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CHINA'S COMPLIANCE WITH THE WORLD TRADE ORGANIZATION AND INTERNATIONAL TRADE RULES

HEARING

BEFORE THE

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED THIRTEENTH CONGRESS

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CHINA'S COMPLIANCE WITH THE WORLD TRADE ORGANIZATION AND INTERNATIONAL TRADE RULES

WEDNESDAY, JANUARY 15, 2014

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:04 a.m., in Room 538, Dirksen Senate Office Building, Hon. Sherrod Brown, Chairman, presiding.

Also Present: Senator Jeff Merkley and Representatives Mark Meadows, Tim Walz, and Brad Sherman.

OPENING STATEMENT OF HON. SHERROD BROWN, A U.S. SENATOR FROM OHIO; CHAIRMAN, CONGRESSIONAL–EXECUTIVE COMMISSION ON CHINA

Chairman BROWN. We will begin. I know that Ms. Lee will be here, because she has always been reliable in the past. But we will get started and I will begin with an opening statement and then call on the three House Members who have been leaders on these China issues, some for many years and others more recently, and thanks for their efforts here and their interest in this Commission.

I would like to welcome everyone to this hearing on "China's Compliance With the World Trade Organization's International Trade Rules."

I am calling on China to fully comply with WTO commitments and fully and faithfully implement all of the WTO rulings against it.

This Commission believes we have a special obligation, from its creation after China PNTR [permanent normal trade relations] more than a decade ago, a special obligation to monitor China's WTO compliance by adhering to a rules-based system to which they committed a decade-and-a-half ago.

With clear obligations, China can take its role in supporting the global economic system, a system based upon transparency, respect for property rights, and adherence to the rule of law.

We admire China's rich history. These hearings in this Commission help us appreciate the difficult and complex challenges in a country so large and so complex, that is growing so fast. We support the aspirations of the Chinese people to make their country a safer and a cleaner and a more prosperous nation in the family of nations.

We believe that fair trade policies and promotion of the rule of law in China will not only benefit this nation, but will also benefit the Chinese people and them as a nation, also.

Last week, I applauded the announcement that Fuyao Glass Industry Group, a Chinese producer of auto safety glass, will redevelop and hire some—they are saying 800 jobs in the former General Motors plant just up the road from Mr. Horn's home and near Dayton, Ohio.

It is a great example of how fair trade can benefit both sides by giving a Chinese company access to a highly skilled workforce and, as I say, creating several hundred jobs in Ohio.

But to truly have a fair trading relationship that benefits both sides, there needs to be a more level playing field. The Chinese Government must do more to abide by its WTO commitments, protect the rights of workers, and support a clean environment.

The United States Trade Representative [USTR], unfortunately, could not send a representative here today. They released their 2013 report to Congress on China's WTO compliance. Though it acknowledges some areas of improvement, it paints a sobering picture of Chinese efforts to intervene in the economy and to unfairly help Chinese businesses, despite WTO commitments not to do so.

For example, China still has not agreed to the WTO Government Procurement Agreement. By not doing so, our businesses miss out on the opportunity to compete potentially for $100 billion in government contracts every year.

China has agreed to submit another offer this year, but progress has been frustratingly slow.

Another issue USTR noted in its report is China's imposition of duties in retaliation for countries bringing WTO cases against them.

In one of those cases involving grain-oriented electrical steel, China not only lost in the WTO challenge, but now appears not to be complying with the ruling. I applaud the USTR announcement on Monday that it is now requesting China to enter consultations in this case. One of those businesses impacted is represented today by Mr. Horn, AK Steel, and he will tell us about that case.

Finally, China's currency manipulation continues to harm our workers and our economy. A December 12 report by the Peterson Institute found that currency manipulation by foreign governments costs the United States—wide estimates here—between 1 million and 5 million jobs, increasing the U.S. trade deficit from anywhere between $200 billion and $500 billion.

Our trade deficit in 2012, the last year we have full measurement, broke $300 billion for the first time. It is expected to do so again when the 2013 figures come out.

These trade deficits are unacceptable. They cost jobs in places like Toledo, Akron, and towns and cities all over my State and our country.

That is why I have introduced the currency—again, the Currency Exchange Rate Oversight Reform Act. It passed overwhelmingly bipartisanly in the Senate. I am hopeful that my colleagues in Ohio will take that up—that we pass it again in the Senate and my colleagues in the House will take it up and move it forward.

Mr. Walz, thank you for joining us.

[The prepared statement of Chairman Brown appears in the appendix.]

STATEMENT OF HON. TIM WALZ, A U.S. REPRESENTATIVE FROM MINNESOTA; MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Representative WALZ. Thank you to Senator Brown and thank you for your longtime unwavering commitment to making sure that fair trade is exactly what we say it is, that it is fair.

And thank you to the witnesses for taking the time and the effort and for providing us the resources to make informed decisions on this.

And as always, to the staff of this commission, their commitment is second to none. Their professionalism is second to none. And I was saying earlier I look very much forward to what this commission produces, because it is important.

I would echo the Senator's words. We are here to make sure that this relationship—all good relationships are based on trust. They are based on fairness.

My constituents and workers in southern Minnesota are not afraid to compete against anyone, but they are frustrated when they compete in an unfair system that gives advantages one way as opposed to making it fair, because when we compete fairly, it improves the quality of products, it improves the quality of trade, and it makes the relationship stronger.

So I would look forward to the hearing today. The WTO regulations are in place for that very reason and why we do trust, President Reagan was right—trust, but verify—and that is what our job is here today.

So I yield back, Senator.

Chairman BROWN. Mr. Meadows?

STATEMENT OF HON. MARK MEADOWS, A U.S. REPRESENTATIVE FROM NORTH CAROLINA; MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Representative MEADOWS. Thank you, Mr. Chairman. And thank you for your words. As you opened up, you articulated it very well.

From the witnesses what I hope to hear from each one of you is the areas, indeed, where we are making some progress, but maybe highlighting the three most problematic areas that you see that we need to address, and if you could highlight those for me, that would be great.

In addition to that, I can say that our trading partner, China, is critical not only to the United States, but to China, as well, and that is one that we need to work on and make sure that it does have the foundation, as my colleague to my right said, a foundation of mutual respect, but, also, trust.

So in doing that, when you have the rule of law and when those laws or agreements are not followed, it is very troubling.

So what we would like to see from each one of you is to articulate that in the best form that you can.

As a member of the Foreign Affairs Committee, we have had numerous hearings that were troubling, I guess, in terms of the trajectory of where we are going with this, either the progress that

has been made or the lack thereof. And so I would like for each one of you to comment on that.

Mr. Chairman, I will yield back.

Chairman BROWN. I thank Mr. Meadows.

Mr. Sherman, welcome.

STATEMENT OF HON. BRAD SHERMAN, A U.S. REPRESENTATIVE FROM CALIFORNIA

Representative SHERMAN. Thank you, Mr. Chair, for giving me an opportunity to participate here today.

In determining whether China is playing fairly, one is tempted to just look at the scoreboard, the balance of trade. It is the most lopsided trading relationship in the history of mammalian life.

But we are told instead we should be looking at the individual plays on the field. The problem is the field is shrouded, because the system we have adopted is based on the idea of free market capitalism being practiced in every country that is part of the WTO.

There is an assumption that capitalist businesspeople will determine what is imported and that they will import anything they can import at a profit, subject only to tariffs and other published restrictions, which are enforced through an independent judiciary that demands that businesses have the freedom to import anything they want, subject only to clearly written rules.

Is there anything in China that reminds us of that system? In fact, if we look at the culture, law, politics of China, we see state-owned enterprises. China does not need to publish tariffs to affect their behavior. They own them.

Chinese Communist Party members and Chinese Government officials are on the boards of other companies. So why look at the statute books and the regulations to see how Beijing influences companies?

And I think of myself, what if I were to get on the phone, as a Congressman, and call a businessperson and tell them, "Don't buy the Chinese product. Buy the American product, because I think that's good for America." I would be laughed at or there would be a press conference denouncing me for trying to interfere with business.

Now, imagine a commissar in China makes an equivalent call. The fact is when we asked whether China plays by the rules, most of the field is hidden. All we see are the published rules and the published tariff rates.

When we reduce or eliminate those rules that limit imports to the United States or impose taxes on them, we give up everything. When China alters its published law, it gives up nothing.

The effect of the policy we have followed for the last couple of decades is clear. You look at the scoreboard and you see the most lopsided trading relationship.

We should demand not just fair trade, but balanced trade. There is no way to look play-by-play when you cannot see the field. We should demand that for every $1 of import, there is $1 of export.

Until then, we have to be tough in enforcing the existing rules.

I yield back.

Chairman BROWN. Thank you, Mr. Sherman.

Again, thank you to the panel for joining us. I will introduce each of you now and then we will begin the testimony, starting with Mr. Horn.

David Horn is Executive Vice President, General Counsel, and Secretary of AK Steel, which he joined in 2000. Prior to that, he was a partner in the Cincinnati law firm of Frost Brown Todd. He is an active member in his community, currently serving as a member of the board and cochair of the Greater Cincinnati Minority Counsel Program and the Mercy Health Foundation.

Thank you, David, for joining us.

Elizabeth Drake is a partner at Stewart and Stewart. She has broad experience in international trade laws, authored articles on China's exchange rate policies, WTO rules on balance of payment measures, and trade and labor rights.

She was previously an international policy analyst at the AFL–CIO and served on the Labor Advisory Committee on Trade Policy and Negotiations to the U.S. Trade Representative.

Welcome, Ms. Drake.

Thea Lee is Deputy Chief of Staff at the AFL–CIO. She served as Policy Director and Chief International Economist. Her research projects have included reports on the impact of international trade on U.S. wage inequality.

She serves on the State Department Advisory Committee on International Economic Policy and, also, on the Board of Directors of the National Bureau of Economic Research.

Welcome, Ms. Lee.

Timothy Webster is Assistant Professor of Law and Director of the East Asian Legal Studies Program at Case Western University Law School in Cleveland. His research looks at the intersection between East Asian and international law and has appeared in the Columbia, Michigan, and Penn international law journals.

He previously taught at Yale Law School. He recently completed a paper titled "Paper Compliance: How China Implements WTO Decisions."

Thank you, Mr. Webster, for joining us.

Mr. Horn, if you would begin.

STATEMENT OF DAVID HORN, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, AK STEEL HOLDINGS CORPORATION

Mr. HORN. Good morning, Chairman Brown and other members of the Commission. I appreciate the opportunity to participate in today's hearing and to present the views of AK Steel regarding China's failure to comply with its obligations as a member of the World Trade Organization.

My name is David Horn. I am Executive Vice President, General Counsel, and Secretary of AK Steel Corporation.

Headquartered in Westchester, Ohio, AK Steel is a leading producer of flat-rolled, carbon, stainless, and electrical steels.

China's adherence to its WTO commitments is extremely important to AK Steel and its 6,100 employees. From AK Steel's perspective, however, China has embraced the opportunities offered by the WTO membership, but not the obligations.

China's failure to follow the rules has hurt AK Steel in two very concrete ways. First, the Chinese Government has heavily sub-

sidized its steel industry. This has resulted in a huge oversupply of steel products in the global market, which depresses steel prices in the United States and foreign markets.

Second, China continues to impose antidumping and countervailing duty measures on AK Steel's exports of grain-oriented electrical steel, which is referred to as GOES, notwithstanding the fact that the WTO has found that these duties are not justified and never should have been imposed.

Although the enormous subsidies provided to Chinese steel producers are a significant concern, what I wish to focus on this morning in the limited time I have available is the unjustified imposition of duties on GOES from AK Steel.

China initiated antidumping and countervailing duty investigations of GOES from the United States in June 2009. In April 2010, China issued its final determination. China found that the imports of GOES from the United States had been dumped at prices below normal value and subsidized by the U.S. Government.

It imposed duties of nearly 20 percent on imports from AK Steel. More than half of this rate, approximately 12 percent, was based on an adverse assumption that AK Steel sold all of its products to the U.S. Government at a premium under the Buy America Act. That was, of course, not true and there was no evidence to support this clearly false assumption.

