijing in late October 2011 to discuss beef market access with their counterparts, as well as other critical priorities like pork market access. At the Joint Commission on Commerce and Trade Plenary in late November 2011, both sides endorsed a commitment to increased technical engagement. Secretary Vilsack had good – and lengthy – discussions with his Chinese counterparts, and we discussed the issue at the official Plenary meeting with Vice Premier Wang Qishan. We have now reached out again to China to follow up and hope that these technical discussions will position us for more fruitful progress on the beef issue in early 2012.

The Administration is also deeply concerned about China's unwarranted ban on the use of ractopamine, a common feed additive. We are continuing to press China on this issue, including at the agricultural trade talks held in Beijing in late October 2011.

Further opening Japan's beef market in a manner that is based on science, is consistent with international standards, and is commercially viable remains a high priority for the U.S. Government. At the end of last year, Japan started the process to reassess the BSE issue, which we view as a vehicle for the United States to make progress with Japan on beef market access. As the first step of this process, Japan submitted questions to its Food Safety Commission to undertake a risk assessment that would support raising the age limit beyond the current threshold in a commercially-viable manner. We will continue to be in close touch with Japan as they move forward with the revisions of its BSE measures.

Questions from Mr. Kind

For Both Dr. Brainard and Ambassador Marantis:

Kind Question 1: The Committee is going to do some work on Customs Re-Authorization in the next several months. Every year Customs reports that the number one country for infringed products is China. What should we be doing to address this problem? Are there legislative changes that we can make to ensure that products made with stolen inputs are not allowed entry into the United States?

A: The levels of IPR theft that occur in China, as well as the volumes of IPR infringing goods exported from China, remain unacceptably high. That is why the President, in his State of the Union address, called for enhanced inspections to prevent counterfeit, pirated, or unsafe goods from crossing our borders, and we will provide more details on these efforts in the weeks and months ahead. The Administration is working to protect American IPR in China, and to reduce the export of infringing products made in China, through a variety of mechanisms – including results-oriented dialogue on IPR protection and enforcement, the annual Special 301 Report, and enforcing international rules to protect American intellectual property and market access through the WTO. The Administration pursues this strategy in close coordination with other relevant U.S. agencies, stakeholders, trading partners, and Congress. In addition, USTR works closely with the U.S. Intellectual Property Enforcement Coordinator’s Office, and the U.S. Department of Homeland Security –including U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement -- among many others agencies, to consider additional steps the United States can take to protect ourselves from these illegal and, in some cases, dangerous imports.

Kind Question 2: Given the current impasse in the Doha Round, however, what additional steps can the U.S. and other nations take to address the subsidies received by China's fishing fleet and the effect it has on fish stocks?

A: The United States will continue to pursue the prohibition of harmful fisheries subsidies that contribute to overfishing and overcapacity and in doing so will maintain pressure both directly and indirectly on China regarding such subsidies received by their fishing fleets. This will include continued work through the WTO, as well as in other relevant multilateral and regional fora such as the UN, FAO, APEC, and through the TPP negotiations. In the WTO Subsidies Committee, for example, we will be examining very closely China’s most recent subsidy notification to determine whether it is complete and if not, we will pursue the issue in the course of the Committee’s work in accordance with the provisions of the WTO Subsidies Agreement.

Kind Question 3: Will the Administration include Chinese fisheries subsidies as a priority issue in upcoming bilateral meetings, including the JCCT (Joint Commission on Commerce and Trade)?

A: The Administration has engaged China on the issue of fisheries subsidies through our multilateral discussions at the WTO. Together with the Commerce Department, USTR also is investigating the extent of China’s use of fisheries subsidies and will be considering whether the issue of fisheries subsidies should be placed as a priority issue on the agenda of upcoming bilateral meetings with China, including the JCCT.

Questions from Mr. Neal**For both Dr. Brainard and Ambassador Marantis:**

Neal Question 1: Ambassador Marantis and Secretary Brainard, the medical technology industry is very concerned about the price controls proposed by the Chinese government, which could severely reduce market access, especially for small and medium size enterprises. What steps can you take to prevent these price controls from happening? Also, as you know, China requires the medical device industry to obtain approval from the US FDA before even beginning China's regulatory process. In my opinion, this is discriminatory since China's domestic producers have no such redundant requirements, and significantly delays American firms' market access. What can be done to address this problem?

