

**THE U.S.-CHINA TRADE RELATIONSHIP:  
FINDING A NEW PATH FORWARD**

---

---

**HEARING**  
BEFORE THE  
**COMMITTEE ON FINANCE**  
**UNITED STATES SENATE**  
ONE HUNDRED ELEVENTH CONGRESS  
SECOND SESSION

—————  
JUNE 23, 2010  
—————



Printed for the use of the Committee on Finance

—————  
U.S. GOVERNMENT PRINTING OFFICE

68-394—PDF

WASHINGTON : 2010

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON FINANCE

MAX BAUCUS, Montana, *Chairman*

JOHN D. ROCKEFELLER IV, West Virginia	CHUCK GRASSLEY, Iowa
KENT CONRAD, North Dakota	ORRIN G. HATCH, Utah
JEFF BINGAMAN, New Mexico	OLYMPIA J. SNOWE, Maine
JOHN F. KERRY, Massachusetts	JON KYL, Arizona
BLANCHE L. LINCOLN, Arkansas	JIM BUNNING, Kentucky
RON WYDEN, Oregon	MIKE CRAPO, Idaho
CHARLES E. SCHUMER, New York	PAT ROBERTS, Kansas
DEBBIE STABENOW, Michigan	JOHN ENSIGN, Nevada
MARIA CANTWELL, Washington	MICHAEL B. ENZI, Wyoming
BILL NELSON, Florida	JOHN CORNYN, Texas
ROBERT MENENDEZ, New Jersey	
THOMAS R. CARPER, Delaware	

RUSSELL SULLIVAN, *Staff Director*

KOLAN DAVIS, *Republican Staff Director and Chief Counsel*

# CONTENTS

## OPENING STATEMENT

	Page
Baucus, Hon. Max, a U.S. Senator from Montana, chairman, Committee on Finance .....	1

## ADMINISTRATION WITNESSES

Locke, Hon. Gary, Secretary of Commerce, Department of Commerce, Washington, DC .....	3
Kirk, Hon. Ronald, U.S. Trade Representative, Executive Office of the President, Washington, DC .....	4

## ALPHABETICAL LISTING AND APPENDIX MATERIAL

Baucus, Hon. Max:	
Opening statement .....	1
Prepared statement .....	37
Grassley, Hon. Chuck:	
Prepared statement .....	39
Kirk, Hon. Ronald:	
Testimony .....	4
Prepared statement .....	41
Responses to questions from committee members .....	43
Locke, Hon. Gary:	
Testimony .....	3
Prepared statement .....	73
Responses to questions from committee members .....	79

## COMMUNICATIONS

American Apparel & Footwear Association (AAFA) .....	99
American Beekeeping Federation, American Honey Producers Association, and National Honey Packers & Dealers Association .....	103
ANSAC (American Natural Soda Ash Corporation) .....	111
American Wire Producers Association (AWPA) .....	116
Stewart, Terence P. ....	125



## **THE U.S.-CHINA TRADE RELATIONSHIP: FINDING A NEW PATH FORWARD**

**WEDNESDAY, JUNE 23, 2010**

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 3 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Wyden, Schumer, Stabenow, Cantwell, Nelson, Menendez, Hatch, and Bunning.

Also present: Democratic Staff: Bill Dauster, Deputy Staff Director and General Counsel; Amber Cottle, Chief International Trade Counsel; and Ayesha Khanna, International Trade Counsel. Republican Staff: David Ross, International Trade Counsel.

### **OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The hearing will come to order.

Albert Einstein said, "To keep your balance, you must keep moving." For many years, the United States-China relationship has been marked by imbalances. We have a significant trade imbalance, we have a worrisome debt imbalance, and there is a lack of balance in China's currency policies.

Our trade imbalance, the focus of this hearing, results from many factors. China continues to erect barriers to U.S. exports. China infringes U.S. intellectual property at unacceptable rates. China discriminates against U.S. companies through so-called indigenous innovation policies. China dumps many of its products on the U.S. market. And China improperly subsidizes many of its exports.

To build a successful relationship, we must address these imbalances. We must restore balance, and to do so we must keep moving forward. But forward movement requires forward thinking. China has changed dramatically. It is now the world's largest exporter and the fastest-growing economy. Consumer demand is increasing exponentially; its Gross Domestic Product is rising sharply.

China is capitalizing on its emerging role as an engine of global growth. It is protecting its domestic industries. It is taking a more active role in the World Trade Organization. And it is finding its place in the global economy.

China has kept moving, but the United States has not. America's approach to China remains the same. The United States continues to pursue the same dialogues to discuss our trade irritants. These

dialogues have helped deepen the U.S.-China economic relationship, but discussions are merely a means to an end. Dialogue alone is not a measurable result.

May's Strategic and Economic Dialogue meeting proved again that we cannot rely on discussion alone to produce movement. We sought ambitious outcomes on China's currency and indigenous innovation practices; we ended up with promises to keep talking.

In our hearing with Treasury Secretary Geithner, I proposed a 4-pronged strategy to rethink U.S.-China trade and economic relations. USTR and Commerce will play key roles in ensuring the success of this strategy.

First, the administration must devise a comprehensive administration-wide plan to improve the U.S.-China economic relations, and each agency must develop a strategy to address its part of the administration-wide plan of the U.S.-China relationship. We need an administration-wide, single plan. We do not have one. This strategy will include dialogue, but it cannot end there. It must include measurable steps for progress in our economic relationship.

Second, the United States must work multilaterally to address trade issues with China. USTR and Commerce maintain robust relationships with key trading partners like India and the European Union, and our agencies must use those relationships to identify and address common concerns raised by China's trade practices.

Third, the United States must look carefully at the tools offered by international institutions such as the WTO. I applaud USTR's strong commitment to enforcing China's WTO obligations. Since 2004, USTR has filed several WTO cases against China, and I urge USTR to consider carefully whether the United States should bring additional cases to ensure that China adheres to its WTO commitments.

Where China's existing obligations are not sufficient, USTR and Commerce must seek to strengthen them. For example, China has long promised to accede to the WTO government procurement agreement, but China has failed to follow through. The United States must seek a timeline for China's accession, and we should seek leverage to ensure that China keeps to that timeline.

Fourth, the United States must take strong unilateral action to address our trade imbalance, even as we pursue multilateral action. USTR must seek suspension of China's indigenous innovation policy. USTR must dismantle Chinese barriers to U.S. agricultural and other exports. And Commerce must apply our antidumping and countervailing duty laws to dumped and subsidized Chinese imports.

China opened the door to appreciating its currency last week, but Commerce must carefully consider whether China's currency practices constitute an improper subsidy under United States law. Taking these four steps will help to achieve results, measurable results. Taking these four steps will help the U.S.-China relationship to keep moving, and doing so should help the U.S.-China economic relationship to find a new balance.

Senator Grassley has a scheduling conflict, so I regret that he will not be able to attend today's hearing. So, we will proceed. He sends his regrets. As you know, he is very conscientious and wants

to attend all the hearings he possibly can, but unfortunately he cannot avoid this scheduling conflict.

All right. Let us introduce our two witnesses. I would now like to introduce Commerce Secretary Gary Locke and U.S. Trade Representative Ron Kirk.

Secretary Locke, welcome to the Finance Committee. Ambassador Kirk, welcome back. As is our usual practice, your statements will automatically be included in the record, and I urge you to summarize. Be pithy, to the point, pull no punches. Just get right down to it.

Secretary Locke?

**STATEMENT OF HON. GARY LOCKE, SECRETARY OF  
COMMERCE, DEPARTMENT OF COMMERCE, WASHINGTON, DC**

Secretary LOCKE. Thank you very much, Chairman Baucus and other members of the Finance Committee. Thank you for this opportunity to discuss this important topic.

The administration and Congress do need to work together to ensure that our economic relationship with China is more balanced and provides more benefits for American workers and businesses here in America.

Over the last 20 years, including as Governor of Washington State where I helped double exports to China, I have watched the transformation of the Chinese economy, and I have seen firsthand how expanded trade opportunities have benefitted both of our countries.

Last month, I led a clean energy trade mission of 24 U.S. companies to China, and on the mission's final day we traveled to Tianjin to visit United Solar Ovonic's manufacturing facility. Chinese workers were assembling solar panels from components made in the company's Michigan plant. In fact, more than 90 percent of the products assembled in Tianjin were made in the United States.

This is a model of what trade can be—not a zero-sum game where increased trade leads to new jobs either in America or in China. There is simply no escaping the importance of the Chinese market to U.S. exporters and companies operating in China. In 2009, as exports to the rest of the world dipped 20 percent, exports to China actually remained stable. Now, thanks to strong Chinese demand and the recovery in prices of agricultural products, our exports to China are growing faster than overall U.S. exports.

That growing interconnectedness would be impossible, of course, without real progress. But progress, which includes China's recent currency announcement, has not happened by accident. It has taken hard work, and we have a plan to build upon it with President Obama's National Export Initiative.

Along with the U.S. Trade Representative and the Department of the Treasury, the Commerce Department has worked hard to remove barriers preventing U.S. companies from getting free and fair access to China's market. The most recent round of the U.S.-China Joint Commission on Commerce and Trade, which Ambassador Kirk and I co-chair, for example, yielded results that restored market access for American farmers and removed barriers for clean energy companies.

The Chinese also agreed to end duplicative regulations for medical device manufacturers and implement new Internet and intellectual property protections, especially relating to technical journals. Still, far more needs to be done before we can be sure that Chinese policies affecting U.S. businesses in China are once again headed in the right direction.

The Commerce Department will continue to rigorously enforce U.S. and international trade laws. In 2009, Commerce initiated 22 antidumping and countervailing duty investigations against imports from China, a 47-percent increase over cases initiated in 2008.

And, as you know, Commerce's Import Administration is currently reviewing allegations in two countervailing duty cases in which the petitioners claim that China's currency policy constitutes a countervailable subsidy. Given the scrutiny that such decisions face on judicial review, the General Counsel's Office and I are monitoring these cases, and, if the facts and the law warrant a decision to investigate, an investigation will proceed.

Make no mistake, the Obama administration is committed to re-orienting our economic relationship with China, and we share your concerns about new indigenous innovation policies, intellectual property protection, and market access. American firms operating in China and exporting to China should, as a matter of basic fairness, have the same opportunities as Chinese companies, and we are committed to ensuring that China lives up to its existing international commitments. But they cannot stop there. The global playing field will not be level unless China starts to take on a broader range of commitments that would bring it in line with the world's other large trading partners.

Our strategy to steadily expand the opportunities that China's growth creates for U.S. companies must be continually recalibrated to better address our key commercial concerns, but we must also maintain cooperative programs that have long-term benefits and dialogues that enable us to demonstrate the importance of an open, transparent, and fair trading system. Those programs have yielded concrete results with direct benefits to the American people, and I am confident that they will continue to do so.

So, thank you, Chairman Baucus and members of the committee, for the opportunity to appear before you today, and I look forward to answering your questions.

The CHAIRMAN. Thank you, Mr. Secretary. We deeply appreciate your statement.

[The prepared statement of Secretary Locke appears in the appendix.]

The CHAIRMAN. Ambassador Kirk?

**STATEMENT OF HON. RONALD KIRK, U.S. TRADE REPRESENTATIVE, EXECUTIVE OFFICE OF THE PRESIDENT, WASHINGTON, DC**

Ambassador KIRK. Chairman Baucus and members of the committee, thank you for this opportunity to join Secretary Locke in discussing the complex, yet evolving trade and economic relationship between the United States and China.



Mr. Chairman, as you have noted, America's interests require an approach to China in a strategic and well-coordinated manner, and that is why the Obama administration is speaking with one voice, pressing for change with enhanced dialogue enforcement of America's WTO rights and negotiations that include key trading partners, wherever appropriate.

Secretaries Geithner, Clinton, Vilsack, Locke, and I are working together with the White House in the Strategic and Economic Dialogue, and Secretary Locke and I are driving the Joint Commission on Commerce and Trade to achieve a more robust and outcome-oriented relationship.

USTR's work is driven by our central mission to open markets, enforce America's trade rights, and dismantle obstacles that could cripple opportunities for American workers, farmers, ranchers, manufacturers, and our service suppliers.

Since joining the World Trade Organization in 2001, China has made many important economic reforms and removed trade barriers and opened markets to U.S. exports. This has created new American opportunities for our exporters, as our manufactured goods to export to China have tripled during that period of time. China's strong recovery from the recent global recession has also facilitated recent double-digit growth in American export sectors, from manufactured goods and chemical products to agricultural goods. In fact, our goods and services exports to China now exceed \$85 billion.

But let us be clear: China's implementation of its WTO commitments is incomplete. We all know that we have serious concerns about Chinese policies that limit market access or otherwise skew the playing field in our trade relationship. We are committed to addressing these concerns by setting clear priorities and working in results-driven dialogues.

Our top priorities include addressing indigenous innovation and other discriminatory industrial policies, often intended to benefit Chinese state-owned enterprises and limit our exports, as well as improving enforcement of intellectual property rights and ending non-science-based regulations that block U.S. agricultural exports.

These issues will top the agenda at our revitalized JCCT this fall. Our 2009 JCCT achieved important progress, including restored market access for American pork products and removal of troubling rules affecting the sales of information security products. We are also working through the Doha Round of negotiations toward better market access for U.S. firms in the multilateral context, and frankly a greater contribution from China.

I also know many members of this committee are concerned about China's currency practices. You recently heard President Obama, in response to China's recent actions, state that, "It was a constructive step that can help safeguard the recovery and contribute to a more balanced global economy." He will discuss these and other issues with China directly at the upcoming G-20 summit in Toronto.

Treasury Secretary Geithner also welcomed China's announcement, but also noted the real test will be how far and how fast China allows its currency to appreciate. We will continue to monitor and raise this issue in every forum.

Mr. Chairman, you recently suggested that our administration should be willing to take strong action on trade issues regarding China, and we are prepared to use the full range of enforcement options where dialogue fails. The United States, under the Obama administration, has been the most active and the most successful of any WTO member in bringing WTO dispute settlement cases against China. Our most recent case challenged China's use of export restraints on key raw materials, which have hurt U.S. workers and companies in the U.S. steel, aluminum, and chemical sectors.

You have our commitment to continue to coordinate with other agencies across the government, as well as the Congress, to execute a comprehensive and effective China strategy. We will also work with China in other fora to open up their markets for America's exporters as well.

In closing, let me simply reiterate the importance of getting our relationship with China right, and we look forward to working with you to make that happen.

Thank you.

The CHAIRMAN. Thank you, both.

[The prepared statement of Ambassador Kirk appears in the appendix.]

The CHAIRMAN. Let me ask a question. When anybody in our country has a defense-related question, what Cabinet Secretary is the appropriate person to go to? When a member of Congress has a defense-related question, what Cabinet Secretary does that member of Congress go to for an answer?

Secretary LOCKE. It would be the Secretary of Defense.

The CHAIRMAN. Right. Let us assume one has a foreign policy question, a member of Congress has a foreign policy question. Who does that member of Congress go to, what Cabinet Secretary?

Secretary LOCKE. The State Department.

The CHAIRMAN. Let us assume a member of Congress has a question about the United States' economic policy toward China. Whom does he or she go to? What one Cabinet Secretary does he or she go to?

Ambassador KIRK. Well, there is not one Cabinet Secretary, as we share the responsibility between Secretary Locke, myself, and Secretary Geithner. But Mr. Chairman, I would submit, we are working in the most coordinated fashion, under the direction of the White House, to approach China in the strategic manner that you have articulated and asked us to do so.

The CHAIRMAN. Why do other countries not just divide and conquer? Well, we will go to Commerce for this, and we will set them off against USTR, against Treasury, et cetera. I mean, I am sure many countries, including China, are not dumb. It is, divide and conquer. If there is no one agency to go to, no one Cabinet member to go to, where do we, members of Congress, go?

Secretary LOCKE. Well, I do not know that the United States has ever had a Department or a Secretary that is focused on any one country, just as we do not have a Secretary—

The CHAIRMAN. I am talking about policy, our economic policy. You can break it down. It could be China, or generally. I am sorry I interrupted you. Go ahead.

Secretary LOCKE. No, no. That is fine. That is fine.

The CHAIRMAN. Go ahead.

Secretary LOCKE. Well, I think that, as Ambassador Kirk indicated, the economic relationship of the United States with respect to economic policies, domestic policy, international policy, and with respect to trade policy, depends on the jurisdiction. But while we do have segregated responsibilities—USTR enforces and focuses on our government-to-government relationships and our treaty obligations, and Commerce deals with private entities—nonetheless, we are all very coordinated. I consult with Ambassador Kirk very extensively as we go into these JCCT meetings, as we meet with foreign officials, and we do the same with both the White House and with Secretary Geithner.

The CHAIRMAN. I just have to tell you, I am very concerned that there is not sufficiently one point to go to, one person, one Cabinet member who is in charge and is, therefore, accountable. Around the United States, we have all these different departments, each doing different things. I understand the good intent to coordinate, but I also think that we are inefficient, we are not sufficiently focused, given the intensive competitive pressures in the world.

We have to very significantly reorganize ourselves, so we are focused much more on economic progress, jobs, and with special attention to our foreign competitors. Also, we have laws that are very complex, your countervailing duty obligations, Mr. Secretary, as well as different obligations that the USTR has. I just think it behooves us to come up with a single department head.

Now, one can say that that person could be in the White House, but White House personnel come and go, Presidents come and go. I just do not think it is sufficient, although some suggest that we designate somebody in the White House to work to coordinate all this. I am just very concerned.

As a consequence of our failure to have a person, we do great in foreign policy, we do great in defense policy, but we do not do that great in economic policy. I think one of the big reasons is because it is just so splintered, it is so disaggregated, it is so spread out, it is just so unfocused. It behooves all of us, in my judgment, to try to figure out a way to get much more focus than we currently have. Your thoughts?

Ambassador KIRK. Well, Senator, I would agree with you, we need more coordination. I would submit to you, I think this administration, the Obama administration, has tried to do just that. I would also remind you that, in the State of the Union, the President laid out a National Export Initiative and created an Export Promotion Cabinet, specifically to drive us in a more strategic manner, in a coordinated manner, in our trade and export policy. We will be presenting a plan to the President in September that we will be happy to come back and share with this committee as well, but obviously we would welcome your thoughts as to how we can do even better.

The CHAIRMAN. My time is about to expire. We need measurable results, too. Until we get this focus on what I am suggesting, we need measurable results in what we are doing.

Let me just ask this question, just because I am curious. What is the software piracy rate in China? What percent of software in China is pirated?

Ambassador KIRK. We have spent quite a bit of time, with the industry in particular, on this.

The CHAIRMAN. What is your best guess?

Ambassador KIRK. It is difficult for them to calculate. We have heard anywhere from, at least of the government-used software, that almost 70 percent of what they use is pirated off a copyright. I have spent a lot of time with some of the software developers that have a calculation, where they know, for every PC sold, for example, in the United States, that they expect to sell roughly \$200 worth.

The CHAIRMAN. That is right. The figure I have is about 80 percent. It is my understanding that Chinese companies will admit that maybe the first 25 percent is legitimate, the rest is pirated. That is just their policy with that company. It is well-known in China, for example.

So one of my main questions is, what are you doing about it? Do you have benchmarks, do you have dates by which that 80 percent will get reduced to a certain level or not? Do you have dates, do you have benchmarks, do you have goals, timetables here? How are we going to solve this? We talk about software ad infinitum around here. I want results. So, Mr. Ambassador, tell us your results plan.

Ambassador KIRK. Well, we have used all of the tools that we have, both through JCCT and direct engagement, and working with the industry as well, to approach China, first of all, to strengthen their own intellectual property rights, particularly on enforcement and piracy.

The CHAIRMAN. Do you have a timetable?

Ambassador KIRK. Our timetable is to get it done as soon as we can, Senator. I do not have the specific metrics you are asking for, but we will work to develop those.

The CHAIRMAN. With all due respect, if you do not have a timetable, you do not have a policy, in my judgment.

Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman. I appreciate it. It is around 79 percent. I do not think there is much doubt about that.

Now, Mr. Ambassador, on June 21, the *New York Times* reported an unnamed senior administration official had stated, since China has agreed to a very modest increase in the value of its currency, this had "significantly changed the dynamics of the G-20 meeting." Removing the currency issue is the dominant item on the agenda. Mr. Ambassador, is that accurate? Is the Chinese currency issue not going to be the dominant issue of these talks?

Ambassador KIRK. Not being familiar with, first of all, whoever this unnamed official is, I cannot speak to the accuracy of that. I would only reiterate what President Obama stated, in paraphrasing, that this was a welcomed sign, but we do not see this as the end of that discussion at all. The President made it clear that this would be the subject of continued concern and talks at the G-20 summit.

Senator HATCH. Well, a related question. Dr. C. Fred Bergsten of the Peterson Institute of International Economics has called for the United States to adopt a multilateral approach in order to convince the Chinese to appreciate the yuan.

Specifically, Dr. Bergsten has argued, “The Chinese are more likely to respond positively to a multilateral coalition rather than bilateral pressure from the United States, especially if that coalition contains a number of emerging market and developing countries whose causes the Chinese frequently claim to champion.”

Is the administration taking steps to put such an international coalition together? If so, what are those steps? Are there similar movements under way to address the intellectual property rights theft in China?

Ambassador KIRK. On the latter, I can speak much more definitively, Senator, as we have had some of our greatest successes in pushing back on some of China’s policies as they relate to intellectual property in software, when we have done so, working in coordination in particular with the European Union, Canada, Japan, Germany, and in some cases some of these emerging markets.

I think you do know that the issue of China’s currency, at least as has been reported in the papers, is one that has been addressed not only by the United States, but there have been expressions of concern from the European Union, Korea, and other countries. But I would have to defer to Secretary Geithner and the President on the extent of our coordination with our other multilateral partners.

Senator HATCH. All right. If you would, refer to them and see if they can get us some answers on that. All right?

Ambassador KIRK. Yes, sir.

Senator HATCH. Mr. Ambassador and Mr. Secretary, we welcome both of you. We are pleased to have you before us.

Now, the Congressional Research Service recently stated, “Counterfeits constitute between 15 percent and 20 percent of all products made in China and are equivalent to about 8 percent of China’s annual Gross Domestic Product.” Unfortunately, this problem seems to be getting worse. I remember back in 1995, the Chinese pledged to close down all large intellectual rights violators. Well, that obviously did not happen. Under Republican and Democratic administrations, it has not happened.

I also remember that the Chinese even launched a year-long campaign against piracy in 2005. I cannot discern any long-term, overall benefit from that particular exercise. Most surprising, to date, I am unaware of a published, specific, and detailed plan for permanently solving the issue of Chinese intellectual property violations.

Now, such a plan is not even included in the administration’s 2010 Joint Strategic Plan on Intellectual Property Enforcement, which was released just yesterday, if I recall correctly. Therefore, why should we believe this administration will be any more effective in getting the Chinese to respect intellectual property rights?

Ambassador KIRK. Senator, while the Strategic Intellectual Property Rights Enforcement Plan, released yesterday, did not speak specifically to China, I can assure you the issue of enforcement of intellectual property rights is at the top of every discussion agenda we have with China, both in the Strategic and Economic Dialogue and in the JCCT.

We have had some areas of success, but one of our challenges in the campaign that you referenced is that China tends to seek enforcement through administrative remedies. We continue to push

them very aggressively by including them and highlighting their shortcomings in our Special 301 report and other fora, to put in place a much stronger law enforcement regime that would help to protect the rights of intellectual rights holders as well.

But I think our biggest aid is going to be the growth of China's burgeoning entrepreneurial community that is beginning to see the damage to their entrepreneurial efforts of this theft and piracy in copyrighting.

Senator HATCH. Thank you.

Go ahead, Mr. Secretary.

Secretary LOCKE. Yes. I would like to also comment on the multilateral pressure. We have seen the results and fruits of multilateral pressure on China with respect, for instance, to their recent proposal on indigenous innovation. Because of a very concerted, coordinated, multilateral comment and protestation to China's proposed policies, the Chinese withdrew that, suspended it, or have delayed it and have made modification.

The CHAIRMAN. I am sorry, Mr. Secretary. I missed that. What did they withdraw?

Secretary LOCKE. Well, they have not formally withdrawn it, but they did not act on it. They actually came up with a second version. We have still had a variety of different countries comment on it and protest it.

The CHAIRMAN. I am sorry. The second version of?

Secretary LOCKE. The indigenous innovation policy.

The CHAIRMAN. They are going to withdraw their second version of that?

Secretary LOCKE. No, no, no. They came out with a second version, following international, multilateral concerns. They came out with a second version, or a revised version. They have, however, delayed the implementation of that second version. That was part of the results of the Strategic and Economic Dialogue, where they have now agreed to enter into consultation and discussions with the U.S. and others on how to achieve innovation without necessarily—as we are concerned about the way in which they are doing it—discriminating against U.S. companies.

But my point is that a multilateral approach has been successful so far in China not moving forward with their proposed indigenous innovation policy. We are still very concerned about the more recent draft, but the good news is that they have not moved forward to implement or to compile the list of favored, preferred innovation companies as they had originally scheduled. Now we are in discussions with them on next steps.

Let me just say that, with respect to counterfeiting and IPR, we have proposed a third IPR attaché. We already have two in China, and they work specifically with U.S. companies, and especially medium-sized companies, to really attack some of these issues.

It is uneven in China, IPR enforcement. Some of the provinces with more high technology are moving aggressively or more aggressively on IPR violations because they recognize, as Ambassador Kirk indicated, that it is in their own economic self-interest to protect innovation. They are also moving forward with respect to IPR and counterfeiting issues with respect to food or medicine because they know that it affects the health and safety of their own resi-

dents. But with respect to so many other goods, whether it is shoes, DVDs and movies, the enforcement is not there. We must continue to put pressure on them and use every tool that we can to have them halt these violations.

The CHAIRMAN. Thank you.

You have one more question?

Senator HATCH. Can I just ask one more?

The CHAIRMAN. One more? Yes.

Senator HATCH. The chairman has been kind enough to let me ask one more.

Mr. Secretary, and Mr. Ambassador, if you care to comment, as Chairman Baucus has pointed out to the members of this committee and to all of us, 79 percent of all business software being used in China has been pirated. However, according to the International Intellectual Property Alliance, the owners of the notorious Chinese website called Tomato Garden were recently convicted by a Chinese court. The Alliance estimates that, since 2003, this website facilitated the downloading of 10 million copies of the Windows XP software.

Now, this is a positive development, yet this seems to be an exception to the rule. For example, the Alliance notes that 99 percent of all music files being downloaded in China are pirated. Ninety-nine percent. In addition, the Entertainment Software Association estimated, in 2009, that over half a million of its members' titles were illegally downloaded in China. Therefore, my question is, why were Tomato Garden's owners convicted when other large-scale, illegal websites remain open for business? What are the lessons to be learned from this event?

The CHAIRMAN. I would ask you to be brief, please, because there are other Senators waiting.

Ambassador KIRK. Well, Senator, I will get back to you. I cannot speak to why we have not been able to get China to move more aggressively on these others, but we do work with them and encourage them in every case to bring legal enforcement, to have strenuous and real enforcement. It is in our interests and in China's interests that they do so. This is of the highest importance to us. I would love to tell you that there was just a silver bullet we could fire in this issue. It is a major problem, but it is one of the reasons it gets such high attention within my office, and in the Department of Commerce as well.

The CHAIRMAN. Thank you, Senator.

Senator Wyden? Senator Wyden, you might continue to run this hearing if I am not back.

Senator WYDEN. All right, Mr. Chairman. Thank you. Thank you for allowing us to have this series of hearings as well.

Gentlemen, as you know, the Pacific Rim countries are a fast and growing market for U.S. exporters, and I am of the view that to tap the potential of these markets is a prerequisite to achieving the President's goal of doubling exports in the next 5 years.

Also, as you know, China is projecting an economic model in the Pacific that is unfortunately harmful to American interests: few rights for workers, state-owned enterprises, disregard for intellectual property, as Senators have been mentioning.

So I want to ask you this afternoon about the opportunity to create an alternative model, and I believe that opportunity is going to present itself at the Trans-Pacific Partnership. Another round is coming up in the next few months.

So here is the question. The key country for looking at this alternative would be Vietnam. Now, Vietnam may not be able to implement today all the commitments that the United States has come to expect of a free trade agreement, but I would very much like to see us get some short-term benefits, particularly improved access to that market for our exporters, for green goods, for the value-added kind of products that I would like to see us get into Vietnam.

So my question to you is, what would you think about the idea, at the Trans-Pacific Partnership, of trying to come up with a more pragmatic pathway that would get us these short-term benefits, improved access to the Vietnam market, but say, in effect, to the Vietnamese, when you improve workers' rights, when you protect intellectual property, we can use this as a pathway to a broader agreement, what would amount to a free trade agreement.

What do you think of this idea? What are your thoughts? Because I do not want to see China with an economic model that is hostile to our workers and intellectual property and our principles get a bigger toehold in countries like Vietnam. Are you open to those kinds of ideas, either one of you?

Ambassador KIRK. Senator, if I might—since we have taken the lead on pushing forward the Trans-Pacific Partnership—I would say that I would agree with you almost in total, except I want to leave open the issue of whether we would seek a different path for Vietnam.

Senator WYDEN. Well, before you do that, and I appreciate that, understand that this is not so much a different path, it is an alternative way to get on the path that right now we are not getting on.

Ambassador KIRK. The good news, and in the interest of brevity, in terms of your introductory comments about the importance of the market, particularly as sort of a competitive hedge against China, that embraces very much our rationale for why the United States made the decision and President Obama announced, at last fall's APEC summit, that we would move forward aggressively to engage in this Trans-Pacific Partnership.

The good news is, we have completed two rounds of negotiations. We just completed the second round in San Francisco last week. But the key to this new trade agreement in this critical region of growth is that all of the partners, including Vietnam, Senator, have agreed to the highest-standard free trade agreement that we can negotiate, particularly on those issues that you specifically enumerated: the rights of workers, in terms of protecting the environment, and more particularly, enhancing trade and environmental goods and services and intellectual property rights.

At least at this stage the good news is, to this point, Vietnam has said, we understand that the bar has been set very high, and we ascribe to those beliefs. So I think it may be a bit premature at this point. Vietnam has one more round in which to make a determination to say they are in or out, but right now we would like to keep encouraging them to walk down this path with us in which they



would agree to the highest standards that the other eight countries have all agreed to. If we can achieve that, then we not only achieve your goal, but one that is even stronger.

Senator WYDEN. Secretary Locke, do you want to add anything to that?

Secretary LOCKE. Well, Ambassador Kirk is the lead negotiator with respect to the Trans-Pacific Partnership, and I do know that obviously Vietnam provides enormous opportunities for U.S. companies, and that the U.S. companies can help the people of Vietnam achieve a higher standard of living, which then creates a win-win situation. I also know that the leaders of Vietnam would much prefer, or oftentimes prefer, to enter into a relationship with the United States, so we need to capitalize on that.

Senator WYDEN. Here is my only point, and my time has expired. It is hard to support a full, free trade agreement with Vietnam when the country does not have any track record of enforcing intellectual property rights and getting us the improvements we need in workers' rights, so we want to get to exactly the place you are talking about, Ambassador Kirk. I just think we need to achieve some concrete objectives now, like getting us these markets for our green products and value-added agriculture and the like while we get on the path to a free trade agreement.

Mr. Chairman, thank you.

The CHAIRMAN. Thank you, Senator, very much.

Senator Stabenow?

Senator STABENOW. Thank you, Mr. Chairman.

Welcome to Secretary Locke and Ambassador Kirk. First, let me say I appreciate your efforts and actions that have been taken. I can only say, on behalf of the people of Michigan, that we need many more. We need to be aggressively focused.

Secretary Locke, I am pleased to be a part of the Export Council that the President has established, and through your leadership as well. But in my judgment, if we do not address trade enforcement issues, we are going to be exporting jobs and not products, and we want to export products, not our jobs. That is the whole point of what we are talking about here. If we do not get a handle fully on what China is doing, I do not know how we meet the President's export goals. That is of great concern to me.

So the actions that you take, and I would say the message from the people of Michigan is, whether or not you act on currency as a subsidy affects the people of my State, and jobs. Whether or not you act on WTO agreements, whether or not you act on currency or intellectual property rights or what happens on procurement, all of those things directly relate to our people and what is happening in terms of jobs right now.

As you know, Senator Schumer and I have combined two bills on currency into one that gives very clear authority and requirements to both USTR and Commerce in terms of identifying currency as a subsidy, which it is. They are getting artificial discounts to bring products in now every single day, and it is unfair, and it is a violation, and we peg it to the definition under the International Monetary Fund, so it is WTO-compliant.

We also have specific requirements for USTR under the WTO. So, the first thing I would say to you is that we need to see more

than just talk from China. We have been hearing that for years, and years, and years. So I am glad it is going to be raised by the President, but frankly I think we have to take some very specific action.

I would welcome your response to that, but I also want to add something else, and that is on this indigenous innovation policy. I am glad that there has been a multinational push-back on this and that China is reevaluating, but we all know that this is an extremely serious issue. Senator Graham and I have introduced a bipartisan bill that very simply says that, until China signs the Government Procurement Act, which they have now had 10 years as a member of the WTO to sign, until they sign that, that it will be our policy not to make any exemptions for China under the Buy America Act or the Buy America provisions.

We have been told that there were no items being purchased from China, but Exhibit A—and this came from my colleague in the House, Mark Schauer—shows a Census hat made in China and one that is made in the United States. In fact, it is a GM plant 5 minutes from my house in Lansing. So we do not need to be purchasing these from China when they are made in the United States. We also know that tires, bullets, and ammunition as well have been purchased from China.

So I would like you both to react both on currency, but also whether you will work with us to close the loopholes on the Buy America provisions and make it very clear we are not going to do business and provide American tax dollars to China unless they open up their procurement processes to our businesses.

Secretary Locke?

Secretary LOCKE. Let me take a first stab at this. We are pleased with the support we received multinationally with respect to China's proposed indigenous innovation proposal and policy, just as it was through multilateral concern and comment that the Chinese withdrew their previous Green Dam filtering software proposal. So we do know that, the more that other nations join in these issues and focus on the issues, the better the response will be.

We are very pleased that China has made recent announcements regarding its currency. As Ambassador Kirk indicated, the issue of currency rebalancing of the world economy will obviously still be a very central part of the G-20 discussions.

The Chinese have indicated that they hope to present a proposal with respect to the Government Procurement Agreement this summer, and we look forward to analyzing their proposal that they might submit. But with respect to the Census purchasing the hats that you have talked about, the Census Bureau spent money for promotional materials to help us achieve a 70-73 percent mail-back response rate with respect to the 2010 Census, much higher than folks ever thought possible. It matched the mail-back response rate of the year 2000, despite all the predictions to the contrary that we could not even come close to the 2000 response rate. A lot of that depended on media, through minority media outlets and publicity by mayors, but also promotional materials.

Senator STABENOW. Yes. With all due respect, I appreciate that, but it does not need a hat made in China.