Nonetheless, AK Steel and the other producer of GOES have been shut out of the Chinese GOES market as a result of these duties.

Prior to the start of the investigation, U.S. GOES exports to China totaled approximately $270 million annually. Today, the value is well under $1 million.

AK Steel was pleased when the USTR filed a WTO complaint against China in September 2010. We likewise were pleased in June 2012 when a WTO dispute settlement panel first ruled that China had violated its WTO obligations in numerous respects when it imposed the duties on GOES.

China appealed certain aspects of that WTO panel's findings, but China's claims were rejected by the WTO Appellate Body in October 2012.

In short, the WTO has ruled that the duties imposed by China on GOES from the United States were not justified and should never have been imposed.

Despite that fact, duties have remained in place against GOES for over 18 months since the panel first found them to be inconsistent with China's international obligations and for nearly 4 years since the duties were first improperly imposed.

Because China would not agree to a reasonable timeline for coming into compliance with the WTO rulings, the United States was forced to request arbitration to determine a reasonable period of time for China to comply.

After the arbitrator rejected China's pleas for more time, on July 31, 2013, China issued a revised final determination. It lowered the duties, but it did not eliminate them. China's revised determination attempting to comply with the WTO's findings retains almost all of the errors of its original one.

Because of China's intransigence, USTR on Monday of this week requested consultations regarding China's failure to come into compliance with the WTO's ruling. USTR will seek a ruling from a WTO compliance panel that China has failed to comply.

Unless China relents, the United States will then need to request a WTO arbitrator to determine the amount of retaliation that the United States is authorized to apply in terms of higher tariffs on imports from China.

While all of this is going on, the GOES produced by AK Steel remains shut out of the Chinese market.

AK Steel's experience shows that the WTO dispute settlement system operates too slowly to provide effective relief, especially where the losing party does everything it can to prolong the process, as China is doing with GOES.

AK Steel very much appreciates the support it has received from the U.S. Government in challenging China's flawed antidumping and countervailing duty measures in the GOES case.

We would respectfully suggest, however, that more should be done. For example, USTR should continue to aggressively pursue other complaints against China's failure to follow the WTO rules in applying antidumping and countervailing duties against U.S. exports.

China has now lost several such cases and those defeats make it more likely that the Chinese Government will bring its practices into WTO compliance.

In order to allow USTR to do more, Congress should appropriate more funds to USTR's WTO dispute settlement function.

Although I know from personal experience that the USTR has very talented lawyers, I understand that most of its WTO litigators split their time among various responsibilities. It would seem to me that if USTR had more lawyers dedicated to WTO disputes, they would launch more cases and litigate more expeditiously.

Finally, Congress should enact the Currency Exchange Rate Oversight Reform Act of 2013, which would have the effect of applying the countervailing duty law to currency manipulation.

Alternatively, Congress should attach provisions applying the countervailing duty law to currency manipulation to any Trade Promotion Authority bill passed by Congress.

Again, I thank you for this opportunity to testify.

Chairman BROWN. Thank you, Mr. Horn.

Ms. Drake?

[The prepared statement of Mr. Horn appears in the appendix.]

STATEMENT OF ELIZABETH DRAKE, PARTNER, STEWART AND STEWART

Ms. DRAKE. Chairman Brown, Commissioners, good morning. My name is Elizabeth Drake and I am a partner at Stewart and Stewart. I thank the Commission for the opportunity to appear before you today.

In the 12 years since China joined the WTO, it has become the world's largest exporter and our most important trading partner. But this trading relationship is far from balanced.

Since 2001, our trade deficit with China has nearly quadrupled. In 2013, China accounted for only 8 percent of our exports, yet a full 46 percent of our trade deficit.

Part of the reason for these troubling trends is China's continued violations of the rules it agreed to when it joined the WTO. These violations include discrimination against foreign goods and firms, localization requirements, export restraints, investment restrictions, lax IPR protections, abusive trade remedies, and a persistent lack of transparency.

Today I would like to highlight just four of these areas. First, the tens of billions of dollars in prohibited export credit subsidies that China provides to its exporters.

Second, discrimination by state-owned enterprises against U.S. producers and products. Third, technology transfer, local content, and export requirements imposed on investors in China. And, fourth, massive subsidies to China's strategic and emerging industries.

Our firm filed a 301 petition on behalf of the United Steelworkers Union in 2010, highlighting a number of these practices in the green technology sector and very much appreciate all of the work that USTR has done to follow-up on the allegations in that petition and resolve many of them.

However, we believe more can be done.

The first issue I would like to address is China's export credit system. Export credits that do not comply with the OECD [Organisation for Economic Co-operation and Development] arrangement on export credits are prohibited under WTO rules. China is now the world's largest export credit provider, by far.

In 2012, China provided an estimated $100 billion in export credits, three times what U.S. Ex-Im Bank was able to provide to our own exporters.

Yet, China refuses to join the OECD arrangement and our own Ex-Im Bank has found that China does not comply with the arrangement in practice. Indeed, some reports indicate that China's export credits may be available at rates as low as 2 percent, 1 percent, or even 0 percent.

Allowing these practices to continue poses a significant threat to the competitiveness of our own exporters, who must rely on an Ex-Im Bank that does follow the rules.

One obstacle to challenging these practices at the WTO is a lack of transparency in China. However, I believe there is enough public information to mount at least a prima facie case that China's export credits are prohibited subsidies. The burden would then shift to China to come forward and demonstrate that the credits, in fact, comply with the OECD rules.

I believe the credible threat of a WTO challenge provides vital leverage to bring China's export credit system into compliance.

With regard to the next two issues, discrimination by state-owned enterprises and the imposition of technology transfer, local content and export requirements on investors, have long been a source of concern.

The United States expended significant negotiating capital to get China to agree to rules prohibiting these practices and these rules

go above and beyond the normal rules in the WTO agreement. Unfortunately, these additional rules have never been enforced.

Examples of continued violations by China are many. I have laid them out in my written testimony and would be happy to answer any questions about those examples.

The United States has secured numerous commitments from China to eliminate these practices over the years. Unfortunately, USTR continues to express dissatisfaction with China's compliance.

WTO challenges may be the only way to finally put an end to these practices.

Finally, the United States should continue to closely monitor the massive subsidies China is providing to its strategic and emerging industries and we should not hesitate to bring a WTO challenge if these subsidies cause harm to U.S. producers and workers.

In 2010, China announced its aim to dramatically expand seven strategic and emerging industries—energy saving and environmental protection, new generation IT, biotech, high-end equipment manufacturing, new or renewable energy, new materials, and new energy vehicles.

China aims to be the world leader in each of these seven industries by 2030. To meet this goal, it is reported that China plans to invest $1.5 trillion in these industries over just a few years. There is no way that China can meet these goals without displacing foreign competitors. Such aggressive distortion of international competition through government subsidies is exactly what WTO rules are designed to prevent and redress.

Bringing a case against these subsidies would be a fact-intensive and resource-intensive exercise, but ensuring the United States has a fair chance to compete in these seven key sectors in the coming decades would be well worth the effort.

Thank you for the opportunity to testify. I look forward to any questions you may have.

Chairman BROWN. Thank you, Ms. Drake.

Ms. Lee, welcome.

[The prepared statement of Ms. Drake appears in the appendix.]

STATEMENT OF THEA MEI LEE, DEPUTY CHIEF OF STAFF, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS [AFL–CIO]

Ms. LEE. Good morning and thank you for the opportunity to testify today on this very important issue that impacts our members, but also impacts Chinese and American workers who are not in unions.

I wanted to start by congratulating the Commission for its excellent work over the last 13 years, particularly under the current chairmanship, Senator Brown and Congressman Smith. I think you have done a wonderful job of reminding our government, the Congress and the Administration of the interrelationship between our economic relationship with China and some of the more important issues, like democracy, rule of law, human rights, workers' rights, that do not get the attention that they deserve in the national discussion that we have been having.

Our bilateral dialogues focus too often on narrow commercial concerns. But the concerns about workers' rights, human rights,

and rule of law are essential to American workers, consumers, and businesses. It is impossible for us to have a healthy economic relationship with China if we do not address those fundamental concerns. That should be a part of all of our bilateral U.S.-China economic dialogue. And we believe that our government should seek more effective avenues for raising these concerns within the multilateral framework of the World Trade Organization [WTO] and other international bodies.

When China joined the WTO more than 12 years ago, there were several concerns raised. One is whether the WTO rules themselves were adequate to protecting workers' rights and the environment, promoting democracy and development, addressing currency manipulation, and, in general, supporting U.S. jobs and manufacturing.

The second question was, given the WTO rules, whether China would comply with those commitments and if not, whether the WTO enforcement mechanisms would be adequate.

The third question is whether the U.S. Government had the will and/or the tools to use WTO mechanisms effectively to protect the interests of American workers and domestic producers, rather than just the interests of multinational corporations.

And if we step back now, 12 years later, I would say that the results are very disappointing. American workers and domestic businesses are paying a high price every day for the failures of WTO accession and WTO enforcement.

The rapid industrialization and export growth in China have far outpaced the development of regulatory institutions, laws, and enforcement capacity. Workers' rights, environmental protections, and consumer safety did not naturally and automatically improve, while foreign investment and exports grew rapidly, I think more rapidly than many expected.

And as Congressman Sherman said, the imbalanced trade relationship between China and the United States continues to grow, to the point where our bilateral trade deficit with China is more than two-thirds of our non-oil goods deficit with the entire world.

If you look, in particular, at advanced technology products, it really is striking. If you look at just that one table in U.S. trade statistics, you will see that we had a $106 billion trade deficit in advanced technology products alone with China. That is larger than our whole advanced technology trade deficit with the world, which means that we have trade surpluses in advanced technology products with most of our trading partners, but we have a massive trade deficit with China. That does highlight some of the areas that Elizabeth Drake outlined in terms of the unfair practices and the uneven playing field that leads to this kind of a dramatic imbalance in an area where there should be a competitive advantage for the United States.

In conclusion, I think that this Commission's proposal that human rights and rule of law be integral to all trade and economic discussions is important, particularly in the context of the Strategic and Economic Dialogue with China.

I understand that the topic is not welcome. I understand, and I hear this often from the U.S. Government, that the Chinese Government does not want to have a conversation about human rights

or workers' rights or democracy. I think that highlights all the more why this is important. It is a foundational building block to everything about our economic relationship with China. Everything that we hope to accomplish vis-a-vis China—political stability, a reciprocal trade relationship, an appropriate regulatory framework, and an economic relationship that delivers good jobs for American workers, as well as for Chinese workers—cannot be accomplished if there is a lack of democracy and fundamental workers' rights and human rights in China.

The second thing is action on currency. 2014 is the year that the U.S. Government needs to take action. Congress should take action, and the Administration should take action. We totally support the Currency Exchange Rate Oversight Reform Act that Chairman Brown mentioned, and it is time for Congress to stop juggling ineffectually and tossing this bill back and forth between the House and the Senate and the Administration. Congress should stop pretending that this issue is being resolved, because it is not.

And, particularly, in a year when our negotiations are moving forward on the Trans-Pacific Partnership and the bilateral investment treaty with China, it is essential that we put these issues of human rights and workers' rights and democracy back at the center of our U.S.-China dialogue.

Thank you so much for your attention. I look forward to your questions.

Chairman BROWN. Thank you, Ms. Lee.

Professor Webster, welcome.

[The prepared statement of Ms. Lee appears in the appendix.]

STATEMENT OF TIMOTHY WEBSTER, ASSISTANT PROFESSOR OF LAW; DIRECTOR, EAST ASIAN LEGAL STUDIES, CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW

Mr. WEBSTER. Thank you. Chairman Brown, members of the Commission, ladies and gentlemen, it is my pleasure and my honor to speak with you here this morning.