A: The Administration has engaged China on the importance of not implementing unfair price controls. This has been an ongoing effort, and so far, we are continuing to press for concrete progress. We understand that the latest Chinese proposal (August 2011) envisages the introduction of price controls in 2012. We have raised our concerns concertedly at senior levels and in the Joint Commission on Commerce and Trade (JCCT) and will continue to press China to hit the pause button and meet with industry to find a path forward so that Chinese consumers are not blocked from the benefits of our products.

The Administration also has raised concerns about China's redundant regulations for many years. We have achieved some success through raising the issue at WTO committee meetings and the JCCT, where the Chinese agreed not to impose duplicative regulations by separate agencies. We also have raised the problem of China requiring regulatory approval in the country of origin – such as FDA approval for U.S. medical devices – before China will consider approving the product. So far, the Chinese have maintained that this is a health and safety issue, indicating that prior approval provides them greater confidence in the safety of the medical device. Our view is that there are other, better, ways for China's FDA to ensure the safety of medical devices. We will continue to work to address this issue.

Neal Question 2: The medical technology industry also is concerned about protection of its intellectual property in China. Failure to adequately protect IP means not only a loss of revenues for the industry, but also potential liability and patient health concerns as well. What steps is the Administration taking to seek better IP enforcement from Chinese authorities?

A: Creativity and innovation are the engines of the American economy. According to industry estimates, IP-intensive industries employ about 18 million Americans. Countries that fail to respect U.S. intellectual property, either by failing to implement or enforce laws that adequately protect American intellectual property, or creating policies that disadvantage U.S. right holders, put American workers and businesses at a disadvantage. The Administration is committed to working with America's trading partners to secure adequate and effective intellectual property safeguards wherever American goods and services are sold.

With regard to China, the Administration is working to protect American IPR in China through a variety of mechanisms – including results-oriented bilateral and multilateral dialogue with China on IPR protection and enforcement, the annual Special 301 Report, and enforcing international rules to protect American intellectual property (IP) and market access through the WTO. USTR undertakes this strategy in close coordination with other relevant U.S. agencies, stakeholders, trading partners, and Congress. We have made progress on some IP challenges through both the WTO, and JCCT and S&ED processes, although much more remains to be done. For example, because of a U.S. trade enforcement win at the WTO, China has reformed its customs rules on destruction of counterfeit goods to comply with its WTO obligations. And through last year's JCCT and S&ED, we were able to push China to establish a State Council-level leadership structure to enhance IPR enforcement throughout China. We are open to all approaches, whether through robust engagement or through trade enforcement actions, to get substantive results from China on intellectual property challenges.

Neal Question 3: Ambassador Marantis and Secretary Brainard, in both of your written statements you highlight the fact that at the most recent Strategic and Economic Dialogue, China pledged to open its mandatory third party liability auto insurance market to foreign insurers. I welcome this news and am interested to know what steps the Chinese are taking towards fulfilling this commitment? Also, what are your plans for following up and ensuring that this commitment is met?

A: China has not yet taken visible steps to fulfill its 2011 S&ED commitment to open its mandatory third party liability auto insurance market to foreign-invested insurers. The U.S. Administration continues to press this issue actively as a top priority with all relevant Chinese policymakers, including the China Insurance Regulatory Commission and China's Ministry of Finance, in all appropriate high-level bilateral meetings, such as the S&ED and the U.S.-China Insurance Dialogue.

Neal Question 4: I'm hearing a great deal from U.S. manufacturers, including some in Massachusetts, about allegations that the Chinese government has orchestrated an artificial increase in the prices of Rare Earth Elements. For example, the price of neodymium, an element vital also to our defense industry, has increased by 1000 percent in the past 18 months. Ambassador Marantis and Secretary Brainard, can you tell me what steps the Administration is taking to address the effect of this price manipulation on our manufacturers?