Secretary LOCKE. No. But I want to assure you that all of these schedules and all of these purchases were made through U.S. companies, companies that were on the GSA schedule, and that they all had to comply with the Buy America Act. The problem is, or perhaps something we can work with you on, is the Buy America Act does not limit products coming from other countries if it is under a certain dollar value. But I can also tell you, for instance, we are proud of the bags that our door-to-door enumerators used. There are some 600,000 enumerators across the country. This was a \$12-million contract that we provided to the Industries for the Blind in Milwaukee. That is a \$12-million contract that supported some 100 jobs in Wisconsin. The Industries for the Blind did purchase some component parts for those bags from outside the United States, and some of it may have included China.

But under the Buy America provision, because of the dollar amount of this contract, more than 50 percent of the total value was through American input, whether the actual sewing, the design, the printing, and so forth. The same thing with the hats. More than 50 percent of the value was American contribution.

The CHAIRMAN. Thank you, Senator.

Senator STABENOW. I appreciate that. I would just add that, because of currency manipulation, they got up to a 40 percent discount on the price as well.

Mr. Chairman, I do not know if Ambassador Kirk had wanted to respond to that or not.

The CHAIRMAN. We have to move on.

Senator STABENOW. All right. We will do that later. Thank you.

The CHAIRMAN. We will have another round.

Senator Nelson, you are next.

Senator NELSON. Gentlemen, thank you for your public service. Chinese drywall. It has been a sad tale. Defective products. The chairman listed in his opening comments all the trade that goes on. This is not the first time. It was defective Chinese toys years ago. We had a Consumer Product Safety Commission that did absolutely nothing for years. Even at the beginning of this administration we could not get the acting Chairman out of there. Finally, we were able to get Inez Tenenbaum in, and she is cracking the whip. She then did her research. That took a long time.

It out-gasses sulfur. When you go in, it smells like rotten eggs. The EPA and the HHS and the CDC say they cannot see any medical/health effects, but the examination certainly found out that what these sulfur-type gasses do is, they corrode every metal in the house. So you go into one of these houses, and all the air conditioning coils are corroded, they have to be replaced. Every piece of metal in the house is corroded. As a result, the values have just plummeted. Here is the poor homeowner. The bank will not work with them on their mortgage, the insurance company says we do not know you. They go to the home builder, and the home builder has gone bankrupt. Here is the poor homeowner, living in a house that is unlivable. They cannot sell it because the value has plummeted.

Now, there is a courageous Federal judge in New Orleans who has issued two or three rulings. The question is not whether or not these companies are liable. The question is, how much is the dam-

age? What he has basically said is, the only way you can remedy the situation is to strip it down to the studs in the walls, rip out all of the wiring and the pipes, and start over. Of course, that is a huge expense. That is the ruling of the court. So I come back to you.

I went to China last summer. I was blown off. Really. Inez Tenenbaum has been a couple of times; Mr. Ambassador, you have as well. We now have the finding by the Consumer Product Safety Commission that there are 10 companies that brought this in. Nine of the 10 companies are companies owned by the Government of China.

During the Nuclear Security Summit, I sought out and talked to the President of China, and I asked him, has anybody briefed you about this, and he said no. I said, well, Mr. President, you need to get briefed because this is a real problem. You have a great credibility problem with a defective product that has been shipped in from China by a number of companies, and it is harming our people. It is certainly going to besmirch your reputation for quality goods. Can you all tell us what in the world we can do from here? Because, at the end of the day, the Government of China is going to have to be financially responsible.

Ambassador KIRK. Senator, I know you raised this issue when I was before you when we presented the President's trade agenda. We continue to stand ready to assist and work with the Consumer Product Safety Commission. You specifically asked me if I would elevate this to the level of our discussions with our colleagues at the JCCT in April. We did that. We will do that again. Chairwoman Tenenbaum was in China at the same time that we were there as part of her investigation, but CPSC has the lead on this. We will assist them and work with you in any way that we can to try to help bring some relief.

Senator NELSON. But nothing has worked thus far. What we have to have is, at the highest levels of government—and I am looking at two of them right now—we have to have fist-pounding to get the government of China to face the reality that they own companies that mined this product that was defective that is ruining American people's lives in a number of States, not just my State.

Ambassador KIRK. Senator, we will be happy to work with you in any way we think we can.

Secretary LOCKE. Senator Nelson, I can tell you that I have raised it on numerous occasions on all my trips to China about this issue, and I will personally commit to raising it, even to the highest levels that I possibly can, and to impress upon the Chinese agencies their responsibility.

As a person who has done a lot of remodeling of houses, who has done a lot of drywalling, when you put in drywall, as in this case with the drywall coming from these 10 Chinese companies, you do not know whether it is 5 panels or 50 panels, or 100 percent of the panels in your house that might have to be taken out.

I have seen the pictures of just the devastating corrosive effects it has on the wiring, on the fixtures, you name it, and it is heart-breaking when you are going to have to tear out all of that stuff and replace every single piece, not just the drywall and all the

mudding and taping that goes on, but also all the subsystems within the house. You are right, this is an economic catastrophe for the homeowners. All it takes is just one or two sheets of  $4 \times 8$  drywall to ruin the entire house, and we need to do something about it.

Senator WYDEN. Thank you, Senator Nelson.

Senator Bunning is next in line.

Senator BUNNING. Thank you.

Secretary Locke, Ambassador Kirk, I know you are both brilliant men. Do you know the difference between Communist China and the U.S. Government as far as negotiations are concerned? In other words, if the Secretary of the Treasury would go to China and try to negotiate with the Trade Minister or whomever, the number-one person supposedly that deals with Treasury things, do you know that they do not have to abide by any laws in China?

The Secretary of the Treasury has to abide by the laws that are made by the people who are sitting around this dais up here. That is the problem. All your great negotiations mean zero and have no effect on the Chinese government. If they did, Senator Nelson's problem would be solved. If they did, our currency problem with China would be solved. We have heard for the last 12 years that I have sat on this committee that we were going to negotiate one-on-one with the Chinese.

Senator Nelson also said he got blown off when he went to China. Well, six members of the Trade Subcommittee of this committee went to China and got blown off by the Trade Ambassador, or the head of the Trade Commission, or whatever you call that person in China. They would not meet with the people who make the laws in the United States of America.

Therefore, we have a miscommunication. All your negotiations and goodwill in meeting with those heads of the Chinese government mean absolutely nothing because you have to abide by the U.S. laws.

An example. As of April 15th of this year, the Department of Treasury was to issue a currency report stating whether China was in violation of currency manipulation. We are still waiting on that report, but the law of the United States states that that report was due on the 15th of April, and another one on the 15th of October.

Now, our Secretary of the Treasury does not have discretion. So I want you to explain to me how you expect to make progress with people who have no respect for the law that they say they are abiding by with policies of personal responsibility, CDs, intellectual property, whatever? They make the law and say that they have to abide by it, but they do not enforce it. Now, tell me how we can deal with it.

Another. I will give you another for instance. We went to China and we said, gee, we would like to clean up the atmosphere. We would like to reduce our emissions in the United States as close to zero as possible, and they thumbed their noses at us and said, you go right ahead. We are not going to do it. We are not going to put any restrictions on the burning of coal in the Republic of China. How can you trust these people? Ambassador Kirk?

The CHAIRMAN. Briefly.

Senator BUNNING. Well, I at least get one question.

The CHAIRMAN. You do. You get one.

Senator BUNNING. Thank you, Mr. Chairman.

The CHAIRMAN. You are very welcome.

Ambassador KIRK. Senator, I would argue that your underlying proposition of the difficulty of China's transformation from a Communist state-owned economy to one in which they have made certain commitments to abide by the rule of law and the WTO drives the wisdom of our U.S. policy to have to engage China frequently, to keep our hand at their back, to continue to negotiate with them in every forum possible, whether it is through the Strategic and Economic Dialogue, the JCCT. Where that fails, we take them to the WTO. It is frustrating, but we stay at the table because this is a relationship too big to ignore.

The opportunities for the United States to try to help China understand the extraordinary needs that they have, to transform the lives of 600 million people who live on less than \$2 a day, is one that the United States can be a partner in if they see this as an opportunity to improve their quality of life, but open up their economy to those areas where the United States has an extraordinary gift, extraordinary talent and resources to do so. But there is not one silver bullet. It is frustrating to all of us.

But I would submit to you that we do have cases where we have been able to argue, convince, cajole, push, and China has seen the wisdom and changed their behavior. It is not occurring at a rate fast enough that I think any of us find acceptable, but I think the broader opportunity for the growth and health of our economy mandates that we continue to stay engaged and work with China, as President Obama has said, to get them to rebalance their economy and their overall industrial policies.

The CHAIRMAN. Thank you.

Senator Schumer?

Senator SCHUMER. Thank you, Mr. Chairman.

On the Senate floor, we have now spent several weeks discussing jobs bills, tax extenders, and State fiscal relief, and the Senate is soon poised to take up small business legislation. Every one of these initiatives is important, yet, almost universally, manufacturing and labor now say that the biggest single step we can take to create jobs domestically and improve the outlook for domestic manufacturing is to get China to reform its exchange rate policy.

In other words, if China appreciated its currency and moved towards a floating exchange rate, it would do more for jobs here in the United States than any single stimulus program that we could pass into law, and it would help China's economy as well. After reinstating the dollar-yuan peg nearly 2 years ago, China's central government finally made an announcement last weekend, ahead of the G-20 meetings, that it would gradually allow the yuan to appreciate. The following day, facing domestic pressures, they backtracked on that statement. On Monday, the Chinese allowed the currency to appreciate by 0.4 percent, but then on Tuesday they manipulated the market by buying enough dollars to erase half of those gains.

This is typical of the Chinese government when it comes to currency practices: one step forward almost immediately followed by a step back. The only purpose is to fend off pressure. It is the same

pattern we have seen for years. I have been working on this with Senator Graham for 5 years, and we are tired, we are fed up, and we are not waiting. Nothing ever changes unless you force the Chinese to act.

That is why Senators Graham, Stabenow, and I are determined to bring our bill to the floor soon. We are not placated by these public pronouncements. We want action. We are tired of the Chinese government teasing us along here, pulling back a little there, hoping that baby steps and public statements will convince enough members that real reform to our domestic currency law is not necessary.

The Chinese will keep treating us like they have us on a yo-yo unless we make a serious push for our legislation, and that is what the six of us, three Democrats and three Republicans, are going to do shortly. Our bill commands brought support, both inside and outside the Congress. On the Finance Committee, nearly all of the committee's Democrats supported a similar bill in the last Congress, and every Republican who was on the committee at the time voted in favor of that legislation. I am optimistic we would win a floor vote by a significant margin.

One of the reasons our bill is necessary is that the government has not taken sufficient action, and unfortunately that includes both Treasury and Commerce. U.S. manufacturers have filed more than a dozen allegations that the Chinese government keeps its currency artificially low, providing its exports with an unfair trade advantage, yet the Commerce Department refuses to exercise its authority under current law to investigate. I emphasize again, we do not have to change the law for this because Commerce has the authority right now.

Mr. Secretary, with all due respect, this is becoming similar to how the Treasury Department treats the currency report. Over and over again, dating back more than 5 years, the government finds a technical reason to delay action, under both Republican and Democratic administrations. The executive branch refuses over and over again to state the obvious and exercise its authority under law, and that is why legislation has become necessary. No delay. We have to move it soon.

Now, I recognize the issues are tough. I know in some cases the government has taken action. For example, Ambassador Kirk, I want to recognize, under your leadership, USTR has initiated more trade enforcement actions in China, against China, in the last 18 months than the Bush administration did in the previous 8 years, so progress is being made.

But on the currency issue, not enough is being done. You cannot do it little product by little product. Currency affects every product—manufacturing, services, imports, exports—and we are losing jobs and wealth. Every day, we are making America less of a power, every day, because we allow the Chinese to do this and do not take any action in response.

So let me turn to my questions, or question. I just have one because I only have 35 seconds left. Why has your Department, Secretary Locke, refused to act on allegations that Chinese manipulation of currency puts our products at an unfair advantage, and

when will Commerce fulfill its statutory responsibilities and initiate the CVD case on currency? Then I am finished.

Secretary LOCKE. Thank you very much, Senator. I agree with you that the appreciation of the currency would do more to help the sale of U.S. goods, and it is essential to the world economic rebalancing that President Obama has supported and called for and urged on the Chinese leaders in all of his face-to-face discussions with them.

With respect to the actions by the Department of Commerce, we have considered the issue of whether certain currency practices involving multiple exchange rates constituted countervailable subsidies in the past, and in some cases we have ruled that, where there are multiple exchange rates specifically geared to our exports, that is an offense that we would rule against.

But in none of these cases did they involve an allegation of an under-valued unified exchange rate such as that in China. In the past several cases, there have been allegations about the unified exchange rate of China, but, from our International Trade Administration folks to the General Counsel's Office, we have felt that they did not meet the very specific requirements of U.S. law. In the two cases that are now before us, where the allegations have been amended, we are taking a very hard look at this very specific issue. We are taking a very hard look at it. If the facts and the law merit an investigation, we will launch the investigation.

Senator SCHUMER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. This is a very important subject you raised. It is fundamental.

I believe, frankly, that the U.S.-China relationship, managing that relationship right on both sides of the Pacific, will in many ways determine the standard of living in the United States and China, and in many countries in the world. I think this is the most important relationship in the world, the U.S. and China, and it has to be handled properly, correctly, with balance, with firmness, with mutual respect. I think what you are hearing here, Mr. Ambassador, Mr. Secretary, is a concern that we have to be a bit more self-respectful. There has to be more self-respect. The United States has to stand up for itself more, because, if we do not, we know what the consequences are.

Now, we do not want to go overboard. We do not want to take advantage of China, we do not want China to take advantage of us. I think the major concern here is that we are frankly letting China take advantage of us. The subject the Senator from New York raised is one that all of us have been involved with for some time now. It is difficult, and gets to the first question I asked of you in this hearing: who is in charge of economic policy here?

I am concerned, frankly, that this administration has kind of backtracked a little on pursuing currency a little more aggressively for fear that it upsets some other strategic issues and policy issues, foreign policy issues, defense policy issues, the administration may or may not have with China, whether it is North Korea, whether it is U.N. sanctions against Iran, whatever it is. We do not, as a country, stand up enough for our economic interests as much as we should, and we have not de-linked them. I think they should be de-linked. I think the economic policies that we pursue with China



should be de-linked from foreign policy and other strategic concerns.

Now, to help advance the ball here, I am going to reintroduce the bill that I have introduced before on currency. It is one that Senator Schumer and I have worked with, Senator Grassley and I have worked with, and other Senators, because I think we have to start moving more aggressively with respect to currency. My judgment is that China just took one little baby step to try to get everybody off its back, and that is not going to work. We have to show that we are serious if we want self-respect. So I want to just tell everyone that I plan to introduce that bill. I am considering marking up that bill because we need to move much more aggressively than we have in the past.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

Mr. Secretary, Ambassador Kirk, good to see both of you.

Ambassador Kirk, for many years, China has prohibited Washington agricultural products, particularly apples and potatoes, because they say that they are prohibited based on something other than sound science. So what is USTR doing to open up the agricultural markets for Washington in apples and potatoes into China?

Ambassador KIRK. Well, again, Senator, this is one of those just mixed challenges where we have wins but still have major hurdles with China because of their application of non-scientific standards to bar certain products. The good news is, we have a trade balance. One of the few areas we have a surplus with China is in our agricultural exports, so in the broad picture we are winning.

In the specific areas, whether it is for our beef, or your apples, or those from Senator Schumer's districts, we continue to be frustrated, but we continue to work with Secretary Vilsack and our team from the Department of Agriculture to get China to just follow international OIE standards.

If they will apply internationally recognized sanitary and phytosanitary standards, then we believe America's farmers and exporters will be just fine, but getting them to that point, I will be honest with you, has been difficult. There is a component of our JCCT discussions every year where we deal specifically with these agricultural standards and issues, and we will continue to press those when we meet again this fall. But in certain specific cases like yours, where we have those, we have pressed those individually as well.

Senator CANTWELL. Thank you.

If I could, Secretary Locke, I want to ask you about a separate issue, which is why an Inspector General recommendation said that NOAA should withhold its finalization of practical alternatives on their marine operation center, but NOAA went ahead with that process. Do you think that your agency's acquisition process is above reproach?

Secretary LOCKE. No. Our acquisition processes within NOAA and throughout other agencies of the Department of Commerce need a thorough review, and that is why we have asked for a separate, outside review and acquisition experts from other Federal agencies and the private sector to come in.

We are very concerned about the fact that we have a defect in consistency in the evaluation of, for instance, the new home porting of NOAA ships in the Pacific Northwest, although the Inspector General indicated that the defects were not sufficient to overturn that, and still that the award should have gone to the ultimate site, which was Newport. But nonetheless, the underlying findings are very troubling and do not give me confidence, or I think the confidence that the American public expects, on any type of acquisition procurement process.

We have seen that with the Census Bureau years ago with respect to billions of dollars spent on hand-held computers that did not work, where we paid the money and got nothing for it. We have seen it with the NOAA satellite procurement that was in collaboration with the Department of Defense and NASA.

Senator CANTWELL. With all due respect, Mr. Secretary, I have no information from the Inspector General that says that you should go ahead and that it is the lowest-cost site. So we have asked the Inspector General if that is the case, and he said no. So where are you getting that information?

Secretary LOCKE. I read a report from the Inspector General just last week, prior to my phone call to you, indicating the problems that the Inspector General's Office uncovered, but his conclusion was that these defects would not have changed the fact that the ultimate awardee was still the lowest cost and were nothing to reverse that contract. But I am happy to discuss that with you.

Senator CANTWELL. Well, I would love to see that document that says so. I think when my staff called after our phone call, I think the response was, the Inspector General's Office laughed that that was the answer that NOAA was given. This document that I am reading from, May 26, it basically says that NOAA should examine whether it sufficiently complied with the requirement to consider existing Federal facilities before pursuing a new lease acquisition.

So we are talking millions of dollars here to the U.S. taxpayer by the fact that this facility did not go through a process in which existing Federal facilities were considered. The Inspector General said, go back and do that homework, and you guys said, let us just go ahead. So, I do not think the Inspector General is giving you a blanket go-ahead authority. If you have such a document, I would love to see it.

Secretary LOCKE. Let me just indicate that I also agree with you that it would have been preferable for us to consider outside existing Federal facilities instead of trying to lease from a separate governmental agency, whether State, local, or private sector. I think in looking at all of this, it would have been preferable. I think that is why we need to have a thorough review of the acquisition processes within the Department of Commerce, and especially NOAA, in terms of, are we asking for Cadillac versions of things when in fact we should be looking at more readily available, suitable facilities or products and services before we procure?

Senator CANTWELL. Well, I do not think the Inspector General has said for you to go ahead. I have a letter here from him saying that you should not go ahead. So when the Inspector General says an agency should not be taking action and is costing taxpayers money because they have not done a thorough review, the next step

is, usually Congress gets involved in saying you should not allocate monies to such projects. So, we will look forward to discussing this with you further.

Secretary LOCKE. I understand.

The CHAIRMAN. Thank you, Senator.

Senator Menendez?

Senator MENENDEZ. Thank you, Mr. Chairman. Mr. Secretary, Mr. Ambassador, thank you very much.

I want to echo the remarks of Senator Schumer and the chairman about China currency practices. I heard what you said, but I have heard that before in terms of, we are taking a hard look at it. Well, we have been taking a hard look at this question for some time, it seems. China makes a declaration that they are going to start moving in that direction, and then it is like the Texas Two-Step, Ambassador. You take one step forward, you take two steps back; I think you might know a little bit about that, in terms of dancing, that is.

Well, they do a dance with us that is pretty harsh for us. There is a reason that China is our banker. Their prices are lower, our prices are higher. At the end of the day they are collecting our dollars. Then they come back and they buy our Treasury bills, so they are our banker.

We cannot consistently have the lack of the currency, floating the currency, that they should allow to take place, as most countries in the world permit, to be manipulated as they do. So as long as we are just taking a hard look, they are going to continue to collect our dollars. We are going to continue to unfortunately be their customers at the bank. That is not a good proposition for American businesses and products and services.

So I would like to get a sense, what is wrong with, for example, the legislation that the chairman and Senator Schumer have discussed, which basically says, look, if you allow your currency to float, great. But if you do not allow your currency to float, there is a tariff, there is a consequence. If China does the right thing, they will not face any consequences. If China, or for that fact any other country, does the wrong thing, there is a consequence. What is wrong with that? How is that not protecting the interests of the United States, and at the same time being fair with practices that we are supposed to be observing universally?

Secretary LOCKE. Senator Menendez, I have not, and I do not believe Ambassador Kirk has, taken a position or indicated that we are opposed to that legislation.

Senator MENENDEZ. All right. So do you support it?

Secretary LOCKE. We have not taken a position on the legislation. I have not seen it. I would be more than happy to look at it and comment and work with your office and Senator Schumer's on it. But let me just say, when you ask, why are we taking a hard look? Given the scrutiny that our decision with the Department of Commerce will face on judicial review, the General Counsel's Office, my office, and the office and the career people within the Department of International Administration, are taking a hard look at the facts and the law of the specific case, and, if they warrant a decision to investigate, we will investigate, and we will allow that investigation to proceed.

Senator MENENDEZ. Well, I appreciate it. Your statement is pretty clear, and you are reading from it, and I understand that. The problem is, we see no concrete action that we take to get the Chinese to ultimately live under the same standards that we live under. We are not asking them for something that they should uniquely do. Every other country in the world largely lets their currency fluctuate. I hear about your desire to export more, but this is about American jobs. This is about America's economy at the end of the day.

Right now, we are at a competitive disadvantage in this respect, so I support the chairman. I hope he will move forward, and I look forward to joining with him because I see the G-20—we were going to make this a major issue at the G-20. Then I read comments that we are going to move away because China made some comments that it is going to change its practice. Well, they have done that before and then they go right back to the same business, and now we take it off the G-20 agenda. That would be absolutely wrong. So I hope we are going to pursue it vigorously at the G-20 meeting.

Let me ask you another area, which is intellectual property. Coming from New Jersey, that is incredibly important to us. China's policy to implement indigenous innovation policy is one of the huge problems. No other government in the world restricts government procurement market access on the basis of intellectual property or brand name ownership as China does. Requiring local IP ownership as a condition for access to the market is not only unprecedented, it fails to recognize the collaborative cross-border and global nature of research and development that produces innovation.

Now, we sent you a letter. I appreciate your response that says you share our concerns, but just like in the currency practice, other than sharing our concern and taking a hard look at it, what are we going to do? What are we going to do, for example, in another area of intellectual property protections that are very significant for this Nation, and certainly my State, which is the area of piracy of copyrighted U.S. scientific, technical, and medical journals by Chinese companies? In New Jersey, over 2,000 people are employed by such entities.

So give me a sense of what we are going to be—successfully, I hope—pursuing here as it relates to both the intellectual property issues and this other area of intellectual journals and whatnot. Between the currency practices—I will stop here and say, the Chinese are great, they are prolific in filing complaints under the WTO, but boy, they do that, and by the same token they are in the midst of doing a whole host of things that put us at a competitive disadvantage.

Ambassador KIRK. Senator, thank you for your comments. We agree with you.

Senator MENENDEZ. And I will not ask you to exhibit the two-step either.

Ambassador KIRK. Well, in Texas, at least where I learned it, we at least try to take two steps forward and one step back, that way we get somewhere.

Listen, we share your frustration. We discussed this with both the chairman and Senator Wyden. The good news is, we are attack-

ing indigenous innovation and working with China in every forum possible to get them to strengthen intellectual property rights. We had some measure of progress during the recent Strategic and Economic Dialogue.

We made our concerns on this indigenous innovation policy one of our top three initiatives. We did get China to agree not to move forward with the second circular—I think that is the word you were looking for, Mr. Chairman—that they had issued, but we have also forced them to a more honest discussion of how this would apply in extending it to government procurement as well.

In terms of taking China on within the WTO, since I have been privileged to serve and you have confirmed me as U.S. Trade Representative under President Obama, the U.S. Trade Representative's Office has taken more cases successfully against China in the WTO than any other member of the WTO. A number of those cases have involved intellectual property rights.

In particular, we are looking at copyrights and protection in those areas, those scientific journals that you referenced, and we have had some success in those. But we recognize, this is going to be an ongoing effort until China develops its own indigenous entrepreneurial community that can join in making that case with us to China of what the real cost of pirating and theft of intellectual property is to the Chinese government.

In the interim, we continue to push them to put in place a more effective law enforcement regime, and where appropriate, again, we have not hesitated to pursue actions and remedy within the World Trade Organization. If there was a specific matter involving one of your constituents that we can follow up with you on, we will be happy to do so.

The CHAIRMAN. Thank you, Senator.

I would like to ask you, Ambassador, how do we make a little more headway on some agricultural products? Right now, China has a total ban on U.S. beef, total. Japan lets some beef in on a restricted basis, as does Korea on a restricted basis. But China has a total ban. What are you going to do about that?

Ambassador KIRK. As you know, we think that ban is entirely unacceptable. One of the good-news stories that did come out of last year's JCCT, as you know, is we did get them to open their market back up for pork, which they had restricted after the H1N1 scare, and we now are resuming those exports. We continue to press, in working with Secretary Vilsack from the Department of Agriculture, to open their market back up to beef, from which we have been excluded for far too long.

As I mentioned, I think, to Senator Cantwell, what we are trying to get China to do in every case is just follow the OIE internationally accepted standards and act on sound science for sanitary and phytosanitary products. The good news is, we do have a surplus in our agricultural exports to China. The frustration we have is with specific products like beef and poultry, in which they have just been very difficult to work with.

The CHAIRMAN. I appreciate what you said, but again, you are using the words "are continuing to press," "continuing to talk," "continuing to encourage." It is all talking. I believe, frankly, that no country altruistically, out of the goodness of its heart, ever low-

ers a trade barrier. Countries just do not do that altruistically when you ask them to do something unless it is to their own economic advantage to do so. You need leverage. Then it is no longer the goodness of their heart, it is in their own self-interest.

What levers do we have?

Ambassador KIRK. Well, Senator, I would agree with you. The lawyer in me says it is not always constructive for me to lay out all of that leverage here. I would hope you would recognize what we were able to achieve in Japan and the European Union, in the brief time I have been here, with respect to beef. I understand leverage and how to use that, but my background—

The CHAIRMAN. What leverage do we have?

Ambassador KIRK. Well, we always have the threat—

The CHAIRMAN. But what leverage do we have, really? Honestly?

Ambassador KIRK. Senator, I, for one, do not that readily dismiss the leverage and the threat of taking a case to the WTO and its value to the United States. We have seen tremendous results from that, and not just with respect to China but with other trading partners as well. But we work with other like-minded countries. We look at our ability to retaliate against China where appropriate, where they are not behaving. But we will use all of the tools that Congress has made available to us through our legislation, through trade remedies, through the WTO to try to gain compliance.

The CHAIRMAN. One of them might be Commerce finding a subsidy with respect to the Chinese currency, that China is subsidizing the products that it ships to the United States because it fails to appreciate the renminbi. That enables us to countervail against China.

Secretary Locke, you discussed why the Commerce Department has not taken action. The answer I got was something about the basket of currency. Secretary Locke, it sounded to me like it was a little bit of rationalization, maybe a little bit of sophistry, a little bit of dodging, that you just do not want to take it in. What is wrong with an allegation straight on that China alone is subsidizing its products because it fails to let the renminbi appreciate?

Secretary LOCKE. There is no disagreement that the Chinese currency is under-valued. There is no disagreement that it is absolutely crucial for appreciation to occur and that, with respect to many of the questions you posed to Ambassador Kirk, that part of the leverage that we have is international opinion. The more that we can pursue these matters—

The CHAIRMAN. Good luck.

Secretary LOCKE [continuing]. Multilaterally, just as we have with respect to indigenous innovation, the Green Dam software filter, and now on currency—

The CHAIRMAN. I am sorry, Mr. Secretary. I mean, world opinion, I do not think quite cuts it. We need a little more actual leverage, economic leverage.

Secretary LOCKE. If you will recall, the United States moved forward on the 421 tire case when a lot of people were saying we should not do that.

The CHAIRMAN. Yes, we did. That is right. And I think the United States made the right decision then.

Secretary LOCKE. So we will use every tool within our tool kit that is legitimate, that is appropriate, that is legal.

The CHAIRMAN. Let me ask this question: Is your tool kit large enough? Do you have the right tools in the tool kit? Have you done an inventory of your tool kit to find out what tools you have, are they appropriate, and do you want more?

Secretary LOCKE. I think what you are seeing is an administration that is willing to use the tools that we do have, compared to prior administrations, where we are not afraid to use those tools.

The CHAIRMAN. All right.

Secretary LOCKE. And we are using them.

The CHAIRMAN. With all due respect, you did not answer my question. Have you done an inventory of your tool kit? Do you have the proper tools? Do you have enough?

Secretary LOCKE. I think we have sufficient tools.

The CHAIRMAN. You do? Could you do this for me, please, both of you? Just go back and look. Go back and see what is there. I would like you to come back to us with an assessment, do you have the right tools or not, creatively. Perhaps you could come up with some ideas where we could help you. This is a 2-way street. We want to help you.

Ambassador KIRK. We appreciate that offer.

Briefly, I would like to say, though, Secretary Locke did make an important point. It does not matter how many tools you have in your toolbox if you do not have the political will to use them, and I do think this administration deserves a tremendous amount of credit in moving forward, not just with China, but with other trading partners that have operated in a way against the interests of U.S. manufacturers, workers, and farmers, to hold them accountable, and we will do that. But we would certainly welcome the opportunity to have the discussion with you if we need new resources and tools.

The CHAIRMAN. Thank you.

Senator WYDEN?

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Secretary, I did not expect to get into the NOAA fleet in Newport, OR this afternoon, but since my colleague from Washington has raised the issue I think it is now important to set the record straight and clear the cloud that was just placed over this award.

Is it not correct that, over the 3-year process, the 3 years of looking at this, the various agencies—it is like an alphabet soup of government: NOAA, the Inspector General, or the Government Accountability Office—no agency ever said that there was any practicable alternative to Newport; is that not correct?

Secretary LOCKE. I am not aware of any decision or recommendation otherwise.

Senator WYDEN. Very good.

My second point goes right to the heart of your work, and I think to the heart of the administration's interest in promoting science. My colleague from Washington essentially seemed to say that she was interested in politicizing the process, that after all of this vetting and effort to have a transparent, open process, she was inter-

ested in overturning this and blocking funding and, in effect, breaking off the work that is done in Newport.

Would this not introduce politics into every award that goes through your Department if, after all of this, all of this work that was open and transparent, the review of all these agencies, that now we are going to have the Congress overturn the funding, block it—would this not introduce politics into your agency's work that would change the Commerce Department dramatically, and not for the better?

Secretary LOCKE. Well, given the fact that Senator Cantwell is a good friend of mine, I would not want to characterize her statements as trying to politicize the process.

Senator WYDEN. Mr. Secretary, I do not know what you call it. She said she was interested in, in effect, blocking funding, overturning the contract, going forward with the Inspector General process. As you know, the Inspector General does not even have legal authority in this area. Senator Cantwell is a good friend of mine, too. I have few better friends and allies in the Senate.

I just want to set the record straight. Let us just go to the substance. If you had Congress overturn this award to Newport at this point, block the funding, in effect throw it out, would that not have dramatic implications for all of the other work that the Commerce Department does in your effort to put science first?

Secretary LOCKE. It is very important that the Congress, as it exercises its proper oversight roles, be very careful, while ensuring proper procedures and impartiality in procurement decisions, that it be also mindful of the ultimate goal of saving the taxpayers' dollars and getting good value for those dollars.

In the case of Newport, all the analysis indicated that it offered the lowest cost of all the proposals and that, while the initial award failed to consider the issue of flood plain, what would be the impact if, during a flood, the rivers were to rise and what impact would that have on the docks. The docks, by their very nature, are in water.

The question is, are the docks sufficiently high so, when the river levels rise, they will still be operational? The Inspector General of the Government Accountability Office said that we, in making the award to Newport, failed to properly address that particular issue and that we needed to go back and address it. We did. We also looked at some of the other competing sites. They are also on rivers that will rise during high water mark or flooding. Still, the conclusion was that the Newport site was the best value for the American taxpayer, which is why we stood by it.

Senator WYDEN. So can we remove the cloud over this award this afternoon once and for all, in your view, Mr. Secretary? This has been vetted and re-vetted and examined by all of these agencies. It seems to me it is time to remove the cloud that was just placed here again. Even by your characterization, you said the Inspector General found nothing that would suggest that Newport was not the right place for this award. So is it possible to remove the cloud over this award this afternoon?

Secretary LOCKE. Given that the Inspector General, in the report that I saw last week, said that there was nothing in his findings that would say that he should change the award going to Newport,



we intend to move forward because it provides the best value for the American taxpayer, and we need to move forward. We need to have a facility for all these NOAA ships so that NOAA can move forward with its mission.

Senator WYDEN. So in your judgment, just as the NOAA report said when it said “final determination,” this is now final. Newport has the award. They have begun work. As you know, it has gone on for quite some time. This is final. Is that not correct?

Secretary LOCKE. It is final with respect to the Department of Commerce and NOAA. Now, knowing that the Congress may have other—

Senator WYDEN. It is final unless there is an effort in the U.S. Congress to politicize it, and I just want folks to know that, on my watch, I am not going to let that happen. I do not think it is right for my State, I do not think it is right for taxpayers, and I think it means that the objectives of the Obama administration in this area, which was to put the science before politics, that this administration’s objectives in this area would be substantially derailed if, after all of this work, the years of effort through an open and transparent process, after the award was finally made—and you have described it, in my view, as a final award; you said it is final in your judgment—to then at this hour say we are still going to try to overturn the funding, we are going to have the Congress try to block the work that is ongoing, I think that has great implications for the way science decisions are made, for taxpayers in this country, and on my watch I am not going to let that happen.

Mr. Chairman, thank you.

The CHAIRMAN. Thank you, Senator.

I want to give you more tools. One of them is enhancing Special 301. I am going to introduce a bill which basically provides that, if a country fails to measurably improve after being placed on the so-called “name and shame” list under Special 301, that the United States could prohibit Federal Government procurement from that foreign country, prohibit new financing by OPIC and Ex-Im, and also the United States could withdraw any preferential treatment for which the foreign country qualifies under the GSP. I am just trying to give us more tools so we can do more.

I do not know what the precise answer is yet, that is, what the focus should be within the administration so we have administration-wide economic policy and also foreign trade policy. I must say, the words hauntingly come back to me. Twenty, thirty years ago I was in Japan. A member of Congress, Speaker Foley, took many members of the Congress over to Japan. That was when Japan was growing and people were “Japan #1,” and all that. Several members of Congress and myself met with the Sony head, Akio Morita, who was head of Sony at the time.

I asked him, Mr. Morita, assuming the next President of the United States—I think a presidential election either just occurred or was about to occur—were to come to you and say, Mr. Morita, and he would give you *carte blanche*, whatever economic policy you recommend, the President will implement. What would you recommend to enhance America’s economic position in the world? What would you recommend?