I would like, in particular, to thank Lawrence Liu, the staff director of the CECC for contacting me back in October and for inviting me here today. And like others on this panel have said already, I would like to congratulate the CECC on its terrific work educating not only Congress, but, also, the American people and, indeed, the world about issues that are ongoing in China.

I frequently assign hearings and roundtables and other testimony from this Commission to my class on Chinese law. So you are also serving to educate the general public.

Now, throughout the United States, but particularly here in Washington, as we have heard from the panel this morning, there is a pervasive belief that China is an international trade scofflaw. By manipulating its currency, subsidizing its domestic industries, dumping goods in the United States, China is seen as a scourge whose baleful influence harms us all.

My recent research, which will appear later this year in the Michigan Journal of International Law attempts to temper this view through empirical observation.

I have examined China's record of implementing the 10 decisions that have been rendered by the WTO's dispute settlement body

[DSB] over the past 10 years, and I find that China has a strong, but increasingly imperfect, record of implementing DSB decisions.

For reasons I will explain, I conclude that China is, at base, a system maintainer, not a system challenger. Part of using any system, whether it is the rules of civil procedure or the rules of international trade or the rules of football, is tactical manipulation. A smart lawyer, coach, or WTO member will strategically deploy procedural rules to benefit his client or to benefit his side to the greatest extent he can.

Of course, sometimes a member will break the rules, and that, I think, is where China is moving and has been moving over the past few years.

Now, in the first wave of cases, before 2007, China was quick to settle WTO decisions and quick to, I would submit, change its laws in accordance with DSB rulings. But after gaining familiarity with the DSB procedures, China has become an increasingly sophisticated WTO litigant and now more willing to use DSB procedures to minimize the effects of adverse rulings.

This is true both in the steel case that Mr. Horn talked about and in other cases, as well. There are two ways of thinking about this. First, China is willing to use the internal procedures of the DSB to its own effect, and we can talk about that, but, second, once decisions have actually been rendered, China is not necessarily willing to implement those decisions as quickly as it should.

That could include things like taking an appeal, as it does when the case looks like it is going to really be difficult to implement and buying itself maybe a year or two of time, or, as I found in a couple of cases, just not changing the inconsistent regulations at all.

So there are a couple of cases, and I talk about it in my article and I talk about it in my testimony. And hearing from Mr. Horn, as well, I wonder if we have not, in a sense, opened the box up by not enforcing earlier decisions where inconsistent regulations were found. We said, "Okay, try it, see if you can push the limit, see how far you can go."

Now, I want to respond very briefly to what Congressman Meadows said. What can we do about this? And, again, here, I would echo some of the comments that Mr. Horn made. The United States is usually the plaintiff in these cases. As a result, it is perfectly well positioned to look at the enforcement piece.

The United States, I think, could push the dispute settlement body to specify which laws, which regulations, which provisions of the regulations need to be changed, need to be amended, and by what time. Does China need to change all of these regulations, some of them? What is the roadmap that China needs to achieve full compliance or full implementation?

I also think the United States needs to focus on enforcement. As I said before, there are several cases where many, four to five or six or so, regulations continue to be in effect even now, even though they were found three, four, five years ago to be inconsistent with the WTO.

I think it is the United States' position to hold China's feet to the fire in those couple of cases.

The final thing I would like to add is that I think the United States also needs to live up to its end of the bargain. The United

States, of course, was the chief architect of the World Trade Organization, the chief architect of the dispute settlement body, and we have a special obligation to implement WTO decisions, as well.

Last year, the Congressional Research Service published a report that said there were either 12 or 13 cases that the United States has yet to implement. So I think our failure to implement cases that go back to the late 1990s and early 2000s erodes confidence in the international trade regime. I think by implementing them, we would gain moral authority when we try to push other countries to do the same.

So I will stop my comments there. I look forward to your questions, and I appreciate the time to come here today.

Thank you.

[The prepared statement of Mr. Webster appears in the appendix.]

Chairman BROWN. Thank you. Thank you all.

I will start with Mr. Webster. USTR, Mr. Webster, expressed some cautious optimism, perhaps over what they have called far-reaching economic reform pronouncements, including that the market shall be decisive and dominant during the Communist Party's third plenum last November.

What should we be looking for in the coming months to determine whether China is, indeed, actually making real and lasting change and achieving those goals?

What will we see? What should we be looking for to measure that and to plan accordingly?

Mr. WEBSTER. That is a great question. The language you are citing is from the recent Chinese Government's Third Plenum of the 18th Central Committee. And this is supposed to be the roadmap of the future.

I think it is very difficult to know. It is a very abstract phrasing. I think some of the things we have been talking about, opening up market access to foreign competitors would be one area where China has not been particularly transparent.

If we see that market-based mechanisms, meaning the best bid as opposed to the best-positioned SOE [state-owned enterprise], winning contracts in various industries would be one index of that. Or if an SOE somehow defaulted on a payment, we would see that Chinese banks are becoming stricter in their lending, which would also indicate the application of market-based principles.

But I think that is a great question and I wish I had a better answer for you. That has certainly been the rhetoric of China over the past three or four months. But how we can actually measure that is anybody's guess.

Chairman BROWN. Thank you.

Ms. Lee, is there more that we can do through the WTO or through future trade negotiations in agreements with China to address worker rights?

What kinds of provisions, labor provisions, would you like to see in future agreements that, as we move forward, can help workers in our country and, frankly, workers in other places?

Ms. LEE. That is an excellent question. We have talked a lot about the lack of worker rights commitment within the WTO, but it is also true that even within the WTO, in the Singapore Declara-

tion, for example, there is a commitment that the members would respect, promote, and realize the international core workers' rights as outlined by the ILO [International Labour Organization]. There is certainly language in the WTO, in Article 20(e) about prison labor. There is language about measures that affect human or animal or plant life or health.

I think that the U.S. Government should be more aggressive in testing the limits of the worker rights protections under the WTO.

We have filed a case in the past and we may file a case in the future, a Section 301 case that the U.S. Government would take up and prosecute about whether the Chinese Government's violation of workers' rights is, in fact, an unfair trading practice. It hurts American workers, it hurts American businesses, and it has a big economic impact on the United States, and it is widespread. It is systematic. It is not one factory with a child laborer working.

It is a systematic, economy-wide repression of the right of freedom of association and the right to bargain collectively.

I think it would also help, as I said earlier, if the U.S. Government put more focus on this issue in all of its strategic and economic dialogues, in the joint talks that happen regularly.

I always see the agendas for these talks and you see intellectual property rights, you see market access, you see subsidies, which are all important issues and we totally support them. We would like to see workers' rights elevated in every discussion that the U.S. Government has with the Chinese Government, because it is so important.

In terms of what kinds of commitments, we are always looking for enforceable commitments of the ILO core labor rights, the freedom of association, right to organize and bargain collectively, and the prohibitions against child labor, forced labor, and discrimination in employment.

The key challenge for us in the international arena is how do we make those commitments real, and how do we get the resources to monitor and enforce? When we start with a country like China, whose labor laws are so far out of compliance with international labor standards, we need a much stronger kind of dialogue that is focused on benchmarks and interim steps. It is unrealistic to think that even if the U.S. Government were to sign a bilateral free trade agreement with China tomorrow and put the strongest worker rights measures into that trade agreement, that that little worker rights chapter would be sufficient to address the kinds of concerns and the kinds of violations that we see in China.

So I think we have to start with a dialogue. We have to start with raising this issue more consistently, and then we could decide whether—if the United States is going to go ahead and negotiate a bilateral investment treaty with China, the issue of workers' rights needs to be confronted squarely and head on in that forum.

Chairman BROWN. Thank you.

Ms. Drake, this Commission is primarily charged with two things—to deal with issues of human rights and economic issues. And I want to shift to a human rights issue for a moment with you.

This Commission did a roundtable just several weeks ago with a number of journalists, all of whom had been threatened visa denial to go back into China for the new year and have access or have

an ability to tell the story of what is happening in China on a whole host of issues.

Perhaps in part because of the light that we shone on this, perhaps for other reasons, too, the Chinese Government did end up renewing visas for most reporters, but notably did not give a visa to a New York Times reporter.

There were also the issues that came out in this roundtable about China blocking U.S. Web sites.

My question is this: Is there a trade remedy either through the WTO or some other avenue that could address this ongoing problem? It is expected. I mean, we have no reason not to expect it, if you will, because it is going to happen at the end of the year again this year and the following year perhaps not.

But if there is a proactive way we can deal with this, how do we do this?

Ms. DRAKE. Thank you, Senator. That is an excellent question and the Commission's work on this issue has been very important.

First on the issue of the journalist visas. When China acceded to the WTO, under the general agreement on trade and services, it committed to allow free entry for senior employees of foreign investors in China for three years, on three-year terms.

And so the United States could try to look at that commitment and see if there is a creative way to either seek consultations with China under that commitment or even bring a WTO dispute, but it would depend on whether or not these journalists were considered senior employees of companies that were actually invested in China.

So it's a limited commitment. It is not broad enough to probably cover all of the journalists that we would want to be sure are protected and are able to do their work in China.

On the Internet blocking issue, that is an extremely interesting issue, and, actually, the United States has raised it at the WTO. In 2011, the USTR submitted a series of questions to the Chinese Government about its Internet-blocking activities.

Again, under the context of the general agreement on trade and services, under which China did make some commitments for market access for U.S. companies, that could be an avenue for challenging blocking. That blocks the ability of U.S. companies to use the Internet and China to have their Web sites up in China, et cetera.

But, again, that commitment is not complete. It does not cover all kinds of Internet content providers. For example, news services are a sector in which China did not make any commitments under the GATT [General Agreement on Tariffs and Trade].

So blocking the New York Times Web site or the Washington Post Web site or what have you likely would not violate their GATT's commitments, but maybe blocking another service provider would if they made commitments in that area.

So the United States did a good job presenting a very full set of questions to China at the WTO on these practices. China made a partial response in 2012 and apparently they had consultations then, but it is definitely an avenue that deserves greater attention and more work.

Chairman BROWN. Thank you.

Mr. Horn, first, thank you for your support on the currency issues that you mentioned at the end of your testimony, both free-standing legislation and as part of future trade agreements.

I understand that your company, AK Steel, has filed trade cases with the Commerce Department and the U.S. International Trade Commission [ITC] against China and other countries for allegedly dumping non-oriented electrical steel, in addition to your testimony.

Are the various tools that the U.S. Government has at its disposal enough to ensure a level playing field with China? And if we need additional tools, what should they be? Give me your thoughts.

Mr. HORN. Great question. I do not think that they are enough. Certainly, we have been able to file the GOES and the NOES trade cases, but they are very expensive to do. They require a lot of data to be able to prepare them and get them filed.

Sometimes it is not always available, the market data in the foreign country and things like that. So first off, you have an obstacle there. Beyond that, they only help us with imports of those specific products into the United States from the targeted countries.

There is also always the risk that countries will circumvent whatever decision is made in terms of duties by trying to send the product through another country or something like that.

So there is a risk there. There needs to be strong enforcement of the trade laws to make sure that there is not circumvention.

Beyond that, it does not help us with our ability to export, and what we have in the case of China is not only a situation where they are exporting their goods to the United States and lowering the prices here because of subsidized product that we have a difficult time competing against, but we also cannot compete in China now. We cannot sell our product there. Trade cases here do not help us address that issue.

So I think there is more that can be done in both directions.

Chairman BROWN. Thank you.

Mr. Walz?

Representative WALZ. Thank you, Chairman.

Thank you all, to the witnesses.

Just hitting on a couple of things. The one thing I would say, too, is this issue of enforcement, I hear that again and again and I think we all understand it.

I want to be very clear. We are going to vote on an omnibus today that is going to be $4 million less, significantly less than what was requested by USTR, specifically for interagency trade enforcement and the Beijing side of it.

So you can go home and tell your people you saved money, you cut the budget, and you underfunded the agency that actually is enforcing this to return money back to the Treasury.

So it is very frustrating to me, but I think that is our responsibility to bring that to light.

A couple of things, and, Mr. Webster, I thought you brought up a good point, too, and I think it is important for us because this trade relationship is important and it needs to be fair.