A. We are very concerned about China's export restraint policy, which affects numerous raw materials, including rare earths. In close cooperation with like-minded trading partners, we have been making a concerted effort to move China away from these market distorting policies. In addition to the JCCT and other bilateral discussions, we also have been working multilaterally through the WTO and other international organizations to push for a closer examination of market-distorting policies – like China's export restraints – that run contrary to the reality of global interdependence when it comes to raw materials.

The recent major WTO victory in the U.S. challenge to China's export restraints on nine categories of key industrial raw materials also sends a strong signal to China that these kinds of policies must be eliminated. We are actively gathering facts on China's export restraint policies on rare earths and other raw materials that could assist us in determining our most effective next steps.

Neal Question 5: Ambassador Marantis and Secretary Brainard, we just entered into three new Free Trade Agreements, but we have not spent enough time discussing the critical importance of adherence to the rules of global free trade - and one of my big concerns is the blatant and fraudulent evasion of our Antidumping and Countervailing Duty Orders. These agreements will do no good if they are used to facilitate circumvention and evasion of our trade laws. For example, unscrupulous exporters and importers of goods from China subject to antidumping and countervailing duty orders regularly commit Customs fraud to evade the duties imposed by the U.S. government. Trade cheats are no different than tax cheats. I am concerned that this rampant evasion makes U.S. trade remedies meaningless. This is an urgent issue that must be dealt with and our government needs to do a much better job of enforcing the laws that are on the books. I am told there are over \$400 million in uncollected duties annually in just eight industries. The total in uncollected duties in goods from China is likely far greater than that. What is the Administration doing to address this problem?

A: We agree that these are serious issues. The U.S. Department of Homeland Security – through U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, the U.S. Department of Commerce, and the U.S. Department of Justice are the front line agencies deeply engaged in combating this problem, and we support the efforts being taken to address the problem of circumvention and duty evasion in a number of U.S. antidumping and countervailing duty orders involving Chinese firms.

Additionally, USTR, through its multilateral and bilateral interactions with its trade partners throughout the Asia Pacific region, is actively seeking strong commitments on cooperation in achieving compliance with all U.S. trade laws, including antidumping and countervailing duty law. We have such commitments in our three new FTAs.

Neal Question 6: The export-led strategy that produced such enormous growth for China is only as good as demand is. It seems to me that one approach to building demand in China and which seems to be in China's best interest, is to assist in boosting the Chinese social safety net through a robust retirement system. Yet, it is my understanding that the Chinese private pension system needs developing. It has been suggested that China should allow the most experienced, technically competent, and market-expert U.S. companies to enter the Chinese Enterprise Annuity market, which is Chinese equivalent to our 401 (k) system, as soon as possible under the current licensing framework to help free up more capital for domestic consumption. Secretary Brainard, what are your thoughts on that assertion and what more can the Administration do to ensure that this occurs?

A: Chinese citizens have to save substantial amounts of their income due to China's weak social safety net, which provides limited public pension and unemployment insurance coverage, and the limited availability of financial products that could help households save more efficiently to meet their financial goals and insure against risks. Chinese households' high saving rate is a major obstacle to China's efforts to shift towards consumption-led growth, and no doubt reduces Chinese demand for U.S. goods and services.

China needs to address the root causes of its high saving rate, including by welcoming increased foreign participation that would allow U.S. firms could help China achieve its goal of building a more modern retirement system by bringing their expertise and technical competence into their market. We have shared our own experiences with the Chinese in the hope that this will help them develop a modern enterprise annuity (401k) system. We continue to press China through the S&ED and other channels to re-open its enterprise annuities licensing system and grant licenses to qualified U.S. financial services companies to supply enterprise annuities services and financial products on the same basis as Chinese firms. This will remain a high priority for the U.S.-China Strategic and Economic Dialogue.

Neal Question 7: Once a trade secret is disclosed, it permanently loses all of its value. One recent estimate places the value of trade secrets owned by publicly traded U.S. companies at five trillion dollars. *See* Elizabeth A. Rowe, "Contributory Negligence, Technology, and Trade Secrets," 17 *George Mason Law Review* (2009), 1. I would like to know what the Administration is planning to do to help strengthen the legal infrastructure that applies to the protection and enforcement of U.S. trade secrets in China?