Without skipping a beat he went right at me. He said, you need a Department of International Trade. He said, you have a Department of Commerce, you have HUD, Department of Housing, Department of Education, Department of Agriculture. You need a department of trade. If you want to compete in the world, you have to have that focus. That was his perception, his observation 20, 30 years ago when I was over there. I do believe we need to have something like that if we are going to compete in the world, and I just urge you all to be thinking about that.

I would like to figure out some way for you to help me, help us together, figure out a way so we can measure our progress. How well are we doing in getting China to live up to the standards that we all want China to live up to economically, whether it is procurement code accession, whether it is IP adherence, whatever it might be. But, as you can tell from all the questions here and all the points made, this is getting to the point where it is beyond just talk. We just need action. I am going to keep working. I am going to find a solution here.

Senator Wyden? I have to leave now. Senator Wyden, you can wrap up.

Senator WYDEN. Thank you very much, Mr. Chairman. I will not be long.

Secretary Locke, you will be pleased, we can go back to discussing trade here for a few minutes. I want to ask you about the question of antidumping and countervailing duty orders. Evasion of antidumping and countervailing duty orders is obviously a serious and growing problem, and I think we know that the Chinese are among the most common violators of laws in both of those areas. Of course, without adequate enforcement, American firms are going to continue to lose business and jobs to unfair imports.

Last month, Commissioner Bersin was up, and he told us that enforcement of the trade laws, particularly in those two areas, anti-dumping and countervailing duties, is going to be an especially important part of his work.

Secretary Locke, what are your plans to work with Commissioner Bersin to further prevent the evasion of our unfair trade laws?

Secretary LOCKE. As Chairman Baucus indicated, and as Ambassador Kirk indicated, when we have tools, we have to use them. As I noted in the opening statement, the number of antidumping and countervailing duty cases this year exceeds last year's by almost 50 percent. When we impose those antidumping margins, it is important that they are followed.

We have received some reports of companies in China openly trying to evade that by routing their products through another country and having it marked as coming from that other country to avoid paying of those duties, so we are working with the Customs and Border agents and that office to really try to share information.

When we learn of this—whether it is through websites or advertisements within China or elsewhere, any other country that tries to do this—we need to alert and work with Customs and Border officials so that we are watching for these items coming on the docks and coming in the various ports so that we can impose those duties.

Senator WYDEN. The other question I wanted to ask you, Secretary Locke, involves green energy and essentially green goods. Now, my office recently put out a report that indicates that U.S. exports of a number of these environmental goods seems to be overstated, accounting for roughly 10 percent of previous estimates.

Now, given the fact that China and a lot of our competitors are already pushing very, very aggressively and very hard to get these markets, it seems to me, first, if we are going to achieve the President's objective to double exports in the next 5 years, and particularly consummate his agenda for green energy, we have to tap these markets. We are not going to be able to do it if we cannot even track how we are measuring our ability to get these green goods into promising markets. What is going to be done to at least improve how we measure green goods trade?

Secretary LOCKE. Well, the Census Bureau does more than just conduct the decennial Census. The Census Bureau actually is a repository of a whole host of statistics and economic figures, surveying companies as well as individuals. Part of their job and part of their mission has involved cataloguing green jobs and the green economy. They came out with a report just recently trying to chronicle exactly the extent of the green economy. So we are working with them now, and I think we should be using their definitions. Part of it is a reporting—

Senator WYDEN. So we will get a better system to ensure that we accurately measure green goods trade?

Secretary LOCKE. Given the work that the Census Bureau has done, we think that we are in a better position to more accurately document export of green jobs. I think it has been a problem of companies having different definitions so, when they report, whether to their trade associations or the Commerce Department, their export of what they call green goods, those definitions are not necessarily consistent. Now with the work of the Census Bureau and the report issued by them, I think we will have greater consistency so that companies are able to report things into the right categories.

Senator WYDEN. Well, what we found is that the evidence with respect to our exports of environmental goods suggests that we were overstating what we were sending into these markets, and, if we are overstating what we are sending and we already know we are lagging behind, we have a big problem. So I need your office to keep me apprised of that.

Secretary LOCKE. It may turn out that we are actually exporting, but the item or the service may not actually be a green item or a green service. It is still an export, but it may be in the wrong category. But, with the work of the Census Bureau trying to have tighter definitions and better survey analytical data, we hope that we will have a more accurate description.

Senator WYDEN. As you and I know, in the real world of the Pacific Northwest, this is a jobs issue. We are making a huge push to get our wind turbines and solar panels into these countries. A prerequisite to getting this done is to be able to track these numbers accurately. So I am going to be following up with you on this. To me, it is an essential issue if we are going to turn this around.

One question for you, Ambassador Kirk. We all are reading these reports about how China is out-performing the United States in this space, in renewable energy, in green goods, and the various products that relate to energy efficiency. You are going to be the point man in turning this around. Can you update us on specific progress that you have made, certainly with the most recent negotiations, but also I would like to have you outline, for example, what specifically you believe will be accomplished between now and the end of the year that lets us tap this market.

Ambassador KIRK. Well, first of all, I want to be clear. I wish I was the point person on this. We have the lead responsibility in terms of negotiating our new trade agreements, whether it is the Trans-Pacific Partnership, working through our partners in APEC and others, to try to promote and encourage the movement of these environmental goods and services, and particularly the lowest tariffs and barriers, and we will be doing that.

Well, as you mentioned in your earlier comments, we have a great opportunity through this Trans-Pacific Partnership in the next round to have a further expansion and deepening of that. But this is an area where the coordination and cooperation that we have across the administration works quite well.

Secretary Locke has been perhaps the most energetic advocate of our developing a green economy and, working through our export initiative, has absolutely taken the bull by the horns, so to speak, to make sure that we deal with the issue of our lack of capacity in this so that we can create the jobs that are so desperately needed, not just in the Pacific Northwest, but when I had a chance to visit Ranking Member Grassley's district in Iowa earlier, he has a company that was formerly involved in making Maytag washing machines, and they are now making the blades for some of these wind turbines. You have companies and manufacturers from Texas and Michigan. This can be a real job-creating industry if we manage this appropriately, and we are going to do that across the administration.

If I might, Senator Wyden—I know our time is coming to a close—I did want to respond to one thing that Chairman Baucus said, and I want to make it absolutely clear. This administration is acutely focused on the needs of Americans to find the jobs that we so desperately want to accompany this economy recovery. We believe having a smart, thoughtful, aggressive export policy is a way to do that.

We share the concerns of this committee about some of our challenges with China, but I want to make sure we do not give the American public the impression that it would be in the best interests—economic interests—of the United States of America to withdraw from the global trading community. Ninety-five percent of the world's consumers live someplace else other than the United States.

The fastest-growing region economically, as you noted, is in the Asia Pacific Rim, and then including China, India, Russia, and Brazil. It is critically important that we deal with the issues that we address, but at the same time that we also continue to remind the American public that the future of our economy, the future of our economic well-being for our children, lies partly in our ability

to continue to relate in a commercial way and sell Americans' goods, services, and agricultural products to the rest of the world. We look forward to working with you to make that happen.

Senator WYDEN. Let me just respond, Mr. Secretary, to this point, because I want to stick up for the chairman on this. I can tell you, I have never, ever heard Chairman Baucus talking about, to use your words, Mr. Ambassador, "withdrawing from the global trading economy."

Ambassador KIRK. And I did not mean to suggest that he did. I want to make sure that I did not.

Senator WYDEN. I want to make it clear that we are talking about how we are going to tap these opportunities. I listened to the words that you and the Secretary used. They are important. Particularly in trade policy, you have to listen to the details.

You know I am an admirer of yours, but I want to disagree profoundly with something you said. You said that the process—in your words, the "coordination"—is working quite well in this area. Mr. Ambassador, I think what you are hearing from the Senators is, we do not think the coordination is going particularly well. We cannot figure out who is accountable. If you look at the product, what we know, the product in the area of green goods, and particularly exporting, these value-added products, we continue to fall behind.

Report after report after report of independent analysts says that in the green goods area we are falling further behind. So I say, to someone I admire and respect, when you tell me the process, to use your words, "is working quite well," I have to tell you, I have a different opinion. Now, I think we are up to changing it. We are going to work with you to get this done. But, if we do not make improvements in this area, in a State like mine that is consistently close to 11 percent unemployment, we are not going to be able to turn this around.

So, I want to let Secretary Locke chime in on this. But both with respect to anybody around here withdrawing from the global trading economy: not on our watch. And certainly with respect to coordination, I want the record to show that I think we have to do a lot better job. We cannot say it is working well when we are falling behind in this way.

Secretary Locke?

Secretary LOCKE. Thank you very much, Senator Wyden. I just do want to point out that at the most recent JCCT meeting the Chinese did agree to remove local content requirements on wind turbines. Just last month, I came back from a first-ever clean energy trade mission to China, and we were successful in helping some medium-sized and small-sized companies, including some from the Pacific Northwest, secure over some \$20 million in sales, much more than they had ever anticipated prior to going on the trip.

The focus of Ambassador Kirk and myself has been in all these meetings with the Chinese officials to level the playing field to make sure that American companies have fair access, the same access that the Chinese companies have. All we want is a level playing field.

But let me tell you that, with respect to how do we increase the jobs, especially in the clean energy field, the Chinese are spending some \$9 billion a month investing in the clean energy sector, energy efficiency, and alternative energy. They are doing this—and I think this is the sentiment of the members of your committee—not just to address their greenhouse gas emissions or to meet their energy needs, they are trying to become the world’s supplier of alternative energy and energy efficiency.

We have too many U.S. companies that excel in this technology, but they are under-performing simply because we do not have a clear U.S. energy policy. Too many companies, too many investors are sitting on the sidelines waiting for a clear signal from the U.S. Congress, or the U.S. Government, quite frankly, in terms of policy. Companies, investors, shareholders do not want to invest in technology A if ultimate U.S. policy supports technology B. In the meantime, too much capital is sitting on the sidelines.

If we do not move quickly—and I know you support a U.S. energy policy—the longer we wait, the farther ahead the Chinese, or the Germans, or the Danes will be in terms of the next economic opportunity of the 21st century: clean energy.

Senator WYDEN. Let me just close with this, because I think this sums it up. We unquestionably see these signs of progress in one area or another. The fact is, we continue to fall further behind. China is imposing tariffs of up to 30 percent on some green goods. This is flagrant protectionism. Flagrant protectionism. I want to see the administration more aggressively get those barriers visible. The public needs to know about it, and put the bully pulpit behind getting them changed.

I just look at these negotiations. Secretary Geithner sat where you all are I think about a week or so ago. We asked him about indigenous innovation. He said that there were various agreements being discussed, but the highlight was essentially that China was going to move into the world procurement effort as part of the negotiations. I said, what an example of slow-walking. They promised that 10 years ago.

Yet, a Secretary sits at the witness table and says that is what we are looking forward to. They are going to join the world procurement organization. So, we need to have a much more aggressive effort. I acknowledge what Secretary Locke has said about examples of one sort or another, but what is indisputable is we are falling further behind.

With China imposing tariffs of up to 30 percent on some green goods, I want—as the chairman of the Trade Subcommittee and somebody who has consistently, to use your words, Mr. Ambassador, worked to expand the global trading system, because I think trade is a democratizing force. I think it is good for workers. I think it helps generate markets for exporters. Those products are good for people around the world, but we have a lot of heavy lifting to do. We will be following this up with both of you.

Unless either of you have anything you would like to add, it has been a long, long afternoon, and we will excuse you at this time.

Ambassador KIRK. We thank you for your leadership and look forward to working with you.

Senator WYDEN. Thank you for yours, Mr. Ambassador.

Secretary LOCKE. Thank you very much.  
Senator WYDEN. And yours, Mr. Secretary.  
The Senate Finance Committee is adjourned.  
[Whereupon, at 5:01 p.m., the hearing was concluded.]





# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

---

### **Hearing Statement of Senator Max Baucus (D-Mont.) Regarding U.S.-China Trade Relationship**

Albert Einstein said: "To keep your balance, you must keep moving."

For many years, the U.S.-China relationship has been marked by imbalances. We have a significant trade imbalance. We have a worrisome debt imbalance. And there's a lack of balance in China's currency policies.

Our trade imbalance — the focus of this hearing — results from many factors. China continues to erect barriers to U.S. exports. China infringes U.S. intellectual property at unacceptable rates. China discriminates against U.S. companies through its so-called "indigenous innovation" policies. China dumps many of its products on the U.S. market. And China improperly subsidizes many of its exports.

To build a successful relationship, we must address these imbalances. We must restore balance. To do so, we must keep moving forward.

But forward movement requires forward thinking.

China has changed dramatically. It is now the world's largest exporter and fastest growing economy. Consumer demand is increasing exponentially. Its gross domestic product is rising sharply.

And China is capitalizing on its emerging role as an engine of global growth. It is protecting its domestic industries. It is taking a more active role in the World Trade Organization. It is finding its place in the global economy.

China has kept moving. But the U.S. has not. America's approach to China remains the same.

The U.S. continues to pursue the same dialogues to discuss our trade irritants. These dialogues have helped deepen the U.S.-China economic relationship. But discussions are merely a means to an end. Dialogue alone is not a measurable result.

May's Strategic and Economic Dialogue meeting proved again that we cannot rely on discussion alone to produce movement. We sought ambitious outcomes on China's currency and indigenous innovation practices. We ended up with promises to keep talking.

In our hearing with Treasury Secretary Geithner, I proposed a four-pronged strategy to rethink U.S.-China trade and economic relations. USTR and Commerce will play key roles in ensuring the success of this strategy.

First, the administration must devise a comprehensive, administration-wide plan to improve U.S.-China economic relations. And each agency must develop a strategy to address its part within the administration-wide plan.

This strategy will include dialogue. But it cannot end there. It must include measurable steps for progress in our economic relationship.

Second, the United States must work multilaterally to address trade issues with China. USTR and Commerce maintain robust relationships with key trading partners like India and the European Union. Our agencies must use those relationships to identify and address common concerns raised by China's trade practices.

Third, the United States must look carefully at the tools offered by international institutions, like the WTO. I applaud USTR's strong commitment to enforcing China's WTO obligations. Since 2004, the USTR has filed several WTO cases against China. I urge USTR to consider carefully whether the United States should bring additional cases to ensure that China adheres to its WTO commitments.

And where China's existing obligations are not sufficient, USTR and Commerce must seek to strengthen them. For example, China has long promised to accede to the WTO Government Procurement Agreement. But China has failed to follow through. The United States must seek a timeline for China's accession. And we should seek leverage to ensure that China keeps to that timeline.

Fourth, the United States must take strong unilateral action to address our trade imbalance even as we pursue multilateral action. USTR must seek suspension of China's indigenous innovation policy. And USTR must dismantle Chinese barriers to U.S. agricultural and other exports.

And Commerce must apply our antidumping and countervailing duty laws to dumped and subsidized Chinese imports.

China opened the door to appreciating its currency last week. But Commerce must carefully consider whether China's currency practices constitute an improper subsidy under U.S. law.

Taking these four steps will help to achieve measurable results. Taking these four steps will help the U.S.-China relationship to keep moving. And doing so should help the U.S.-China economic relationship to find a new balance.

###

**Opening Statement of Senator Chuck Grassley**  
**“The U.S.-China Trade Relationship: Finding a New Path Forward”**  
**June 23, 2010**

The Finance Committee is fortunate to have two members of President Obama’s cabinet here today with responsibility for advising the President on the development and implementation of our international trade and economic agenda.

Regrettably, after 17 months in office, I find that agenda to be adrift. For example, the President has called for a doubling of our nation’s exports over the next 5 years, but I’ve yet to see a credible plan from this Administration for achieving that goal.

Similarly, the President has asserted that he wants to strengthen our economic relations with Colombia, Panama, and South Korea, but I’ve yet to see any sign that the Administration is making a serious effort to implement our stalled trade agreements with each of these important allies.

I’m not the only one who feels this way. For example, just yesterday, the Washington Post said the Administration has subjected Colombia to “arms-length disdain and protectionist stonewalling” and that congressional Democrats have treated Colombia “more as an enemy than friend.”

The President’s refusal to act on our pending trade agreements is inexplicable as a matter of either good trade policy or appropriate foreign policy.

Today’s hearing is about our bilateral economic relations with China, and I am concerned about the Administration’s approach to this issue, too.

I emphatically disagreed with the Treasury Department’s decision in April to delay issuance of its biannual report on currency exchange rates.

Two weeks ago, in a hearing before this Committee, I urged Secretary Geithner to admit publicly what everyone else already knows—namely, that China is manipulating the value of its currency in order to gain an unfair advantage in international trade.

China’s most recent move to reinstate a slow, crawling exchange rate peg doesn’t solve that problem.

I’ve previously called upon the President to prepare a case against China’s currency manipulation under Article XV of the General Agreement on Tariffs and Trade at the World Trade Organization.

I reiterate that call today, and I look forward to hearing from Ambassador Kirk and Secretary Locke on this issue.

Moreover, our trade tensions with China extend well beyond currency manipulation. I have serious concerns about the direction that China's government is taking in advancing mercantilist economic and trade policies.

We need a comprehensive strategic vision for engaging China and asserting our own policy interests in the Asia-Pacific region.

I support the Administration's involvement in the negotiation of a Trans-Pacific Partnership trade agreement, but we can't put all of our eggs into a single basket. Those negotiations don't substitute for a comprehensive strategic vision.

I also welcome the United States hosting the 2011 Asia-Pacific Economic Cooperation ministerial meeting, but I've yet to hear what the Administration intends to accomplish in hosting that meeting, let alone how it fits into a comprehensive strategic vision.

Perhaps yesterday's release of the Administration's Joint Strategic Plan on Intellectual Property Enforcement is evidence that a comprehensive strategic vision is being developed.

Given the magnitude of China's failure to effectively protect intellectual property rights, this is a significant issue in our bilateral relations.

I look forward to reviewing the details of the Administration's Joint Strategic Plan.

It may not be readily evident, but protecting intellectual property rights is just as much a jobs issue as the elimination of tariff and non-tariff barriers to trade, in terms of sustaining good-paying jobs here in the United States.

I'm hoping for more evidence from Secretary Locke and Ambassador Kirk that the Administration has a cohesive plan and common vision for engaging China because thus far, I fear we've been lurching from agenda to agenda in our bilateral meetings with the Chinese, without any long-term vision to lead our engagement.

**Testimony of Ambassador Ron Kirk****June 23, 2010****Senate Finance Committee****Hearing on “The U.S. – China Trade Relationship: Finding a New Path Forward”  
Washington, D.C.**

Chairman Baucus, Ranking Member Grassley, members of the Committee, thank you for this opportunity to discuss the complex and evolving trade and economic relationship between the United States and China. As you suggested earlier this month, Mr. Chairman, America’s interests require us to approach China in a strategic and well-coordinated manner across all agencies. And we’re doing just that.

We are speaking with one voice, pressing for change with enhanced dialogue, enforcement of our WTO rights, and negotiations that include our key trading partners wherever appropriate. Coordinating with the White House, Secretaries Geithner, Clinton, Vilsack, Locke and I are working together seamlessly in the U.S.-China Strategic and Economic Dialogue (S&ED) and Secretary Locke and I are driving the U.S.-China Joint Commission on Commerce and Trade (JCCT) to achieve a more robust and outcome-oriented relationship with China.

USTR’s role in this important work is driven by our mission to open markets, enforce our rights under trade agreements, and anticipate and quickly dismantle obstacles that otherwise could cripple future opportunities for American workers, farmers, ranchers, manufacturers and service suppliers.

Our existing trade relationship with China represents years of progress. 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 opportunities for Americans across the country who have benefited from the tripling of manufactured goods exports to China since 2001. More recently, thanks to China’s strong recovery from the global recession, we have seen double digit growth in a variety of export sectors, ranging from high-end manufactured goods and chemical products to agricultural goods like soybeans. U.S. goods and services exports to China totaled \$85 billion in 2009, and China is now our third largest export market.

But let me be clear, China’s implementation of its WTO commitments has not been complete. We have serious concerns about new Chinese policies that limit market access or otherwise skew the playing field in our trade relationship. We are addressing these concerns by setting clear priorities and working in proven results-driven dialogues.

Top priority concerns with China include addressing indigenous innovation and other discriminatory industrial policies that are often intended to benefit state-owned enterprises and that limit our exports, improving enforcement of intellectual property rights, ending non science-based regulations that block U.S. agricultural exports and obtaining increased services market access.

These issues will top our JCCT agenda later this fall, a forum we have revamped for better results. The JCCT already has a solid track record of achieving important progress on issues ranging from restored market access for American pork products to the removal of restrictive testing and certification rules for private and SOE purchases of information security products. We are also working through the WTO Doha negotiations to seek better market access for U.S. firms in the multilateral context.

I also know this Committee is concerned about China's currency practices. In response to China's recent announcement on currency, the President noted that "China's decision to increase the flexibility of its exchange rate is a constructive step that can help safeguard the recovery and contribute to a more balanced global economy," and that he will be discussing these and other issues with China at the G-20 Summit in Toronto. My colleague, Treasury Secretary Geithner will be closely monitoring how far and how fast the Chinese let the currency appreciate.

Mr. Chairman, you recently suggested the Administration should be willing to take strong action. We could not agree more. We are prepared to make use of the full range of enforcement options when dialogue fails. We have been by far the most active – and successful – WTO Member when it comes to bringing WTO dispute settlement cases against China. Our most recent case challenges China's use of export restraints on key raw materials, which hurt our steel, aluminum and chemicals sectors, affecting workers and companies throughout the United States.

We will continue to coordinate with our interagency partners and Members of Congress, to ensure we are executing a comprehensive and effective China strategy. That includes working together to address the challenges posed by China's macroeconomic policies. We are pressing China to change its growth strategy to rely less on exports and more on consumption.

We are also pursuing U.S. interests through dialogue and negotiation with China in other fora. For example, we are engaging with China on workers' rights in an effort to ensure a level playing field for American workers, and we are pressing for China's accession to the Government Procurement Agreement and for a meaningful China contribution to the Doha Round. Our other interactions with China also need our attention. For example, in Africa, we should be working cooperatively to ensure our respective actions support Africa's development.

Chairman Baucus, Ranking Member Grassley, and members of the Committee, I cannot overstate the importance of getting our relationship with China right. Thank you for the opportunity to testify and I look forward to our discussions.

**FINANCE COMMITTEE QUESTIONS FOR THE RECORD**

**United States Senate  
Committee on Finance**

**Hearing on  
“The U.S. – China Trade Relationship: Finding a New Path Forward”  
Wednesday, June 23, 2010**

Questions for the Record  
Finance Committee Hearing  
The U.S. – China Trade Relationship: Finding a New Path Forward  
June 23, 2010

Questions from Chairman Baucus

Questions for Secretary Locke and Ambassador Kirk

**Question 1**

I support U.S.-China dialogues such as the S&ED and JCCT. But too often, we measure success by the amount we talk, and not what we accomplish. What steps have each of you taken to develop and implement comprehensive China strategies within your agencies? And what benchmarks have you implemented to measure progress by concrete outcomes, not further dialogues?

**Answer:**

A strong, well coordinated China policy is a top priority for the Obama Administration and USTR is working closely with the White House and other agencies to improve and deepen our relationship with China and make the progress we need on our most important bilateral issues, like trade. Our plan is focused on four areas – coordination, strengthened institutions for dialogue, enforcement, and results.

First, China needs to hear this Administration speak in one voice, identifying clear goals and priorities. The Obama Administration has worked very hard at achieving unprecedented coordination in our policies, goals, and communication. For example, I worked hand in glove with Secretary Locke, Secretary Clinton and her economic team and Secretary Geithner leading up to the Strategic and Economic Dialogue (S&ED). Secretary Locke and I, together with our respective China teams, are applying the same results-oriented cooperation, as we prepare for the 2010 Joint Commission on Commerce and Trade (JCCT) meeting later this year.

Second, we are revamping our bilateral dialogues with China to focus on our priorities today and tomorrow. For example, we intensified our work under the S&ED, which gives us a valuable opportunity for discussion of strategic issues that bear directly on our trade relationship with China. The S&ED discussions can help reinforce other important bilateral engagement with China, including under the JCCT, and U.S.-China Investment Forum. Together with the Department of Commerce, we are enhancing the JCCT by intensifying and accelerating our engagement in sectoral working groups and addressing issues early and at higher levels. USTR and Commerce held our first-ever Vice Ministerial-level mid-year review meeting with our Chinese counterparts on May 26 designed to energize the working groups to make real progress. We are also improving our collaboration with industry stakeholders and with the Congress to ensure we are working on the right job-creating issues.

Third, we are working to improve our trade enforcement by making sure we are utilizing our full range of tools most effectively, and looking for new modes of engagement to eliminate trade distortions and balance the playing field for U.S. stakeholders. We will not hesitate to use every tool at our disposal. For example, we have been by far the most active – and successful – WTO Member when it comes to bringing WTO dispute settlement cases against China. We also, for the first time, utilized the China special safeguard provision and took action against the surge of Chinese tire imports by using the Section 421 mechanism.

Fourth, this Administration is focused on results. We agree that we need to measure success by the progress we make on the priority policy issues that we face with China, not the amount that we talk. Our goal is always to get concrete policy actions from China that expand our access to their market and level the playing field in our trade relationship. These policy outcomes may not always be flashy. They may not always make headlines. But in every case they are safeguarding the jobs and livelihoods of American workers, farmers, ranchers, and service providers, and strengthening the rules-based trading system.

For example, at the May S&ED, we got China's commitment to produce a revised offer to join the WTO Government Procurement Agreement. That is a solid step toward ensuring China's huge government procurement market is open to our stakeholders. China submitted this improved offer on July 9, and we are currently reviewing it carefully. On indigenous innovation, China has agreed to a set of principles to guide innovation policy that, if implemented, will help us address the concerns that we and other trading partners have about the direction of China's policies in this area. China also agreed to launch a dialogue on innovation that will provide us with another opportunity to press China not to move forward with the most problematic elements of their proposed indigenous innovation product accreditation system as well as to identify more effective and appropriate policies to support innovation. The primary value of this dialogue will come not from the discussions themselves, but from the policy changes that we hope to engender as a result of the dialogue – and the continued high-level political engagement with China on this issue.

We are also focused on generating as much concrete progress as possible through the JCCT. At last year's JCCT meeting in Hangzhou, we signed nine agreements which have a real impact for the United States, on everything from wind turbines to market access for



agriculture. We are focused on ensuring that our enhanced efforts this year generate an even more productive JCCT plenary this Fall.

**Question 2**

I am concerned that China's indigenous innovation policies are just one more example of rising protectionism. I understand China committed to additional dialogue on indigenous innovation during the S&ED, but believe China needs to suspend these discriminatory practices. What is your plan for suspending these practices? Which of your agencies will take the lead? How will you coordinate with each other and with other U.S. agencies?

**Answer:**

USTR is deeply concerned about a series of policies that China is developing on "indigenous innovation," including a product accreditation system. These are the latest set of industrial policy initiatives designed to support domestic companies at the expense of foreign companies, especially in high-technology sectors.

These policy issues cut across the responsibilities of a number of U.S. government agencies, including USTR, Commerce, Treasury, State, the Office of Science and Technology Policy (OSTP) and others. This set of agencies is in continuous cooperation to ensure well-coordinated U.S. government responses drawing on all relevant U.S. government expertise and resources as we press China to address our concerns. USTR is also working closely with U.S. stakeholders, with Congress, and with the EU and other countries to assess the impact of China's innovation policies, and to effectively address them with the Chinese government. USTR, along with Commerce, Treasury, State, OSTP and other U.S. government agencies, has raised the discriminatory and otherwise problematic aspects of China's innovation policies with officials from all the relevant Chinese government agencies at all levels. This is one of our top trade priorities with China, and we will continue this high level of interagency coordination as we work to make progress.

Indigenous innovation was one of the primary topics discussed at the S&ED in Beijing on May 24-25. At the meeting, China committed that its innovation policies will be consistent with the principles of nondiscrimination, intellectual property rights enforcement, market competition and open trade and investment, as well as, consistent with WTO rules, leaving the terms and conditions of technology transfer, production processes and other proprietary information to agreement between individual enterprises. China also agreed to expert- and high-level bilateral innovation discussions with all relevant U.S. and Chinese agencies and to take into account the results of these discussions in formulating and implementing its innovation measures. We held an initial meeting with China on July 20, to launch these discussions. We also intend to continue using the JCCT to press China with respect to specific measures and policies that raise concerns with U.S. stakeholders. The S&ED will also continue to be a place where we discuss China's high-level, cross-cutting issues related to problematic Chinese state-led economic development orientation and industrial policies.

Prior to the S&ED, in response to intense engagement by the United States, other trading partners and the international business community, on April 10, China issued for public comment a draft circular that would revise the indigenous innovation product accreditation criteria. The United States has expressed concerns about the draft revised criteria, and has also engaged directly with China to get China to suspend this initiative, submitting detailed comments on how these draft criteria and the proposed indigenous innovation product accreditation system could, if implemented, operate to discriminate against U.S. and other foreign investors in China and products the U.S. exports to China. Our comments also press our broader concerns about China's innovation policies. On May 10, China announced that it would not begin accepting applications at that time, but would be studying the comments received.

### **Question 3**

I am worried that the United States has been subsuming U.S. – China economic priorities, such as currency and indigenous innovation, to diplomatic concerns. And I am concerned that we have not made progress on key issues in our economic relationship as a result. What are your thoughts on delinking the strategic and economic components of our bilateral relationship? Will this help prevent China from trading progress on economic issues for progress on strategic issues?

#### **Answer:**

Stimulating economic recovery and helping America emerge a stronger and more prosperous nation is a top priority for President Obama. The Obama Administration also recognizes that ensuring the long-term growth and vitality of the U.S. economy is essential to our national security.

As a result of China's growing importance as an economic and strategic actor, the United States has a wide array of important policy priorities with China that range from trade and economic issues, climate change, human rights, as well as numerous strategic issues, including non-proliferation. President Obama has been clear in each of his meetings with President Hu that it is essential that the United States and China make progress in all of these areas, and the Obama Administration is pursuing a China policy that is designed to do just that. The Strategic and Economic Dialogue, for example, was created to provide a high-level mechanism to make progress on strategic and economic issues. The Obama Administration also views the JCCT as a critically important mechanism for the United States and China to make progress on trade and investment issues.

### **Question 4**

Intellectual property protection and enforcement is a rampant problem in China. It costs U.S. businesses billions of dollars each year. And it is a particular problem for small and medium-sized businesses that lack the resources necessary to aggressively pursue individual enforcement actions.

I appreciate the steps the United States has taken to address this issue, including bringing a WTO case against China. But our actions to date have not been effective. What is your plan for improving China's protection and enforcement of intellectual property? What concrete steps are you seeking from China?

**Answer:**

Wherever possible, we hope to identify specific problems and resolve them through dialogue in the JCCT process. We begin with the IPR working group's efforts, and when that is not enough, we can move the issue up to higher levels for resolution. If dialogue is not enough, we can also look to WTO dispute settlement in appropriate cases.

Each year in the JCCT, IPR issues feature prominently, as a priority area for our focus. This includes direct engagement between Secretary Locke and me with our counterpart Vice Premier Wang Qishan. It also includes ongoing work via our JCCT IPR Working Group, co-chaired on the U.S. side by USTR and the U.S. Patent and Trademark Office (USPTO). In addition to the co-chairs, a robust interagency team including the Copyright Office, DOC, Justice, State Department, the FTC, and Customs participates in this important Working Group. The Working Group met most recently in April for a week of IPR meetings with Chinese officials and will meet again before the JCCT plenary.

In some cases, dialogue is not sufficient to resolve a problem. In two cases, we have used the WTO dispute settlement process to address problems. One of the cases addressed specific concerns about China's high legal thresholds for criminal enforcement of IPR laws, as well as weaknesses in China's laws concerning border enforcement and copyright protection and enforcement. In January 2009, a WTO panel found for the United States on the border protection and copyright enforcement claims and provided helpful clarification on important legal principles related to the third claim about legal thresholds for criminal prosecution.

The other case focused on a series of explicit market access barriers to foreign products like music, books, and films. Chinese policies that impede market access include, for example, prohibitions and discriminatory restrictions on foreign companies seeking to import and distribute products such as reading materials, music and films. These market access restrictions impair the ability of legitimate products to gain access to China's market and thereby create opportunities for illegal copies to fill the void. A win in our WTO dispute that challenged many of these restrictions hopefully will open markets for many of these products.

The Administration's "2010 Joint Strategic Plan on Intellectual Property Enforcement," which the USTR helped formulate and will continue to participate in implementing, contains a number of action items intended to improve China's enforcement of intellectual property. The Administration's plan includes an action item for improving the effectiveness of U.S. personnel stationed overseas to combat intellectual property infringement in priority countries including China, one that calls for convening an interagency working group to improve coordination of capacity building and training efforts all over the world, including in China, and another calling for a comprehensive review of existing support offered to U.S. businesses facing barriers in the

Chinese market. The Administration's plan includes a host of other action items intended to reduce infringement in China and everywhere intellectual property theft is causing harm.

**Question 5**

Many U.S. companies have also noted that software piracy continues to be rampant among Chinese state-owned enterprises (SOEs). And the U.S. software industry tells me that Chinese companies only legally purchase 20 – 30 percent of their software needs. They pirate the rest. What are you doing to ensure China's SOEs legally purchase U.S. software?

**Answer:**

We will continue to take concerted action on this high-priority issue. USTR, together with the Department of Commerce, has obtained a series of commitments from China since the 2005 JCCT to try to ensure its government agencies and its enterprises use legal software. U.S. pressure also persuaded China in 2006 to issue new rules that require computers to be pre-installed with licensed operating system software (normal in most countries, but before 2006, not the normal practice in China).

These actions definitely have helped, but despite these commitments, the PC software piracy rate in China remains excessively high. As the world's second largest PC market and a rapidly growing economy, China's software piracy rate is an enormous challenge, and corporate end user piracy remains a primary concern to our industry. We are concerned that China has not fully implemented its commitment to software legalization and that pirated software is in widespread use. In light of this, we have been asking China to adopt "software asset management" policies to increase compliance with the software legalization rules. We will continue to press hard for these disciplines.

Separately, we are concerned that the government intends to use purchases related to software legalization as well as policies encouraging the purchase of domestic software to promote the domestic software industry and discriminate against foreign products.

I want to assure you that the issue of software piracy will be a high priority for me as we look ahead to more engagement with China on IPR issues this year, including at the JCCT.

**Question 6**

I understand that China requires trademark holders to obtain a domestically registered trademark before the government will take action against counterfeiters. And in some cases, China has refused to grant U.S. companies trademarks, stating that a company name is contrary to "socialist morality or customs." And while a company's trademark application languishes, counterfeiting persists. What steps are you taking to address this issue?

**Answer:**

As I mentioned during my testimony, I believe China needs to do more to protect and enforce the intellectual property rights of U.S. companies. USTR is working closely with other Administration agencies, Congress, and industry stakeholders to ensure that the Administration uses all the trade tools at our disposal to address China's IP challenges.