I think the point you brought out about the United States upholding ours, whether it is upland cotton or whatever it is, it is

making sure that we are addressing those, and I think that sends the message.

The question I have is, looking at China's organization on the economy from the large state-owned enterprises, banks, telecoms, the joint ventures, the carmakers and things, then there is this talk about there is the private.

My question is, how private are they? My experience with the Chinese, you have a lot of municipal investment through joint venture or, I mean, venture capital that is actually owned government-wise or whatever.

So this idea of how transparent or how much interference there is, in your opinion of looking at this, is it deeper than we think?

Mr. WEBSTER. Again, it is difficult to track down who owns what. I think in the late 1990s and early 2000s, there was a growing private sector in China. But over the past 8 or 10 years, this has been supplanted by state-owned enterprises across a wide range of important key industries, including the ones that we have talked about today, automotive, steel, telecom and so forth.

I guess the only response I would have is that, at least as regards trade, the WTO itself only offers limited capacity to dive into things like workers' rights, environmental rights, things like that.

So we cannot see every bilateral problem involving China through a trade lens. If we do, we are going to be disappointed by the efficacy of what WTO or what international trade laws can do.

That is a great question. Thank you.

Representative WALZ. Very good.

Mr. Horn, again, thank you for your work. Two questions to you. First of all, give me your overall impression of doing business in China, as you see it. And then, second, could USTR be more aggressive in helping out? Because this is a case, again, as I said, with this budget, this seems to me to be one of those cases that the private sector does not have the ability nor the authority to do what WTO, USTR, and the Federal Government does. And have they been aggressive enough in helping you do that?

Mr. HORN. Thank you. Let me address the first part of that question first, about doing business in China.

We are optimistic that once the duties ultimately are eliminated on electrical steel, we will be able to get back into China and do business there. But there is absolutely no certainty of that.

We are very concerned about the political element of it and the state-owned enterprises and whether they will be willing to buy from us, even if there are no duties at some point.

So that is a significant concern to us. We have been locked out now for about four years and have continued to try to maintain the relationships and we will try to get back in there, because it is an important part of the business to our company.

But we are very concerned that it will be difficult for us to do business in China given the importance that the Chinese Government has placed on building its electrical steel industry and not wanting us to go in there and compete against it.

So that is going to be a problem for us.

With regard to the USTR, we do appreciate the support they have given us, but I think if they had more resources that they

could devote to cases, they could move the cases along more expeditiously.

From time to time, there were delays between when things occurred and when USTR was able to respond. So I do not fault them for trying. They have a lot of things to do.

But if they had greater resources, I think they could have responded more promptly in following up on things that needed to be done in our case.

Representative WALZ. Mr. Webster, what will be, in your experience, in past history, what will be China's response to the GOES? What will we see? Will we see token—trying to keep these guys on the hook, trying to do that with no real effort to actually do it, while, at the same time, beefing up and supporting their domestic ability on the grain-oriented steel?

Is that a fair assumption of the way this will play out?

Mr. WEBSTER. Yes. Again, another great question. This is really the limit. I do not think China has fought a case this hard as of yet. In an earlier decision that challenged China's censorship regime, there was a lot of pushback. China failed to implement the decision in a timely manner, but eventually it did achieve full—or relatively full— compliance.

I think with the steel industry being as important as it is in China—and we have already seen and Mr. Horn has already mentioned, there was a huge row over what a reasonable period of time to implement this decision is.

Usually it takes 8 to 10 months to implement a WTO ruling. But in the steel case, China and the United States first went to arbitration to determine a reasonable period of time. Now that period has ended, and the United States is still dissatisfied by China's implementation. The United States is now bringing an implementation action against China. This is the first time a WTO member has brought an implementation proceeding against China, so we will have to wait to see what the result is. I am fairly confident that the United States will win the proceeding, but less sure that China will actually change its conduct. It levied the same anti-dumping duty again after the reasonable period of time ended with no explanation of how it arrived at the duty—which was the brunt of the United States complaint to begin with.

It is up to the USTR or the United States to continue to apply pressure. In the past, as I testified, the United States has allowed China to get away with incomplete implementation. I suspect this, too, will be another multiyear saga before full implementation is realized.

Representative WALZ. Very good.

And, Ms. Lee, I will just end quickly here with you on this. Could you tell, from your perception, as this goes on and you see Mr. Horn's dilemma, you heard about where we are, you hear the experience, tell me how this affects American workers? What does that do to an American worker trying to go to work, work hard, do their thing, pay their bills, raise their family? What happens to them in this?

Ms. LEE. This imbalanced and unfair economic relationship with China is very present for American workers, particularly in the

manufacturing sector, but not just in manufacturing. It affects engineers, as well, and other technicians.

But the idea that American workers are going to be in direct competition with workers who lack basic fundamental freedoms is devastating. It is undermining to an American worker trying to keep his or her job, an American worker trying to bargain decent wages and benefits, an American worker trying to form a union at a mobile manufacturing plant.

So this is ever present. It is something we hear about constantly from our members. They are faced with it every day. They sit down at the bargaining table and the boss says to them, "Yeah, you want a raise. Yeah, you want health care, you want a pension, you want safety equipment, you want a bathroom break, whatever it is, we can go to China and we don't have to worry about that. And not only that, but on top of it, we are not going to worry so much about environmental protections, we are not going to worry about consumer safety protections, and all of those create enormous economic incentives for an American company to move that production.

That is something that we face every day, and this is a burning issue. This is an urgent issue for American workers.

Thank you, Congressman Walz.

Representative WALZ. Thank you all. I yield back.

Chairman BROWN. Senator Merkley?

Senator MERKLEY. Thank you. I appreciate all of your insights and expertise being brought to bear on this topic and have a lot of questions.

Ms. Drake, you listed a whole series of challenges in the trade relationship: Currency manipulation, export subsidies, tech transfer requirements, local content requirements, export requirements for investing companies, subsidies to China's strategic and emerging industries.

Probably those include some of the things that I often hear about, including the low-cost bank loans, below-cost bank loans, free land, people being thrown off their land and provided the key, industry's intellectual property theft.

There is a long list. And then I hear Mr. Webster summarizing and saying that China is a system maintainer, not a system challenger.

So it is kind of a question for the two of you. I am not sure if those are academic terms, Mr. Webster, coming from a political science perspective, but it seemed like from your introduction you were trying to diminish the normal impression that we have of all these serious—this long list of serious violations do significant harm to the United States, and you listed things the United States could do to kind of make the system work better.

I have a picture, from Ms. Drake's presentation, of gross violations that have a huge impact on the United States, and from your presentation, it is like, well, they stretch the rules, occasionally break them, but the United States could respond.

Are the two of you coming from dramatically different positions or is it more a political science evaluation that you are reaching?

Why do you not start, Mr. Webster, and I will ask Ms. Drake to comment.

Mr. WEBSTER. Thank you. Thanks for that question. I think we may be talking about two different things.

If I understand Ms. Drake, she is talking about the entire panoply of WTO agreements. Right? There were 20-some-odd agreements that China has to adhere to, as all WTO members have to adhere to, and she is saying, look, holistically, China is X, Y, and Z.

I am looking at a very narrow subset of that; i.e., the implementation of rulings by the WTO court and I am saying insofar as we can look at rulings from the WTO court, we find the following things.

There are cases that China has not fully implemented. But so far we have not brought arbitration proceedings against China to ensure implementation. This grain-oriented steel case will be the first test of that.

But my point is simply looking at that narrow aspect of—essentially looking at court rulings, if you like, China has a fairly strong interest and a fairly strong—again, not perfect and increasingly imperfect, but fairly strong record of implementing WTO rulings as they have been handed down by the DSB.

Senator MERKLEY. As I read your testimony, I think you have it divided into two phases—an earlier phase where they are a little bit more responsive and recent phases in which they have been a lot less responsive.

I think about when U.S. Senators, a group of 10 of us, took a trip to China and we were talking to the ambassador and his economic team in regard to trade enforcement, and his basic response was, "Our top priority is getting China to cooperate with us on sanctions on Iran." And that basic insight was, well, we have other foreign policy considerations and we do not want to upset the field by doing trade enforcement, and we kind of see this rhythm in which we—we have a lot of priorities in the world and kind of maintain the level playing field or more level playing field maybe envisioned by the spirit and the details of the law leaves a lot of room for China to essentially flout and break that understanding.

In that regard, it makes sense that if you have a very low wage, low labor law, low environmental law, low enforcement state, that it is going to be cheaper to make things.

We have lost 5 million manufacturing jobs since 1998, 50,000 factories, and I think people across America are not so convinced that this trade relationship is actually working to the benefit of the United States.

Ms. Drake, can you comment on that?

Ms. DRAKE. Thank you so much. I really appreciate that question. And I agree, I do not think that Mr. Webster and I are in disagreement, I hope. It was because we were looking at different things.

He was looking at compliance with the rulings that result from disputes that have been brought. I was looking at the disputes that have not been brought. And China's record of compliance is a function of the disputes that have been brought, most of which deal with, as his paper details, paper compliance.

This regulation, per se, we can just read this regulation and tell it does not comply with WTO rules. Okay. We will withdraw that regulation or we will modify that regulation.

It is very different to bring a case that is based not just on a facial violation, but an actual violation based on the facts on the ground, and that is more of what the GOES case is about, looking at how the government actually functions when it is trying to—when it should be complying with its WTO obligations, and there we have seen less compliance, as has been discussed.

But what cases are brought, again, gets back to the issue we were talking about, about what resources USTR has. It is much, much easier to formulate a case based on a facial violation that it is based on a very complicated fact pattern on the ground in China about what provincial authorities may be doing or what have you. And in order to bring those cases, which I think are the most difficult, but also the most important cases, USTR needs resources. They also should look at how they interact with the private sector and attorneys for the private sector.

While they are very responsive to attorneys and their attorneys are excellent, it is very different when you see how China does it. China will hire attorneys, often U.S. attorneys, and have them in the room at WTO dispute panel meetings.

USTR never does that. They do not allow any outside attorneys on its side of the case to come into the room. That is a problem. That makes USTR's job harder.

They should also look at the question of a lot of U.S. firms who may have problems in China and are invested in China, and also have concerns about retaliation, about giving USTR information that then leads back to the company.

We should all be looking at ways that we can protect those companies and give them the confidence they need to actually give us this information so we can mount the more difficult cases that we need to bring.

Senator MERKLEY. Thank you very much. I want to try to get in one last quick question, but I am basically out of time. So brief question, brief answer.

In 2011, I proposed an amendment that would require USTR to do a counter-notification on China, because China had not done its notifications under WTO as required.

Within two weeks, USTR did put out a list of counter-notifications, basically listing many of the things that China does.

One of those pieces was a famous brand strategy and you could see it all the way through. You can see it in the vignettes that we hear stories of where in order to attract a famous international brand, China would pre-build a factory and say "Come. See, we've already built the factory for you. Look, we will give you these loans, below interest rate or even a net negative interest rate. Look, we'll do this for you. Look, we've lined up the labor. Look, we've done this."

The whole theory behind it was if we can bring the leader and their supply chain, then we will bring their competitors. And so we can do massive subsidies in this setting as kind of a lost leader, if you will.

Has that national brand strategy ever been challenged by the United States in kind of a formal proceeding and is the national brand strategy, with these massive subsidies to particular companies, in compliance with WTO?

Ms. DRAKE. Part of the answer depends on whether it is an export contingent subsidy or not. It is clearly a subsidy that is harming U.S. industries and, therefore, even if it is not export contingent, is actionable at the WTO.

Senator MERKLEY. So it is a yes and yes situation in that regard.

Ms. DRAKE. Yes.

Senator MERKLEY. Which then makes it yes in violation. Thank you.

Mr. WEBSTER. And the final, yes, the United States did bring a case against it and did win the case, and China has more or less not fully, but to some extent, closed down that famous brands project. So there was a case brought specifically against that.