A: We share your deep concerns about cases of trade secret theft and about the problem of the theft of intellectual property more generally. China must ensure that its IPR enforcement system serves to both effectively deter IPR infringement and compensate rights holders who are victims of such infringement. To achieve these goals, China must provide fair, open, transparent, and predictable administrative, civil, and criminal enforcement mechanisms for all forms of IPR, including trade secrets.

The Administration has repeatedly raised the issue of violations of trade secrets with the Chinese government at the most senior levels where we will continue to press China to improve the legal infrastructure to strengthen the protection of trade secrets of both domestic and foreign corporations and to improve enforcement of IP rights. We also are engaged in candid dialogue with our stakeholders about the importance of careful, long-term strategic thinking about the protection and use of their core assets in every market where IPR protection and enforcement remains a challenge.

For Ambassador Marantis:

Neal Question 1: The United States International Trade Commission recently published an important report on the effects of China's IPR theft on the US economy. The numbers were staggering in terms of job losses, including to the IP-intensive manufacturing sector - high tech, transportation equipment, chemicals and consumer equipment - proving that IP is a big

contributor to the manufacturing sector. That study found that nearly a million jobs could be created in the IP-intensive sector of the U.S. economy if China's respect for IP was similar to how the U.S. respects IP. Ambassador Marantis, what options do you have to use this study to secure change from China? Are there cases that the Administration or the ITC can initiate to address these problems?

A: This study underscores the serious challenges we face in China regarding rampant IPR theft. It also sends a clear message to China, and we will continue to be relentless in pressing to achieve sustained improvements in China's IP enforcement. USTR works to protect American IP rights holders in China through a variety of mechanisms – including results oriented dialogue on IPR protection and enforcement, the annual Special 301 Report, and enforcing WTO rules to protect American innovators' IP and market access rights. USTR undertakes this strategy in close coordination with other relevant U.S. agencies, stakeholders, trading partners, and Congress.

- In the case of China, intensive bilateral dialogue has achieved tangible results. For instance, the Administration secured wide-ranging commitments from China in the S&ED and JCCT to eliminate discriminatory “indigenous innovation” criteria used in government procurement and to select industrial equipment for preferential treatment, thus ensuring access to China's market for American machinery manufacturers.
- On software, the United States' pressure has led China to create unprecedented audit and inspection mechanisms to drive the use of legitimate software in the government sector and at state-owned enterprises (SOEs).
- China also has taken steps to address piracy of electronic journals, create more effective judicial rules for addressing Internet piracy, and crack down on landlords who rent space to counterfeiters in China.
- USTR's Notorious Markets out-of-cycle review under Special 301 provisions of the Trade Act of 1974 encouraged significant results such as:
 - A commercial deal between major Western music labels and China's most popular website to provide access to legal content, rather than linking to pirated music.
 - A major Chinese sales website announcing a new trademark enforcement program with major brand owners.
- More systemically, through last year's JCCT and S&ED, we were able to successfully push China to institutionalize its high-level government coordination and leadership mechanisms to enhance long-term IPR protection and enforcement.

But, IPR theft in China remains and we will continue to prioritize this issue in our engagement with China.

Neal Question 2: Ambassador Marantis, what are your expectations for the upcoming JCCT as far as IP is concerned, particularly with respect to software legalization by the SOEs? Isn't this another way for China to subsidize its manufacturing sector by allowing its largest and most profitable SOEs to not pay for the IT they use in the manufacture of products destined for the United States and other markets? China's 12th five-year plan envisions a strengthening of the

SOEs in strategic sectors. What are you doing to ensure that China actually moves on the SOE commitments? Is Treasury helping you with this effort given its work with the Chinese in this area?

A: We continue to engage China at all levels to address software piracy, since this is a major problem, and we have made some progress. In fact, the President himself pressed the issue during last year's State visit by President Hu Jintao.

In response to our efforts, China has taken unprecedented steps to set up mechanisms that can curb this problem, and we are pressing to see concrete change on the ground.