On the specific issue that you raised, I am sensitive to the importance of protecting American brands. My office is aware of the problem in which some firms have been refused trademark registration by the Chinese authorities, and my staff raised the issue with our Chinese counterparts during an April 2010 visit to Beijing. We are working with our colleagues at the Department of Commerce to examine the facts and explore possible ways forward, in consultation with relevant stakeholders and with the assistance of the U.S. Embassy in Beijing.

**Question 7**

I understand China recently announced that it is urging Chinese exporters to live up to international corporate social responsibility (CSR) standards, including on issues such as environmental protection. What are your thoughts on encouraging China to include respect for intellectual property rights as an element of its CSR program?

**Answer:**

We firmly agree with the importance of Chinese firms respecting IPR. We have for some time argued that the application of consistent and deterrent penalties against Chinese firms that fail to comply with China's IPR laws is essential to addressing China's widespread problems difficulties regarding IPR protection and enforcement. In addition, we recognize that there also may be other ways to encourage greater respect for IPR by Chinese firms. We need to better understand China's proposed policies regarding corporate social responsibility (CSR), before we can assess whether it might be useful to encourage China to include respect for IPR as an element. It certainly seems like an interesting idea and I would be happy to explore it further with you.

**Question 8**

Treasury has primary jurisdiction over currency policy. But USTR is responsible for determining whether the United States should bring a WTO case against China's currency practices. And the Commerce Department is responsible for determining whether China's currency practices are an improper subsidy under U.S. law.

Ambassador Kirk, what steps are you taking to assess whether the United States should bring a WTO case against China's currency practices?

Secretary Locke, what standard do you use to assess whether the Commerce Department should accept a countervailing duty petition against China's currency practices?

**Answer:**

USTR stands ready to defend the rights of American workers and companies around the world. We continue to review a variety of issues, and it would not be appropriate to make public statements about whether particular issues might be subject to WTO litigation.

**Question 9**

I fully support the President's recent call to double U.S. exports in the next five years. But we cannot meet this goal without a clear plan in place, and benchmarks to ensure we are making measurable progress along the way. What steps are you taking to establish these benchmarks? How will you ensure exports from key U.S. sectors are increasing on an annual basis?

**Answer:**

I am fully engaged with my interagency colleagues in the Export Promotion Cabinet in the development of the National Export Initiative (NEI) plan for achieving the President's goal of doubling U.S. exports and supporting several million additional jobs in the next five years. The NEI plan, to be submitted to the President in early September, will outline the Administration's specific steps to carry out this goal. The plan will reflect the ongoing interagency work led by the Trade Promotion Coordinating Committee (TPCC) Data and Analytics working group on establishing and coordinating data, metrics, and benchmarks across the TPCC agencies. I strongly believe in the importance of establishing clear benchmarks to ensure that we can measure our progress towards achieving the NEI goals.

USTR efforts relating to the NEI focus in particular on our extensive trade policy activities to expand export opportunities for U.S. farmers, ranchers, businesses and workers by opening key foreign markets, reducing barriers to trade, and robustly enforcing our trade agreements. We are hard at work on all these fronts.

To open new markets, we are focused on resolving the outstanding issues with Korea so that Congress can approve this important trade agreement. We also are moving expeditiously on the Trans-Pacific Partnership Agreement negotiations. And we're pressing our trading partners hard, especially China, India, and Brazil as key emerging markets, in the WTO Doha negotiation for a more ambitious and balanced result.

We are also continuing our efforts to address a broad range of barriers to U.S. exports to other countries. In the past few months, working with Secretary Vilsack, we have worked to reach agreements with Russia and China to resume U.S exports of poultry and pork, respectively – re-opening over \$1 billion in U.S. exports and supporting agricultural jobs at home.

On the trade enforcement front, a WTO dispute settlement panel recently issued a report finding that billions of dollars of launch aid and other subsidies provided by the European Union to Airbus are inconsistent with WTO rules.

The Administration's "2010 Joint Strategic Plan on Intellectual Property Enforcement" will also help us reach the President's goal by leveling the playing field for U.S. companies selling overseas and thereby increasing U.S. exports. So many of our industries depend on intellectual property to protect their creative ideas and protect their competitive edge. Through effective enforcement of intellectual property rights, we as a government can help U.S. companies to sell their products in overseas markets. Without this effort, the intellectual property of products of U.S. companies will continue to be infringed, and a significant number of sales will continue to be lost to the counterfeit or pirated versions.

Our longstanding, bipartisan U.S. commitment to welcoming foreign investors is also an important component of our efforts to increase U.S. exports. U.S. affiliates of foreign-based companies are strong exporters, producing well-paid, export-based jobs for Americans.

#### Questions for Ambassador Kirk

##### **Question 10**

I support USTR's efforts to address China's ineffective IP practices through the Special 301 Report. But many critics argue that the Special 301 does not have the "teeth" to be an effective tool. In 2008, Senator Hatch and I introduced an IP enforcement bill that would authorize remedies if countries failed to improve their IP practices. And we are working to re-introduce a version of that bill in this Congress. What are your thoughts on the Baucus/Hatch IP bill? What steps would you take to improve the Special 301 process?

##### **Answer:**

USTR has been using the annual Special 301 Report as mandated by Congress, to good effect for over 20 years to improve the adequacy and effectiveness of IPR protection and enforcement in our trading partners around the world. However, we recognize that there is always room for improvement. Under the Special 301 process, USTR develops action plans and similar documents to establish benchmarks as a tool to encourage improvements by countries in order to be removed from the Special 301 list. As described in the recently published Joint Strategic Plan on Intellectual Property Enforcement, USTR, in coordination with the IP Enforcement Coordinator, will initiate an interagency process to increase the effectiveness of, and strengthen implementation of, Special 301 action plans. The action plans, or other appropriate measures, will focus on selected trading partners for which targeted efforts could produce desired results.

With respect to China, the Special 301 process is one tool in our trade policy tool kit that we can use to encourage greater efforts and effectiveness of IPR protection and enforcement. We see the Special 301 process as complementary to our efforts, described elsewhere, in the JCCT and the other relevant fora, including, when appropriate, using the WTO dispute resolution process.

**Question 11**

As the incomes of Chinese consumers rise, and their demand for beef grows, China has the potential to be a large and lucrative market for American ranchers, including those in my home state of Montana. But China currently maintains a de facto ban on imports of U.S. beef, despite a World Organization for Animal Health finding that U.S. beef can be safely traded. What steps are you taking to open the Chinese market to U.S. beef?

Recently, China and Canada announced an agreement to permit imports of certain Canadian beef into China. What are the terms of this agreement? And how does it affect your efforts to open the Chinese market to U.S. beef?

**Answer:**

The U.S. continues to press China to lift its BSE-related ban on U.S. beef and beef products. Building on discussions of this issue at the 2009 JCCT, both sides agreed to engage in further government-to-government discussions about the current status of beef and beef products. Our joint USTR/USDA delegation to Beijing in March 2010 again urged China to come back to the table for discussions of a science-based re-opening of China's market to U.S. beef. Ambassador Siddiqui and USDA Under Secretary Miller also raised this issue during May 2010 JCCT agriculture working group meetings, proposing a roadmap for progress. China has expressed its willingness to re-engage. We are hopeful that in the coming months we can work on this issue and achieve positive results.

With regard to Canada's announcement on an arrangement with China on beef, we understand that it is an agreement in principle and that Canada and China have yet to engage on specific terms and conditions and will have to agree on a protocol and health certificate statements.

**Question 12**

Ambassador Kirk, the administration has emphasized the importance of enforcing our existing trade agreements. In particular, it has promised aggressive enforcement with respect to China. A few months ago, the administration was rumored to be working on a variety of WTO cases against China, and it appeared poised to file a case involving restrictions on foreign credit card service providers. Yet no new WTO cases have been filed against China this year. What is the status of the administration's enforcement efforts with respect to China?

**Answer:**

USTR stands ready to defend the rights of American workers and companies around the world. USTR engages with stakeholders in a wide number of sectors on an ongoing basis and I can assure you that there is no higher priority in our agency than enforcement of our trade rights and ensuring China lives up to its commitments.

We and interested stakeholders have been concerned for some time about China's restrictions on electronic payment services, and in particular Chinese measures that permit only a single



Chinese supplier, China Union Pay (CUP) to process domestic currency payment transactions for credit and debit cards.

We continue to review a variety of issues, and it would not be appropriate to make public statements about whether particular issues might be subject to WTO litigation.

Questions from Senator Grassley

Questions for Ambassador Kirk

**Question 1**

I'm concerned by the growing trend of the Chinese government to impose measures that limit market access for imports and advantage Chinese companies at the expense of U.S. firms.

This trend appears to reflect a conscious policy decision by the Chinese government.

It is not what one expects to see from a country that is a major global exporter and one of the chief beneficiaries of the global trading system.

Do you agree that China is becoming less interested in opening its market to foreign competition and more intent on creating advantages for its own companies?

If so, does the Administration have a comprehensive plan in place for addressing this problem? How should the United States respond to it?

**Answer:**

We share your concerns that China appears to be implementing a variety of policies which disadvantage foreign firms seeking to participate in the Chinese market. We are deeply engaged with stakeholders on these systemic concerns in China. We are working hard to address all the concerning elements of China's industrial policies – for example, subsidies, discriminatory tax and other policies – using all the tools available to us at the WTO and through bilateral efforts, including the JCCT and the S&ED, to ensure that our producers are receiving fair treatment.

One example of the kind of measures that USTR is concerned about are the policies that China is developing on “indigenous innovation,” including a product accreditation system. These are the latest set of industrial policy initiatives designed to support domestic companies at the expense of foreign companies, especially in high-technology sectors.

These policy issues cut across the responsibilities of a number of U.S. government agencies, including USTR, Commerce, Treasury, State, the Office of Science and Technology Policy (OSTP) and others. This set of agencies is in continuous cooperation to ensure well-coordinated U.S. government responses drawing on all relevant U.S. government expertise and resources available as we press China to address our concerns. USTR is also working closely with U.S.

stakeholders, Congress and other agencies, as well as with the EU and other countries to assess the impact of these policies, and to address them effectively with the Chinese government. USTR, Commerce, Treasury, State, and other U.S. government agencies, have raised the issue with officials from all the relevant Chinese government agencies at all levels. This is one of our top trade priorities with China this year, and we will continue this high level of interagency coordination as we work to make progress.

Indigenous innovation was one of the primary topics discussed at the S&ED in Beijing on May 24-25. At the meeting, China committed that its innovation policies will be consistent with the principles of nondiscrimination, intellectual property rights enforcement, market competition and open trade and investment, and, consistent with WTO rules, leaving the terms and conditions of technology transfer, production processes and other proprietary information to agreement between individual enterprises. China also agreed to expert- and high-level bilateral innovation discussions with all relevant U.S. and Chinese agencies and to take into account the results of these discussions in formulating and implementing its innovation measures. We held an initial meeting with China on July 20 to launch these discussions and will continue to raise the issue at every appropriate opportunity and press China to uphold these commitments.

This is just an example of the kind of coordinated interagency approach that we will need to take to address these kinds of policy concerns in China, and that is the approach that the Obama Administration is taking.

## **Question 2**

When you were here in March you talked about the enforcement work your office is doing at the World Trade Organization (WTO) with respect to China.

One enforcement matter that you are not currently pursuing involves China's restrictions on electronic payment services.

China restricts the access of U.S. credit card companies to the Chinese market because the government only allows the Chinese-owned "China Union Pay" company to provide electronic payment processing services for domestic credit card transactions.

I understand that China's restrictions are inconsistent with its obligations as a member of the WTO. It seems to me that we should be aggressively challenging these restrictions at the WTO.

Are you aware of this issue? If so, why hasn't USTR filed a WTO case?

### **Answer:**

USTR stands ready to defend the rights of American workers and companies around the world. USTR engages with stakeholders in a wide number of sectors on an ongoing basis and I can assure you that there is no higher priority in our agency than enforcement of our trade rights and ensuring China lives up to its commitments.

We and interested stakeholders have been concerned for some time about China's restrictions on electronic payment services, and in particular Chinese measures that permit only a single Chinese supplier, China Union Pay (CUP) to process domestic currency payment transactions for credit and debit cards.

With respect to possible future WTO cases, we continue to review a variety of issues. It would not be appropriate to make public statements about whether particular issues might be subject to WTO litigation.

**Question 3**

I'm glad the President has finally acknowledged the importance of implementing our trade agreement with South Korea.

I don't understand, however, why the Administration believes it will take until November to wrap up the discussions with the South Koreans, nor why the President is planning to wait until next year to submit the agreement to Congress for implementation.

In my view, there is no reason why it should take until November to resolve the issues that the Administration has identified with respect to this trade agreement. On the contrary, the Administration should be able to do so by the end of the summer, and it should be able to send the agreement to Congress for implementation after Congress returns from its August recess.

It's just a matter of political will.

What is your reaction to my comments?

**Answer:**

The U.S.-Korea Free Trade Agreement (KORUS FTA) holds significant economic potential for the United States. But the President believes that more must be done to level the playing field for U.S. workers and producers in the key sectors of autos and beef. That's why, at his June 26 meeting with President Lee, President Obama announced that he was launching an initiative to complete the U.S.-Korea Free Trade Agreement. The President has instructed me to initiate new discussions with my counterpart – Trade Minister Kim Jong-hoon – to resolve the outstanding issues regarding the U.S.-Korea FTA by the time of the President's November visit to South Korea for the next G20 summit. If those issues have been resolved, President Obama intends to submit the KORUS FTA to Congress for approval in the months following his November meeting with President Lee.

**Question 4**

In an editorial last week, the Washington Post said the Obama administration and Democratic congressional leaders have subjected Colombia to “arms-length disdain and protectionist stonewalling” and that congressional Democrats have treated Colombia “more as an enemy than friend.”

Do you think Mr. Santos’ election will change this dynamic so that we will finally be able to implement our bilateral trade agreement with Colombia?

If not, why isn’t the President willing to give the Colombians the same commitment he gave to the South Koreans?

Does this Administration appreciate the significance of our relationship with Colombia, which is just as important in Latin America as our relationship with South Korea is in Asia?

**Answer:**

The Administration highly values its relationship with Colombia and the role it plays in the Hemisphere. The Colombia trade agreement continues to be an important trade priority for the Administration. On July 7, the President signaled his commitment to move forward with the agreement as soon as possible. As directed by the President, we are working to address successfully the outstanding labor-related issues in order to be able to move the agreement forward. The outgoing Colombian Government has worked closely and cooperatively with the Administration in providing the necessary information for this work to proceed, and we are looking forward to working with the Santos Administration to complete the task.

**Question 5**

I also support quick implementation of our trade agreement with Panama. There is no good reason why that agreement should remain stalled.

Why isn’t the President willing to make the Panama trade agreement a priority? How much longer do we need to wait before we’ll see a serious attempt to implement the Panama trade agreement?

**Answer:**

The Panama trade agreement is also an important trade priority for the Administration. On July 7, the President announced his commitment to moving forward with the agreement as soon as possible. We are working to successfully address the outstanding issues related to the agreement in order to be able to submit it for Congressional consideration. Specifically, we are seeking to address concerns with certain aspects of Panama’s labor regime and its tax transparency rules. Panama is a highly valued U.S. partner in the region, and we recognize the significant commercial advantages to having this trade agreement enter into force.

**Question 6**

I have called upon the Administration to prepare a WTO case against China's currency practices under Article XV of the General Agreement on Tariffs and Trade.

Is your staff actively preparing such a case? If not, why not?

**Answer:**

USTR stands ready to defend the rights of American workers and companies around the world. We continue to review a variety of issues, and it would not be appropriate to make public statements about whether particular issues might be subject to WTO litigation.

**Question 7**

I was glad to see that USTR made some progress on the indigenous innovation issue during the recent meetings of the Strategic and Economic Dialogue in China.

I was disappointed, however, that the Chinese government continues to resist addressing U.S. concerns.

For example, I understand that the Chinese government's attitude is that China is not a signatory to the WTO Agreement on Government Procurement (GPA), so China can do whatever it wants in this area.

If that's China's attitude, then why shouldn't we take the same approach? In other words, we have no obligations to China under the GPA, so maybe we should consider further restricting the ability of federal agencies to procure goods and services from China.

That might create an incentive for China to get serious about joining the GPA. What's your reaction to my idea?

**Answer:**

At the JCCT and many other international venues I have emphasized the importance of China's fulfilling its WTO commitment to join the GPA and to commit to a high level of coverage that is comparable to that of the U.S. and other GPA Parties. At the recent S&ED, China agreed to submit a revised offer by July 2010 but indicated that the revised offer would not at that point cover government procurement by SOEs and the sub-central level of government. In accordance with its S&ED commitment, China submitted an improved offer on July 9 that expands the coverage of procurement of its central government entities, but does not include coverage of government procurement by key SOE's and the sub-central levels of government.

We are still analyzing the new offer, but recognize it will require much more work. We coordinated with the EU and other GPA Parties to send a strong signal to China in meetings in

Geneva the week of July 12 that China needs to move expeditiously to add sub-central government entities and SOEs engaged in government activities to the procurement that it covers under the GPA. We will be working closely with China and the other GPA Parties to ensure that China's ultimate terms of accession are comprehensive and in accord with the coverage of the other GPA Parties.

China's problematic indigenous innovation product accreditation system for government procurement makes clear that China should accelerate its accession to the GPA so that there is no discrimination in covered procurements against products produced in the U.S. and other GPA parties. China also committed last year at the JCCT to treat products produced by U.S. investors in China the same as domestic products for government procurement purposes, and China should honor this commitment. In May, China issued draft regulations for public comment that define what is a "domestic product." We worked with U.S. industry in preparing our comments on those draft regulations which encourage China to follow international practice in defining what is a domestic product.

With respect to China's indigenous innovation policies, we did make progress at the S&ED. China agreed that its innovation policies would be consistent with key principles—non-discrimination, market competition, strong IPR enforcement, open trade and investment, and non-involvement of government in companies' technology transfer decisions. China also agreed to engage in intensive discussions with us on innovation policies, and we held an initial meeting with China to kick-off these discussions on July 20. We also intend to continue using the JCCT to press China with respect to specific measures and policies that raise concerns with U.S. stakeholders. The S&ED will also continue to be a place where we discuss high level, cross-cutting issues related to problematic Chinese state-led economic development orientation and industrial policies.

#### **Question 8**

China is the only major market in the world that bans all imports of U.S. beef. Yet U.S. beef is safe.

After all, millions of Americans and others around the world consume this product every day.

In addition, the World Organization for Animal Health recognizes that our beef is safe.

What is the Administration doing to see that China reopens its market to U.S. beef?

#### **Answer:**

The U.S. continues to press China to lift its BSE-related ban on U.S. beef and beef products. Building on discussions of this issue at the 2009 JCCT, both sides agreed to engage in further government-to-government discussions about the current status of beef and beef products. Our joint USTR/USDA delegation to Beijing in March 2010 again urged China to come back to the table for discussions of a science-based re-opening of China's market to U.S. beef. Ambassador

Siddiqui and USDA Under Secretary Miller also raised this issue during May 2010 JCCT agriculture working group meetings, proposing a roadmap for progress. China has expressed its willingness to re-engage. We are hopeful that in the coming months we can work on this issue and achieve positive results.

**Question 9**

China recently lifted its non-science based ban on the importation of U.S. pork, which was imposed due to alleged concerns over the H1N1 virus.

I remain concerned, however, over other barriers to exports of U.S. pork to China. For example, China continues to prohibit imports of pork containing traces of ractopamine, a safe veterinary drug used in the United States.

In addition, China's value-added tax may be applied at a lower rate for Chinese-produced pork than for imported pork, thus discriminating against U.S. pork. What is the Administration doing to improve access for U.S. pork in China?

**Answer:**

The recent agreement to finalize China's removal of the H1N1 ban does not touch on the issue of China's ban on ractopamine. The U.S. government has for several years been concerned about China's measures which establish a zero tolerance for the presence of ractopamine in pork, and has pressed this issue with the Chinese government.

At the same time, some U.S. pork producers have been exporting ractopamine-free product in the past several years. This product, just as in the months and years before China's April 2009 H1N1 ban, can be shipped to China with no barriers.

**Question 10**

I understand that China has threatened to prohibit imports of U.S. food-grade dairy products unless the United States revises its export certificate for these products.

Uncertainty regarding dairy exports to China is understandably causing anxiety for the U.S. dairy industry.

What is the Administration doing to see that the Chinese market remains open to exports of U.S. food-grade dairy products?

**Answer:**

We are working hard on this important issue. We learned on April 21 that China's food safety import agency is seeking to impose new conditions on the import of dairy products, which could negatively affect our dairy industry. Working with the U.S. Embassy, we have requested

China's government to pause, and not take any actions while both sides work together to address China's concerns about import safety in a way that is based on science and international guidelines, and does not negatively affect U.S. dairy exporters. In late May, Ambassador Siddiqui and USDA counterparts met with Chinese officials in Beijing and discussed this issue. As a result of those discussions, our negotiators are working with China on a possible solution, and China has agreed to not take any enforcement actions against U.S. dairy shipments while talks are continuing.

Since the May visit, the United States has proposed several certificate options to the Chinese. Our latest offer was sent on June 26th to Beijing. We are working very hard to ensure that US export certificates are science-based and consistent with our OIE and CODEX obligations. We will keep you informed of our progress in these negotiations.

#### **Question 11**

Secretary Locke stated in response to a question from Senator Stabenow that Buy American requirements do not limit purchases of Chinese products below a certain value threshold.

Please explain further how the value thresholds work and how they interact with our international obligations in the area of government procurement.

Does the Federal government collect the data that would be necessary to track whether and to what extent Federal agencies procure Chinese goods and services that fall below the relevant value thresholds? Would it be feasible to do so? If so, how? If not, why not?

#### **Answer:**

The Trade Agreements Act of 1979 generally prohibits federal agencies from buying goods or services that are covered by the WTO Government Procurement Agreement (GPA) from any country that is not a party to the GPA or an FTA, or is not a least developed country. Under the GPA, the United States applies a threshold for goods and services of \$203,000. That means that procurement of goods and services by a covered entity at or above \$203,000 in value is subject to the obligations of the GPA, unless the United States has taken an exception for it. Where procurement is covered by the GPA, the U.S. Trade Representative waives the application of "buy American" requirements to such procurement. For procurement below the \$203,000 threshold, the "buy American" requirements are applied.

I defer all questions regarding federal government procurement data collection to the Office of Management and Budget's Office of Federal Procurement Policy (OFPP), which is responsible for all federal procurement policy. The Federal Procurement Data System (FPDS) is the publicly available database for reporting government procurement data administered by the General Services Administration.



Questions From Senator RockefellerQuestions for Ambassador Kirk**Question 1**

Secretary Locke and Ambassador Kirk, I know that the Administration is considering how to comply with the World Trade Organization's decision on "zeroing." As you know, the manner in which the Administration deems compliance will have enormous implications for how our domestic industry and its workers will be affected by predatory trade practices. If the Administration takes wrong steps to bring the United States into compliance there is the possibility that American workers will face the double jeopardy of the current economic crisis and unfair trade practices from international competitors.

Congress needs to be consulted before the Administration decides how to bring the United States into compliance and before action is taken. The Administration must ensure that whatever steps are taken are not in contravention to the original congressional intent. Additionally, the steps taken must not be applied retroactively as this would be unacceptable and run counter to congressional intent. Should the Administration take steps in order to come into compliance with World Trade Order rulings regarding the practice of zeroing then those actions must only be applied prospectively.

Will you pledge to consult members of Congress as you deliberate on how best to implement new zeroing regulations?

**Answer:**

USTR staff has already begun discussing this issue with congressional staff. We will continue to consult with Members and their staffs as we move forward on the issue of compliance with the WTO's rulings on zeroing.

**Question 2**

I read recently that two Chinese state-owned enterprise steel companies were merged by government fiat into the third largest steel company in China. This merger, and previous mergers of state-owned enterprise telecom companies and mergers in other sectors, are not being reviewed like regular commercial company mergers. Our companies and U.S. workers are fully prepared to compete according to the rules. But China is applying its competition rules to some and not to others.

China has said that its new antitrust law applies to state-owned enterprises. If that's the case why are SOE mergers happening without review?

**Answer:**

USTR shares the concern about whether the Chinese Ministry of Commerce (MOFCOM) is reviewing mergers between Chinese state-owned enterprises (SOEs) according to China's Anti-Monopoly Law (AML) and applicable merger regulations, and we have raised our concerns with MOFCOM. The AML applies to the conduct and transactions of "undertakings," and Article 12 of the AML does not exclude SOEs from the definition of the term "undertaking." MOFCOM has stated publicly, and has confirmed to USTR and other U.S. agencies, including the Department of Justice and the Federal Trade Commission, that mergers involving SOEs are subject to MOFCOM's pre-merger notification requirements. Thus, if applicable thresholds and requirements for reporting merger transactions to MOFCOM are met, MOFCOM should be reviewing these transactions according to the AML and applicable regulations. We will continue to urge the Chinese agencies that supervise China's SOEs to abide by the AML's notification requirements and MOFCOM and relevant Chinese officials to apply the same competition principles in its review of all mergers, including those involving SOEs.

**Question 3**

The Strategic and Economic Dialogue just took place last month. The announcement of the S&ED results commends China for its SOE reforms. China has 20 SOEs on the Fortune 500 list, and when they list them on the stock exchange it seems like it's more to raise capital than to allow expanded private control. At the same time, China has announced that it reserves key sectors of its economy only to SOEs, barring competition from U.S. companies.

Why in our most important meetings with China are we not ensuring that China lifts these bans on our companies' participation in the Chinese market? Why are we not ensuring that China's SOEs comply with market-based decision making instead of applauding China's consolidation of the state's power and the state driven participation in the market?

**Answer:**

USTR shares your concerns and remains extremely troubled by the role that SOEs play in China's economy, and by the severe restrictions on our companies' participation in the Chinese market. While China has made some reforms to some SOEs, we do not think that these reforms have gone nearly far enough. We continue to push China toward greater reform, including through allowing foreign investment in SOEs and in sectors currently dominated by SOEs. It is also particularly important that China ensure that SOEs operate on a level playing field with foreign investors. We have raised these concerns with the Chinese government in the past, and will continue to raise them, including at the JCCT, and the S&ED, and the U.S.-China Investment Forum.

Questions from Senator BingamanQuestions for Ambassador Kirk**Question 1**

One year ago, on June 23, 2009, the United States filed a WTO case against China alleging that China has unfair export restrictions on nine raw materials used in steel production and other finished goods. (The nine materials are bauxite, coke, flourspar, magnesium, manganese, silicon metal, silicon carbide, yellow phosphorous, and zinc.) It is my understanding that the administration considered whether to include rare-earth metals in the WTO case and has continued to investigate China's policies on the export of these elements. This is an important issue for clean energy manufacturing jobs in the United States because rare-earth metals are used in the production of many clean energy goods, including high-strength magnets used in wind turbines. Nearly 95% of rare-earth metals are currently mined and processed in China. In January, China capped the quantity of rare-earth metals that could be produced, and earlier this month China decided to limit production rights to state-controlled mining companies. Secretary Locke and Ambassador Kirk: First, will these new policies restrict the export of rare-earth metals? Second, what is the status of the administration's investigation into Chinese export policies for rare-earth metals?

**Answer:**

We and U.S. industry have been concerned for some time about the export quotas and export duties that China uses to restrain exports of rare earths. We continue to urge China to eliminate these export restraints in order to ensure that there is a level playing field for all competitors in this important sector.

I can assure you that there is no higher priority in USTR than enforcement of our trade rights and ensuring China lives up to its commitments.

With respect to possible future WTO cases on rare earths and other materials, we continue to review a variety of issues. It would not be appropriate to make public statements about whether particular issues might be subject to WTO litigation.

**Question 2**

China continues to commit significant resources to manufacturing clean energy technologies, including photovoltaic (PV) cells, advanced batteries, and wind turbines. Both the domestic use and exports of Chinese goods are growing. For example, United States' imports of solar cells from China jumped from about \$190 million in 2007 to nearly \$420 million in 2009 -- more than doubling even during the recession.

Some American manufacturers of these goods are concerned that their Chinese competitors receive subsidies or other preferential treatment from the Chinese government. Subsidies are

hard to document and quantify, so these companies are hesitant to file a formal petition with the Commerce Department and U.S. International Trade Commission. However, other policies such as indigenous innovation are clearly intended to advantage Chinese companies. In addition, two German manufacturers of PV cells asked Germany and the EU last year to initiate antidumping investigations into Chinese PV exports, evidence that concerns about China's policies are not limited to American manufacturers.

There are private-sector reports describing Chinese policies to promote the manufacturing of clean energy goods. However, it would be useful for the United States government to produce an official report on China's policies and how they affect U.S. manufacturers of clean energy technologies.

Ambassador Kirk: I ask that you use your authority under Section 332 of the Tariff Act of 1930 (19 U.S.C. 1332) to request the U.S. International Trade Commission conduct a fact-finding investigation into (1) China's clean energy manufacturing industry, (2) China's policies regarding clean energy technology manufacturing, and (3) the economic effect of these policies on American manufacturers and jobs in the United States. Will you make this request?

**Answer:**

I agree it is very important to ensure that we have opportunities in overseas markets, including China's, for clean energy technologies, and that U.S. companies are able to compete on a level playing field with foreign producers.

Clean energy is an important part of our agenda with China. For example, at the JCCT last year China agreed to remove local content requirements that it had applied to its fast-growing wind market, though this was only one of the several policies that China has used to support its wind market, and we are working with U.S. industry to build on that progress in our work this year. We are also carefully reviewing China's evolving policies in this area to ensure that they are in compliance with China's WTO obligations. We are working with private sector stakeholders and with other government agencies to gather detailed information about China's policies regarding clean energy technology manufacturing and the impact that these policies may have on U.S. companies competing in these sectors. We think that the activities underway will allow us to respond most effectively to this challenge. We will be consulting further with both private sector stakeholders and the Congress as we continue to gather information about Chinese policies and engage the Chinese government to ensure fair access to the Chinese market for these important technologies.

Questions from Senator KerryQuestions for Ambassador Kirk**Question 1**

During your Senate confirmation hearing, you talked about the importance of addressing “the challenges for U.S. investors presented by China’s state-owned enterprises (“SOEs”) and the role they play in China’s economy.” You also said that you would “carefully consider the contributions our BIT negotiations as well as our ongoing economic dialogue with China can make to advance the objective of leveling the playing field for U.S. firms in the Chinese market.”

Clearly SOEs present a significant and growing challenge to American companies, jobs and competitiveness around the world. Recognizing that the Administration has yet to release the results of Model BIT Review, please give a preview of what new disciplines you will include to address the SOE challenge.

**Answer:**

We agree that issues raised by SOEs and other state-influenced entities are important in the context of our BIT negotiations with China and other key partners. 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 it is appropriate to include additional provisions in the BIT text to address problems posed by SOEs in China’s economy, as well as giving thought to the best ways to resolve investment restriction issues using the JCCT, the S&ED, the U.S.-China Investment Forum, and other U.S.–China bilateral fora. This review is still pending, and we are not yet in a position to discuss specific changes under consideration

**Question 2**

Under the current model BIT, only SOEs that operate with a delegation of government authority would be covered by the agreement. Why do both the BIT and the WTO Government Procurement Agreement cover only government actions, especially when China says its SOEs are commercial companies? It seems self-evident that the GPA should rightly cover government purchases. But it also seems that the BIT should cover “commercial” purchases of SOEs, and that these should not be excluded from coverage just because there is no explicit delegation of government authority. The WTO GPA and BIT are potentially the two most important binding agreements that we could have with China over the next years. Can you explain to me how they will operate to secure very complete coverage, under one or the other of these agreements to actions by SOEs?

**Answer:**

The 2004 model BIT contains a number of provisions that discipline discriminatory or unfair practices by, or in favor of, SOEs. The scope of the 2004 model BIT covers not only actions by SOEs operating pursuant to delegated government authority but also a range of government

actions that discriminate in favor of, or otherwise unfairly advantage, SOEs – including SOEs acting in a commercial capacity. In the context of the Administration’s ongoing review of our model BIT, we are carefully considering whether it is appropriate to include additional provisions to address problems posed by SOEs.

In addition to the BIT, China’s commitments under the WTO Agreements, including in its WTO accession protocol include a number of disciplines regarding SOEs engaged in commercial activities. These provide important coverage of commercial purchases and sales by SOEs.

GATT Article III:8(a) provides that the GATT national treatment obligations do not apply to “laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.” The GATS, Article XIII, includes a similar provision with respect to services. These exclusions from the GATT and GATS can be covered under the WTO Government Procurement Agreement. In China’s accession to the GPA, the United States and other Parties have emphasized the need for China to cover SOEs that are engaged in purchases for governmental purposes.

We are also looking at the best ways to address these issues using the JCCT, the S&ED, the U.S.-China Investment Forum, and other U.S.-China bilateral fora.

#### Questions from Senator Wyden

##### Questions for Ambassador Kirk

##### **Question 1**

Ambassador Kirk, as I said during the hearing, in seeking to reach trade and investment commitments with Vietnam through the Trans-Pacific Partnership Agreement (TPP), I believe that the depth and scope of each party’s commitments to the agreement should be commensurate with Vietnam’s ability to enforce the commitments found in a 21<sup>st</sup> century free trade agreement (FTA).

Vietnam faces a lot of challenges. The Department of State’s report on labor rights is replete with illustrations of how Vietnam fails to provide workers basic rights and protections. Vietnam is on USTR’s Watch List because it fails to protect intellectual property. State-Owned Enterprises dominate a substantial portion of the economy. International observers rank Vietnam among many of the most corrupt countries. More than a third of the Vietnamese economy is informal, and outside the sphere of any government regulation. Both the Bush and Obama Administrations precluded Vietnam from even qualifying for the Generalized System of Preferences for these reasons.

During the hearing I asked for your thoughts about negotiating a reciprocal agreement with Vietnam that puts the U.S. and Vietnam on a pathway toward a modern, high-standard free trade

agreement. In the short term, a narrow agreement could be sought, and when certain benchmarks are reached pertaining to worker rights, state-owned enterprises, and intellectual property are met, the depth and scope of the agreement would grow in a manner negotiated within the TPP talks. The path toward a comprehensive FTA would be spelled out.

Your answer to my question left some believing that your goal is only to get Vietnam to make commitments to a high-standard agreement, which would include requiring it to enforce the core labor rights as outlined in the May 10 Agreement, and protect intellectual property. I don't want us to get into a situation where the U.S. market is wide open to Vietnamese goods and services but American producers are disadvantaged while Vietnam struggles with capacity constraints that limit its ability to implement FTA commitments. Do you believe that Vietnam currently has the capacity to implement the commitments of a high-standard FTA?

**Answer:**

Vietnam has shown a strong capacity to implement the high-standard commitments it made in its WTO accession agreement in 2007. However, as we would with any FTA partner, as we negotiate the agreement, we will confirm that Vietnam is able and ready to implement the commitments of a high-standard agreement, taking into consideration input from Congress and other stakeholders. In the meantime, we will continue providing capacity building and technical assistance to Vietnam in areas where needs have been identified.