Senator MERKLEY. I will note they have still not resumed, though, doing full notification as required under WTO nor have we done counter-notifications since 2011.

Ms. DRAKE. And there have been some remaining benefits from that program found in countervailing duty investigations.

Chairman BROWN. Mr. Meadows?

Representative MEADOWS. Thank you, Mr. Chairman.

Thank each of you for your great testimony.

Ms. Drake, I am going to go to you. Your 17 pages of testimony was very illuminating and is spot on.

But I want to follow up on one thing that you said in your oral testimony. You talked about the export credits and about the filing of either a lawsuit or a brief with regard to export credits.

What agency or what person is the best position to do that? And then it sounded like you were a little bit ambiguous about the potential outcome of that. And so I would like you to comment on that, if you would.

Ms. DRAKE. Thank you for the question.

The responsibility for bringing a WTO case, a WTO challenge is with the Trade Representative's office. But this is a sensitive issue that normally is more in Treasury's bailiwick.

Representative MEADOWS. Right.

Ms. DRAKE. And the United States, starting in 2012 through the Strategic and Economic Dialogue and Treasury did launch negotiations with China to try to come to an agreement on guidelines to govern export credit financing.

Now, it was of some concern that they were not trying to get China into the OECD arrangement, which exists, which raised a concern that maybe this was going to be a lower bar for China.

Those negotiations were supposed to conclude by this year. The last public news about the status of the negotiations was from the last Strategic and Economic Dialogue in 2013, where it appeared they were focused just on sectoral issues, like ships and medical equipment and not the universal problem that these export credits pose.

So if the United States were to bring a case, it would require action by USTR, but I am sure agreement within the Administration, including the Treasury Department.

Representative MEADOWS. What is the expected outcome? Because that is where I saw our hesitancy, well, we can do that——

Ms. DRAKE. I think part of the hesitancy from USTR is the lack of public information about the rates at which these export credits are provided.

But to bring a WTO case, it is important to understand what burdens each side bear. The United States only bears the burden of showing that those rates are below market rates.

I believe, as I outlined in my testimony, there is more than enough information to establish that.

It then becomes China's burden to establish that those below market rates are nonetheless compliant with the OECD arrangement. So it is China's burden to put forward the information.

So if we really ever want to get this information, probably a WTO dispute is the only way to get it, and I believe that we would prevail in a dispute, but I understand there is some hesitance because the United States cannot be 100 percent certain what the record will show, because China does not disclose that information.

Representative MEADOWS. So is it that uncertainty that is the major impediment toward filing that or are there other impediments at this point?

Ms. DRAKE. I think it is the lack of transparency, the uncertainty, and the amount of work that would be needed. The USTR has a lot of priorities and this has not risen to the top of the pile.

Representative MEADOWS. So it becomes more of a funding and a priority issue for USTR than anything else.

Ms. DRAKE. Right. A difficult case is harder to pursue than a case that is open and shut.

Representative MEADOWS. Thank you.

Professor Webster, I want to come back to you, because you were talking about some of the rules that get followed and the appeals that slow down the process.

In the United States, they would call that doing a good job and having good lawyers. And so I want to make sure that we look at that in the proper context, because if, indeed, they are following rules and there are guidelines and rules within that, that is something that is very difficult to challenge is really where they break the rules, and that is the nature of this hearing today.

Help define that for me, if you would, because it seemed like you characterized that a lot of that was just being prudent with—playing within the confines and not breaking the rules.

Mr. WEBSTER. Thank you. I think that is right. When you take an appeal, even if your appeal is not necessarily meritorious, you are still working within the system and that is why I have characterized at least their litigation strategies as system-maintaining as opposed to system-challenging.

Now, that said, there are cases, as I have outlined in my paper and as I have outlined in my remarks today, where China has not shown full compliance with those rulings, and those, I think, are areas where the United States bears the burden of holding China's feet to the fire and saying, "Look, you need to make sure this regulation is canceled."

So in those instances, I would say China is perhaps challenging the system or is working outside of the fairly clear legal logic of the WTO.

That has happened in only two cases. So I am not prepared to say that China is systematically challenging the WTO DSB procedures, but there are cases and I think maybe with this grain-oriented steel case, where we will see more of that in the future as China becomes more familiar and understands how it can manipulate the levers of international dispute resolution.

Representative MEADOWS. Our lack of enforcement across the board will only encourage more breaking of potential rules. We find it wherever we may go. If a certain behavior is ignored, it will be repeated over and over again.

So I guess my question to each one of you is how can we be more effective. I have heard, one, funding for USTR, helping them establish priorities that maybe have the most significant effect in terms of commerce and human rights and employees.

What are some of the other areas that we can address or at least try to highlight? Anybody want to comment? Ms. Lee?

Ms. LEE. Thank you so much. This is a really important issue. One question is whether the very setup of the WTO compliance is problematic in the sense that it is all complaint driven. So it takes a lot of resources, as Mr. Horn and Ms. Drake pointed out, to mount these cases, and there is a fundamental lack of information.

In some of these cases that Ms. Drake talked about, you have two problems, two recalcitrant members. One is the Chinese Government. It is not in their interest to disclose what the subsidies are, how they are distributed, or what they are. The other is U.S. companies who, for various reasons, are fearful of doing that.

So I think one piece might be more transparency. If we can figure out, as Ms. Drake suggested, ways of encouraging more transparency or using some of that budget for USTR to have more investigative resources, I think that would be one piece.

Representative MEADOWS. And if the Chairman will indulge me for just one second, I will close with this. I would like each one of you, if you would, to submit for the record a comment on this.

How can we—and it gets back to the most effective way you, within your particular area that you testified on here today, highlight that particular issue either within an agency or with one area where we, from a legislative point of view, could offer a legislative fix.

So if you could highlight that and submit that for the record, I would greatly appreciate it.

Thank you, each one of you.

I apologize. I am going to have to step out for a South Sudan hearing that I am late for, but I will yield back.

Chairman BROWN. Thank you, Mr. Meadows.

Mr. Sherman?

Representative SHERMAN. Thank you.

Ms. Lee, I could not agree with you more that we need to talk to the Chinese about international labor standards. But I will point out, before the subcommittee I was then chair of, the State Department I was able to get to admit that right to work laws are a viola-

tion of international labor standards. So we have some cleaning up to do at home.

One issue before us, when we see a violation or what we perceive to be a violation of trade rules, is whether we retaliate first and then bring the action to WTO or whether we just file with WTO.

Ms. Drake, a number of us up here would like to see immediate double-digit tariffs on all Chinese goods because of their currency manipulation.

The Chinese would regard that tariff as a violation of WTO. Do you think that if we were to take that action, they would just file something with WTO and not retaliate in any way until that long process was completed or would they—if we imposed double-digit tariffs tomorrow, would they actually take some physical action on the ground?

Ms. DRAKE. That is a very interesting question, Congressman. Thank you.

If we took that action, I would not be surprised if China itself felt that it could also take immediate action while it was waiting for a WTO dispute to be resolved.

But I do think it is worth looking at history. The WTO, since the founding, since the GATT, has allowed members to take action when they are facing balance of payment difficulties, and many countries have done so, including our own.

In 1971, when Nixon imposed a temporary import surcharge to deal with what was then an alarming decline in our trade balance, which would look absolutely wonderful to most of us if it were our trade balance today.

It did not result in a GATT dispute, but the United States did invoke those balance of payments provisions, saying this was an emergency situation and something needed to be done, and, as a result, got some concessions from Japan and other countries on currency issues before a GATT dispute could proceed.

There was a project done a couple of years ago where our firm wrote a paper laying out this history and explaining the legal justification for countries to take balance of payments measures.

So it is not out of the realm of contemplation and, in fact, the GATT members themselves agreed that countries have a right to ensure that they have more balanced trade on a temporary basis.

Representative SHERMAN. So we could impose double-digit tariffs on Chinese goods either because they are a currency manipulator, we could defend on that basis, we could defend on the basis that you have just identified, that we have a temporary balance of payments.

In any case, we could take action now. But when I look at this chart you provided, where we see this lopsided trading relationship, it is clear. It is not that they have got better workers or better business people. They have got a better government when it comes to fighting for the trade rights of their citizens.

They would take immediate action when they think we have violated WTO. And as we have heard in case after case here, and Mr. Horn was very clear, we never take immediate action. We go through the process and then after the company bringing the—that suffered the problem is bankrupt, maybe by then the WTO process will end.

Mr. Horn, have your colleagues in the business world or business advisors or any of them said, "Hey, you know, if you come publicly testify to Congress, that is going to make it tough for you to do business in China in the future?"

Mr. HORN. We talked about that and concluded we needed to do it, of course, or I would not be here. But there was some concern, particularly if we identified particular customers or companies, that that could make things even worse.

Representative SHERMAN. I represent the entertainment industry and their preference is to accept whatever crumbs they are given rather than to note that they are allowed to show a limited number of pictures on a limited number of screens for a very limited percentage of the box office.

They have asked me not to propose in their name, that we have a limited number of toys or a limited number of shoes imported from China sold at a limited number of stores.

Mr. Webster, your paper, by its terms, focuses only on paper compliance. So if they paper comply, but they telephone various businesspeople and say, "Hey, don't buy the American goods anyway," there is no way that is reflected. You would have no source of information.

You are nodding, for the record.

Mr. WEBSTER. Yes. Yes. So, yes, that is true. As I said before, the WTO provides blunt tools by which to address certain problems in international trade.

Representative SHERMAN. And it provides absolutely no tool for dealing with the violations that are done under the table as opposed to the top of the table.

Mr. WEBSTER. That is correct.

Representative SHERMAN. And if you live in an under-the-table country, you are going to run roughly a 4:1 trade surplus with a country that plays entirely above the table.

Mr. WEBSTER. If I might, sir, respond to your earlier comment about going right to slapping on tariffs.

I might suggest that going through the process is worthwhile because we are, after all, a rule-of-law country. We want to set a good example to other countries, especially ones that we hope will adhere to the rule of law. Otherwise, we begin a race to the bottom.

Representative SHERMAN. We have been setting that example and all the stuff takes place under the table. We have a 4:1 trade deficit. China has four times as much to lose if there is a trade war as compared to us, and yet we cower behind this theory that if we owe them money, we dare not upset them, confusing international creditor relationships with domestic creditor relationships.

I would point out, I fear my bank because they could take my home if I did not pay them. Not true in international creditor relationships, at least not since about 1910.

Does anyone else have a further comment?

[No Response.]

Representative SHERMAN. I yield back.

Chairman BROWN. Thank you, Mr. Sherman.

Let me ask one more question of the panel. Mr. Meadows kind of began that question and then Mr. Sherman followed up on it.

What suggestions do you have—and I want to ask this of all four of you—what suggestions do you have to make this work better?

Obviously, a better funded USTR. I talk to Ambassador Froman pretty regularly. He never whines about it. We disagree on TPA [Trade Promotion Authority], we disagree fundamentally on a number of things, but I think that this Administration has done a reasonably good job on enforcing trade rules, and we do not fund them nearly enough to do it. That is pretty clear.

But the answer that Ms. Lee gave and then a number of you sort of cited with Mr. Sherman's question—and so it is enforcement dollars, it is transparency, and some other things.

But my question is this—just give me general thoughts on how to make this work better.

What has really troubled me on trade enforcement, I watch an industry in southwest Ohio, the coated paper industry, pretty much just more or less go out of business because of Chinese dumping of coated paper on industry. They did not even—it did not exist in China until a decade-and-a-half ago.

They buy their wood pulp in Brazil. They ship it to China. They mill it on the east coast of China. They ship it back to the United States. They underprice our manufacturers, and it is not moving diamonds around. I mean, it is wood pulp and it is paper. It is heavy and it is dense and it is expensive to move for $1 of sales. Yet, they are able to.

But my point that I should get to is that the problem is that by the time this industry could go through our labyrinth of rules and procedures—and I agree with Professor Webster, absolutely, we want to be known as and be a country of the rule of law, of course.