- China agreed at the 2010 JCCT to establish software asset management systems at government agencies, to allocate budgets for legitimate software purchases, and to promote the use of licensed software at SOEs.
- At the 2011 State Visit of President Hu, China further bolstered its commitment to software legalization by agreeing to conduct financial audits focused on the use of legal software in government agencies and to publish these audit results.
- At the 2011 S&ED, China agreed to improve its high-level, long-term IPR protection and enforcement mechanism and strengthen its government inspection mechanism to make sure that software being used by government agencies at all levels is legitimate.
- In the 2011 JCCT, China committed to increase resources devoted to conducting audits and inspections, and to further improve management of government software assets, including by the use of technical means. China also agreed to further promote the use of licensed software in enterprises and conduct additional enterprise software management pilot projects beyond the pilot project for 30 SOEs it has underway.

Securing these commitments required significant coordination across relevant agencies, including with Treasury. While we must see how these steps work out in practice, and much more work remains to be done, China's recent commitments mark a significant opportunity for genuine progress on this difficult issue. We will be following up aggressively through both the S&ED and JCCT processes that are underway for 2012.

Neal Question 3: Ambassador Marantis, China made commitments at the JCCT with respect to continuing to provide the necessary budgeting for software legalization. There are some concerns that China is treating this as a one-off process and the budgets aren't there for continued legalization. How is that proceeding? What are you going to do to ensure that China is treating this as a continuous and on-going process, like all other governments do?

A: As mentioned above, we continue to engage China at all levels to address software piracy, and China has taken a series of unprecedented steps to set up mechanisms that can curb this problem. We share your concern that if such mechanisms and Chinese commitments are not backed up with a continuing focus by China, including by assuring adequate budgets and other resources, progress will cease. We have specifically pressed China in our engagements to allocate continuing, not one-time, budget resources to software legalization. As we engage

China in 2012 to both monitor and implement its prior commitments, as well as to build on prior commitments, we will continue to press China to back up its commitments with real action.

Neal Question 4: Ambassador Marantis, US industry had hoped that there would be substantial increases in sales of software as a result of the government legalization campaign, but the sales increases are still incremental. This obviously needs to be encouraged and it would be useful to understand the USG's strategy. In addition, industry is starting to have some progress with respect to civil and criminal cases. Can you share some information on this and how we can encourage more enforcement activities?

A: USTR works closely with industry to both monitor the progress of China's software legalization efforts, and to develop the best possible ideas for attacking the problem of software piracy in China. We also press at expert and senior levels to remove barriers to fair and speedy legal proceedings, so that our stakeholders can receive the relief they need. We believe that sustained pressure on China from all quarters to ensure that it protects the IP rights of software companies and other holders of intellectual property is critical, and such civil and criminal cases against infringers are certainly an important tool.

Neal Question 5: Ambassador Marantis, with respect to government procurement, USG agencies are required to purchase and use legal software. There are provisions in the FTAs that you have managed to negotiate that extend this obligation to other governments. What are you doing to have China undertake this same kind of obligation, even before it completes its FTA negotiations for its agencies and its vendors? Is there more that we can do to lead by example?

A: Although we are not engaged in FTA-type negotiations with China, we believe that maintaining high-level political pressure on China on the issue of software legalization through negotiating fora like the JCCT and the S&ED, as well as other high-level bilateral meetings, can yield positive results in the area of government procurement of legal software. We agree with you that the United States should lead by example, and the U.S. Intellectual Property Enforcement Coordinator, housed in the White House, has been working with Federal agencies to review the U.S. Government's practices and policies regarding the use of software by Federal contractors and to promote the use of only legal software. Additionally, in January 2011, White House officials issued a joint statement to federal executives reminding them that all technology used in the Federal government must be properly licensed in accordance with applicable law. The Administration will continue to lead by example in this area, as we engage other countries like China on the issue.

Neal Question 6: Ambassador Marantis, the Committee is going to do some work on Customs Re-Authorization in the next several months. Every year Customs reports that the number one country for infringed products is China. What should we be doing to address this problem? Are there legislative changes that we can make to ensure that products made with stolen inputs are not allowed entry into the United States?