**Question 2**

Ambassador Kirk, can you give me an update on any progress made toward advancing a plurilateral agreement to break down barriers to trade in environmental goods? What role do you envision China will play in any potential agreement?

**Answer:**

I've said to my counterparts in other countries that we're interested in exploring fast-tracking action in the WTO's work on liberalizing trade in climate-friendly technologies--solar cells, wind turbines, and such -- to help build momentum for a broader multilateral result in Doha on environmental goods and services. Several other ministers have joined me in calling for this (e.g., Australia, EU, Japan, New Zealand). We're talking to developing countries that are ready to be leaders in this area and it could lead to a plurilateral agreement, but we are still in a preliminary and exploratory stage.

China is not yet ready to be a leader, so we can't wait for them to start up these discussions. In the end I think China would join us once it saw it was missing out on a ground-breaking agreement.

I assure you, however, that we won't seek to implement a tariff-cutting agreement until China has committed to take reciprocal action.

Questions from Senator StabenowQuestions for Ambassador Kirk**Question 1**

In its WTO Accession agreement, China committed that it would ensure that all SOEs and state-invested enterprises make purchases and sales based solely on commercial considerations, e.g. price, quality, marketability and availability. China also agreed that companies from the U.S. and other WTO Members would have an adequate opportunity to compete for sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, China said it would not influence, directly or indirectly, commercial decisions of SOEs or state-invested enterprises, except in a manner consistent with the WTO Agreement. Chinese SOEs account for 35 percent of China's GDP and over 50 percent of fixed asset investment in China. They receive massive subsidies, such as cheap land and licenses, that may violate the concept of national treatment. SOEs' shares are not freely traded on the stock exchanges, and they are protected through governmental policies that affect the transfer of technology to them by U.S. and other leading-edge companies. How can these actions be considered "commercial" when they clearly are not? What interpretation does the Administration have of what is considered "commercial," and what likelihood is there of a successful WTO challenge to these non-commercial actions by SOEs so that U.S. companies will have a more level playing field against these competitors?

**Answer:**

I agree that China's SOEs pose unique and substantial concerns, given how significant a role they play in the Chinese economy. Chinese subsidization of its SOEs can create massive problems that skew market outcomes, and we are using our trade remedy laws to help stakeholders in the United States harmed by subsidized Chinese SOE exports flowing into our market. China's Accession Protocol and Working Party Report provide additional disciplines designed to ensure that SOEs act like normal market actors in commercial buying and selling, and that they do not discriminate against U.S. firms. We are working intensively with our stakeholders to deal with concerns about fair market access in SOE-dominated sectors.

More broadly, we have stressed to China consistently that reservation of key economic sectors of its economy to SOE control is inconsistent with its stated policy of open investment, and that Premier Wen Jiabao recently reiterated a pledge that foreign businesses will be given national treatment. This spring, China adopted a policy of gradually opening up its SOEs to private investment, and we are pressing China to ensure this policy is implemented in a non-discriminatory fashion. A high standard bilateral investment treaty with China could address some of these matters, and we are pressing for SOEs that purchase goods and services for governmental purposes to be covered by China's obligations under the WTO Government Procurement Agreement.



**Question 2**

There is a new kind of barrier that our trade policy needs to tackle – internet restrictions. China is increasingly restricting the Internet and the free flow of information. We're market leaders in this area but we can't export these services with these restrictions. What is USTR doing to ease the restrictions on the Internet in China?

**Answer:**

We are very cognizant of the chilling effect Internet restrictions can have on commerce and the distorting effects this has for companies that operate in China. We are working closely with U.S. companies and other countries to identify approaches that could improve market access. China's publication of an Internet White paper last month suggests that it also recognizes the problem it has created in its lack of transparency; whether China is willing to take steps to improve this remains to be seen. China's decision last year to back down from imposing a broad Internet filtering software mandate on personal computers, where we were heavily involved, also suggests that there are limits to the government's efforts to restrict information flows. This was one example of how we can work to maintain, and ideally expand, meaningful space on networks for open exchange of information.

**Question 3**

While in Beijing, I saw the Cadillac CTS, which is made in Lansing, on display at the Beijing Auto Show. But with an undervalued currency, a 25% tariff, and possible antidumping and countervailing duties, our cars are priced right out of the Chinese market. What is USTR doing to lower the 25% tariff the Chinese have on our cars?

**Answer:**

USTR has been working closely with industry to find attainable market access solutions in the Doha Round negotiations. While the specifics of the tariff reduction "modalities" are still under negotiation, we are committed to achieving an ambitious and balanced agreement that will lower tariffs on automobiles and other manufactured goods and provide new market access opportunities for U.S. companies in China, Brazil, India, and other important, growing markets.

**Question 4**

China's Vice Minister of Commerce Yi Xiaozhun recently stated that its forthcoming offer to the WTO's Committee on Government Procurement in July will not cover procurement by its SOEs, as China's SOEs operate according to "commercial purposes."

Yet the clear approach of the Chinese government, as espoused for example in the initial draft of Circular 618 and in December 2009 MIT guidance on the development of China's heavy equipment industry, is to steer purchasing opportunities to China's SOEs and state-influenced enterprises via regulatory fiat.

This strongly suggests that SOEs regularly do not operate on a commercial basis, and must be conducting some of their purchases according to government instructions and for government purposes. In that regard, China's indigenous innovation policies related to procurement are a direct affront to its WTO commitment to ensure that its SOEs or state-invested enterprises act according to commercial considerations and the government is not influencing, either directly or indirectly the value or country of origin of any goods purchased or sold.

What is the U.S. government's strategy for dealing with this challenging issue?

Specifically, which SOEs purchases are "governmental" and covered by the GPA and which should be considered "commercial" and subject to China's WTO accession obligations – and how is commercial defined? What are you doing to ensure that China's SOEs are covered by these two sets of obligations, and that they don't fall through the cracks?

How will you demonstrate to American companies and workers that your strategy is working?

**Answer:**

Based on the practice in the GPA, the coverage of China's SOEs will be based either on a list of specific SOEs or by sector, in which case all SOEs operating in a specific sector, such as the electricity sector, would be covered. Where an SOE is engaged in commercial activities, it would not be subject to the GPA because the GPA only covers governmental enterprises that make purchases for governmental purposes and not with a view to commercial resale or the production of goods for commercial sale. The GPA does not include any definition of "commercial." China's WTO accessions commitments contain disciplines that require China to ensure that its SOEs make purchases and sales based solely on commercial considerations, and that the firms in other WTO Members have an adequate opportunity to compete for sales to and purchases from SOEs on non-discriminatory terms and conditions. In addition, China agreed not to influence the decisions of firms with respect to the transfer of technology, which could be used to discipline actions by the Chinese government to condition private party transactions, e.g., on partnering with and/or transferring technology to Chinese SOEs. USTR is committed to ensuring that China respects its WTO obligations, and when China joins the GPA we will have these disciplines, in addition to the existing obligations, to rely upon to address SOE actions that affect U.S. interests.

Questions from Senator Enzi

Questions for Ambassador Kirk

**Question 1**

The Chinese government announced on June 22 that it would eliminate its export VAT rebate on over 400 products including steel, metal products, rubber and glass beginning July 15.

I was disappointed to learn that soda ash, currently subject to a 9% VAT rebate, was not among the products listed. Can you explain what rationale China has for maintaining the VAT rebate on soda ash, other than to maintain continued export support of this product?

**Answer:**

It is important to our economy that U.S. exporting industries, such as the American soda ash industry, can compete on a level playing field in the global marketplace. U.S. soda ash producers are concerned that China increased the VAT refund rate for its soda ash exports last year, at a time when China's exports were already increasing despite the economic downturn. As a result, Chinese soda ash exporters enjoy an automatic advantage, making it more difficult for U.S. soda ash exports to compete in Asian and other markets. We have raised concerns with China about its VAT policies on soda ash and other exports and are working to find the most effective ways to address barriers to U.S. exports and trade practices that unfairly disadvantage U.S. industries and workers. We will also work to create new opportunities in growing overseas markets by reducing tariff and non-tariff barriers on soda ash and other chemical products in the World Trade Organization (WTO), the TPP and other negotiations on industrial market access.

**Question 2**

Ambassador Kirk, you and other cabinet officials have raised concern over VAT rebates with the Chinese government on a number of occasions. I am extremely thankful of your efforts. As the fall meeting of the Joint Commission on Commerce and Trade (JCCT) approaches will there be an opportunity to raise this inconsistency in China's industrial policy?

**Answer:**

I have urged my Chinese counterparts to stop trying to manage exports and will continue to use the JCCT, including the steel dialogue and other venues, as well as the S&ED to press this issue. We have been concerned, for example, that China has taken steps like increasing VAT rebates on exports over the last 18 months, particularly in light of greatly reduced demand outside of China. I have explained that increases to VAT rebates during the economic crisis have caused serious concerns among U.S. industries about the possibility of Chinese exports rising again, just as U.S. industry begins to recover from the recession. I have also explained that China's VAT policies negate progress made toward reducing China's trade surplus and moving toward a more balanced trade relationship.

Some of the U.S. sectors hit particularly hard by China's current VAT rebate policies are steel, aluminum and soda ash.

The way in which China uses VAT rebates can vary. In the steel sector, for example, China applies different VAT rebates to closely-related products. That is, it eliminates or reduces VAT rebate rates for raw materials and primary steel products, while setting higher VAT rebate rates for certain processed steel products. We have seen a similar practice in the aluminum sector, where finished products like aluminum foil and extrusions are being encouraged. In other

sectors like soda ash, it is more a matter of raising the VAT rebate rate when China's planners believe exports need to be encouraged and lowering it when they do not. However, whatever the particular method used, these practices distort trade flows.

### **Question 3**

During the recent Strategic and Economic Dialogue (S&ED), China made a broad commitment to protect intellectual property rights. We've seen this before. For example, in prior JCCT meetings, the Chinese government has made very specific commitments to ensure the use of legal software by the government and state-owned enterprises (SOEs). Yet the US software industry conservatively estimates that 8 out of 10 pieces of software installed in China last year were illegal, with a commercial value of \$7.6 billion. What steps are your agencies taking to ensure that China follows through with its various commitments to reduce IP theft?

#### **Answer:**

We will continue to take concerted action on this high-priority issue. USTR and the Department of Commerce have obtained a series of commitments from China since the 2005 JCCT to try to ensure its government agencies and its enterprises use legal software. U.S. pressure also persuaded China in 2006 to issue new rules that require computers to be pre-installed with licensed operating system software (normal in most countries, but before 2006, not the normal practice in China).

These actions definitely have helped, but despite these commitments, the PC software piracy rate in China remains excessively high. As the world's second largest PC market and a rapidly growing economy, China's software piracy rate is an enormous challenge, and corporate end user piracy remains a primary concern to our industry. We are concerned that China has not fully implemented its commitment to software legalization and that pirated software is in widespread use. In light of this, we have been asking China to adopt "software asset management" policies to increase compliance with the software legalization rules. We will continue to press hard for these disciplines.

Separately, we are concerned that the government intends to use purchases related to software legalization as well as policies encouraging the purchase of domestic software to promote the domestic software industry and discriminate against foreign products.

I want to assure you that the issue of software piracy will be a high priority for me as we look ahead to more engagement with China on IPR issues this year, including at the JCCT.

**Testimony of Secretary of Commerce Gary Locke**  
**Senate Finance Committee Hearing**  
**U.S.-China Economic Relations**  
**June 23, 2010**

Chairman Baucus, Ranking Member Grassley, Members of the Finance Committee: Thank you for the opportunity to testify today on this important topic. I agree that we need to work together to find a way to adjust the course of our economic relationship with China to make that relationship more balanced and to ensure that it provides more opportunities for American workers and businesses.

As you know, I recently returned from my fourth, and longest, trip to China as Secretary of Commerce – this time leading a trade mission of U.S. clean energy companies and participating in the Strategic and Economic Dialogue (S&ED). The United States values the important strategic and economic relationship we share with China. However, my meetings there last month, with both U.S. companies and Chinese officials, reinforced my view that despite progress in many areas, far more needs to be done before we can be sure that commercial trends affecting U.S. businesses in China are once again heading in the right direction. This perception is increasingly echoed by American businesses and increasingly spoken aloud.

This Committee and this Administration share strong concerns about aspects of Chinese policies that affect U.S. business: market access, indigenous innovation, currency and intellectual property (IP) protection and enforcement – all topics I raised during my bilateral meetings with Chinese officials and that other members of the Administration have raised as top priorities in their meetings with Chinese officials.

I also know this Committee is concerned about China's currency practices. In response to China's recent announcement on currency, the President noted that "China's decision to increase the flexibility of its exchange rate is a constructive step that can help safeguard the recovery and contribute to a more balanced global economy," and that he will be discussing these and other issues with China at the G-20 Summit in Toronto. My colleague, Treasury Secretary Geithner, will be closely monitoring how far and how fast the Chinese let their currency appreciate and will continue to raise this issue with Chinese officials.

We all understand that China represents a huge opportunity for American businesses. This was illustrated by the 24 U.S. companies that participated in the China portion of my trade mission. They were well-received by government officials and their private sector interlocutors. I witnessed the signing of a memorandum of understanding on hydrokinetic energy generation; my team arranged over 250 individual and group meetings for the members of the delegation with potential business partners in Hong Kong, Shanghai, and Beijing; and participants were able to develop relationships with officials at every level of government. The trade mission registered immediate successes collectively valued at over \$20 million.

The importance of the Chinese market to the global strategy of U.S. exporters and companies operating in China grows daily. The interaction between those U.S. businesses and their Chinese partners, suppliers, and customers has improved dramatically as Chinese businesses have adopted more international business practices and as the commercial legal environment has improved.

China is now the United States' third-largest export market for goods, and our exports to China have grown more than three-fold since its accession to the World Trade Organization (WTO) only eight-and-a-half years ago. Exports to China remained stable overall in 2009 during the recession, while U.S. exports to other markets declined some 20 percent. Now our exports to China are growing faster than overall U.S. exports, thanks to strong Chinese demand growth and the recovery in prices of agricultural products. We should neither underestimate the importance of the China market nor the potential it holds for American exporters who tap into it.

Furthermore, the relationship between our two countries should not be portrayed as a zero sum game. There are so many opportunities for trade to benefit both China and the United States. I have seen those benefits first hand over the last 20 years – as Commerce Secretary, as an attorney in private practice, and as the governor of Washington State, where I helped double exports to China during my tenure.

But we need to ensure that our exports flow into China's market on equal terms with Chinese products and services. The Department of Commerce will do more to support the current exports trend. The President's National Export Initiative (NEI), which aims to help double U.S. exports within five years and support several million American jobs, will focus on China and other emerging high-growth markets. Under the NEI, the Department of Commerce is expanding trade advocacy and working to remove barriers preventing U.S. companies from getting free and fair access to China's market. At the same time, we are working to promote open trade and cross-border investment; urging China to create an open environment for innovation, including through strengthened intellectual property rights protection and enforcement; and encouraging China to enhance transparency and the rule of law.

Another key component of the National Export Initiative is its focus on trade compliance and enforcement. Rigorous enforcement of U.S. and international trade laws helps remove barriers that prevent U.S. companies and workers from getting access to foreign markets and ensures that the competitiveness of U.S. companies is not harmed by unfair trade practices of governments and foreign companies in the domestic market. Commerce rigorously enforces our trade remedy laws at home. USTR leads the Administration's enforcement efforts at the WTO in Geneva, and my staff continues to work closely with USTR to support those efforts.

We have legitimate concerns with China's approach to economic growth. The flip side of the promising story about the success of many individual exporters and U.S. companies in China is the difficult policy and regulatory environment that the U.S. business community still faces. The President, Secretary Geithner, Ambassador Kirk and I have spoken with one voice about those challenges, both publicly and in meetings with our Chinese counterparts. We know that American businesses will succeed when they have a level playing field on which to compete.

The Chinese government maintains policies designed to support export-led growth and foster indigenous innovation. Over the last five years, the Chinese government has identified key sectors that must be "state-dominated" and others that will stay "largely in state hands," slowing a long-term trend of economic liberalization begun decades ago that had reduced incrementally the influence of China's state-owned sector and incorporated limited market forces more fully in economic policy making.

As a result, there are concerns that the state-owned sector is growing and that the sway of government policy in place of market principles has been increasing. While significant problems that successive Administrations have faced still exist – especially IP protection and enforcement – they also are now part of a broader issue: industrial policies that limit foreign market access with the goal of developing an indigenous capacity to innovate and increase the profitability of Chinese companies vis-à-vis their foreign competitors. As currently applied, these policies do things like try to compel foreign companies to transfer technology. This only encourages Chinese companies to rely on this kind of technology transfer as a business model, and then use the tactic to the detriment of U.S. and other foreign companies.

All this points to the need to address the real challenges we face in our bilateral engagement on China's policies. U.S. companies operating in China are not granted the same degree of openness and fair treatment that foreign companies, including private Chinese companies, receive in the U.S. market. The state's large role in China's domestic economy poses an ongoing challenge to our ability to grow some of our most competitive exports. Our goods and services are doing well in China's market, but we know that significant impediments continue to exist.

Americans can only take full advantage of the opportunities created by a more balanced Chinese economy if China is willing to make sure that its markets are open to U.S. goods and services. We still have work to do. American firms operating and exporting into China should, as a basic matter of fairness, have the same opportunities as Chinese companies. We are committed to making sure that China lives up to its existing international obligations, including through rigorous enforcement of our trade laws – and are equally convinced that the global playing field will not be level until China starts to take on a broader range of commitments that would bring it in line with the commitments of the world's other large trading powers. We have encouraged China to make an ambitious offer to join the WTO's government procurement agreement and are looking for other concrete ways China can start to address our broad set of commercial concerns by showing its commitment to international trade rules.

Moving to the issues you have asked me to focus on today, I want to provide you with a summary of current Department of Commerce activities related to these issues.

#### *Market Access*

The Department of Commerce's International Trade Administration (ITA) monitors the barriers that U.S. companies face when exporting to China or trying to operate in that market. ITA plays a significant role in enforcement as well, engaging directly with U.S. industry and Chinese officials, and supporting USTR in its role litigating WTO disputes in Geneva. Negotiation has led to specific successes. For example, at the 2009 Joint Commission on Commerce and Trade (JCCT), China gave assurances that it will impose maximum administrative penalties on internet infringers and announced its intent to reopen its market to exports on pork products and live swine. In addition, after discussing the importance and benefits of transparency in rulemaking, China's State Council included a requirement that most draft rules be published on a website maintained by the State Council in order to solicit comments.

Even with these accomplishments, China has increasingly erected barriers at or behind the border in sectors that are supposedly open to foreign products and services. In over a dozen

JCCT working groups, working-level experts are addressing continuing sources of concern with an eye to making significant progress at this fall's JCCT meeting. These working groups are addressing policies that favor indigenous innovation; policies to develop unique technical standards and burdensome and duplicative conformity assessment requirements; inadequate enforcement of intellectual property rights; and government procurement policies that favor domestic products and services.

#### *Indigenous Innovation*

The U.S. Government respects China's desire to develop its innovation economy; this is a goal shared by many countries, including the United States. Unfortunately, recent innovation policy developments in China, such as the proposed indigenous innovation product accreditation system, have generated intense concern within the U.S. business community that China is using its innovation strategy to displace foreign products and gain access to foreign technologies.

U.S. companies tell me that addressing these new indigenous innovation policies, which are designed to encourage technology transfer and force U.S. companies to transfer R&D operations to China, is one of their top priorities. I have raised these concerns repeatedly with my Chinese counterparts, and my staff also has raised these concerns in their interaction with the Chinese, in coordination with other members of the Administration. We have made some progress. Most recently, I discussed these issues in my bilateral meetings last month. At the S&ED, I spoke forcefully about the impact these policies may have on U.S. companies and the need for China to revise its policies. Also, last month, the U.S. government submitted comments opposing implementation of the accreditation system as envisioned, and on May 10, the Chinese authorities delayed implementation of the system to review the comments submitted.

China's development of innovation policies is part of a long-term strategy to change the nature of the Chinese economy's role in the global economy – a way to get out of the low margin in the global processing trade's supply chain. But as currently implemented, the policies will not accomplish that goal and are likely to injure U.S. and other foreign companies by disadvantaging them in China's markets, threatening their control of their intellectual property, requiring R&D strategies that do not match how global businesses operate, and creating new barriers to U.S. exports. Reversing this counter-productive approach will require creative solutions.

As a result of our concerted efforts at the S&ED, we were able to make progress on this issue. China has committed to ensure its innovation policies are consistent with important constructive principles, will join both high-level and expert bilateral discussions on what truly spurs innovation, and will take the results into account as it develops and implements its innovation policies. I will be working closely with Ambassador Kirk, White House Office of Science and Technology Policy Director John Holdren, Secretary Geithner, Secretary of State Hillary Clinton, and other Administration colleagues in this important effort. This dialogue is in addition to the important ongoing engagement that Commerce Department bureaus such as the National Institute of Standards and Technology have with different Chinese government and quasi-government entities, bringing together the standards and science and technology elements of the innovation eco-system. The U.S. economy remains the most innovative in the world. Providing the Chinese government with a vehicle to understand how the United States and other innovative economies promote innovation should clarify that China has



many paths open to producing strong innovation – but that policies like government-sponsored product lists tied to special benefits and compulsory technology transfers are not pathways to real innovation.

#### *Currency*

The Department of Commerce's Import Administration is currently reviewing allegations in two countervailing duty (CVD) cases in which the petitioners claim that China's currency policy constitutes a countervailable subsidy. I am carefully monitoring the review of these allegations to determine whether they meet the legal threshold for investigation. Given the scrutiny that such decisions face in U.S. courts and at the WTO, I want to make sure our decision on whether to investigate is warranted by the facts and the law.

#### *Intellectual Property Protection and Enforcement*

Improving the protection of intellectual property rights (IPR) through enforcement mechanisms that exist in Chinese law is a serious priority for the Department of Commerce, as it is throughout the U.S. government. Chinese government officials express willingness to address the problem, but serious challenges stand in the way of their efforts. For example, penalties for IPR infringement generally are not severe enough to deter potential violators from breaking the law and the lack of meaningful injunctive relief continues to hamper enforcement.

The Department of Commerce recognizes the seriousness of the problem in China and has devoted significant resources, in both the United States and China, to help improve the IPR protection and enforcement situation to the benefit of U.S. stakeholders. Commerce and USTR jointly lead the JCCT IPR working group, which is a key mechanism to press China to improve its policies in this area. In addition, in 2004, the Department of Commerce's U.S. Patent and Trademark Office (USPTO) established at the U.S. Embassy in Beijing a permanent IPR Attaché position to work closely with a China team at USPTO headquarters to better address the concerns of U.S. industry. In 2007, another IPR Attaché position was added in Guangzhou, and we will soon deploy a third to the country.

In addition, the Department has been an integral part of an interagency committee charged with the development and implementation of the Administration's strategic plan to combat intellectual property infringement. The "2010 Joint Strategic Plan on Intellectual Property Enforcement," which was publicly released yesterday, contains more than thirty recommendations to improve enforcement efforts here and overseas including, among others, one in which Commerce will be leading an effort to review U.S. Government support of U.S. businesses as they navigate intellectual property enforcement issues in overseas markets, including China.

#### *Conclusion*

The Obama Administration is committed to reorienting our economic relationship with China so that Americans can take full advantage of the opportunities provided by a growing China. This means avoiding a return to the past model, where China exported and saved and the United States borrowed and consumed. As the United States starts to save more, invest more and export more – and rely less on consumption financed by excess borrowing – China and other large economies that traditionally have run large trade surpluses will need to shift their

growth models. Otherwise, the world won't grow as fast as it can – and future risks will accumulate.

I am confident that our strategy of working to steadily expand the opportunities China's growth creates for the United States can continue to be calibrated to better address our key commercial concerns. When we have concerns with China's approach to economic development, we need to say so. When cooperation and dialogue are not enough, we are committed to utilizing all the tools we have available in order to make the progress we need. President Obama has said of the U.S. partnership with China "one country's success need not come at the expense of another. Our progress can be shared" and that our relationship must be able to recognize that "our two nations may not always agree on every issue." We also must maintain cooperative programs that have long-term benefits and dialogues that present the opportunity to demonstrate the importance of an open, transparent, and fair trading system to both U.S. and Chinese companies.

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

## FINANCE COMMITTEE QUESTIONS FOR THE RECORD

United States Senate  
Committee on FinanceHearing on  
“The U.S. – China Trade Relationship: Finding a New Path Forward”  
Wednesday, June 23, 2010

## QUESTIONS FROM CHAIRMAN BAUCUS FOR SECRETARY LOCKE

**Question 1**

*I support U.S.-China dialogues such as the S&ED and JCCT. But too often, we measure success by the amount we talk, and not what we accomplish. What steps have each of you taken to develop and implement comprehensive China strategies within your agencies? And what benchmarks have you implemented to measure progress by concrete outcomes, not further dialogues?*

**Response:**

The Obama Administration is committed to a strong and mutually beneficial relationship with China. The U.S.-China Joint Commission on Commerce and Trade (JCCT) and the Strategic & Economic Dialogue (S&ED) frameworks have and continue to produce results. We work continuously to make these mechanisms as effective as possible, but we do not rely solely on these formal interactions.

The Commerce Department tracks a wide range of economic data to help measure the success of our engagement with China. For example, U.S. merchandise exports to China increased 103 percent between 2004 and 2008, and U.S. services exports to China increased 108 percent between 2004 and 2008. In the first five months of 2010, U.S. exports of merchandise to China increased 39 percent from the same period of 2009. Also, the President’s budget request lays out performance measures, which we will use to track progress, including the percent of industry-specific trade barriers addressed that were removed or prevented.

In addition, there are several new areas where we are measuring the outcomes and working to expand our commercial successes in China. We will closely track the progress of the National Export Initiative, under which the President has set a goal of doubling U.S. exports over five years, by measuring exports to key emerging markets like China. The involvement of Commerce Department officials in trade missions, from Deputy Assistant Secretaries up to and including me, is one way to increase American exports to China. The U.S. Government’s formal advocacy efforts helped American companies produce over \$25 billion in U.S. export value to China over the last six years; my trade mission to China last month registered immediate successes collectively valued at over \$20 million for American clean energy companies. We will continue to follow up with those companies to be sure they continue to reap the benefits of the over 250 individual and group meetings held with potential business partners in Hong Kong,

Shanghai, and Beijing and the relationships participants were able to develop with Chinese officials at every level of government. That is a trajectory I am committed to continuing.

The Commerce Department and the United States Trade Representative (USTR) are working with China, U.S. industry and other agencies year-round to identify and address key trade concerns and to ensure that past JCCT commitments are implemented. In May, Commerce and USTR co-chaired the first-ever JCCT Mid-Year Review with our Chinese counterparts. We took stock of progress made on 2009 JCCT commitments, identified key policy concerns, and prepared for the high-level meeting later this year. In all of the JCCT meetings this year, from the various working group meetings to meetings led by senior officials, we are now including a discussion on implementation of past JCCT commitments.

The Commerce Department has developed a policy process to address China-related issues, taking into account the broad scope of the Commerce Department's nine bureaus. A new China Task Force, including representatives of all the bureaus, provides a forum for sharing information and planning on China-related activities. I have hired a Senior Advisor in my office dedicated to this agenda.

**Question 2**

*I am concerned that China's indigenous innovation policies are just one more example of rising protectionism. I understand China committed to additional dialogue on indigenous innovation during the S&ED, but believe China needs to suspend these discriminatory practices. What is your plan for suspending these practices? Which of your agencies will take the lead? How will you coordinate with each other and with other U.S. agencies?*

**Response:** I share your concerns regarding China's indigenous innovation policies. Nearly every business executive I meet with brings up China's indigenous innovation policies and other discriminatory practices. The Department of Commerce, in close coordination with other agencies, is working closely with stakeholders and with the European Union and other trading partners to raise our concerns effectively with the Chinese Government. In the past six months, senior Commerce officials, including myself, have raised the U.S. Government's concerns with officials from the relevant Chinese government agencies at all levels and at every appropriate opportunity. Most recently, I raised these issues during my Clean Energy Trade Mission to China and, with other agency heads, discussed them at the S&ED. Resolving U.S. industry's concerns with China's indigenous innovation policies is one of the U.S. Government's top trade priorities with China.

As a result of this engagement, at the S&ED in May, China committed that its innovation policies will be consistent with the principles of nondiscrimination; strong enforcement of intellectual property rights; support for market competition and open international trade and investment; and, consistent with China's World Trade Organization (WTO) commitments, leave the terms and conditions of technology transfer to agreement between individual enterprises. China also agreed to intensive expert and high-level bilateral innovation discussions with all relevant U.S. and Chinese agencies and to take into account the results of these discussions in formulating and implementing its innovation measures. Commerce Department officials will

participate in these discussions, and an initial meeting was held to launch the discussions on July 20.

We will push China to honor its commitment to take into account the result of these discussions, and to adhere to the principles outlined above as it implements policies to promote innovation. China's S&ED commitments are a positive step, but much work remains.

**Question 3**

*I am worried that the United States has been subsuming U.S. – China economic priorities, such as currency and indigenous innovation, to diplomatic concerns. And I am concerned that we have not made progress on key issues in our economic relationship as a result. What are your thoughts on delinking the strategic and economic components of our bilateral relationship? Will this help prevent China from trading progress on economic issues for progress on strategic issues?*

**Response:** Over the past 30 years, the United States has sought to engage China in ways that help it to integrate smoothly into the international system. The United States welcomes a prosperous, stable China, at peace with its neighbors and increasingly respectful of the rights of its citizens. We also would like China to be a responsible and stabilizing influence in international affairs. In April 2009, President Obama and President Hu Jintao agreed to work together to build a positive, cooperative and comprehensive relationship.

Given the scope and importance of our relationship with China, many areas of bilateral concern do not fit into simple designations such as economic, commercial, diplomatic, or strategic. In cooperation with my interagency colleagues, we address issues in multiple fora and use our many lines of communication with the Chinese government to achieve progress. President Obama recognizes the need to make progress on all of the issues between our two countries, and, even though we will not agree on everything, “to deepen our cooperation even further and advance the prosperity, health and security of our people.”

The relationship as a whole has a solid foundation and has yielded substantial dividends. We look for opportunities to ensure shared prosperity and to broaden cooperation on key issues such as regional stability, security, and global health.

**Question 4**

*Intellectual property protection and enforcement is a rampant problem in China. It costs U.S. businesses billions of dollars each year. And it is a particular problem for small and medium-sized businesses that lack the resources necessary to aggressively pursue individual enforcement actions.*

*I appreciate the steps the United States has taken to address this issue, including bringing a WTO case against China. But our actions to date have not been effective. What is your plan for improving China's protection and enforcement of intellectual property? What concrete steps are you seeking from China?*

**Response:** Improving the protection of intellectual property rights (IPR) through enforcement mechanisms that exist in Chinese law is a high priority for the Department of Commerce. We understand the particular problem for small- and medium-sized enterprises (SMEs) that lack resources to devote to these very real problems. Accordingly, the International Trade Administration (ITA) and the United States Patent and Trademark Office (USPTO) have China-focused IPR tools to help SMEs understand their options and responsibilities. As we implement the Administration's "2010 Joint Strategic Plan on Intellectual Property Enforcement," we will re-examine and enhance these tools to help SMEs operate and protect their intellectual property (IP) in China.

At the 2009 JCCT, China committed that it will impose maximum administrative penalties on Internet infringers and strengthen protection of copyright-protected academic and medical journals. I am working to expand upon that success at the next meeting of the JCCT this fall.

But we are not waiting for China to do better. The Department of Commerce's USPTO already has IP attachés in Beijing and Guangzhou. We are currently working to deploy a third IP attaché to China. As a result of the work of our two IP attachés currently stationed in China, the USPTO in the last three years has submitted comments on some 15 major Chinese legislative or regulatory proposals affecting substantive IP rights in China, and we continue to monitor IP enforcement in China both through cooperation with U.S. law enforcement agencies and through review of enforcement actions taken (or not taken) under the Chinese legal system, especially on behalf of U.S. enterprises.

These attachés work with the Chinese government to improve IP enforcement efforts and assist U.S. rights holders to protect and enforce their rights in China. For example, our IP attaché in Beijing is coordinating a joint program with China, the European Union and Japan, on the topic of "trademark squatting" – a costly and time consuming problem in China hurting U.S. companies where a party intentionally files an application to claim another company's trademark.

ITA will continue to help SMEs overcome problems they face protecting and enforcing their intellectual property rights overseas through our Trade Agreements and Compliance program. Working collaboratively with the USPTO and other U.S. Government agencies, ITA works with businesses facing unfair IP trade barriers to ensure that our trading partners establish, maintain, and enforce legal regimes that provide for effective IPR protection and enforcement as required by our trade agreements. We consistently communicate to all levels of the Chinese government that a strong IPR regime in China will also encourage innovation and benefit both of our nations.

**Question 5**

*Many U.S. companies have also noted that software piracy continues to be rampant among Chinese state-owned enterprises (SOEs). And the U.S. software industry tells me that Chinese companies only legally purchase 20 – 30 percent of their software needs. They pirate the rest. What are you doing to ensure China's SOEs legally purchase U.S. software?*

**Response:** In bilateral and multilateral discussions with all of our trading partners, including China, the Department of Commerce and other concerned agencies push for the use of legally purchased and licensed software. We have heard from U.S. industry representatives that a

significant number of Chinese state-owned enterprises run pirated software on their computer systems. At the 2006 JCCT, the United States announced that China had issued a notice requiring the pre-installation of legal operating system software for all computers imported to or produced in China. We are carefully monitoring the situation to ensure that this is taking place. The Department of Commerce will continue to press the Chinese Government to ensure that state-owned enterprises use only legitimate software. In addition to leading by example in this way, the Commerce Department makes use of its extensive toolkit to assist U.S. software companies in finding ways to protect their IPR and enforce their rights in China.

**Question 6**

*I understand that China requires trademark holders to obtain a domestically registered trademark before the government will take action against counterfeiters. And in some cases, China has refused to grant U.S. companies trademarks, stating that a company name is contrary to "socialist morality or customs." And while a company's trademark application languishes, counterfeiting persists. What steps are you taking to address this issue?*

**Response:** The Department of Commerce is doing everything it can to make sure our businesses get equal treatment in foreign markets. To that end, the protection and enforcement of intellectual property rights of U.S. companies doing business abroad is one of my highest concerns and priorities. We are mindful of the particular enforcement challenge raised here.

We are looking at enforcement challenges connected with this issue and have taken a number of steps to address the issue with China. On my most recent trip to China I raised this issue with China's Minister of Commerce, Chen Deming. During the JCCT Mid-Year Review later that week, Under Secretary of Commerce for International Trade Francisco Sanchez and our USTR colleagues brought this issue to the attention of Vice Minister of Commerce Ma Xiuhong. In addition, this issue was raised in April at the JCCT Intellectual Property Working Group meeting.