But by the time it takes for an industry to go to our government and get action, so often, there is so much damage. I mean, the damage, that Mr. Horn still cannot sell his grain-directional steel into the Chinese market has done damage to him. His company is vibrant enough and strong enough, it is not close to putting him out of business, but some industries it is.

So my question is this: How do we make this—the USTR says it prefers to negotiate it. If that does not work, then it takes action at WTO.

How do we make this—how do we just make this more efficient that it does not take so long to go through this process, follow the rule of law, but to go through this arduous process in a way that is a little bit faster for American companies and American workers to get redress and get enforcement, ultimately. It is decision-making, then enforcement after the decision is made.

Did you want to start, Mr. Horn?

Mr. HORN. It would seem to me that if there is a way to more expeditiously impose the retaliatory tariffs, you are going to go a long way toward getting compliance more quickly.

The problem we have is that while it is true that China has used the rules to its advantage in terms of the delay, the fact of the matter is it ignored the rules at the outset when it issued tariffs without sufficient evidence, and without providing that evidence to us.

There were a lot of places where China flouted the rules. Once it issued the duties and we got before the WTO, yes, it is true that they just took advantage of the rules. But now it has dragged out

over multiple years that we have had to fight improperly imposed tariffs.

So the only, I think, way to put pressure on China is if we can retaliate with tariffs that cost it business.

So somehow I think we have to be able to expedite that if we are going to get China to really comply.

Chairman BROWN. Thank you. And, also, address the issue on the other end of—you know, we launch an investigation into all of this, a very complex, complicated set of behaviors to figure out subsidies that the Chinese might be paying, whether they are dumping, whether they—whatever kinds of subsidies they are doing.

Ms. Drake?

Ms. DRAKE. Thank you, Senator. Yes, absolutely, the trade remedy process, which the private industry uses, can be costly and can take a long time.

So in terms of resources, it is important not only that USTR has sufficient resources, but also the Department of Commerce, International Trade Commission, particularly the Department of Commerce, which needs to investigate these subsidies and often pays those intransigents from the Chinese Government when it tries to do so.

A tool that we have not used in the trade remedy area is self-initiation. The Administration has the ability to self-initiate anti-dumping and countervailing duty cases, which would take the burden off the industry to gather the information to bring the case. But you would still need to show support in the industry to comply with our law and with WTO rules.

But the Administration does have the ability to do this, which would be especially useful in fragmented industries, where it is very difficult to bring together all the players in order to organize a case based simply on private sector efforts.

This is something that we raised with the Administration, particularly in the context of auto parts, where you have a lot of small producers that are being harmed, but do not necessarily have one or two or three big players that are able to get together and take action.

So those are some of the things that would be helpful.

Chairman BROWN. How much faster would that self-initiation process be?

Ms. DRAKE. It would depend on the resources that the government had to do it, and it can be very slow on the WTO side, but if there was a concerted effort to get the Commerce Department, the ITC, and USTR working together to gather the information, they might be able to do it more quickly.

They could work with state and local governments, who would have information about the industries that are being harmed in their areas. They could work with the Labor Department on employment data. But it would require, again, resources, which seems to be the issue that we continue to come back to.

Chairman BROWN. Thank you.

Ms. Lee?

Ms. LEE. I want to totally agree with Ms. Drake's last point about self-initiation. This actually confronts a point that maybe we have not talked about today. The lack of resources for the labor

movement, for unions, is a real obstacle to bringing trade cases, even if we are aware of unfair trade practices.

In the olden days, a couple of decades ago, it was more common that labor and business would bring a trade case together. That still happens in the steel industry and in a few other places.

But too often now, the interests of American workers and the interests of the companies they work for diverge, because the companies are multinational. The companies may be producing in China, and they may be importing into the United States. Even if they have operations both in the United States and in China or in other countries, they are often not willing to bring a trade case, because they do not want to jeopardize their relationship with the government where they have production. For that reason, their economic interests are mixed. They are benefiting from subsidies or from lack of enforcement of labor and environment regulations, whereas American workers do not benefit from that. We cannot outsource ourselves. We need to make a living on American soil.

So I think the idea of self-initiation is a really important way to bring together the interests of labor, small businesses that are still located in the United States, and state and local governments, and try to really remake our trade policy in the interests of American jobs and American workers.

So I want to reinforce that. And just to make one more general point about this issue: Slow dispute resolution and the lack of transparency are very much to the advantage of a rule breaker. In this case, it operates to the advantage of the Chinese Government.

What we face here is that the scale of violation is so great that the machinery of WTO dispute resolution is simply inadequate. And so what we need is for our government to be more aggressive, and more creative in bringing these kinds of WTO violation cases. They need more resources to do it, because they are facing a scale that is unprecedented.

In some of the areas like currency and workers' rights, these are more difficult cases to bring, but it is very important that they not shy away from them.

Thank you.

Chairman BROWN. Thank you. Your point about self-initiation and in light of some companies' varied interests, whether it is intimidation in another country or it is production elsewhere, in a number of countries.

We worked on a case brought by the Steelworkers that ultimately the U.S. company won and the Steelworkers, therefore, won, but the U.S. company did not petition with them because they had a good bit of production in China and in the United States. It was clear China was dumping this product, as the ITC determined and there were countervailing duties applied, but it took a long time and it probably would have been done more quickly if the company had not had the sort of dual interest there, which is increasingly likely, perhaps inevitable in some cases.

Thank you.

Mr. Webster?

Mr. WEBSTER. Thank you. First, as many of us have said before, the international trade regime cannot handle everything. So I

think the first thing is to have realistic expectations of what we can achieve through WTO litigation in the first place.

Currency manipulation, workers' rights are going to be very difficult to get through a WTO panel.

Second, as I have said, the rule of law is a slow, laborious, and difficult process. Three, five years is a long time and during that time, industries, such as Mr. Horn's, are going to suffer, no doubt about it.

I wonder if it might be possible to allocate government funds to help out these businesses while they suffer, while there is ongoing litigation.

I think international trade does a lot of good things, but in the various industries that it displaces, it does not necessarily take account for or provide for people who are adversely affected by international trade.

So we have lots of workers in Ohio, for example, who are left without jobs because manufacturing has now been outsourced to China.

Having programs to train those people would be helpful and I think some kind of funding for industries that are currently engaged in WTO litigation so they do not run out of business might be something that the United States can do.

And although we have said it before, I think enforcement is helpful. A, making sure that the violating regulations are spelled out clearly for China; B, holding China's feet to the fire to ensure that they change or modify all the regulations that have been specified; and, C, as we said before, beefing up the number of, say, Mandarin-speaking, Chinese-speaking experts, Chinese law experts in the USTR may be another suggestion to help improve enforcement.

Chairman BROWN. Thank you.

Last question, Mr. Sherman.

Representative SHERMAN. I just have a comment, and that is if we were to move forward with that currency manipulation, impose the tariff now, that would generate the funds to help industries. That would provide the funds for the staffing. But most importantly, it would change the circumstance where China can gain just by delaying—just by having so many infractions above and below the table that the system cannot handle it, and to watch companies and their competitors go out of business through delay.

If we took that one step, we would solve all the problems we are talking about here.

Chairman BROWN. If not all of them, a significant number, because it watches over currency, watches over all products going in both directions. Mr. Horn would still have the problem of their subsidies and tariffs, but it would make a big difference.

Representative SHERMAN. It would put us in a position to deal with all the problems we are talking about.

Chairman BROWN. Thank you. I would also like, without objection, to enter Cochairman Chris Smith's statement for the record. No objection. So ordered.

Thanks to all of you for your testimony. It was very helpful.

A special thanks to Mr. Liu and Ms. Ellerman from my staff and from the Commission for their help, their really good work on this hearing.

The Commission is adjourned. Thank you all.

[The prepared statement of Representative Smith appears in the appendix.]

[Whereupon, at 11:32 a.m., the hearing was concluded.]

A P P E N D I X

PREPARED STATEMENTS

PREPARED STATEMENT OF DAVID HORN

JANUARY 15, 2014

Introduction

Chairman Brown, Chairman Smith, and Members of the Commission, I appreciate the opportunity to participate in today's hearing and to present the views of AK Steel regarding China's failure to comply with its obligations as a Member of the World Trade Organization ("WTO").

My name is David Horn. I am Executive Vice President, General Counsel, and Secretary of AK Steel Corporation. Headquartered in West Chester, Ohio, AK Steel is a leading producer of flat-rolled carbon, stainless and electrical steels, primarily for automotive, infrastructure and manufacturing, construction and electrical power generation and distribution markets. Through a wholly-owned subsidiary, the company also produces tubular steel products for truck, automotive, and other markets.

China's adherence to its WTO commitments is extremely important to AK Steel and its 6,100 employees. The WTO system is intended to encourage trade and investment, break down artificial trade barriers, and promote efficiency and increase wealth for all. China was admitted into the WTO system in 2001 based on its pledges to adhere to international rules. Upon its accession, China obtained significantly improved access to most of the world's markets, including the U.S. market. WTO membership has paid off handsomely for China. For example, China is now the world's largest exporter.

From AK Steel's perspective, China has embraced the opportunities offered by WTO membership but not the obligations. China's compliance with WTO rules is severely lacking, and AK Steel and its employees are suffering as a result. China's failure to follow the rules has hurt AK Steel in at two very concrete ways. First, the Chinese government's subsidization of its steel industry has created a huge oversupply of steel products in the global market, which depresses steel prices in the United States and foreign markets. Second, China continues to impose anti-dumping and countervailing duty measures on AK Steel's exports of Grain Oriented Electrical Steel ("GOES") notwithstanding the fact that the WTO has found that these duties are not justified and never should have been imposed.

I will discuss those two issues and conclude by offering a few modest suggestions for addressing these problems.

China Subsidizes Its Steel Industry To An Unprecedented Degree

The Government of China has encouraged steel production from the earliest days of the People's Republic. During the Great Leap Forward, for example, Chairman Mao oversaw construction of millions of small, backyard furnaces to smelt iron in rural areas. The Chinese government invested billions upon billions in its efforts to build an industry capable of dominating not only the Chinese market but also the global market. There is no doubt that China has achieved its objective of global dominance in steel. Six of the ten largest steel producers in the world today are Chinese companies.[1]

In 2000, the year before China's WTO accession, the country's annual crude steel production was reported to be approximately 128 million metric tons,[2] already the largest in the world. A U.S. government report published in 2000 noted that although China's steel industry was large, it suffered from structural problems. The report stated, however, that the Government of China was working to address these problems by fostering the development of bigger, more efficient steel companies:

> [T]he Chinese government is undertaking a concerted effort to upgrade key producers. Government planned and supported investment projects will improve production techniques and product quality. And a government-directed consolidation of the industry will concentrate steel production around a small number of large industrial conglomerates. The Chinese government intends for these

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[1] World Steel Association, "World Steel in Figures 2013."
[2] World Steel Association, "Crude Steel Production, 1980–2012."

producers to enjoy the full benefits of economies of scale and diversified business operations.[3]

In the years that followed, government assistance flowed to China's largest steel companies, and production continued to increase. From 2000 to 2005, steel production nearly trebled.[4] Apparently not satisfied, the Chinese government in 2005 promulgated an industrial plan entitled the *Iron and Steel Policy*.[5] This plan continued and refined earlier policies promoting consolidation in the industry and upgrading equipment and technology. Article 16 of the policy specified that the Chinese government would support the industry directly through "taxation, interest subsidies, and scientific research funds." It also provided instructions for reorganizing existing steel producers into more efficient, larger companies and called for discriminatory treatment of foreign companies and technologies. Article 23, for example, specified that foreign investors would not be "allowed to have a controlling share" of a Chinese iron or steel company. The Chinese government made clear that it would support the growth of its steel industry and ensure that it remained Chinese.