A: USTR works closely with other offices and agencies, including the U.S. Intellectual Property Enforcement Coordinator, and the agencies within the U.S. Department of Homeland Security with the authority to enforce U.S. IP laws – including U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement -- among many others, to consider additional steps the United States can take to protect ourselves from these illegal, and in some cases, dangerous imports. One area includes enhanced inspections to prevent counterfeit, pirated, or unsafe goods from crossing our borders, as President Obama announced during the State of the Union.

Neal Question 7: Ambassador Marantis, during the hearing, various members of the Committee raised concerns with the protection of U.S. intellectual property in China. Despite some progress, continuing problems with the piracy of software were discussed. I also have significant concerns with China's weak legal infrastructure as applied to both the protection and the enforcement of trade secrets. There are multiple obstacles to trade secret enforcement in China, including an evidentiary burden that is too high, a minimal ability to conduct discovery, low damages that lack any effective deterrent value, and local protectionism. Yet the protection of this valuable IP in China is critical to maintaining the competitiveness of U.S. companies, especially given that U.S. industry is seeing an increase in (i) both state-sponsored and private party misappropriation of trade secrets through cross-border cybercrime, and (ii) government mandated disclosure of trade secrets as a condition of market access or doing business in China. According to iDefense, in 2009, "Chinese state authorities continued their efforts to extend control over their population's use of cyber space ... [and] cyber espionage and cyber warfare planning activities grew incrementally in scope and sophistication." *2010 Cyber Threats and Trends*, iDefense-VeriSign, December 15, 2009. A former White House advisor noted in 2010 that, "every major company in the U.S. and Europe has been penetrated ... China and Russia are stealing peta-bytes worth of information." *Dealing with Sophisticated Threats in Cyberspace without Creating Big Brother*. Richard Clarke; RSA Conference 2010, March 3, 2010, available at <http://www.rsaconference.com/2010/usa/index.htm>. In addition, iDefense reported an increase in Chinese businesses' use of corporate infiltration and disruption attacks against competitors over the course of 2009. For example, the head of the internet monitoring department within Beijing's Municipal Public Security Bureau was arrested for allegedly accepting more than \$5.5 million in bribes to assist a local anti-virus company to defeat its competitor. As an example of the increasing erosion of trade secret protection through government mandated disclosure, a Chinese competition authority would consider the refusal by a successful company to license its trade secrets to a competitor to be an "abuse of dominance" and the company forced to disclose the confidential information if access to it was "essential to innovate and compete." *Guidelines/or Anti-Monopoly Law Enforcement in the Area of Intellectual Property Rights*, Art. 15 (Fourth Draft Revision). Moreover, various multi-national companies have had to disclose trade secrets as part of Chinese foreign investment requirements.

A: We share your deep concerns about cases of trade secret theft and the problem of the theft of intellectual property more generally. China must ensure that its IPR enforcement system serves to both effectively deter IPR infringement and compensate rights holders who are victims of such infringement. To achieve these goals, China must provide fair, open, transparent, and

predictable administrative, civil, and criminal enforcement mechanisms for all forms of IPR, including trade secrets.

The Administration has repeatedly raised the issue of violations of trade secrets with the Chinese government at the most senior levels. I have done so myself in recent exchanges with my Chinese counterpart at the Ministry of Commerce, as has Vice President Biden and Secretary Geithner in his high-level meetings in Beijing last month. We also have been working with China through expert dialogue and other engagement to improve the legal infrastructure for enforcement of IP rights, including trade secrets.

Finally, we are engaged in candid dialogue with our stakeholders about the importance of careful, long term strategic thinking about the protection and use of their core assets in every market where IPR protection and enforcement remains a challenge.

Questions from Mr. Pascrell

For both Dr. Brainard and Ambassador Marantis

Pascrell Question 1: I am deeply concerned about the problem of competition from Chinese State-Owned Enterprises (SOEs). China's meteoric rise since it gained full access to the WTO a decade ago has been extraordinary. It has become the largest global manufacturer. But that was not the result of free market forces alone. Rather, it is the result of deliberate government policies to develop and dominate manufacturing and accomplished by massive intervention in the marketplace. About half of all of the productive assets in China (like steel plants and solar panel plants) are owned or controlled by the Chinese government through state-owned or controlled enterprises. The Chinese government provides, for example, financing at below market rates and raw materials at less than market prices. This gives SOEs a tremendous competitive advantage -- and has shutdown thousands of U.S. plants and cost thousands upon thousands of jobs here when they have had to compete against dumped and subsidized imports from such Chinese state-owned or supported enterprises.