We will continue this dialogue with our Chinese counterparts as we look for ways to address this issue. In the meantime, we are aggressively addressing the larger counterfeiting issue and also working directly with companies affected by this specific situation. In cases like this, Commerce works with the company to identify courses of action, bases for enforcement, and ways to prevent unauthorized goods from entering markets where the trademark is registered.

**Question 7**

*I understand China recently announced that it is urging Chinese exporters to live up to international corporate social responsibility (CSR) standards, including on issues such as environmental protection. What are your thoughts on encouraging China to include respect for intellectual property rights as an element of its CSR program?*

**Response:** While the possible pros and cons of encouraging China or other foreign countries to incorporate respect for IPR in their corporate social responsibility standards have not been fully explored, this idea merits further examination. Improving the protection of intellectual property rights through enforcement mechanisms that exist in Chinese law is a top priority for the

Department of Commerce and for the U.S. Government as a whole. While naming and shaming bad corporate behavior in terms of respecting IP rights could in principle be helpful in curbing abuses, particularly in areas in which counterfeits/fakes pose health and safety risks, serious challenges stand in the way of efforts to using CSR principles to address the problem. The Department of Commerce recognizes the seriousness of the problem in China and has devoted significant resources, in both the United States and China, to help improve the IPR protection and enforcement situation to the benefit of U.S. stakeholders. We are working closely with industry stakeholders to better coordinate public and private initiatives in training, capacity-building and outreach activities, and are seeking to learn more about Chinese government's plans to promote CSR standards for Chinese companies.

**Question 8**

*Treasury has primary jurisdiction over currency policy. But USTR is responsible for determining whether the United States should bring a WTO case against China's currency practices. And the Commerce Department is responsible for determining whether China's currency practices are an improper subsidy under U.S. law.*

*Ambassador Kirk, what steps are you taking to assess whether the United States should bring a WTO case against China's currency practices?*

*Secretary Locke, what standard do you use to assess whether the Commerce Department should accept a countervailing duty petition against China's currency practices?*

**Response:** The Commerce Department observes the requirements of U.S. trade law when determining whether to initiate a countervailing duty investigation of an alleged subsidy program. Under section 702 of the Tariff Act of 1930, as amended, a petition must allege the elements necessary for the imposition of a countervailing duty, and be accompanied by information reasonably available to the petitioner supporting those allegations. The three elements of a subsidy as defined by U.S. law are the existence of a financial contribution by the government, the conferral of a benefit, and that the subsidy is specific to an enterprise or industry or group thereof. The Department carefully considers the complex legal and factual issues involved in Chinese currency undervaluation allegations in determining whether the petitioner's allegation adequately addresses each of those three elements of a subsidy.

**Question 9**

*I fully support the President's recent call to double U.S. exports in the next five years. But we cannot meet this goal without a clear plan in place, and benchmarks to ensure we are making measurable progress along the way. What steps are you taking to establish these benchmarks? How will you ensure exports from key U.S. sectors are increasing on an annual basis?*

**Response:** President Obama's Executive Order establishing the National Export Initiative (NEI) signed on March 11, 2010, requires the Export Promotion Cabinet, through the Trade Promotion Coordinating Committee (TPCC) to provide the President a comprehensive plan to carry out the goals of the NEI within 180 days. Furthermore, the Executive Order makes clear



that in my capacity as Chairman of the TPCC, I shall set forth the steps taken to implement this plan in the annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives required by the Export Enhancement Act of 1992. This report will be shared with your Committee as well as the International Trade Administration's (ITA) other authorizing and Appropriations Committees.

The structure and the content of the NEI report to the President are being developed through the TPCC. The report will include work by the TPCC Data & Analytics Working Group (co-chaired by representatives from Commerce and USTR) on establishing and coordinating data, metrics, and benchmarks across the TPCC agencies.

The Department of Commerce is already taking action to increase U.S. exports. In addition to our work through the TPCC to promote exports, Commerce's ITA, led by Under Secretary Francisco Sanchez, has implemented a plan to ramp up our efforts in the first 12 months following President Obama's announcement of the NEI. Central to this plan is a fundamental shift for the organization. We will target new-to-market companies which will provide a greater short-term return on investment. This plan includes:

- Expanding the base of companies that export to more than one country;
- Expanding U.S. exports to emerging markets and in high growth sectors;
- Increasing participation by international buyers in U.S. trade shows; and
- Increasing participation in trade missions.

While we focus on increasing the number of companies that export to new markets, we are partnering with Small business Administration, states, and other non-profit business advisors to make sure new-to-export companies get the services they need.

While implementing this program within existing resources, we have set a stretch goal of increasing ITA-assisted U.S. exports by 22 percent. In 2009, ITA helped support \$17.5 billion in total value of U.S. exports<sup>1</sup>. Our goal for the 12-month plan is to help support \$22.7 billion in U.S. exports. This will support 123,000 jobs in 2010 up from our projected target of 97,000 jobs<sup>2</sup>.

The International Trade Administration is closely tracking these performance metrics, and is currently on track to meet these goals. Other factors play a critical role in growing exports for key U.S. sectors, and government cannot do it alone. As the President noted in his July 7 speech on exports, "America's success ultimately depends on [the private sector's] success. It's the private sector that has always been the source of our job creation, our economic growth, and our prosperity; and it's our businesses and workers who will take the reins of this recovery and lead us forward." We will continue to work closely with our strategic partners and the business community at large, especially small- and medium-sized businesses.

<sup>1</sup>Total Value of Exports include value of export successes, value of U.S. export content of Advocacy wins, and value of Market Development Cooperator Program--related exports.

<sup>2</sup>Based on 2010 ratio of \$185,000 in exports per job supported/created.

Like you, I strongly believe that establishing metrics to ensure we can accurately measure our progress toward achieving the goals of the National Export Initiative is important. I thank you for your support of the NEI and look forward to your continued input as we move forward in implementing this critical initiative to continue to grow our economy and, most importantly, get Americans back to work.

#### QUESTIONS FROM SENATOR GRASSLEY FOR SECRETARY LOCKE

##### *Question 1*

*I'm concerned by the growing trend of the Chinese government to impose measures that limit market access for imports and advantage Chinese companies at the expense of U.S. firms.*

*This trend appears to reflect a conscious policy decision by the Chinese government.*

*It is not what one expects to see from a country that is a major global exporter and one of the chief beneficiaries of the global trading system.*

*Do you agree that China is becoming less interested in opening its market to foreign competition and more intent on creating advantages for its own companies?*

*If so, does the Administration have a comprehensive plan in place for addressing this problem? How should the United States respond to it?*

**Response:** Over the last five years, the Chinese Government has increasingly resorted to industrial policies to redirect its economy. This policy shift slowed a long-term trend of economic liberalization that had reduced incrementally the influence of China's state-owned sector and incorporated limited market forces in economic policy making over the last few decades. As a result, there are concerns that the state-owned sector is growing and government policy has increasingly taken the place of market principles in the Chinese economy. While significant problems that previous Administrations have faced still exist, it is clear that these problems are part of a larger issue: industrial policies that limit foreign market access with the goal of developing an indigenous capacity to innovate and increase the profitability of Chinese companies vis-à-vis their foreign competitors. While we are concerned about the long-term trend, we should note that between 2008 and 2009, U.S. goods exports to China were down only 0.3 percent (basically flat), while U.S. goods exports to the world were down 18 percent. Compared to the same period of 2009, in the first five months of 2010, U.S. goods exports to China increased 39 percent, compared to an increase of 23 percent to the world.

The President, Secretary Geithner, Ambassador Kirk and I have spoken with one voice about those challenges, both publicly and in meetings with our Chinese counterparts. We know that American businesses will succeed when they have a level playing field on which to compete. Where progress is lacking, we do not hesitate to make full and effective use of the WTO dispute settlement mechanism, and to vigorously enforce our trade laws to protect our rights. The involvement of Commerce Department officials in trade missions, from Deputy Assistant Secretaries up to and including me, is one way to increase American exports to China. The U.S. Government's formal advocacy efforts helped produce over \$25 billion in U.S. export value to

China over the last six years, my trade mission to China last month registered immediate successes collectively valued at over \$20 million for American clean energy companies. The Chinese government has responded to some of our concerns, by, for example, removing the local content requirements for wind turbines. We will continue to ensure that Americans can take full advantage of the opportunities provided by a growing China.

**Question 2**

*When you were in Shanghai last month, you spoke about the potential market opportunities in China for U.S. wind turbine manufacturers.*

*I understand, however, that China is applying “buy local” policies that steer most state-financed energy contracts to Chinese companies.*

*These discriminatory policies are causing U.S. wind turbine manufacturers to lose market opportunities in China.*

*What is the Administration doing to eliminate China’s discriminatory policies, and what can Congress do to help?*

**Response:** The Department of Commerce is committed to ensuring that U.S. companies can compete fairly in the global economy. China’s clean energy market is likely to reach \$100 billion by 2020, giving U.S. companies an important and timely opportunity to participate in this emerging, dynamic sector. At last year’s meeting of the JCCT, for example, China agreed to remove local content requirements on wind turbines. In May, I led a clean energy trade mission of 24 companies to China, focusing on increasing opportunities for U.S. businesses to access the vast clean energy sector in China. During the mission, I met with senior-level officials to discuss market access opportunities and challenges for U.S. businesses in China’s clean energy sector. The mission provided us with a great opportunity to raise our concerns on policies which potentially discriminate against U.S. companies, specifically in China’s renewable energy sector. We will continue to monitor these policies, and will address specific concerns through high-level engagement, including the JCCT. In addition, at the S&ED this May, China undertook to revise its offer this summer to join the Government Procurement Agreement. The United States has received the offer and U.S. agencies are still evaluating it.

**Question 3**

*In an editorial last week, the Washington Post said the Obama administration and Democratic congressional leaders have subjected Colombia to “arms-length disdain and protectionist stonewalling” and that congressional Democrats have treated Colombia “more as an enemy than friend.”*

*Do you think Mr. Santos’ election will change this dynamic so that we will finally be able to implement our bilateral trade agreement with Colombia?*

*If not, why isn’t the President willing to give the Colombians the same commitment he gave to the South Koreans?*

*Does this Administration appreciate the significance of our relationship with Colombia, which is just as important in Latin America as our relationship with South Korea is in Asia?*

**Response:** The Obama Administration highly values our relationship with Colombia, and the role it plays in the Hemisphere. The Colombia trade agreement continues to be an important trade priority for the Administration. On July 7, the President signaled his commitment to move forward with the agreement as soon as possible. As directed by the President, the Commerce Department is working with USTR to address successfully the outstanding labor-related issues. The outgoing Colombian Government has worked closely and cooperatively with the Administration in providing the necessary information for this work to proceed, and I look forward to assisting Ambassador Kirk in working with the Santos Administration to complete the task.

**Question 4**

*I also support quick implementation of our trade agreement with Panama. There is no good reason why that agreement should remain stalled.*

*Why isn't the President willing to make the Panama trade agreement a priority? How much longer do we need to wait before we'll see a serious attempt to implement the Panama trade agreement?*

**Response:** The Panama trade agreement is also an important trade priority for the Administration. On July 7, the President announced his commitment to moving forward also with the agreement as soon as possible. In cooperation with my colleague Ambassador Kirk, the Department of Commerce is working to successfully address the outstanding issues related to the agreement in order to be able to submit it for Congressional consideration. Specifically, USTR is seeking to address concerns with certain aspects of Panama's labor regime and its tax transparency rules. Panama is a highly valued U.S. partner in the region, and we recognize the significant commercial advantages to having this trade agreement enter into force.

**Question 5**

*In 2001, the United States imposed an antidumping duty order on imports of honey from China.*

*I understand that some importers may be evading the order and are thus not paying antidumping duties.*

*What is the Administration doing to prevent the circumvention of the antidumping duty order on imports of honey from China?*

**Response:** The Department of Commerce's Import Administration (IA) takes these allegations seriously and has actively investigated allegations of circumvention of the antidumping order on honey from China. IA works in concert with other agencies, including U.S. Customs and Border Protection (CBP), the Department of Justice (DOJ), and USTR to implement and further our enforcement initiatives. For example, Commerce referred specific information to CBP that was

discovered by IA officials during the course of administrative proceedings involving the antidumping order on honey from China. These referrals directly resulted in a CBP investigation, which ultimately led to the arrest and prosecution of certain honey importers.

IA has established a CBP Liaison Unit, to coordinate with and provide advice to CBP on the enforcement of the antidumping/countervailing duty laws, as well as the implementation of IA's determinations. The CBP Liaison Unit also tracks and maintains protest records and files related to customs litigation issues.

IA's China/Non-Market Economy Unit (NME) has been given special charge to address distinct and unique issues encountered in cases involving China and other NME countries, such as questionable financial reporting systems, opaque company ties, and unclear relationships with local and provincial governments, while paying special attention to addressing fraud and circumvention issues.

Drawing upon these resources, Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, met with representatives of the U.S. Honey Packers in August, 2009. They were concerned about the proper identification of the products to determine whether certain products not labeled as honey were actually pure honey. Deputy Assistant Secretary Lorentzen outlined the process of scope and anticircumvention inquiries, what type of information would need to be provided for the record, and the possible results of such Departmental action. The Department will continue to do all that it reasonably can within the confines of the law to prevent and address the evasion or circumvention of this and other antidumping orders.

***Question 6***

*Secretary Locke stated in response to a question from Senator Stabenow that Buy American requirements do not limit purchases of Chinese products below a certain value threshold.*

*Please explain further how the value thresholds work and how they interact with our international obligations in the area of government procurement.*

*Does the Federal government collect the data that would be necessary to track whether and to what extent Federal agencies procure Chinese goods and services that fall below the relevant value thresholds? Would it be feasible to do so? If so, how? If not, why not?*

**Response:** In general, the Buy American Act of 1933 requires the federal government to procure only U.S.- made goods for use in the United States. As implemented, the Buy American Act does not apply to contracts below the "micro-purchase" threshold (currently \$3000) (see FAR 25.100(b)(1)).

The Trade Agreements Act of 1979 (TAA) authorizes the President, who has delegated the authority to the U.S. Trade Representative, to waive procurement provisions, including the Buy American Act, for covered procurements from designated countries that include a Caribbean Basin country, a least-developed country, or a country with which we have reciprocal government procurement commitments such as a Free Trade Agreement or the WTO Agreement on Government Procurement (GPA). The TAA in effect rewards countries that have agreed to

open their government procurement markets to U.S. companies by providing reciprocal access to the U.S. federal government procurement market. China has yet to provide such access.

Where a federal government procurement is covered under the GPA and exceeds the dollar threshold set out in that agreement – the GPA goods and services threshold is \$203,000 – then the federal agency must either buy American-made products or products from a designated country such as one of our trade agreement partners, unless no offer is received or the offers received are insufficient to fulfill the requirements (see FAR 25.403(c)(1)).

The Office of Management and Budget is responsible for setting policy on the reporting of data connected to federal government procurements, including identification of origin of products purchased. That policy is implemented through the Federal Procurement Data System, the publicly available database for reporting government procurement data administered by the General Services Administration. This system is able to present data down to the individual contract level. However, because of how the data is recorded in the system, it is not possible to assess the country of origin for each contract.

#### QUESTIONS FROM SENATOR ROCKEFELLER FOR SECRETARY LOCKE

##### *Question 1*

*Secretary Locke and Ambassador Kirk, I know that the Administration is considering how to comply with the World Trade Organization's decision on "zeroing." As you know, the manner in which the Administration deems compliance will have enormous implications for how our domestic industry and its workers will be affected by predatory trade practices. If the Administration takes wrong steps to bring the United States into compliance there is the possibility that American workers will face the double jeopardy of the current economic crisis and unfair trade practices from international competitors.*

*Congress needs to be consulted before the Administration decides how to bring the United States into compliance and before action is taken. The Administration must ensure that whatever steps are taken are not in contravention to the original congressional intent. Additionally, the steps taken must not be applied retroactively as this would be unacceptable and run counter to congressional intent. Should the Administration take steps in order to come into compliance with World Trade Order rulings regarding the practice of zeroing then those actions must only be applied prospectively.*

*Will you pledge to consult members of Congress as you deliberate on how best to implement new zeroing regulations?*

**Response:** Absolutely. The Administration is aware of the concerns associated with the "zeroing" issue. We have criticized the reports of the WTO Appellate Body, finding zeroing to be inconsistent with our WTO obligations, as creating new obligations for WTO members. WTO dispute settlement, however, is an important component of the WTO Agreements and the United States has indicated that it intends to come into compliance with the zeroing findings. To this end, Commerce and USTR have been working closely in an effort to develop an

implementation approach that would both bring the United States into compliance and provide effective enforcement of U.S. antidumping law. Despite months of serious work on this issue, we are not yet there. You may be assured that we will engage in consultations with Congress prior to moving forward.

#### QUESTION FROM SENATOR BINGAMAN FOR SECRETARY LOCKE

***Question 1***

*One year ago, on June 23, 2009, the United States filed a WTO case against China alleging that China has unfair export restrictions on nine raw materials used in steel production and other finished goods. (The nine materials are bauxite, coke, fluorspar, magnesium, manganese, silicon metal, silicon carbide, yellow phosphorous, and zinc.) It is my understanding that the administration considered whether to include rare-earth metals in the WTO case and has continued to investigate China's policies on the export of these elements. This is an important issue for clean energy manufacturing jobs in the United States because rare-earth metals are used in the production of many clean energy goods, including high-strength magnets used in wind turbines. Nearly 95% of rare-earth metals are currently mined and processed in China. In January, China capped the quantity of rare-earth metals that could be produced, and earlier this month China decided to limit production rights to state-controlled mining companies. Secretary Locke and Ambassador Kirk: First, will these new policies restrict the export of rare-earth metals? Second, what is the status of the administration's investigation into Chinese export policies for rare-earth metals?*

**Response:** The U.S. Government and U.S. industry have been concerned for some time about the export quotas and export duties that China uses to restrain exports of rare earth metals. We continue to urge China, through bilateral fora such as the JCCT, and multilateral fora such as the WTO, to eliminate these export restraints to ensure that there is a level playing field for all competitors in this important sector.

#### QUESTIONS FROM SENATOR WYDEN FOR SECRETARY LOCKE

***Question 1***

*Secretary Locke, earlier this year, during this committee's hearing to consider the nomination of Frank Sanchez as the Under Secretary of Commerce for International Trade, I and Chairman Baucus raised the issue of metrics and benchmarks for the National Export Initiative (NEI). We both support the establishment of periodic benchmarks so that we know that whether the right strategy is employed to meet the president's goal of doubling exports in five years. Mr. Sanchez said that he, too, supported establishing goals and benchmarks that enable measuring the success of the NEI and to make adjustments to the strategy if necessary. What progress has the Department of Commerce and the Obama Administration made on establishing metrics and benchmarks, by economic sector that would establish the near- and medium-term goals for the NEI?*

**Response:** President Obama's Executive Order establishing the National Export Initiative (NEI) signed on March 11, 2010, requires the Export Promotion Cabinet, through the Trade Promotion Coordinating Committee (TPCC) to provide the President a comprehensive plan to carry out the goals of the NEI within 180 days. Furthermore, the EO makes clear that in my capacity as Chairman of the TPCC, I shall set forth the steps taken to implement this plan in the annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives required by the Export Enhancement Act of 1992. This report will be shared with the Finance Committee as well as ITA's other authorizing and Appropriations Committees.

The structure and the content of the NEI report to the President are being developed through the TPCC. The report will include work by the TPCC Data & Analytics Working Group (co-chaired by representatives from Commerce and USTR) on establishing and coordinating data, metrics, and benchmarks across the TPCC agencies.

The Department of Commerce is already taking action to increase U.S. exports. In addition to our work through the TPCC to promote exports, Commerce's ITA, led by Under Secretary Francisco Sanchez, has implemented a plan to ramp up our efforts in the first 12 months following the President's announcement of the NEI. Central to this plan is a fundamental shift for the organization. We will target new-to-market companies which will provide a greater short-term return on investment. This plan includes:

- Expanding the base of companies that export to more than one country;
- Expanding U.S. exports to emerging markets and in high growth sectors;
- Increasing participation by international buyers in U.S. trade shows; and
- Increasing participation in trade missions.

While we focus on increasing the number of companies that export to new markets, we are partnering with the Small Business Administration, States, and other non-profit business advisors to make sure new-to-export companies get the services they need.

While implementing this program within existing resources, we have set a stretch goal of increasing ITA-assisted U.S. exports by 22 percent. In 2009, ITA helped support \$17.5 billion in total value of U.S. exports<sup>1</sup>. Our goal for the 12-month plan is to help support \$22.7 billion in U.S. exports. This will support 123,000 jobs in 2010 up from our projected target of 97,000 jobs<sup>2</sup>.

The International Trade Administration is closely tracking these performance metrics, and is currently on track to meet these goals. Other factors play a critical role in growing exports for key U.S. sectors and government cannot do it alone. As the President noted in his July 7 speech on exports, "America's success ultimately depends on [the private sector's] success. It's the private sector that has always been the source of our job creation, our economic growth, and our

<sup>1</sup>Total Value of Exports include value of export successes, value of U.S. export content of Advocacy wins, and value of Market Development Cooperator Program--related exports.

<sup>2</sup>Based on 2010 ratio of \$185,000 in exports per job supported/created.



prosperity; and it's our businesses and workers who will take the reins of this recovery and lead us forward." We will continue to work closely with our strategic partners and the business community at large, especially small- and medium-sized businesses.

Like you, I strongly believe that establishing metrics to ensure we can accurately measure our progress towards achieving the goals of the National Export Initiative is important. I thank you for your support of the NEI and look forward to your continued input as we move forward in implementing this critical initiative to continue to grow our economy and, most importantly, get Americans back to work.

**Question 2**

*Secretary Locke, as I mentioned at the hearing, my office recently published a report that suggests that U.S. exports of certain environmental goods are vastly overstated, accounting for roughly 10 percent of previous estimates. This leads me to believe that we might not have as firm a grasp as we thought we had when it comes to how we account for environmental goods exports.*

*If we can't track what we export, then how are we going to measure our ability to reach the goal of doubling exports of green products, like clean energy products, over the next five years, as spelled out in the draft National Renewable Energy and Energy Efficiency Export Strategy? Can you please clarify your remarks that you provided at the hearing?*

**Response:** While the Department of Commerce does not consider data on the renewable energy and energy efficiency sectors to be complete, we believe that sufficient data exists to provide a reasonable starting point for measuring exports in these sectors. The methodology of estimating the exports should still provide policy makers with a reasonable assessment of the outcomes of the National Renewable Energy and Energy Efficiency Export Strategy and whether it is meeting its goals. Overestimation of trade in these and other environmental technologies is largely due to the issue of dual-use and a lack of clarity in how some of these goods are being used. The Commerce Department has worked with industry and the U.S. International Trade Commission (USITC) to develop a list of these goods from which we can reasonably extract trade data. Much of the improvement in limiting overestimation of trade in these sectors is a result of the work completed by the USITC at your request.

The Department of Commerce is working closely with the USITC and other U.S. agencies to improve the data regarding renewable energy and energy efficiency exports. The Strategy will explicitly state both the methodologies used to derive trade figures and the margins of error associated with this data. The Trade Promotion Coordinating Committee Working Group on Renewable Energy and Energy Efficiency will periodically update these trade statistics as improvements become available, and will continue to consult with the USITC in approximating U.S. trade in renewable energy and energy efficiency products.

## QUESTIONS FROM SENATOR STABENOW FOR SECRETARY LOCKE

**Question 1**

*I know agencies are able to buy Chinese-made hats, tires and even ammunition because of waivers to the Buy American Act. Can you provide me with a list of products made in China that the Department of Commerce purchased relying on Buy American Act waivers in FY2009?*

**Response:** The Department of Commerce did not purchase any products from China in FY2009 using Buy American Act waivers.

**Question 2**

*I know China is an important market for US businesses. While in China, I heard of the high demand on our Embassy staff and resources working with US businesses. I would like to know if Commerce has the ability to meet the demand. And if not, what is Commerce doing to prioritize, reshuffle, or pursue additional funding?*

**Response:** Commerce currently has offices in Beijing, Shanghai, Chengdu, Shenyang, Guangzhou and Hong Kong. All of these commercial offices are very busy, especially Beijing and Shanghai, which have the largest staff (38 in Beijing; 26 in Shanghai). In all, 129 employees (Americans and Chinese) of the Department of Commerce work at the American Embassy and Consulates in China at present. The commercial section (CS China) strives to meet business clients' demand for its core services. For example, at full staffing, CS China can meet the demand for the Gold Key Matchmaking Service with the standard six weeks' lead-time, but vacancies have caused delays for services in some sectors that will be addressed when we are able to fill some of the vacant positions. The President's FY2011 budget requests additional funding for ITA that would allow the agency to address such delays. We consistently review our hiring priorities to ensure that they are in line with the National Export Initiative and other core Administration priorities.

**Question 3**

*As Michigan companies have repeatedly reported to the Import Administration, they are struggling to compete with Chinese imports that are subsidized by the undervalued yuan. It's my understanding that the threshold for the Import Administration to initiate a subsidy allegation is lower than that of the threshold to find a subsidy and impose countervailing duties. With the initiation threshold so low, what is preventing the Import Administration from even beginning the investigation?*

**Response:** The Commerce Department must observe the requirements of U.S. trade law when determining whether to initiate a countervailing duty investigation of an alleged subsidy program. Under section 702 of the Tariff Act of 1930, as amended, a petition must allege the elements necessary for the imposition of a countervailing duty, and be accompanied by information reasonably available to the petitioner supporting those allegations. The three elements of a subsidy as defined by U.S. law are the existence of a financial contribution by the government, the conferral of a benefit, and that the subsidy be specific to an enterprise or industry or group thereof. Allegations of Chinese currency undervaluation involve unique and

complex legal and factual issues that require careful consideration before the Department can determine that the petitioner's allegation adequately addresses all of the three elements of a subsidy. The Department is still in the process of examining the facts of the allegation, and the information reasonably available to petitioners, to determine whether the allegation meets the legal threshold for initiation.

#### QUESTION FROM SENATOR ENSIGN FOR SECRETARY LOCKE

##### *Question 1*

*I'm interested in any learning about any programs or initiatives that the Department of Commerce is implementing that are designed to boost Chinese tourism into the U.S. As you know, the number of Chinese tourists has continued to grow over the last decade. According to the state run China Tourism Academy, 54 million Chinese are expected to go abroad this year, up from 42.6 million in 2009 and 10.5 million in 2000. This trend is anticipated to continue. The WTO estimates that by 2020, Chinese mainland travelers will take 100 million trips abroad, making China the world's fourth largest source of overseas tourism.*

*While the U.S. Travel Association expects the number of Chinese tourist arrivals to the U.S. to grow from a half million last year to 795,000 in 2013, the evidence suggests that we are not doing enough to fully capture the potential of this market. Most Chinese tourists, some 75 percent, still restrict their trips to Hong Kong and Macau. Of the remainder, more than half stay in Asia, with only 10 percent venturing to Europe or the U.S. This is especially frustrating when you consider that the U.S. bound tourists represent the highest spending international visitors, pumping an average of \$7200 per person per trip into our economy. I believe that this is an underserved tourism market that could mean billions of additional dollars in economic activity.*

*As you may know, I am a coauthor of the Travel Promotion Act, which I am confident will encourage international tourism in the U.S. Can you describe what, if anything, the Department of Commerce is doing to specifically boost Chinese tourism in the U.S.?*

*I am aware that the AmCham-China Business Visa Program allows participating member companies' direct employees, their spouses and children apply for and receive U.S. visas in an expedited manner. Is the Department of Commerce working with the Department of Homeland Security and other governmental entities to build upon this program to attract more Chinese tourists to the U.S.? Why or why not?*

**Response:** We agree that China is an important growth market for the U.S. travel and tourism industry and we are actively targeting this key market. In 2007, the Department of Commerce developed and signed the Memorandum of Understanding Between the Government of the People's Republic of China and the Government of the United States of America to Facilitate Outbound Tourist Group Travel from China to the United States (MOU), opening the Chinese market for outbound group leisure travel. Through the Joint Committee on Commerce and Trade (JCCT), the Department and the China National Tourism Administration (CNTA) are working to implement this agreement. Since the MOU was signed, we have increased the coverage of the MOU from 9 to 21 Chinese provinces. We have also worked with the Department of State to

facilitate group leisure travel through a special visa interview appointment system for those traveling in groups to the United States.

Through the Tourism Policy Council, an interagency committee established by law to focus on travel and tourism issues, we will continue to seek ways to reduce wait times for visa interviews and increase access for those wishing to apply for visas to travel to the United States.

The Department of Commerce has also provided a 2009 Market Development Cooperator Program (MDCP) award to the National Tour Association (NTA) to open a Visit USA office in Shanghai. The NTA has responsibility for qualifying and maintaining an updated list of approved U.S. inbound tour operators in accordance with the MOU. NTA is planning to open this office to assist in facilitating the exchange between government agencies and the private sector in both China and the United States to enhance mutual understanding of the structure, regulatory framework, and best practices of the travel and tourism sectors in both countries.

The Department's U.S. Commercial Service in China has several trade specialists that assist U.S. travel and tourism businesses to increase travel from China to the United States. Services include supporting these U.S. businesses at Chinese trade shows and setting up and implementing trade missions and business meetings.

The Department's Office of Travel and Tourism Industries (OTTI) conducts several key data collection and analysis functions to provide market intelligence for U.S. businesses interested in China. On a monthly basis, OTTI reports the number of Chinese visitors to the United States and surveys Chinese visitors who leave the United States concerning their trip to our country. On an annual basis, OTTI develops a market profile of Chinese visitors; this information is used to develop custom data runs for specific U.S. destinations interested in the Chinese market. This data is also used by the DOC's Bureau of Economic Analysis to develop the estimate of spending by Chinese visitors that you quoted. Finally, OTTI issues a forecast for overall travel to the United States, which provides guidance to the travel industry on travel from China and almost 40 other countries. This information projects volume and growth rates for international travelers to the United States.

OTTI and its partner offices in the DOC's International Trade Administration have held two webinars on Chinese travel to the United States, providing the latest data and additional information to assist U.S. businesses expand this market.

The AmCham-China Business Visa Program was developed as a business facilitation tool and is therefore aimed toward expediting the visa process for business travelers. The Department of State will normally issue combination business/tourist (B1/B2) visas to business travelers unless there is a reason not to do so.

The Department will work closely with the Corporation for Travel Promotion, established by the Travel Promotion Act, to promote travel from China to the United States.

**QUESTIONS FROM SENATOR ENZI FOR SECRETARY LOCKE*****Question 1***

*Secretary Locke, the latest proposal by the Administration to reform export licensing requirements came out in April. Secretary Gates cited that a single agency would be better able to reduce redundancy and provide small exporters with greater access to markets overseas. How would this proposal meet the goals set by President Obama to double exports in the next 5 years while providing the necessary protection of sensitive U.S. hardware?*

**Response:** The President's Export Control Reform (ECR) effort, which is separate and distinct from the National Export Initiative, seeks to enhance U.S. national security by focusing controls on the most sensitive items. ECR is expected to facilitate exports of less sensitive items to customers that do not pose a proliferation or national security concern. For those items warranting control, the reform process will make our licensing system more simplified, transparent, and predictable, which will create efficiencies for exporters in complying with regulations and the U.S. Government in making decisions on license applications, that in turn will put American companies on a more level playing field with foreign competitors subject to similar export control requirements and spur exports of controlled U.S. items. Accordingly, ECR is expected to enhance the competitiveness of our industrial base and facilitate more secure exports, which increases both our economic and national security.

***Question 2***

*It was recently reported that Chinese officials are pushing closer ties with a number of nations in the Pacific region, including Australia which, is a significant trade partner with China. In terms of American exports, what is the Department of Commerce doing to ensure that U.S. firms do not miss out on opportunities to increase trade to China and the region?*

**Response:** As Secretary of Commerce, I am keenly aware of the opportunities in China for U.S. exporters. The President's National Export Initiative states a goal of doubling exports over the next five years, an increase that will support several million American jobs. Strong U.S. exports to China and the Pacific region will be key to meeting this goal, and the Department of Commerce is working diligently on a number of fronts to ensure that this happens.

The Department of Commerce is engaging the Chinese Government on trade matters through the Joint Commission on Commerce and Trade, which will hold its high-level meeting this November, and through the U.S. – China Strategic and Economic Dialogue, which had its second meeting this past May.

Commerce currently has offices in Beijing, Shanghai, Chengdu, Shenyang, Guangzhou and Hong Kong and in 17 embassies and consulates across eleven other countries throughout East Asia and the Pacific. These offices are located within U.S. Embassies and Consulates, and staffed with Foreign Service Officers and Locally Engaged Staff, who work with U.S. firms to help them increase exports to China and the region. Domestically, a network of 109 U.S. Export Assistance Centers provides comprehensive exporting information and know-how to U.S. companies, including country-specific market research, information on standards and

regulations; and market entry planning. The China Business Information Center is an online web portal and toll-free hotline that provides U.S. companies with essential information on exporting to China.

Commerce, through strategic partnerships with corporations and associations, is reaching out to companies that currently export to only one country, to help these companies expand into additional markets, including in Asia.

Trade missions form a key part of Commerce's strategy to create business opportunities for U.S. companies abroad. For example, in May of this year, I led a business delegation of 24 U.S. companies to China to introduce them to in-country business prospects, and our staff is preparing to host several governor-led trade missions this summer. Through our International Buyer Program, our overseas staff recruits international businesspeople to attend trade shows in the United States, where they are introduced to U.S. exhibitors and their products and services.

## COMMUNICATIONS

---



July 2, 2010

The Honorable Max Baucus  
Chair  
Finance Committee  
U.S. Senate  
Washington, DC

**RE: Written Testimony for June 23, 2010 Senate Finance Committee  
Hearing on “The U.S.-China Trade Relationship – Finding a New Path  
Forward”**

Dear Chairman Baucus:

Thank you for providing us this opportunity to submit this testimony in relation to the hearing cited above.

The American Apparel & Footwear Association (AAFA) is the national trade association representing the apparel and footwear industries, and their suppliers. Our members produce and market apparel and footwear throughout the United States and the world, including China. In short, our members make everywhere and sell everywhere.

AAFA applauds the Committee for holding a hearing on this critical question – finding a new path forward for the U.S./China trade relationship. AAFA fundamentally believes that the U.S./China trade relationship has benefited the U.S. economy – from U.S. workers to U.S. consumers.

While many problems remain, China’s economy over the past ten years has become significantly more open, predictable, transparent and market-based, opening the world’s fastest growing market, with over 400 million middle-class consumers, to U.S. products, U.S. brands and U.S. retailers. China’s accession to the World Trade Organization (WTO) in 2001 led to much of this change.

What has this sea change done for our industry? China is now the fastest growing market for U.S. apparel and footwear brands. Sales of U.S.-branded footwear and apparel in the Chinese market, even if those clothes and shoes are not made in the United States, support thousands of U.S. jobs – high-value jobs in R&D, marketing, logistics, sales and other fields. In fact, in this time of economic uncertainty, China in many cases is the only growing market for U.S. brands and retailers. This holds true for many other U.S. industries.