China's 2005 steel policy had the desired effect. Chinese steel production increased to more than 535 million metric tons in 2009—almost half of global steel production.[6] Not content, the Chinese government issued another policy calling for additional government support for "backbone" enterprises.[7] This new plan continued support through export rebatees, grants, and loans. In 2011 China issued yet another industrial policy for the steel industry calling for additional support to "certain enterprises" to help them attain "strong competitiveness and influence in the international market."[8]

The Chinese Government's sustained support has created an industry bigger than either China or the world needs. In 2013 its steel industry reportedly produced 780 million metric tons of steel,[9] more than seven times all U.S. production. Some reports have the number being even higher. The vastness of the Chinese steel industry is difficult to comprehend. Consider, for example, that after subtracting apparent consumption from production,[10] the Chinese steel industry has more than 70 million tons of excess production. This volume exceeds steel production in almost all other countries. In fact, the only countries other than China producing more than 70 million tons of steel per year are Japan, the United States, and India.[11] China's industry is so large that its excess production alone would qualify as the fifth largest steel-producing country in the world.

The opaqueness of China's governmental and economic systems makes it difficult to find, let alone quantify, the subsidies that benefit Chinese industry. China did not make its first subsidies notification required by the WTO until 2006, five years after it joined.[12] This belated disclosure was grossly inadequate. It provided almost no information on the amount of funds paid out under identified subsidy programs and it offered no information at all about subsidies provided by provincial and municipal authorities. It failed to disclose one-off subsidies such as the government-directed gift of 51 percent of the shares in the Ercheng Iron and Steel Group to another Chinese steel producer in 2004.[13] The recipient paid nothing for control of an enterprise with three million tons of capacity. China's WTO notification also ignored rampant debt-for equity swaps in which State-Owned Banks forgave non-performing debt in exchange for often valueless shares.[14]

The information that is available indicates that the subsidies provided to Chinese steel companies are substantial. In the first U.S. countervailing duty investigation addressing a steel product from China, the U.S. Department of Commerce found in 2008 that Chinese producers of circular welded pipe were subsidized at rates rang-

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[3] U.S. Department of Commerce, "Global Steel Trade: Structural Problems and Future Solutions" (2000).

[4] World Steel Association, "Crude Steel Production, 1980–2012."

[5] P.R.C. National Development and Reform Commission, "Policies for Development of Iron and Steel Industry" (July 8, 2005).

[6] World Steel Association, "Crude Steel Production, 1980–2012."

[7] P.R.C. State Council, "Steel Adjustment and Revitalization Plan" (Mar. 23, 2009).

[8] P.R.C. Ministry of Industry Information and Technology, "Iron and Steel Industry 12th Five Year Plan" (Oct. 24, 2011).

[9] "China's Steel Output to Hit Record High in 2013—NDRC," *Reuters* (Aug. 2, 2013).

[10] "China Steel Demand Rebounding as Nation Adds Railways, Cars," *Bloomberg News* (Mar. 13, 2013).

[11] World Steel Association, "Crude Steel Production, 1980–2012."

[12] *See* Office of the United States Trade Representative, "United States Details China and India Subsidy Programs in Submission to WTO" (Oct. 2011).

[13] *See* Citigroup Global Markets, "China Steel Industry: Capacity Continues to Grow, So Does Surplus" (Feb. 21, 2006).

[14] *See generally* Song and Liu, *The Chinese Steel Industry's Transformation* (2012).

ing from approximately 30 to 45 percent *ad valorem*.[15] The countervailed subsidy programs included export assistance grants, other types of grants, and the provision of hot-rolled steel to pipe producers for less than adequate remuneration.

In a 2009 decision on oil country tubular goods ("OCTG") from China, the Department of Commerce found that the producers examined were subsidized at rates ranging from approximately 10 to 16 percent *ad valorem.*[16] The subsidy programs included policy loans for OCTG production; export financing; the provision of steel rounds for less than adequate remuneration; grants from various government funds; income tax breaks for companies with foreign investment and companies with high technology; tax breaks for purchasing Chinese equipment; accelerated depreciation; debt forgiveness for State-Owned Enterprises; and the provision of electricity for less than adequate remuneration.

In 2013, the European Commission completed its first subsidies investigation of a Chinese steel product. The Commission found that the manufacture of organic coated steel products in China benefited from a variety of subsidies including the provision for less than adequate remuneration of land use rights, hot rolled steel, cold rolled steel, electricity, and water; policy loans; debt for equity swaps; equity infusions; tax breaks for research and development; tax concessions for designated geographical regions; and a variety of grant program.[17] As it has in many U.S. cases, the Chinese Government declined to fully participate in the investigation, forcing the Commission to base several decisions on the facts available. The Commission found countervailing duty rates ranging from 14 to 45 percent *ad valorem.*

Researchers Usha and George Haley recently published a study showing that, following WTO accession, the Chinese government has provided financing for 20 percent of the expansion of the country's manufacturing capacity, leading to "massive excess global capacity, increased exports, and depressed worldwide prices, and have hollowed out other countries' industrial bases."[18] The Haleys report that the Chinese ″subsidies took the form of free or low-cost loans; artificially cheap raw materials, components, energy, and land, and support for R&D and technology acquisitions.″ The Haleys calculate that the Chinese steel industry received $27 billion in energy subsidies alone between 2000 and 2007, which allowed Chinese steel companies to sell their products for up to 25 percent less than comparable U.S. and European products.[19]

Toward the end of last year, AK Steel filed antidumping and countervailing duty petitions against imports of GOES and non-oriented electrical steel ("NOES") from China. The evidence collected by AK Steel in connection with these petitions indicates that Chinese producers of electrical steel receive numerous subsidies. For example, we cited China's *Iron and Steel Industry 12th Five-Year Plan,* which covers 2011 through 2015, and designates electrical steel as a "development priority" for China. This plan instructs Chinese government agencies to provide special treatment to "leading specialty steel enterprises" and to "strongly promote specialty steel enterprises." The *Iron & Steel Plan* further requires that government entities "coordinate" policies to this effect, "including fiscal policy, taxation policy, finance policy, trade policy, land policy, energy saving policy, [and] environmental protection policy." The Department of Commerce is now investigating some 30 different subsidy programs appearing to benefit the production of GOES and NOES in China.

Another Chinese government program that benefits its steel producers is currency undervaluation. Although the U.S. Department of the Treasury has not named any country a currency manipulator in two decades, and although the U.S. Department of Commerce has declined to investigate whether currency undervaluation constitutes a countervailable subsidy, the fact is that the Chinese government manipulates the value of its currency, the Yuan. Although the Yuan has been appreciating in recent years, the International Monetary Fund reported in 2013 that the Yuan remains undervalued by up to 10 percent.[20] This provides Chinese steel exporters with a significant price advantage when selling their products overseas. AK Steel

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[15] *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 73 Fed. Reg. 31966 (June 5, 2008).

[16] *Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 Fed. Reg. 64045 (Dec. 7, 2009).

[17] Council Implementing Regulation (EU) No. 215/2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China (Mar. 11, 2013).

[18] Haley and Haley, "How Chinese Subsidies Changed the World," *Harvard Business Review* (Apr. 25, 2013).

[19] *Id.*

[20] International Monetary Fund, "2013 Pilot External Sector Report—Individual Economy Assessments" (Aug. 1, 2013).

feels this pressure every day. We feel it directly when China floods the U.S. market with dumped and subsidized Chinese steel. We feel it indirectly when China floods foreign markets with dumped and subsidized Chinese steel and the manufacturers in those markets which cannot sell their products domestically then come to the U.S. to sell their products here, flooding the U.S. market with even more excess capacity and driving prices even lower.

It is well settled in economic theory that production subsidies tend to expand output.[21] As a result, there has been a tremendous buildup of excess production in China. Chinese producers look to export markets to sell their excess production. Estimates from the National Development and Reform Commission, China's most important industrial planning agency, indicate that in 2013 the country exported approximately 61 million tons of steel.[22] This amount is greater than all of the steel produced in South Korea or Germany, which are the world's sixth and seventh largest steel producing countries, respectively.[23]

China's overcapacity and overproduction are causing serious problems for producers in other countries, including AK Steel. As reported by the *Wall Street Journal* in May 2013, a "surge in Chinese steel production and a flood of exports are pressuring world-wide steel prices."[24] A May 2013 article in the industry publication *Platts* quotes an industry observer as noting that "Overcapacity is ensuring steel mills globally have 'zero pricing power.'"[25]

The unprecedented degree to which the Chinese steel industry is subsidized means that Chinese companies are not playing according to same market rules and principles as U.S. steel companies like AK Steel. Large Chinese steel companies have access to virtually limitless low-cost loans from government-owned banks. They continue to expand production notwithstanding low prices, low profits, and mounting inventories.[26] In market economies, companies cannot rely on endless supplies of money from the government and cannot ignore market conditions and produce for the sake maintaining employment for extended periods. These market rules do not apply in China, which increases capacity year after year irrespective of market signals.[27]

China's mammoth steel industry also squeezes foreign competitors by driving up costs for the raw materials used to make steel. China is, for example, the world's largest purchaser of iron ore, accounting for approximately 60 percent according to some reports. China's insatiable demand for raw materials has driven up global prices for raw materials while its overcapacity and overproduction have driven down prices for finished products. The result is that, for many products, the margins are either small or non-existent. This is not sustainable for market economy steel companies which must earn a profit to survive.

This is the reality in which AK Steel exists: The Chinese Government has heavily subsidized its industry in order to dominate the world steel market. These subsidies are inconsistent with China's WTO obligations and detrimental to the world trading system.

The WTO Ruled That China Violated Its WTO Obligations By Imposing Antidumping and Countervailing Duties Against GOES From The United States

AK Steel has also been harmed by China's use of trade remedies as a sword instead of a shield. In the 2013 National Trade Estimate, the Office of the United States Trade Representative ("USTR") reported that:

> The United States and other WTO members have also expressed serious concerns about China's evolving practice of launching antidumping and countervailing duty investigations that appear designed to discourage the United States or other trading partners from the legitimate exercise of their rights under WTO antidumping and countervailing duty rules and the trade remedy provisions of China's accession protocol. This type of retaliatory conduct is not

[21] *See generally* World Trade Organization, "World Trade Report 2006."

[22] "China's Steel Output to Hit Record High in 2013 – NDRC," *Reuters* (Aug. 2, 2013).

[23] World Steel Association, "Crude Steel Production, 1980–2012."

[24] "Surging Chinese Steel Exports Put Pressure on World Prices," *The Wall Street Journal* (May 16, 2013).

[25] Forster, "Steel Prices, Raw Material Costs Out Of Sync," *Platts* (May 2013).

[26] A state-owned news agency reported in 2013 that data from the China Iron and Steel Association indicated that the profit rate at China's steel companies in the first half of 2013 was only 0.13 percent. "Overcapacity sends China steel sector into Loss," *Xinhua* (July 31, 2013).

[27] In the years since China's WTO accession, data from the World Steel Association show that China's steel production has increased fourfold, whereas production in the United States has been steadily declining.

typical of WTO members, and it may have its roots in China's Foreign Trade Law and antidumping and countervailing duty implementing regulations, which authorize "corresponding countermeasures" when China believes that a trading partner has discriminatorily imposed antidumping or countervailing duties against imports from China. Further, when China has pursued investigations under these circumstances, it appears that its regulatory authorities imposed duties regardless of the strength of the underlying legal and factual support.[28]

AK Steel has first-hand experience with the punitive and arbitrary nature of China's trade apparatus. China initiated antidumping and countervailing duty investigations of GOES from the United States in June 2009. Many of the subsidy programs China investigated had no basis in reality, and the authority made multiple demands for substantial volumes of confidential and irrelevant information, in an apparent effort to make participating impossible.

In April, 2010 China issued its final determination. China found that imports of GOES from the United States had been dumped at prices below normal value and subsidized by the U.S. Government. China also found that low-priced imports had injured the domestic industry and that additional import duties were justified as a result. China imposed antidumping duties of 7.8 percent and countervailing duties of 11.7 percent on GOES manufactured by AK Steel. Virtually the entire countervailing duty rate was based on adverse assumptions that AK Steel sold all of its production—not just GOES, but all of its products—to the U.S. Government at a premium under the "Buy America" Act. There was, of course, no evidence supporting this assumption, because it was clearly false.