Now the Chinese are intending to have their SOEs invest directly in the U.S. to buy or build commercial facilities. I am concerned about Chinese state actors who want to buy and set up commercial operations in the United States which are going to act at the direction of that government--not based on commercial considerations--to gain market share in the U.S. or get access to finite energy resources.

1.) What is USTR and the Administration doing to ensure that Chinese SOEs and state supported enterprises act based on commercial considerations when they acquire an on-going facility or build a green field facility in the U.S.? As you know, CFIUS only deals with investments affecting national security, but investments and operations by SOEs here that are subsidized by the Chinese government can be just as damaging to our economic security.

A: Together with other agencies and our Embassy in Beijing, we are actively investigating new potential problems relating to China's state-owned and state-invested enterprises (SOEs), in particular following China's implementation of the Twelfth Five-Year Plan, which calls for large amounts of financial and other support for SOEs, particularly those in "strategic emerging sectors" like green technologies.

The Administration has been clear that China must ensure that its SOEs do not receive unfair advantages, such as with respect to access to credit, tax treatment, regulatory applicability, and access to the factors of production, and have pressed for interest rate liberalization. We also have stressed the importance of SOE operations being guided exclusively by commercial considerations, and press for greater transparency in SOE corporate governance.

We are pressing China to address our concerns on SOEs at the highest levels and in a number of bilateral dialogues and high-level engagements, including the Strategic and Economic Dialogues (S&ED) and the Joint Commission on Commerce and Trade (JCCT), as well as in multilateral fora such as the WTO and G20.

In these dialogues, and in multilateral fora like the G-20, we also underscore the need for Chinese SOEs to pay greater dividends into the government's general budget, and to pursue commercial rates of return in their commercial activities. Progress in this area cannot only help ensure that Chinese SOEs compete fairly with other enterprises, including foreign enterprises, but also will enable China to strengthen its social safety net, which is an important element in rebalancing China's economy. With regard to Chinese SOE investment in the United States, to the extent that any acquisition of a U.S. business raises national security concerns, CFIUS has the authority to review the transaction and address such concerns. In addition, Chinese SOEs are of course subject to U.S. competition laws designed to combat anti-competitive behavior.

More broadly, in both the Trans-Pacific Partnership Agreement and Doha Round negotiations, the United States has proposed tough new disciplines on government subsidies and non-commercial financing to SOEs.

2.) What are you doing to ensure U.S. workers and companies can compete in the U.S. market against Chinese SOEs on a level playing field?

A: As we have noted in the answer above, ensuring that U.S. businesses and workers can compete on a level playing field with our trading partners is fundamental to the Administration's trade policy, and we are focused on ensuring that SOE preferences in China or elsewhere do not harm our workers and businesses.

3.) What is the status of the Model BIT and are you addressing this issue within it? Any BIT with China must have strong disciplines for SOEs that invest in the U.S. market.

A: In the context of our BIT negotiations with China and other key partners, we agree that issues raised by SOEs and other state-influenced entities are important. The 2004 model BIT contains a number of provisions that discipline discriminatory or unfair practices by, or in favor

of, SOEs. The Administration is carefully considering whether additional provisions are needed to address the problems posed by SOEs in China's economy and in the economies of other future BIT partners.

For Ambassador Marantis:

Pascrell Question 1: What are your expectations for the upcoming JCCT as far as IP is concerned, particularly with respect to software legalization by the SOEs? Isn't this another way for China to subsidize its manufacturing sector by allowing its largest and most profitable SOEs to not pay for the IT they use in the manufacturing of products destined for the United States and other markets? China's 12th five-year plan envisions a strengthening of the SOEs in strategic sectors. What are you doing to ensure that China actually moves on the SOE commitments? Is Treasury helping you with this effort given its work with the Chinese in this area?