Just as important, China is the fastest-growing market for U.S.-made and U.S.-produced products not only in our industry, but in all industries – from U.S.-made yarn, fabric, waterproof textiles and rubber soles to U.S.-made machinery and high technology products and from U.S.-produced cotton to U.S.-produced soybeans and poultry. In many cases, China is the largest market for these U.S.-made and U.S.-produced products. For example, China is the largest and fastest growing export market for U.S. cotton, with almost \$900 million in exports in 2009 alone. China is also now the 4<sup>th</sup> largest market for U.S.-made yarn and fabric, with China importing over \$430 million in U.S. textiles in 2009 alone.

Please bear in mind that the U.S.-China trade benefits not only the U.S. farmers, manufacturers and brands, but also U.S. consumers. Today, virtually all clothes and shoes sold in the United States are imported. Over 85 percent of all footwear and over 35 percent of all apparel sold in the United States is imported from China. Similar situations exist for a multitude of other consumer products used every day by U.S. consumers. The bottom line is that trade with China helps hardworking American families buy affordable clothes and shoes, life necessities, for themselves and for their children.

China's membership in the WTO has provided the United States with a well-established and respected framework for addressing specific concerns. And the United States has used these mechanisms effectively in many circumstances, including some of the issues of concern to the Committee. The resolution of the U.S. intellectual property rights (IPR) and famous brands subsidies cases through the WTO dispute settlement mechanism are perfect examples.

Moreover, China's accession to the WTO equipped the United States with new tools that could be used to address concerns raised by China's accession. For example, although AAFA opposed the use of quotas in this circumstance, the United States utilized the "textile-specific" safeguard several years ago to respond to concerns raised by certain domestic textile companies at a key time when global apparel quotas were being eliminated. More recently, the United States utilized the so-called "product specific" safeguard to react to concerns related to increased imports of tires. Finally, the United States does not even have to begin considering the concept of granting Market Economy Status to China in trade remedy cases until later this decade.

Again, AAFA recognizes that problems in the U.S.-China trade relationship still exist today. AAFA remains concerned with China's enforcement of IPR, not only in China but in products China ships to the United States. Counterfeit footwear from China is the number one counterfeit product seized by U.S. Customs and Border Protection (CBP). Footwear, along with apparel and fashion accessories, have consistently made the top 5 list of counterfeit products seized by CBP in the past few years. Most of these products have come from China.



While not a major issue for our industry, China's indigenous innovation policies are also an area of growing concern. AAFA hopes that the United States can successfully address these issues through the existing WTO framework. The recent successful WTO case on intellectual property rights demonstrates the benefits of this approach.

Regarding China's alleged subsidies policy, the United States eliminated many concerns through its successful WTO "famous brands" case against China. Meanwhile, China's apparel and footwear industry is one of the most market-based industries in the world, with the factories privately held and, for the most part, foreign-owned.

Our members have been impacted by China's Value-Added Tax (VAT) export rebate policy. China follows most other countries around the world, including Europe, in rebating the VAT paid on products that are exported out of the country. This practice in itself is not of concern to our industry. However, China has attempted to use the VAT export rebate as a tool to discourage apparel and footwear production in recent years by changing the percent of the VAT rebated to factories multiple times and with little or no notice. The one thing our industry cannot afford is uncertainty. We hope this issue can be addressed through future dialogue with China through the WTO or other initiatives like the Joint Commission on Commerce and Trade (JCCT) or the Strategic & Economic Dialogue (S&ED).

AAFA understands that one major issue of concern, the currency issue, cannot be addressed under the auspices of the WTO. AAFA believes the best long term strategy for China and the world is a freely convertible currency. AAFA remains concerned, however, that it is extremely difficult to identify the "right" exchange rate. Advocates for trade remedies often point to a "range" of currency misalignment in China of 15 to 50 percent. In fact, China has allowed its currency to float on a limited basis. The renminbi has already risen about 16 percent since mid 2005, yet it is still undervalued in the view of many experts. This only shows that it is no simple task to measure the true value of not just the renminbi, but any currency. Also, such wide discrepancies make it difficult to identify and execute effective trade remedies.

While we share your frustration that the path toward currency adjustment has not gone more quickly and evenly, we note that slow and deliberate change, rather than abrupt shifts, is the key to predictability to make sure business is not disrupted.

When measuring the scope of actions to be taken, please consider that such action could lead to retaliation by China that could close the fastest-growing market to U.S. footwear and apparel brands and a multitude of U.S. exports. As a result, such action could not only hurt U.S. companies, U.S. manufacturers, U.S. workers and hardworking American families, but could ultimately jeopardize our economic recovery.

Finally, since both the United States and China are member countries in the World Trade Organization (WTO), it is important that any action contemplated or taken by Congress not violate U.S. obligations under international trade rules. While many might not be concerned about this issue, this potential violation is of critical concern to the U.S. apparel and footwear industry. As I mentioned previously, U.S. apparel and

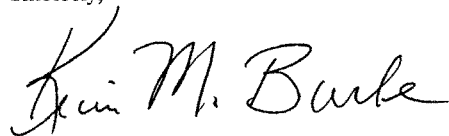
footwear firms make and sell everywhere around the world, including selling clothes and shoes made in China into major markets like Europe, Brazil and India. Any action taken by the United States against China that violates international trade rules would not only be closely watched by these countries, but could be quickly replicated, closing these important markets to U.S. brands. In fact, Brazil, Ecuador, Europe and many other countries have already imposed restrictions on imports of U.S.-branded footwear and apparel.

The U.S. apparel and footwear industry recognize that many important issues exist in the United States-China relationship – issues that directly affect U.S. apparel and footwear firms. However, as in the case of our industry, the relationship between the United States and China is one that is critically important to, and intimately intertwined with, the U.S. economy.

AAFA believes China's integration into the global economy since its accession to the WTO in 2001 has ultimately benefited this relationship by making the relationship, and China's economy, more open, transparent, predictable and market-based.

Thank you for your time and consideration in this matter. Please contact Nate Herman of my staff at 703-797-9062 or [nherman@apparelandfootwear.org](mailto:nherman@apparelandfootwear.org) if you have any questions or would like additional information.

Sincerely,

A handwritten signature in cursive script that reads "Kevin M. Burke". The signature is written in black ink and is positioned above the printed name and title.

Kevin M. Burke  
President & CEO

**STATEMENT OF**  
**AMERICAN BEEKEEPING FEDERATION**  
**AMERICAN HONEY PRODUCERS ASSOCIATION**  
**NATIONAL HONEY PACKERS & DEALERS ASSOCIATION**  
**HEARING ON**

**“The U.S. – China Trade Relationship: Finding a New Path Forward”**

**Committee on Finance**

**United States Senate**

**Wednesday, June 23, 2010**

We applaud the Senate Finance Committee for this timely hearing on the U.S. – China trade relationship. As beekeepers, honey packers, and importers, our challenges seem to grow faster than we can produce honey. The ever-evolving and complex schemes devised to enter honey into the United States without paying the U.S. antidumping duty on Chinese honey imports is mind-boggling, to say the least. Our comments are intended to shed additional light on these schemes, so the committee fully understands the gaps in our current laws and is better positioned to develop legislation that will provide the relevant federal agencies with the enforcement tools necessary to fight this very real threat to our future in the honey industry.

We also commend officials of the U.S. Immigration and Customs Enforcement (ICE) as well as U.S. Customs and Border Protection (CBP) for their dedicated efforts to combat the illicit trade in Chinese honey, which continues to be a major ongoing issue, as unscrupulous but resourceful market participants continue to develop multiple ways to evade antidumping and other U.S. laws. ICE special agents have recently had success in working closely with CBP officials on various honey laundering investigations. Their efforts offer some hope for the future to our industry, which suffered a 34% loss of U.S. managed honeybee colonies (over the last seven months ending in April 2010) due to the mysterious phenomenon known as Colony Collapse Disorder (CCD) and poor weather conditions.

### **U.S. Import Statistics Highlight the Honey Import Circumvention Problem**

U.S. Department of Agriculture Honey Market News data shows the U.S. imported less than 200,000 pounds of honey from China in 2009, despite the fact that China was one of the two largest U.S. honey suppliers before imposition of the Chinese antidumping duty in December 2001. Prior to implementation of the antidumping duty, China had shipped 58.7 million pounds of honey to the United States in 2000.

Record levels of honey are now being imported into the United States from Thailand, Taiwan, Malaysia and Indonesia. These last three countries do not have commercial beekeeping industries with anywhere near the capacity to produce significant quantities of honey, but somehow were able to export 35.5 million pounds of honey to the United States in 2008. In fact, Malaysia has only 25 beekeepers with the capacity to export about 45,000 pounds of annually.

How is it possible for Malaysia to ship 5.4 million pounds of honey to the United States in just the first two months of 2010? The answer is entirely economic, since the honey is transshipped from China to Malaysia. In 2001, Malaysia exported 44,837 pounds of honey valued at \$50,000, and after implementation of the antidumping duty on Chinese honey in 2001, Malaysia was already exporting 1.7 million pounds of honey valued at \$1.4 million in 2002.

The average price of honey from Malaysia, Indonesia, Taiwan, and Thailand is about \$0.75 per pound. Compare this price to the honey from the U.S., Canada, Argentina and Brazil, and the reality that it costs about \$1 per pound to produce honey normally. According to USDA, the average price of U.S. honey sold in the United States was \$1.41 per pound, while transshipped Chinese honey is being offered as low as \$1.15 per pound (which is only possible because no antidumping duty will ever be paid on the imported honey).

Transshipment of Chinese-origin honey through other countries is not the only problem. Chinese shippers and others are also misdescribing honey as blended syrup, honey syrup, and malt sweetener to avoid paying the antidumping duty. Nearly half of the honey entering the United States without payment of the duty is imported as a misdescribed product.

In both 2008 and 2009, at least 80 million pounds of Chinese-origin honey entered the United States each year without paying the anti-dumping duty. This means that uncollected duties totaled \$200 million in lost revenues for the U.S. Treasury for this two-year period.

In 2008, 35% of all U.S. honey imports entered our market without payment of the antidumping duty. In 2009, circumvented honey imports grew to 44% of total imports.

### **The Impact of Transshipments on the U.S. Honey Sector**

Increasingly sophisticated honey import schemes are creating drastically diverging market prices. There is now one price for legitimate honey and another rock bottom price (which is sometimes available at one-half the cost of legitimate honey) for transshipped honey. This trade makes it almost impossible for honey packers who refuse to purchase this transshipped product to compete against those who are engaged in this activity. Additionally, the unfair competition is detrimental to the legitimate honey importer segment of the honey industry.

Honey laundering undermines the credibility of the entire honey sector, since the image and reputation of honey as a safe and wholesome product is put into question. Such schemes mean there is greater risk of adulterated honey products being sold as pure honey in the U.S. food chain with increased potential of residues entering the U.S. food supply, since Chinese honey has been found to contain a variety of antibiotics.

The honey laundering trade undermines the image and reputation of honey among U.S. consumers. This illicit trade opens the honey industry to questions of commercial fraud, food safety and security. Clearly, consumers and food manufacturers are also being cheated as this practice spreads.

### **Department of Homeland Security Continues to Investigate Illegal Activities**

In his written statement submitted to the committee, CBP Commissioner Alan Bersin highlighted the agency's "targeted enforcement" approach. We believe this approach has proven effective in detecting transshipped honey and we strongly support these efforts.

We are encouraged that the Department of Homeland Security is continuing to investigate and U.S. Attorneys are continuing to prosecute those who support illegal honey laundering activities. In May of 2008, two Chicago executives of a German-based food company were arrested for allegedly conspiring to illegally import honey from China that was falsely identified as coming from other countries to avoid antidumping duties. According to the government complaint, the company imported honey into the U.S. valued at almost \$30 million since 2005. The complaint noted that when ICE agents searched the company's Chicago office, they seized documents that showed the company had sold an adulterated shipment to an unidentified company in the U.S. at a discount rate.

Federal authorities have also pursued other schemes, including the activities of Chinese nationals and importers to defraud the United States with false paperwork used to hide Chinese-origin honey. On August 19, 2009, a citizen of China pleaded guilty in U.S. District Court in Seattle, to "conspiracy to enter goods in the United States, and introduction of adulterated food into interstate commerce."

An importer from Bellevue, Washington, was also arrested on May 6 and his trial is forthcoming. According to the complaint filed in the case, his two companies purchased

honey from China, and then had it shipped to other countries where it was re-labeled to make it appear it is a product of these other countries. More recently, on October 29, 2009, the U.S. Attorney for Chicago announced that the “president of a honey manufacturer in China” pleaded guilty “to conspiring to illegally import Chinese honey.”

#### **Abuse of “New Shipper” Bonding Under the Antidumping Law**

Leading up to 2006, Chinese exporters widely exploited the “new shipper” provision of the U.S. antidumping law, which resulted in severe undercutting of U.S. antidumping orders that were meant to protect domestic agricultural markets, including honey. Prior to 2006, cash deposits were required on honey imported from Chinese shippers in order to cover estimated anti-dumping duties in the event that the Department of Commerce later found fault with the shipments and determined that duties were owed. However, “new shippers” of Chinese honey were given a break on the grounds that they had not been a part of the prior dumping activities that had resulted in the anti-dumping order in the first place. As a result, these “new shippers” were given the option to post bonds in lieu of cash, thus significantly decreasing their cost of doing business when compared to “old shippers”. Over time, the bonding privilege was exploited and flagrantly abused by “old shippers” posing as “new shippers” to obtain the bonding privilege – only to disappear when Commerce sought to collect the duties owed.

The Pension Protection Act of 2006 included a provision that temporarily suspended the ability of importers of honey from new shippers to choose to post a bond or security in lieu of cash deposit of estimated duties. The amendment served to prevent serious harm to U.S. domestic honey producers and other antidumping petitioners, including domestic producers of fresh garlic, canned mushrooms and freshwater crawfish tail meat. This temporary suspension expired on June 30, 2009, and unfortunately, market data suggests that certain shippers may be laying the foundation to again exploit this loophole in U.S. trade law to the detriment of the domestic agricultural market.

#### **The New Shipper Review Process Was Repeatedly Abused**

“New shippers” are foreign exporters who did not ship during the original antidumping investigation. WTO rules provide that imports from new shippers are to be reviewed on an accelerated basis. U.S. law, prior to the bonding privilege suspension, also gave importers from new shippers the added privilege of posting low-cost bonds to secure their dumping duty deposits in lieu of full cash deposits. This bonding option was not required by WTO rules.

The U.S. new shipper review process had been repeatedly abused by alleged new shippers from China. After often lengthy reviews, the Commerce Department has dismissed multiple new shipper cases after determining that Chinese shippers provided false information to qualify for new shipper status. CBP also reported that abuses in new shipper cases were a significant factor in its inability to collect over \$100 million in antidumping duties on imports from China during fiscal year 2003.

The bonding option provided a powerful financial incentive for Chinese exporters to falsely claim new shipper status, because dumping duty deposits on imports from new shippers could be secured by low cost-bonds (obtained for pennies on the dollar) rather than by the full cash deposits required in most other cases. Once Chinese exporters obtained new shipper status, they harmed U.S. producers by shipping massive volumes of honey or other commodities at very low prices. These massive imports cause devastating and potentially irreparable harm, particularly to domestic agricultural sectors. Moreover, if the government eventually determines that substantial antidumping duties must be paid, the shipper's affiliated U.S. importer can evade payment by defaulting or disappearing. In effect, this scheme enables Chinese exporters to undercut and avoid almost all of the remedial effect of antidumping duties.

#### **Abuse of the Bonding Option is a Significant Concern of U.S. Honey Producers**

In 2001, at considerable expense, domestic producers obtained an antidumping order imposing a substantial dumping duty deposit rate on all imports of Chinese honey. This antidumping order reduced imports of Chinese-origin honey from almost 59 million pounds in 2000 to 17 million pounds in 2002. In 2003, however, low-priced Chinese imports surged by 200 percent to 53 million pounds. This import surge continued in 2004, with imports of almost 24 million pounds through the first half of 2004, compared with almost 15 million pounds in the first half of 2003. If Chinese honey imports continued at that torrid pace, total imports for 2004 would have exceeded 81 million pounds. Moreover, the average import price for Chinese honey was almost 40 percent below the average price for all other imports.

These alarming trends were fueled primarily by abuse of the new shipper bonding privilege. For example, a single self-styled Chinese “new shipper” sent over 11 million pounds of low-priced honey to an affiliated importer in the United States in the six months after the August 2003 start of its new shipper review – an amount equivalent to two-thirds of all imports from China for all of 2002. Continuation of these abuses would have devastated the U.S. honey industry. Other sectors, including domestic producers of fresh garlic, canned mushrooms, and freshwater crawfish tail meat, faced similar abuses.

By suspending a key financial incentive in U.S. law that had been repeatedly abused and was not required by the WTO, the 2006 Act eliminated serious abuses of the new shipper process virtually overnight. Unfortunately, the expiration of this Act in 2009 and subsequent inaction by Congress in extending the law has encouraged Chinese shippers to again set up “shell” companies for the sole purpose of receiving very low dumping margins. At least three companies have shipped one to three containers of honey beginning in December 2009 at what is presumably a “fair” price with the idea of subsequently requesting that the Department of Commerce undertake a new shipper review of its export sales price. Of course, while the new shipper review is underway, the importer posts a bond – generally for much less than the antidumping duty amount that is assessed at the end of the investigation.

### Observations

Efforts to stem the flow of Chinese honey imports, which have been shown to be contaminated with antibiotics, are being severely weakened by intentional circumvention of U.S. trade and food safety laws. These circumvention schemes often depend upon unscrupulous actors to establish importing companies that are thinly-capitalized and specialize in importing food products of questionable provenance into the United States. When enforcement actions are taken, these companies shut down operations and become insolvent. They are then replaced with new undercapitalized importers that pick up where the shuttered companies left off.

U.S. honey producers and processors are concerned that history will repeat itself with millions of pounds of honey ultimately shipped to the U.S. through sham companies (whether it is the shipper or importer, or both) that go out of business or declare bankruptcy by the time that the final duty rate is established. Of course, this means that the U.S. government is unable to collect significant antidumping duties that are supposed to be paid into the U.S. Treasury and U.S. honey businesses are undercut by imports that successfully avoid the payment of duties. Therefore, we urge Congress to take action to keep unscrupulous shippers and importers from again taking advantage of a loophole in U.S. trade law.

We concur with the assessment of Department of Treasury Deputy Assistant Secretary Timothy Skud, who submitted the following comments to the committee for this hearing:

“One area of concern to the Treasury Department, CBP, and other trade agencies has been problems in collecting antidumping and countervailing duties. In response to Congress’ interest in this area, the Treasury Department has provided two reports on this issue in recent years. Although CBP’s overall duty collection rate is over 99 percent, CBP is able to collect less than 50 percent of antidumping and countervailing duties that have been retrospectively assessed. The conclusion of our reports is that the chief obstacle to ensuring collection of retrospectively assessed duties is the absence of adequate security, such as cash deposits or bonds. *This problem has been exacerbated by unscrupulous importers who knew they were likely to incur retrospective duty assessments and absconded when payment was due.* We and CBP are also working with colleagues at the Department of Commerce to prepare a report requested by Congress on the relative advantages and disadvantages of prospective and retrospective anti-dumping and countervailing duty systems, including the extent to which the respective approaches would minimize uncollected duties and reduce incentives and opportunities for evasion of the anti-dumping and countervailing duty laws.”

Mr. Skud’s comments are based on a Department of Treasury Report on “Duty Collection Problems,” which determined that some importers may be bankrupted, while others “game” the system:

“In some cases, importers are unable to pay the final duty bill because the bill exceeds their assets. In other cases, it appears that some importers expect that



their final assessment will exceed their cash deposit, and that *these importers plan to be 'unavailable' to pay their duty obligations. Some importers establish shell companies that they intend to close if CBP attempts to collect and duties that are determined retrospectively. In some cases, importers do not have sufficient attachable assets for the government to pursue.*"<sup>1</sup>

It is our duty to help our government officials ensure that imported honey is safe, legal and properly labeled as to country of origin. Your support of efforts to combat fraudulent Chinese honey import practices could make all the difference in preserving our viability as a beekeeping industry that is absolutely critical to American agriculture and contributes more than \$15 billion to U.S. farm output. The adverse affects of this fraudulent trade on legitimate businesses who ethically source honey will not be stopped without the concerted involvement of us individually and the federal government collectively.

CBP officials have had some success in intercepting containers of questionable honey, and we need them to continue their efforts. To enhance this work, we urge this committee to continue to ask the tough questions and develop new legislation that will give CBP and ICE officials the appropriate authorities to address the various import schemes.

To ensure the integrity of the honey sector, it is critical that this committee craft legislation that will put an end to the entry of transshipped and misdescribed honey into the United States. Through targeted enforcement, ICE and CBP agents have had success in continuing to closely track honey shipments, but they may not always have the necessary resources and tools to aid their investigations that will lead to further convictions.

We believe the Customs Reauthorization bill under consideration by this committee provides an excellent vehicle to address a number of concerns that affect the trade relationship between the United States and China. If strong trade rules can be established and enforced, constructive trade between our countries will be enhanced.

### **Recommendations**

Thus, we ask the committee to consider the following provisions for inclusion in the Customs Reauthorization Bill:

1. Extend the new shipper bonding privilege suspension for a period of three years, if not permanently;
2. Require collection of cash deposits on suspect subject commodities, which means CBP would demand cash deposits on U.S. imports where CBP has sufficient evidence to support that the commodity was imported for the purpose of evading antidumping duties;

---

<sup>1</sup> Duty Collection Problems FY 2003-2006, Department of the Treasury (July 2007), p. 9.

3. Require CBP to compile a database of individual characteristics of honey produced in foreign countries to facilitate the verification of country of origin markings of imported honey;
4. Add enforcement of “antidumping and countervailing duty laws” to other priority areas such as IPR and health and safety laws;
5. Establish procedures for CBP investigations regarding allegations of transshipped commodities;
6. Require at least one CBP official at each major port who is dedicated to the enforcement of antidumping and countervailing duty laws;
7. Increase CBP and ICE resources for the enforcement of antidumping and countervailing duties, since there is a significant return on investment if these agencies are able to better collect on the \$900 million in uncollected duties owed to the U.S. Treasury on honey, mushrooms, crawfish, and garlic; and
8. Implement technologies that will facilitate communications between and among the numerous government agencies with regulatory authority over commodities that enter the United States.

By enhancing CBP’s authorities and capabilities, this committee can help minimize the potential risk of adulterated honey products being sold as pure honey in the U.S. food chain, avoid any risk of residues in the U.S. food supply, respond to numerous commercial fraud schemes, encourage compliance with U.S. laws, restore the integrity of U.S. trade law, and collect substantial antidumping duties for the U.S. Treasury.



**Statement of ANSAC  
(American Natural Soda Ash Corporation)**

**On**

**The U.S.-China Trade Relationship:  
Finding a New Path Forward**

**Before**

**The Committee on Finance  
United States Senate**

**June 23, 2010**

Mr. John Andrews, President  
American Natural Soda Ash Corporation (ANSAC)  
15 Riverside Avenue, 2nd Floor  
Westport, Connecticut 06880

Mr. John McDermid, IBC  
[jmcdermid@ibgc.com](mailto:jmcdermid@ibgc.com)

## **CHINA'S VAT REBATE – AN INDUSTRIAL POLICY TOOL THAT SUPPORTS CHINESE SODA ASH EXPORTS**

### **I. Introduction – The U.S. Soda Ash Industry**

Soda ash is an inorganic chemical that is used in many industrial applications, most notably in the production of glass and detergents. ANSAC is the international marketing arm for four U.S. soda ash manufacturers: FMC Corporation, General Chemical, Solvay Chemicals and OCI Chemicals Corporation.

ANSAC and the U.S. soda ash industry are strong supporters of global free trade. By any measure, ANSAC's story is an extraordinary one of exporting success. Since ANSAC's founding in 1984, U.S. soda ash exports have increased from \$138 million to nearly \$1 billion annually.

Thanks to a unique deposit of the natural resource trona in Green River, Wyoming, U.S. soda ash manufacturers are globally competitive. The Wyoming deposit is large enough that it could supply world demand for over 1,000 years. Whereas U.S. production relies on this natural deposit, the vast majority of all other soda ash around the world is produced through synthetic processes. The U.S. industry produces roughly one-third of total global output. Over 50% of U.S. production is now exported, and soda ash contributed a surplus of \$840 million to the U.S. trade balance last year.

The remarkable rise in U.S. exports has coincided with an equally remarkable surge in global trade liberalization and sharp reductions in once-impenetrable tariff barriers. Almost without exception, the successful efforts to eliminate or reduce government barriers to U.S. soda ash exports have been accomplished with the negotiation and implementation of free trade agreements and through the vigorous efforts of U.S. trade negotiators. Given that U.S. soda ash consumption has essentially been flat for years, it is vital that the industry increase exports in order to stabilize U.S. production and U.S. jobs.

### **II. China's Soda Ash Industry and the VAT Rebate**

Although China does not have natural trona deposits to rival the United States, China became the largest soda ash producer in the world in 2003. China's soda ash industry, which is characterized by inefficient, energy-intensive and environmentally-unfriendly manufacturing, receives billions of dollars in support from central, provincial and local governments.

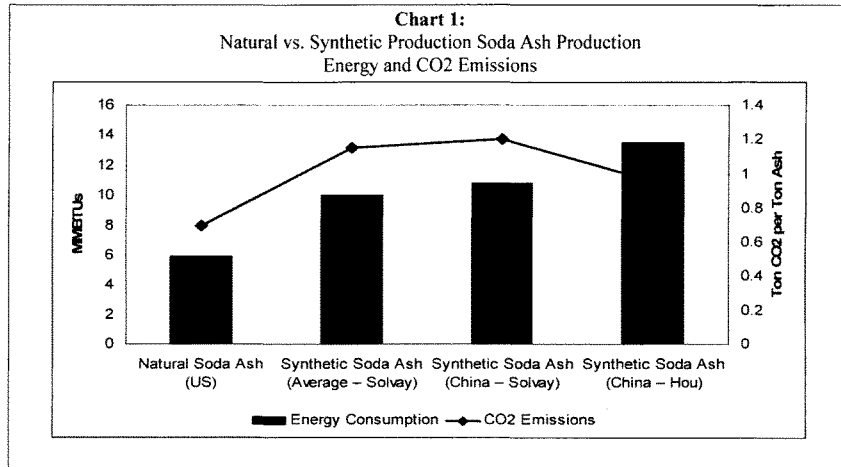
Among the industrial policy tools China uses to support its domestic industry is a rebate of China's value-added tax (VAT) on soda ash exports. After having abandoned the VAT rebate in 2007, the central government reinstated a 9% rebate on its 17% VAT in April 2009. The VAT rebate serves to encourage Chinese exports of soda ash to markets where it competes directly

with U.S. exports. Despite plummeting demand for this globally-traded chemical commodity during the economic recession – including a 14% drop in Chinese demand in 2009 and capacity utilization rates among domestic producers averaging 75% - China’s soda ash exports actually increased and China continued to expand its capacity in soda ash production.

**II. China’s Promotion of Inefficient Production Through Industrial Policy**

The expansion of Chinese soda ash production capacity goes against current market trends, but fits into China’s pattern of industrial policy. The centerpiece of this policy is the preservation of employment, not unlike that witnessed in other commodity sectors, such as the steel industry. The VAT rebate for soda ash exports supports added production capacity, resulting in an unprecedented increase in low-priced exports throughout the world, with serious energy and environmental consequences within China itself.

China had removed its 13% VAT rebate on soda ash exports in July 2007 in line with an overall attempt to reduce incentives for energy-intensive and environmentally-unfriendly industries. China’s synthetic soda ash production is environmentally “dirty” when compared to natural soda ash production in the United States, which has significant comparative advantages in terms of energy costs and emissions output. U.S. soda ash production is the lowest cost, lowest carbon dioxide (CO2)-emitting, and lowest energy-consuming in the world (see Chart 1).



<i>Soda Ash Production Process</i>	<i>Energy Consumption</i>	<i>CO2 Emissions</i>
Natural Soda Ash (U.S.)	5.95 mmbtu/ton	0.7 ton CO2/ton ash
Synthetic (Average - Solvay)	8.4-11.7mmbtu/ton	0.9-1.4 ton CO2/ ton ash
Synthetic (China - Solvay)	10.8 mmbtu/ton	1.2 ton CO2/ton ash
Synthetic (China - Hou)	13.5 mmbtu /ton	0.9-1.0 ton CO2/ ton ash

In China's submission to the World Trade Organization (WTO) as part of its 2008 Trade Policy Review, it explained: "In order to reduce the production, consumption and export of high energy-intensive, high emission and products of exhaustible resource, the Chinese Government adjusted the export VAT rebate policy on July 1, 2007, covering 2,831 commodities, which accounted for 37% of the total number of export commodities."<sup>1</sup> Yet, China's recent actions with respect to soda ash – and numerous other industrial products – fly in the face of these environmental goals.

### **III. The Environmental Consequences of China's Synthetic Soda Ash Production**

Roughly 95% of China's soda ash production is synthetic and, of that, half uses the Solvay process and half uses another process called the Hou process.

The Solvay process involves a series of chemical reactions involving salt, ammonia and carbon dioxide from the calcination of limestone, through which a sodium bicarbonate solution is produced. This solution is heated to produce soda ash, water and carbon dioxide. A major by-product of the Solvay process is calcium chloride, which is produced in even greater quantity than the soda ash itself. For every ton of soda ash produced through the Solvay process, approximately 1.1 tons of calcium chloride is also produced. Calcium chloride has limited commercial application (such as in drilling fluids and road salts), and the quantity produced far exceeds the demand for this by-product. The result is that vast quantities of calcium chloride must be disposed of cheaply. The most common disposal method is the release of the effluent stream into nearby waterways.

The Hou process, also known as the "dual process", produces ammonium chloride as its major by-product instead of calcium chloride. While there is greater commercial demand for ammonium chloride, which is used as a low-grade fertilizer, the Hou process is more energy intensive compared to the Solvay process. Both synthetic processes use coal as their dominant energy source.

As compared to natural soda ash, the production of synthetic soda ash is much more chemically complex and energy intensive. With best available technology the Solvay process requires 8.4-11.7 million BTUs (mmbtu) per ton versus 5.3-6.6 mmbtu/ton for typical natural soda ash. As a result of the high energy usage, a ton of synthetic soda ash produced through the Solvay process generates between 0.9 and 1.4 tons of carbon dioxide. This compares to the combined process and energy emissions from natural soda ash of 0.7 tons of carbon dioxide. U.S.-based natural soda ash production has a clear advantage over foreign-produced material from an energy and carbon intensity standpoint.

### **IV. China's Soda Ash Exports Challenge U.S. Exports to Third-Country Markets**

U.S. exports are increasingly facing stiff competition from Chinese exports in key third-country markets. Approximately 11% of Chinese soda ash production was exported in 2008, primarily to ASEAN countries and other Asia-Pacific markets. By providing this 9% export rebate, the Chinese government is helping its producers remain competitive and gain market share outside

---

<sup>1</sup> *Trade Policy Review – China*, Report by China, WT/TPR/G/199 (8 May 2008) at pg. 15.

of China. In 2009, while China's soda ash exports increased by 9.1% in terms of quantity from the previous year, U.S. exports fell 17.8%.

Between 2000 and 2008, China's soda ash production more than doubled. As over 75% of China's soda ash is produced by state-owned enterprises, China's rise as a soda-ash producing powerhouse is an example of the power and efficacy of the Chinese government to intervene in the economy. In fact, China's soda ash production has outpaced its domestic demand, resulting in a concerted effort to gain export market share.

In 1996, the top four global markets for U.S. soda ash were Indonesia, Korea, Japan and Thailand. Combined, they accounted for \$190 million in exports, or 37% of total U.S. exports. By 2008, exports to these four markets had fallen to \$152.9 million, amounting to only 16.3% of total U.S. exports. At the same time, China's exports to the Asia-Pacific outpaced U.S. exports by at least 110,000 metric tons (MT).

U.S. soda ash competitiveness in Asia depends on a level playing field. The elimination of the China's 9% VAT rebate would help U.S. exports to compete in Asia. Although China maintains a significant shipping-cost advantage to Asian markets, U.S. soda ash producers can compete effectively due to production cost advantages and economies of scale.

Were it not for extraordinary levels of government support for domestic producers, China would be one of the largest and most promising foreign markets for U.S. soda ash. At the very least, the elimination of the 9% VAT rebate will provide U.S. producers opportunities for export growth over the long-term in third-country markets.

**V. Conclusion – China's VAT Rebate on Soda Ash Exports Should be Eliminated**

China's VAT rebate for soda ash exports has stimulated excessive soda ash capacity expansions in China, has given China an artificial incentive to export, and has driven Chinese soda ash prices down at the expense of U.S. exports. All of this is happening in the midst of a major decline in global demand for soda ash. The VAT rebate is an irresponsible industrial policy during this troublesome economic period.

The VAT rebate policy should be high on the agenda of the U.S. trade and economic discussions with the Chinese Government, including bilateral (JCCT, S&ED) and multilateral (WTO, OECD) fora. The removal of China's VAT rebate on soda ash exports would not only help the U.S. soda ash industry and U.S. manufacturing, but would serve to help recalibrate China's industrial policies away from energy-intensive, environmentally-damaging, export-driven growth.

**WRITTEN STATEMENT OF THE  
AMERICAN WIRE PRODUCERS ASSOCIATION (AWPA)**

**SENATE COMMITTEE ON FINANCE**

**HEARING on “The US – China Trade Relationship:  
Finding a New Path Forward”**

**June 23, 2010**

**American Wire Producers Association  
801 North Fairfax Street  
Suite 211  
Alexandria, VA 22314  
703-299-4434  
[www.awpa.org](http://www.awpa.org)**



### **INTRODUCTION**

The American Wire Producers Association (AWPA) appreciates the opportunity to submit this written statement in connection with the Committee's hearing on the "US – China Relationship: Finding a New Path Forward." Our members remain firmly convinced that the United States Government needs to be more insistent that China abide by its WTO commitments and immediately stop its illegal trading policies on several fronts: currency manipulation; export tax and VAT rebate schemes; and subsidization of Chinese products. American wire and wire products manufacturers have been seriously and adversely impacted by all three of these illegal practices, making it almost impossible for the US industry to compete with unfairly-traded imports from China.

### **BACKGROUND**

The AWPA is a trade association which represents companies that collectively produce more than 80 % of all carbon, alloy and stainless steel wire and wire products in the United States. The 80 member companies of the AWPA employ more than 26,000 workers in over 165 plants and facilities located in 33 states and 110 Congressional Districts.

American wire and wire products manufacturers are entrepreneurial and work hard to maintain their competitive market position despite heavy import competition in their products. They pride themselves on their high productivity and constant reinvestment in the latest technology and equipment, keeping the American wire industry one of the most globally competitive segments of the steel industry.