A: We continue to engage China at all levels to address software piracy, since this is a major problem, and we have made some progress. In fact, the President himself pressed the issue during last year's State visit by President Hu Jintao.

In response to our efforts, China has taken unprecedented steps to set up mechanisms that can curb this problem, and we are pressing to see concrete change on the ground.

- China agreed at the 2010 JCCT to establish software asset management systems at government agencies, to allocate budgets for legitimate software purchases, and to promote the use of licensed software at SOEs.
- At the 2011 State Visit of President Hu, China further bolstered its commitment to software legalization by agreeing to conduct financial audits focused on the use of legal software in government agencies and to publish these audit results.
- At the 2011 S&ED, China agreed to improve its high-level, long-term IPR protection and enforcement mechanism and strengthen its government inspection mechanism to make sure that software being used by government agencies at all levels is legitimate.
- In the 2011 JCCT, China committed to increase resources devoted to conducting audits and inspections, and to further improve management of government software assets, including by the use of technical means. China also agreed to further promote the use of licensed software in enterprises and conduct additional enterprise software management pilot projects beyond the 30 SOE pilot projects it has underway.

Securing these commitments required significant coordination across relevant agencies, including with Treasury. While we must see how these steps work out in practice, and much more work remains to be done, China's recent commitments mark a significant opportunity for genuine progress on this difficult issue. We will be following up aggressively through both the S&ED and JCCT processes that are underway for 2012.

Pascrell Question 2: China made commitments at the JCCT with respect to continuing to provide the necessary budgeting for software legalization. There are some concerns that China is treating this as a one-off process and the budgets aren't there for continued legalization. How is that proceeding? What are you going to do to ensure that China is treating this as a continuous and on-going process, like all other governments do?

A: As mentioned above, we continue to engage China at all levels to address software piracy, and China has taken a series of unprecedented steps to set up mechanisms that can curb this problem. We share your concern that if such mechanisms and Chinese commitments are not backed up with a continuing focus by China, including by assuring adequate budgets and other resources, progress will cease. Because we share that concern, we have specifically pressed China in our engagements to allocate continuing, not one-time, budget resources to software legalization. As we engage China in 2012 to both monitor and implement its prior commitments, as well as to build on prior commitments, we will continue to press China to back up its commitments with real budgets.

Pascrell Question 3: US industry had hoped that there would be substantial increases in sales of software as a result of the government legalization campaign, but the sales increases are still incremental. This obviously needs to be encouraged and it would be useful to understand the US's strategy. In addition, industry is starting to have some progress with respect to civil and criminal cases. Can you share some information on this and how we can encourage more enforcement activities?

A: USTR works closely with industry to both monitor the progress of China's software legalization efforts, and to develop the best possible ideas for attacking the problem of software piracy in China. We also press at expert and senior levels to remove barriers to fair and speedy court proceedings, so that our stakeholders can receive the relief they need. We believe that sustained pressure on China from all quarters to ensure that it protects the IP rights of software companies and other holders of intellectual property is critical, and such civil and criminal cases against infringers are certainly an important tool.

Pascrell Question 4: In its WTO accession agreement, China made commitments to protect against unfair commercial use and disclosure of undisclosed test and other data submitted to authorities in China to obtain marketing approval for pharmaceuticals. Protection under the agreement is supposed to be at least 6 years, although none is afforded in practice. What will you do to ensure that China protects regulatory data in a way that lives up to their agreements and supports the innovative economy we have built?

A: USTR has, in coordination with U.S. stakeholders and the U.S. Department of Commerce, among others, pressed China to afford meaningful protection (against unfair commercial use, as well as against disclosure) to confidential test and other data required to support an application for regulatory marketing approval for pharmaceutical products. While there has been some progress, including under the JCCT, we all agree that the time is now for China to implement

necessary revisions to its laws, rules, and regulations, so that all pharmaceutical products utilizing new chemical entities would receive the full 6 years of protection. We will continue to work with stakeholders and the Chinese government to ensure China's implementation of its WTO commitments in this area.