The member companies of the AWPA firmly believe that a continued lack of action by the US Government to halt China's unfair trade practices – artificially suppressing the value of the Chinese yuan, distorting export patterns by manipulating taxes and VAT rebates on exports, and subsidizing Chinese

manufacturers – threatens the jobs of more than 26,000 American workers in the domestic wire and wire products industry.

### **MAJOR TRADE PROBLEMS WITH CHINA**

#### **A. Currency Manipulation**

The Chinese Yuan remains significantly undervalued against the US dollar and other major currencies. At the same time Chinese industries have achieved major increases in production capability and quality, productivity, foreign direct investment, and other factors that would normally be expected to cause a currency to appreciate. While China has indicated recently that it may now be willing to review and change its currency practices, we have heard this promise before and the previous results fell woefully short of adequately re-aligning the US dollar and the Chinese Yuan. Our country cannot accept half measures and small gestures when the US manufacturing industry is suffering so badly.

Under current law, the Department of the Treasury is required to identify countries that manipulate their currencies for purposes of gaining an unfair competitive trade advantage. In recent years, Treasury has found that certain countries' currencies were undervalued. However, despite overwhelming evidence, Treasury has refused to cite such countries – including China – as currency manipulators.

On March 16, 2010, Senators Schumer, Stabenow, and Graham introduced S. 3134, the Currency Exchange Rate Oversight Act of 2010. This bill would reform and enhance oversight of currency exchange rates. The bill sets out consequences for countries that fail to adopt appropriate policies to eliminate currency misalignment, and it includes tools to address the impact of currency misalignment on US industries. The bill would repeal the currency provisions in current law and replaces them with a new framework, based on objective criteria which will require Treasury to identify misaligned currencies and mandate action by the Administration if countries fail to correct the misalignment.

The member companies of the AWPA support this legislation and respectfully urge the members of this Committee to approve S.3134 and send it to the Senate floor for a vote.

*B. Border Tax Schemes – Export Taxes and VAT Rebate Incentives*

The AWPA and many other American industries must contend with an extraordinary distortion of trade patterns caused by the border tax measures of the Chinese Government. In violation of its international trade obligations, China has imposed export taxes on carbon steel wire rod while granting VAT rebates on many finished downstream wire products, creating distortions that directly and adversely impact the US manufacturers of these products.

The use of export taxes and licenses to limit exports of wire rod is a violation of China's Protocol of Accession to the World Trade Organization (WTO). In addition, China's VAT rebates subsidize the export of downstream wire products. The imposition of export taxes on wire rod encourages the retention of this basic material input in China, resulting in greater availability and lower input costs for Chinese wire and wire products manufacturers. Together, these programs manipulate China's border tax scheme to favor Chinese industries which export higher value downstream products to the United States and other countries. These practices violate the commitments made by the Chinese Government when it joined the WTO.

The specific violations of China's international obligations are:

- (1) China's export taxes on wire rod violate section 11.3 of China's Protocol of Accession to the WTO;
- (2) China's export licensing requirements on wire rod violate Article XI: 1 of the GATT and Part I, Section 7.2 of China's Protocol of Accession;

(3) China's differential tax scheme is a prohibited export subsidy that violates Article 3 of the SCM Agreement, Articles VI and XVI of the GATT, and Part I, Section 10.3 of China's Protocol of Accession to the WTO;

(4) China's discriminatory, steel-specific border measures are causing adverse effects to the interests of the United States and as such also constitute an actionable subsidy under Articles 5 and 6.3 of the Agreement on Subsidies and Countervailing Measures; and

(5) China's differential export tax scheme, export taxes on wire rod, and export licensing requirements for wire rod further nullify or impair benefits of the United States within the meaning of Article XXIII: 1(b) of the GATT.

The member companies of the AWPA have been working with US trade officials to try to resolve this problem. Preliminary discussions with the Office of the United States Trade Representative (USTR) led to the participation of an AWPA member company representative in the meeting of the US-China Steel Dialogue which was held in Beijing in October 2008. The USTR agreed that our industry has a unique story to tell and encouraged the AWPA to become an active participant in this government-industry initiative.

During the Steel Dialogue meeting in 2008, the AWPA representative made a presentation regarding recent trends in exports of wire rod and representative wire products from China. He pointed out that wire rod exports to the United States dropped significantly from 2007 to 2008, while at the same time exports of wire and wire products – already sizeable – increased significantly. Additionally, the average unit values of the Chinese wire products were below the average unit values of all other countries. These trade patterns are the direct result of China's border tax policies. In 2007, the Chinese government eliminated VAT rebates on exports of wire rod, but it continued to provide for VAT rebates on exports of some wire and wire products. On January 1, 2008, China increased the export tax on wire rod from 10 to 15 percent. There are no similar export taxes on downstream wire products.

During the meeting in Beijing in October 2008, the Chinese Government acknowledged that a distortion did exist but claimed that it had the right to limit exports of wire rod due to an alleged adverse impact of increased wire rod production on the country's environment. USTR officials countered that this argument is not plausible because domestic rod production within China was not being reduced. Following the meeting, there was some optimism by both US trade officials and AWWA's representative that the Chinese Government was likely to modify its export tax scheme. Two weeks after the meeting in Beijing, the Chinese Government did announce the removal of export taxes on many steel products, but it did NOT remove or reduce the export tax on wire rod. Just after this announcement, representatives of the AWWA met with the USTR staff and discussed the possibility of a WTO challenge of China's export tax on wire rod.

On April 1, 2009, the Chinese Government raised the VAT rebates to 9% and 13% on some selected downstream products including chain; grates, cookers and barbecues; and table, kitchen or other household articles.

It is the AWWA's position that the Chinese Government's disparate treatment of wire rod in relation to other basic steel products undermines any potential legal defense based on environmental concerns. If the Chinese authorities were motivated by such concerns, why did they remove the export taxes on other steel products which present the same environmental concerns and, in fact, are likely to have an even greater adverse impact on the environment than the production of wire rod? Moreover, wire rod continues to be produced in China – it just remains in China, rather than being available for export. It appears that China's actions are driven not by concerns about the environment but by a commercial calculation to promote the production and exportation of downstream wire and wire products manufactured from wire rod. These downstream products have higher added values than wire rod, and the Chinese companies that make them

employ large numbers of workers. By pointing to the unjustified disparate treatment of wire rod compared with other basic steel products, we believe that the United States can effectively refute any legal defense that the Chinese government may raise based on environmental issues.

Even the USTR raised this issue in its 2009 Report to Congress on China's WTO Compliance, stating that "China maintains numerous export restraints that raise serious concerns under WTO rules."<sup>1</sup>

C. Chinese Government's Policy of Subsidization

The Chinese Government's continued intervention in its domestic manufacturing sector in ways that promote the creation of excess capacity to produce wire and wire products is of great concern to the AWP. China's productive capacity far exceeds its domestic demand for these products. Thus, Chinese manufacturers have a strong incentive to export wire products to the United States at prices far below the market-determined prices of their competitors.

In some instances, China does not even consume the wire product in question. For example, China has become the world's largest producer of steel wire garment hangers, but China has no domestic market for garment hangers. Instead, China targeted the US market with its vast capacity and nearly destroyed a vibrant and competitive American industry, driving seven companies out of business and forcing unemployment on hundreds of American workers.

We believe that the US wire and wire products industry can compete with any manufacturer whose practices are dictated by free market principles. We cannot compete, however, with industries which are subsidized by government.

---

<sup>1</sup> 2009 USTR Report to Congress on China's WTO Compliance, [http://www.ustr.gov/webfm\\_send/1572](http://www.ustr.gov/webfm_send/1572) pp. 38-39.

**RECOMMENDED ACTIONS**Trade Strategy

The United States should develop a national economic and trade strategy to address the challenges posed by these unfair trade practices.

Constructive Dialogue With Action

While the US should continue to engage China in constructive dialogue, we must use all available means to ensure the aggressive enforcement of international trade obligations – including China’s Accession Agreement to the WTO and all other WTO trade rules. Many of these recommendations are supported by the US-China Economic Security Review Commission in its 2009 Annual Report to Congress.<sup>2</sup>

Trade Law Reform

- *CVD Cases Against Non-Market Economies* – The US Department of Commerce should have the statutory authority to impose countervailing duties on subsidized imports, including currency manipulation, from non-market economies such as China. Although Commerce recently permitted US companies to pursue countervailing duty remedies against products from China, many supporters of the new policy want to see it codified into US trade law.
- *Remedies at WTO* – The USTR should seek remedies at the WTO regarding countries that employ unfair trade practices.
- *S.3134, Currency Exchange Rate Oversight Act of 2010* – S.3134 should be promptly enacted to deal with currency manipulation.

The AWPA member companies have been losing ground in competition with China’s wire and wire products producers, and we expect further losses as long


---

<sup>2</sup> 2009 Report to Congress of the US-China Economic and Security Review Commission, [http://www.uscc.gov/annual\\_report/2009/09\\_annual\\_report.php](http://www.uscc.gov/annual_report/2009/09_annual_report.php), pp. 90-91.

as the Chinese Government is not held accountable and expected to comply with its international obligations under the WTO.

We look forward to working with the members and staff of the Finance Committee to take effective steps to insure fair trade with China. In these challenging economic times, we are not asking for special treatment, just the opportunity to compete fairly with our international trading partners.

Sincerely,

A handwritten signature in black ink that reads "Walter Robertson III". The signature is written in a cursive style with a prominent "W" and "R".

Walt Robertson  
AWPA President  
President, Johnstown Wire Technologies



United States Senate, Committee on Finance  
Hearing on The U.S. – China Trade Relationship: Finding a New Path Forward,  
Wednesday, June 23, 2010

Written Submission of Terence P. Stewart, Esq.,  
Managing Partner, Stewart and Stewart<sup>1</sup>

July 7, 2010

**I. Introduction**

There is little doubt that the acceptance of China at the end of 2001 into the World Trade Organization constituted a great experiment, one with both substantial opportunities and significant risks for China and the existing WTO membership. China's desire to reestablish a role in global economic institutions has led the country to make significant modifications to laws and regulations and to significantly liberalize trade in many products – both before accession and since becoming a member of the WTO – consistent with many of its accepted obligations. This has led to increased market access opportunities for many countries' exporters including those from the United States. China's economic reforms have led to an extraordinary growth within China and the lifting of tens of millions of people out of poverty. Thus, some of the opportunities recognized as possible with WTO membership have materialized.

At the same time, the large role of the state in China and the industrial policies which have promoted rapid development and global dominance in many sectors through subsidies and other measures have continued unabated. Chinese policy objectives – including the rapid increase of the Chinese industrial base and manufacturing employment, control of the value of the currency at artificially low levels, the numerous areas where China continues not to accept obligations or has failed to honor the spirit of those commitments it has undertaken at the WTO, the slow road to rule of law at home, and a highly mercantilist approach to trade – have made relations with China difficult for many WTO members. Additionally, these Chinese policies have undermined the global system and have stymied a necessary rebalancing of the global system to support sustainable growth over time. At the recent Trade Policy Review of China in the WTO, both the U.S. and EU expressed strong concerns about backtracking by China on liberalization – concerns that have been expressed increasingly loudly by the business communities of both major trading powers in recent years.

A significant number of these concerns with China could be addressed through the WTO, including through dispute settlement if necessary. Other problems can also be addressed through effective enforcement of U.S. trade remedy laws, consistent with our WTO rights and obligations. However, the U.S. business community having made investments in China is unwilling in most instances to actually pursue their rights through U.S. government action, in

---

<sup>1</sup> This submission is adapted from the Prepared Statement presented by Terence P. Stewart to the U.S.-China Economic and Security Review Commission at its June 9, 2010 hearing, "*Evaluating China's Past and Future Role in the World Trade Organization; Recommendations for Future U.S.-China Relations within the WTO.*" The full statement is available on-line at [http://www.uscc.gov/hearings/2010hearings/written\\_testimonies/10\\_06\\_09\\_wrt/10\\_06\\_09\\_stewart\\_statement.pdf](http://www.uscc.gov/hearings/2010hearings/written_testimonies/10_06_09_wrt/10_06_09_stewart_statement.pdf).

part because of deep concerns about retaliation by the Chinese government (central, provincial and local). Anecdotal information suggests that China has flouted obligations undertaken, pressured companies to invest in China or lose access to the market, and applied many laws and regulations in an uneven manner favoring local companies, amongst other problems. While companies will raise such issues privately, few are willing to come forward and supply the information needed to have corrective action pursued. Thus, the risks identified with Chinese accession to the WTO a decade ago have complicated the ability of the U.S. and other trading partners to achieve the benefits negotiated in that deal.

The U.S., of course, has many other venues to address issues with China – such as the Joint Commission on Commerce and Trade and the Strategic and Economic Dialogue – and those venues are pursued by various parts of each U.S. administration. However, there is little question that on the issue of trade flows, tariffs, and non-tariff barriers, the WTO is the framework for understanding rights and obligations and remains an important venue for seeking compliance and for seeking greater liberalization. It is in this forum that countries like the U.S. struggle both to get greater compliance by China with obligations undertaken and to get China to accept a leadership role in liberalization.

Unfortunately, as China's power has risen, it has deviated from its path of reform to a more trade-restrictive regime. Consider the comments of U.S. Ambassador Punke on May 31, 2010:

In the first years after China's accession to the WTO, China made noteworthy progress in adopting economic reforms that facilitated its transition toward a market economy and increased the openness of its economy to trade and investment. However, beginning in 2006, progress toward further market liberalization began to slow.

By the time of China's Trade Policy Review in 2008, the United States noted evidence of a possible trend toward a more restrictive trade regime, citing several Chinese measures signaling new restrictions on market access and foreign investment in China. At the root of many of these problems was China's continued pursuit of problematic industrial policies that relied on excessive government intervention in the market through an array of trade-distorting measures designed to promote and protect domestic industries ....

In the United States' view, China has become much more focused on developing industrial policy initiatives aimed at helping Chinese enterprises move up the value chain in key industries, and China has demonstrated a highly selective interest in continuing to open its market more fully and fairly to foreign participation.<sup>2</sup>

So the future relations for the U.S. and China within the WTO will ultimately depend on whether China accepts a responsibility for rebalancing the trade environment towards greater internal

<sup>2</sup> See Trade Policy Review of China, *Statement by Ambassador Michael Punke, U.S. Permanent Representative to the WTO*, Geneva, May 31, 2010.

growth at home, whether China picks up the mantle of WTO leadership its growing share of global trade necessitates, and whether there is a return to a more market-oriented Chinese trade and investment policy (requiring progress on a whole host of trade distorting practices, from currency to industrial policies, etc.). The U.S. will certainly continue working with China to address specific issues either cooperatively or legalistically through the dispute settlement system of the WTO. While one can envision additional cases against China and such cases are important to help push a reluctant trading partner to conform its laws and practices to obligations undertaken, cases alone cannot correct the fundamental problems or create a framework for further global liberalization. Such corrections can only come if China accepts a set of principles currently far removed from China's model of economic growth. Alternatively, the U.S. and other trading partners need to reevaluate the trading system in light of the world's leading exporter's practices and determine collective approaches to these problematic Chinese issues. Neither scenario seems likely over the next decade, suggesting a significant expansion of trade friction between China and the United States.

## II. Potential WTO Challenges to China's Trade and Industrial Policies

For any administration, the key to engagement with a trading partner is how to best move the trading partner into compliance with obligations. What approach is best will often depend on the receptiveness of the trading partner to addressing the concern, technical support issues, internal political problems, and other considerations. For U.S. businesses and their workers, what is needed is speedy resolution. WTO disputes are, for many issues, the last resort, not the first. U.S. companies are hoping that this government outreach to China will resolve the matter without a need for a formal bilateral or multilateral challenge, although a challenge may ultimately be needed. All of that said, a challenge to China's indigenous innovation policies and many other WTO complaints could be brought and hopefully will be (if other solutions are not achieved) soon. This following list is not intended to be exhaustive but simply some examples of problems being faced by many sectors of the economy desirous of doing business in China.

### A. Indigenous Innovation

China's indigenous innovation policies is a clear example of China's attempts to promote industrial policies that favor Chinese industries while at the same time limiting market access for foreign-origin goods and service providers.

In December 2007, China issued a measure aimed at limiting government procurement of "indigenous innovative" products to "Chinese" products manufactured within China. Subsequently, in November 2009, China issued a circular identifying the eligible products and the criteria for being accredited as a national indigenous innovation product. Such accreditation would give preferential treatment in government procurement to that product. The eligible product areas are: computer and application devices; communication products; modernized office equipment; software; "new energy and equipment"; and energy-efficient products. Several provisions of the circular were problematic. The circular provided that to qualify as an indigenous innovation product, the product's intellectual property must have been registered originally in China. The same "first registration in China" requirement also applied to the

product's trademarks and brands. In addition, the circular required that a product must have highly advanced technology that equals or exceeds international standards.

The United States has expressed serious concerns to China about this measure, as it appeared, among other things, to be discriminatory, limit market access for foreign companies, and interfere with the exercise of intellectual property rights. At the recent 2010 Trade Policy Review of China, the U.S. stated:

At present, the industrial policies generating the most controversy are China's so-called "indigenous innovation" policies. Over time, it has become evident that many of these programs contain elements that could discriminate against foreign products, foreign investors, foreign technology and/or foreign intellectual property. Recent measures have generated intense concern among WTO Members and their business communities by more concretely demonstrating a policy direction that seems designed to limit market access for imports and foreign investors and pressure enterprises to localize research and development in China, as well as transfer technologies.<sup>3</sup>

In April 2010, China revised its accreditation circular to address some of the concerns raised by the U.S. and others. In the revised circular, China relaxed the IP, trademark and brands "first registration in China" requirement, and changed the highly advanced technology requirement to require that a product be proven effective in conserving energy, reducing pollution, and/or raising energy-efficiency, or that it "substantially" improve on an original product's structure, quality, material, craftsmanship, or performance.<sup>4</sup> These changes, however, have not alleviated the concerns about this measure.

At the most recent Strategic and Economic Dialogue (S&ED) held in Beijing in May 2010, the fact sheet released by the U.S. government seemed to indicate that progress had been made on this issue.<sup>5</sup> Despite this statement, China's indigenous innovation policy is likely to be a continuing issue of dispute into the future. Indeed, following the S&ED, Under Secretary of Commerce for International Trade Francisco Sanchez stated that "China did not agree to a U.S. request to suspend its indigenous innovation policy" made at the S&ED, although China "did agree to provide additional time for U.S. industry and government comments on how it could achieve its goal of promoting innovation in China without discriminating against foreign companies."<sup>6</sup>

<sup>3</sup> See Trade Policy Review of China, *Statement by Ambassador Michael Punke, U.S. Permanent Representative to the WTO*, Geneva, May 31, 2010, at 3.

<sup>4</sup> See US-China Business Council, *China Proposes Partial Solution to Indigenous Innovation Issues* (April 12, 2010); <http://www.uschina.org/public/documents/2010/04/indigenous-innovation-memo.html>.

<sup>5</sup> See Dept. of Treasury, *Second Meeting of the U.S.-China Strategic & Economic Dialogue, U.S. Fact Sheet – Economic Track*; <http://www.ustrcas.gov/initiatives/us-china/S&ED-2010-Fact%20Sheet.pdf>.

<sup>6</sup> See Inside U.S. Trade, World Trade Online, *Sanchez Says China Rebuffed U.S. Request for Indigenous Innovation Delay*, June 4, 2010.

If concerns about these indigenous innovation policies are not adequately addressed by China, the U.S. should explore options for challenging these policies at the WTO. Given that China has still not acceded to the WTO Agreement on Government Procurement despite a commitment to do so in its Protocol of Accession, the U.S. may also wish to explore new means for increasing China's incentive to undertake those procurement obligations and comply with them. For example, Senators Stabenow, Graham, Feingold, Brown, and Casey have recently introduced bipartisan legislation that would withhold U.S. federal procurement dollars from China to increase U.S. leverage in this area.<sup>7</sup>

#### B. Export Restraints

One obvious example of the flouting of China's Protocol obligations is China's policies on export taxes. The Protocol of Accession limits products to which China can impose an export tax to 84 Harmonized System (HS) items and identifies the maximum export tax. China's 2010 list of products subject to export taxes lists 329 HS categories, nearly four times the number permitted under its protocol. Moreover, some of the products listed, although part of the 84 permitted in the protocol, are at rates above the maximum rate authorized. These are input materials by and large.

Efforts by China to reduce exports by quotas, export duties, export licensing, minimum export price requirements and other restrictions on some or all of these products are viewed by foreign competitors as creating twin artificial disadvantages for them. First, export taxes or other restrictions increase the cost of the materials to importing countries. Second, these restrictions reduce the cost of these materials to companies within China. This gives Chinese users of these inputs an artificial competitive advantage. It is worth noting in this context that the WTO Secretariat, in the 2010 Trade Policy Review of China, criticized China's use of export restraints in general and refuted China's stated rationales for using them.<sup>8</sup>

The U.S., the EU and Mexico have challenged a handful of these export restraints at the WTO, and those cases are currently in the early stages of panel activity.<sup>9</sup> The case raises a number of important issues for the multilateral trading system moving forward. Beggar-thy-neighbor policies in the area of raw materials, if not checked, could have potentially devastating consequences for global commerce, as a race to lock up and restrict resources would be the obvious likely outcome. Actions by China appear to be highly mercantilist in intent and are clearly distortive of global trade flows. If China's actions are, as seems likely, part of a conscious policy to give domestic producers artificial competitive advantages, then we will not likely see a rapid resolution of the dispute.

As China's export restraint policies are at the heart of many of the industrial policies that aim to force investment to shift to China or to otherwise distort trade flows to the advantage of domestic

<sup>7</sup> See China Fair Trade Act of 2010, S. 3505.

<sup>8</sup> See Trade Policy Review of China, *Report of the Secretariat*, WT/TPR/S/230 (26 April 2010) at 44.

<sup>9</sup> See Note by the Secretariat re Constitution of the Panel Established at the Requests of the United States, the European Communities, and Mexico, *China — Raw Materials Exports*, WT/DS394/8, WT/DS395/8, WT/DS398/7 (March 30, 2010).

producers, the U.S. should bring a broad-based case against all of the export duty and other export restraints imposed that are not covered in the first case. Alternatively, one could do cases on other subsets of products affected. For example, export restraints on rare earth minerals would be a prime target for a WTO case. Rare earth minerals are important and essential raw materials used in critical applications ranging from defense systems (e.g., precision-guided munitions), to hybrid electric motors and batteries, cell phones, computer hard drives, energy efficient light bulbs, wind-power turbines, and fiber optics, amongst others. In the past, the United States had a fully integrated industry to mine rare earth minerals and convert them to oxides, metals, alloys, semifinished products and finished components, and supplied close to 100% of rare earth minerals to global markets. That is no longer the case. Currently, China supplies more than 90% of the globe's rare earth minerals and downstream processed products.

### C. Trade-Related Investment Measures

As part of its accession, China committed that it would comply with the TRIMs Agreement and eliminate, and cease to enforce, export performance requirements, including in contracts imposing such requirements.<sup>10</sup> However, despite clear obligations by China to eliminate export requirements as part of investment or licensing systems for producers, the International Trade Commission's public report in the Section 421 Passenger Tires from China investigation showed that China has not eliminated, but continues to allow, mandatory export requirements for companies investing in China. These requirements put pressure on trading partners as investment in China is not allowed to service the domestic market but must, for an extended period of time, be used to flood export channels. In that 421 case, one company in particular, Cooper Tire & Rubber, revealed that it was required to export all tires produced by its recent joint venture facility in China for five years:

Cooper Tire & Rubber, which is both a domestic producer of subject tires and an importer of subject tires from China, takes no position regarding petitioner's remedy. Cooper recommends, however, that any quota be managed by the U.S. government, such as through a licensing or visa system. Cooper explains that it is concerned about how a quota would be administered procedurally because its business license for its Kushan plant in China requires Cooper to export all the tires produced in the plant during the first five years; production at the plant began in February 2008. Final comments of Cooper Tire & Rubber at 2-3.<sup>11</sup>

The Company has entered into a joint venture with Kenda Tire Company to construct and operate a tire manufacturing facility in China which was completed and began production in 2007. Until May 2012, all of the tires produced by this

<sup>10</sup> See Protocol on the Accession of the People's Republic of China, WT/L/432 (23 November 2001) at Part I, item 7, para. 3; Report of the Working Party on the Accession of China, WT/MIN(01)/3 (10 November 2001) at section IV.D.5, para. 203.

<sup>11</sup> *Certain Passenger Vehicle and Light Truck Tires from China*, Investigation No. TA-421-7, USITC Publ. 4085 at 34 n. 190 (July 2009).

joint venture are required to be exported and sold by Cooper Tire & Rubber Company and its affiliates.<sup>12</sup>

This is a concrete example of a violation of China's obligations under the TRIMs Agreement and its accession commitments (protocol and working party report) to eliminate export performance requirements tied to investment. While many companies who accept these obligations are hesitant to acknowledge the WTO-inconsistent obligation accepted, the U.S. should pursue aggressively any instances where public information confirms the existence of such WTO-inconsistent obligations.

In the most recent Transitional Review Mechanism (TRM), China maintained that it had faithfully honored its commitments "in respect of the TRIMs Agreement as found in paragraph 7.3 of the Accession Protocol of China, more specifically those commitments on such performance requirements as local content, offsets, the transfer of technology, export performance or the conduct of research and development, etc."<sup>13</sup> Interestingly, however, China "clarified that while China's commitment was that the approval for the right of importation or investment was not conditioned on performance requirements including the transfer of technology, it nevertheless would not stop the parties to a joint venture contract from negotiating provisions on technology transfers according to their own wish."<sup>14</sup>

The United States did bring two WTO cases against China which involved, in part, export performance requirements. In the first case, the U.S. claimed that certain measures granting refunds, reductions, or exemptions from taxes or other payments otherwise due to the Chinese government by enterprises in China appeared to be provided on the condition that those enterprises purchase domestic over imported goods, or on the condition that those enterprises meet certain export performance criteria, a violation *inter alia* of Article 2 of the TRIMs Agreement.<sup>15</sup> In this case, the U.S. and China reached a settlement in the form of a Memorandum of Understanding, with China agreeing to repeal the measures at issue.<sup>16</sup>

In the second case, involving subsidies provided to China's "famous brand" products, the U.S. claimed that certain measures offering grants, loans, and other incentives to enterprises in China appeared to be provided on the condition that those enterprises meet certain export performance

<sup>12</sup> Cooper Tire & Rubber Company, 2008 10 K at 40.

<sup>13</sup> See Transitional Review Mechanism Pursuant to Paragraph 18 of the Protocol of Accession of the People's Republic of China to the World Trade Organization, *Report of the Chairman*, G/L/899 (23 October 2009) at Annex 1, para. 16.

<sup>14</sup> See Transitional Review Mechanism Pursuant to Paragraph 18 of the Protocol of Accession of the People's Republic of China to the World Trade Organization, *Report of the Chairman*, G/L/899 (23 October 2009) at Annex 1, para. 18.

<sup>15</sup> See China – Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments, *Request for Consultations by the United States*, WT/DS358/1, G/L/813, G/SCM/D74/1, G/TRIMS/D/25 (7 February 2007).

<sup>16</sup> See China – Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments, *Communication from China and the United States*, WT/DS358/14 (4 January 2008).

criteria.<sup>17</sup> As such, the U.S. claimed that the challenged measures qualified as prohibited export subsidies. As in the first case, the U.S. and China reached a settlement in this dispute, with China agreeing "either to eliminate the measures of concern or to modify them to remove any provisions related to export-contingent brand designations and financial benefits."<sup>18</sup>

#### D. Other Issues

There are a host of other trade and industrial policies maintained by China that should be examined for potential WTO challenge. For example, recent USTR reports on sanitary and phytosanitary measures and technical barriers to trade being encountered by U.S. companies in China (and in other countries) provide a roadmap of practices that could be reviewed for consistency with WTO obligations and pursued where appropriate.<sup>19</sup> In addition, the U.S. – China Commission held a hearing in May of this year on the civil and military aircraft industry in China that revealed technology transfer agreements and support programs in the sector that may be challengeable within the WTO. Finally, a study on technology transfer, trade-related investment measures, subsidies, and intellectual property rights protections in China that our firm prepared in 2007 identified a number of areas where additional WTO challenges could be brought, many of which continue to pose obstacles to U.S. firms and workers today.<sup>20</sup>

### III. Addressing the Undervaluation of China's Currency

Economists are in broad agreement that China's currency is substantially undervalued, by as much as 40% according to some estimates. While China's recent decision to begin to liberalize its exchange rate is a welcome step in the right direction, it falls short of allowing the exchange rate to be fully market determined and is therefore insufficient to eliminate the full extent of undervaluation that continues to occur. China's currency undervaluation provides an unfair competitive advantage to its producers by artificially increasing the cost of U.S. exports and decreasing the cost of Chinese goods imported into the United States. The consequences of this undervaluation have been the massive and persistent U.S. trade deficit with China, elimination of important export opportunities, harsh competition for domestic producers from unfairly low-priced imports, and the loss of production, income, and employment in the United States. The

<sup>17</sup> See China – Grants, Loans and Other Incentives, *Request for Consultations by the United States*, WT/DS387/1, G/L/879, G/SCM/D81/1, G/AG/GEN/79 (7 January 2009).

<sup>18</sup> See USTR press release, *United States Wins End to China's "Famous Brand" Subsidies After Challenge at WTO: Agreement Levels Playing Field for American Workers in Every Manufacturing Sector*, December 18, 2009.

<sup>19</sup> See USTR, 2010 Report on Sanitary and Phytosanitary Measures at 32-37; USTR, 2010 Report on Technical Barriers to Trade at 69-75.

<sup>20</sup> See Terence P. Stewart, et al., *China's Laws, Regulations and Practices in the Areas of Technology Transfer, Trade-Related Investment Measures, Subsidies and Intellectual Property Protection Which Raise WTO Compliance Concerns*, prepared for the U.S. China Economic and Security Review Commission (Sept. 2007), available on-line at <http://www.usec.gov/researchpapers/2008/TLAG%20Report%20-%20China's%20Laws,%20Regulations,%20Practices%20in%20Areas%20of%20Technology%20and%20WTO%20Non-Compliance.pdf>.



U.S. should explore options for addressing this unfair competition through multilateral means at the WTO and through the enforcement of our trade remedy laws.

#### A. WTO Dispute Settlement Options

There are viable claims that the United States could make to challenge China's unfair currency practices through the WTO dispute settlement system. The United States need not wait for a formal determination from the International Monetary Fund that China is manipulating its currency before bringing a WTO case. If a WTO challenge were successful, the U.S. could ultimately be authorized to raise tariffs or take other retaliatory measures unless China brought its currency practices into compliance with WTO rules.

The potential bases for challenging China's exchange rate policy are that the undervaluation of China's currency: (1) constitutes a prohibited export subsidy within the meaning of various GATT articles and WTO Agreements; (2) violates GATT Article XV:4; (3) violates GATT Article II:3; (4) violates China's obligations under the International Monetary Fund's Articles of Agreement; and (5) nullifies and impairs benefits accruing to the United States.

The WTO and IMF are part of a coherent, rules-based system that was designed to prevent and redress exactly the type of trade-distorting currency practices that China is currently engaged in. Those rules can and should be employed to their fullest extent to achieve effective relief for American industries, farmers, workers, and communities.

#### B. Enforcement of U.S. Countervailing Duty Law

Since before the founding of the GATT in the late 1940s, U.S. countervailing duty law has permitted our government to offset the trade distorting effects of at least certain types of artificial currency advantages. Treasury so found in the 1930s and in the 1950s.<sup>21</sup> The GATT also reflected the right of countries to address these distortive currency problems either under the antidumping or countervailing duty provisions of Art. VI of the GATT. This is so even though there are GATT provisions (Art. XV) calling for cooperation with the IMF on certain currency questions. While it is true that the provisions involved in GATT Art. VI and in prior U.S. case law pertain to looking for dual currency situations, a currency that is undervalued by reason of government action presents the same problems as a dual currency – a currency provides artificial advantages to exporters where used to encourage exports – and has the added pernicious effect as practiced by China of discouraging imports. These practices should be subject to the same corrective action permitted for dual exchange rate policies.

There is both past precedent and current authority in the Ad Note to Article VI of the GATT 1994 to use trade remedy laws (either antidumping or countervail) to address the injurious effects

<sup>21</sup> See, e.g., T.D. 48360 (June 1936) and T.D. 53257, 88 Treas. Dec. 105; 18 Fed. Reg. 2653 (May 7, 1953); *F.W. Woolworth Co. v. United States*, 115 F.2d 348 (CCPA 1940); *V. Mueller & Co. v. United States*, 115 F.2d 354, 360 (CCPA 1940); *Robert E. Miller & Co., Inc. v. United States*, 34 CCPA 101, 102-103, 105 (1946); *Energetic Worsted Corp. v. United States*, 224 F. Supp. 606, 612-614 (Cust. Ct. 1963), *rev'd on other grounds*, 53 CCPA 36, 45-46 (1968).

of various currency practices, including undervaluation. For example, In 1958, the GATT Secretariat studied the application of antidumping and countervailing duties by the Contracting Parties. In reviewing the types of measures that involve subsidization, the study referenced the Ad Note to Article VI:

A special type of low price import may also be mentioned in this connexion, namely those which are the consequence of currency measures taken in the exporting country. While in most such instances the price comparison will not permit the levy of an anti-dumping duty, GATT expressly permits the levy of countervailing duties in circumstances where the exportation of the product is facilitated by a multiple currency system (Note to Article VI). A case in which such a provision has been applied is the imposition of a countervailing duty by the United States on imports of wool tops from Uruguay.<sup>22</sup>

The study further noted: "Concerning countervailing duties, the United States has indicated that these are used to offset all types of export subsidization, including subsidization through differential exchange rates."<sup>23</sup>

Thus, the United States should be able to use our unfair trade laws to deal with underpriced currencies from any country, including China. Such action should withstand WTO scrutiny if the system is functioning properly and interpreting agreements consistent with negotiators' intent.

#### IV. Conclusion

China's trade and industrial policies are putting U.S. firms, farmers, ranchers, and workers at a profound competitive disadvantage. Not all aspects of China's industrial policy involve issues that can be adequately addressed under WTO rules or through the enforcement of domestic trade remedy laws. Many problems are also difficult to address through these formal means by virtue of the fact that the victims of the problem are unable or unwilling to provide the factual information to the U.S. to permit them to bring formal proceedings, due to concerns about retaliation or other fallout effects. That said, the WTO dispute settlement system and our trade remedy laws provide important tools for supplementing the bilateral dialogue the U.S. currently uses to address trade problems presented by China's industrial policies. Those tools should be used to the fullest extent possible to realize the benefits that American firms and workers were promised upon China's accession to the WTO nearly nine years ago.

---

<sup>22</sup> GATT, *Anti-Dumping and Countervailing Duties* (July 1958) at 11.

<sup>23</sup> *Id.* at 13.