With a combined duty rate of nearly 20 percent, AK Steel was shut out of the Chinese GOES market. The other U.S. producer of GOES, ATI, faced an even higher combined duty of more than 30 percent. Prior to the start of the investigation, U.S. GOES exports to China totaled more than $270 million annually. Today the value is nearly zero.

AK Steel was pleased when USTR filed a WTO complaint against China in September 2010, challenging many procedural and substantive flaws in China's investigation and findings. In June 2012, a WTO dispute settlement panel ruled in favor of the United States. It found that China violated its WTO obligations in numerous respects by imposing duties on imports of GOES from the United States. For example, the Panel found that

- China failed to require the Chinese petitioners to provide adequate public summaries of the confidential portions of their petition and thus impaired the ability of foreign respondents, including AK Steel, to defend their interests.
- China's finding that its domestic producers suffered adverse price effects failed to reflect an objective examination of the evidence and was not based on positive evidence. For example, China found that the "low prices" of imports forced down the Chinese producers' prices, when, in fact, imports were priced higher than the Chinese producers' prices.
- China's finding that imports from the United States were a cause of injury to the domestic industry failed to reflect an objective examination of the evidence and was not based on positive evidence. For example, China ignored the fact that the huge increase in capacity resulting from a new Chinese production facility created an oversupply of GOES in the Chinese market, which caused the two Chinese producers to aggressively compete on price and to lead market prices down. Imports had nothing to do with this race to the bottom by the Chinese producers.
- China failed to disclose the "essential facts" on which certain of its key findings were based.
- China's assumption that all of AK Steel's sales benefited from overpayments under the "Buy America" program had no factual basis. The WTO Panel stated that on this issue China's "determination is particularly flawed in its treatment of AK Steel."[29]

China appealed certain aspects of the WTO panel's findings, but China's claims were rejected by the WTO Appellate Body in October 2012.[30]

Under the relevant WTO Agreements, antidumping and countervailing duties cannot be imposed without valid findings that dumped and/or subsidized imports

[28] Office of the United States Trade Representative, "2013 National Trade Estimate Report on Foreign Trade Barriers."

[29] *Panel Report, China—Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States,* WT/DS414/R (circulated June 15, 2012).

[30] *Appellate Body Report, China—Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States,* WT/DS414/AB/R (adopted Oct. 18, 2012).

caused material injury to a domestic industry producing a similar product. The WTO Panel and the Appellate Body ruled that China's findings did not meet this standard. In particular, the WTO found China failed to make a WTO-consistent finding that imports either (1) had adverse price effects on Chinese producers or (2) were a cause of material injury to the Chinese industry. As a result, no duties should ever have been imposed.

China Has Refused To Comply With The WTO Rulings

Antidumping and countervailing duties have remained in place for over 18 months since the WTO panel found them to be inconsistent with China's international obligations—and for nearly four years since the duties were improperly imposed. Following the USTR's victory before both the WTO Panel and Appellate Body, China would not agree to a reasonable timeline for coming into compliance with the WTO rulings. The United States had to request a WTO arbitrator to determine a reasonable period of time for China to comply.[31]

After the arbitrator rejected China's pleas for more time to comply, on July 31, 2013, China issued a revised final determination lowering the punitive subsidy rate of approximately 12 percent for AK Steel in the original decision to 3.4 percent. China did not, however, remedy the serious flaws in its injury and causation findings that the WTO had identified, and it continued to find that imports from the United States were a cause of material injury to its domestic industry. Thus, China has kept the duties in place notwithstanding the WTO's rulings. China's revised determination attempting to comply with the WTO's findings retains almost all of the errors in the original one. Because of China's intransigence, USTR will next need to present evidence and argument to explain why a WTO compliance panel should rule that China has failed to comply with the WTO's earlier findings. The United States will then need to request a WTO arbitrator to determine the amount of retaliation that the United States is authorized to apply in terms of higher tariffs on imports of China.

Observations And Conclusions

Based on AK Steel's experience, China is not complying with its WTO commitments. From our perspective, the Chinese Government appears to have become very skilled in taking advantage of the benefits of WTO membership without accepting the corresponding obligations.

When the United States and other Members accepted China into the WTO, they did so with expectations that China would comply with its WTO commitments to eliminate subsidies, move from a state-controlled economy to a market economy, and adhere to WTO rules in trade remedy proceedings. Instead, subsidization and state capitalism remain not only alive and well in China but appear to be expanding. The GOES case demonstrates that China will ignore its international obligations when applying duties to protect the industries it has chosen to support with vast subsidies.

AK Steel's experience also shows that the WTO dispute settlement system operates too slowly to provide effective relief, especially where the losing party does everything it can to thwart and prolong the process, as China is doing on GOES. In the GOES case, the panel ruled against China in June 2012, and the Appellate Body affirmed that ruling in October 2012. More than one year has passed, yet the duties remain in place. The United States will need to prevail in several additional time-consuming proceedings in order for AK Steel to regain the market access that has been unjustifiably taken away by the Chinese government.

What Should Be Done

AK Steel appreciates the support it has received from the U.S. government in challenging China's flawed antidumping and countervailing duty measures in the GOES case. We would respectfully suggest, however, that more should be done.

USTR should aggressively pursue WTO complaints against China's failure to follow the WTO rules in applying antidumping and countervailing duties against U.S. exports. China has now lost several such cases in a row, including several challenges by USTR and one by the European Commission. The United States should encourage other WTO Members adversely affected by China's trade remedy investigations to do the same. As China loses more and more WTO cases, it is more likely that the Chinese government will bring its practices into WTO compliance.

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[31] *See* Arbitration Report, *Countervailing and Anti-dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States*—Arb-2013–1/27.

In order to allow USTR to do more, Congress should appropriate more funds to USTR's WTO dispute settlement function. USTR needs more resources to bring more WTO complaints against China and to do so more quickly. AK Steel fears that those charged with protecting America's trade rights are being outgunned. The Chinese Government hires private lawyers to litigate their WTO cases, many of whom are located here in Washington, DC. These outside lawyers become members of China's official WTO delegation, participate in the dispute, and speak for the Government of China before WTO panels and the Appellate Body. USTR, on the other hand, does not hire outside trade lawyers and does not allow private industry's trade lawyers to observe, much less participate in, the WTO hearings. Thus, USTR must largely rely on its own resources.

Although I know from personal experience that USTR has talented and effective lawyers, I understand that most of its WTO litigators split their time among various responsibilities, including negotiating trade agreements. It would seem to me that if USTR had more lawyers dedicated to WTO disputes, it could launch more cases and litigate them more expeditiously and aggressively.

Finally, Congress should enact The Currency Exchange Rate Oversight Reform Act of 2013, introduced by Senators Brown, Sessions, Schumer, Burr, Stabenow, and Collins, which would have the effect of applying the countervailing duty law to currency manipulation. Alternatively, Congress should attach provisions applying the countervailing duty law to currency manipulation to any Trade Promotion Authority bill passed by the Congress.

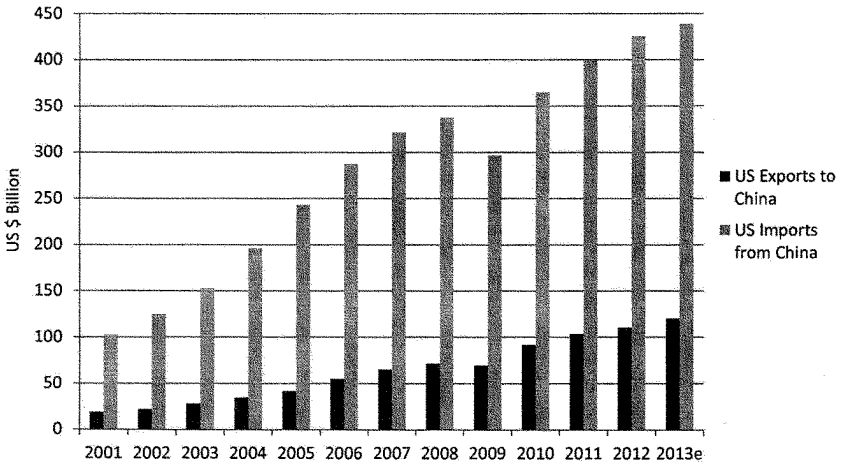
Again, I thank you for this opportunity to testify.

PREPARED STATEMENT OF ELIZABETH J. DRAKE[1]

JANUARY 15, 2014

I. Introduction

Since China joined the WTO twelve years ago, it has become the world's number one exporter and the most important U.S. trading partner. Unfortunately, the growth in trade between the U.S. and China has not been balanced. While annual U.S. exports to China grew by $101 billion from 2001 to 2013, annual U.S. imports from China rose by nearly $337 billion, more than three times as much.[2] As a result, our trade deficit with China has nearly quadrupled since 2001. Even though China only accounted for eight percent of our exports to the world in 2013, it accounted for 19 percent of our imports and a full 46 percent of our trade deficit.[3]



[1] Partner, Law Offices of Stewart and Stewart. This testimony is submitted in the author's personal capacity and not on behalf of the firm or its clients.

[2] Import and export statistics are from USITC Dataweb. Imports are general imports; exports are total exports. Imports and exports for 2013 estimated based on first eleven months of data.

[3] *Id.*

Though China has reaped significant benefits from its accession to the WTO, it continues to violate many of its WTO obligations both on paper and in practice. Despite the rapid ascent of China as a major trading nation, the Government of China has failed to assume the responsibility and leadership necessary to fulfill its obligations as a Member of the WTO. WTO-inconsistent policies that China continues to pursue twelve years after accession include discrimination against foreign goods and firms, localization requirements, prohibited export subsidies and other massive trade-distorting subsidies, export restraints, and the abuse of trade remedies not as a legitimate means of correcting unfair trade but as a tool of retaliation and intimidation. These policies give Chinese producers and exporters a significant competitive advantage at the expense of producers and workers in the U.S., distort trade flows and competition, thwart innovation, and undermine the rules-based trading system.

While USTR and the Administration have made impressive efforts to identify and redress such violations, more can be done. In order to tackle these violations, particularly in the context of a Chinese legal system that is not uniformly transparent, USTR needs more resources so it can expand and intensify its excellent work. These resources are a smart investment in our country's long-term competitiveness. For the price of additional attorneys and experts at USTR, we can do more to address tens of billions of dollars of WTO-illegal subsidies, blatant discrimination by Chinese entities, and a growing trade deficit that saps U.S. production, investment, and jobs. Indeed, the important victories the U.S. has already won at the WTO when it has challenged China's policies confirm how essential U.S. leadership is in holding China accountable to the rules it has agreed to. We made significant concessions when China joined the WTO; in return, it agreed to abide by the rules. Yet if the rules are not fully and effectively enforced, the sacrifices we made when China joined the WTO will have been in vain.

USTR recently reported on the broad array of areas in which China has continued to fall short of its WTO commitments, including in areas such as intellectual property rights protection, access for investors and service providers, and transparency. This testimony highlights just four areas in which China is failing to comply with its WTO commitments. These are among the areas in which I believe U.S. industry and workers would have the most to gain from greater enforcement efforts by the U.S. They are: (1) billions of dollars in prohibited export subsidies provided by the Export-Import Bank of China and the China Development Bank; (2) discrimination by state-owned enterprises against U.S. producers and products; (3) the imposition of technology transfer, local content, and export requirements on companies investing in China; and (4) trade-distorting subsidies being provided to China's Strategic and Emerging Industries.

Finally, China's undervaluation of its currency also gives Chinese exports a significant unfair advantage and directly harms U.S. producers and workers. The U.S. should consider all available options for addressing this distortion, including options at the IMF and WTO as well as action under our trade remedy laws. These written comments are, however, limited to the four areas listed above.

II. Selected Examples of China's Non-Compliance with its WTO Commitments

A. Prohibited Export Credit Subsidies

Article 3 of the WTO Agreement on Subsidies and Countervailing Measures prohibits WTO Members from providing subsidies that are contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance.[4] China committed to eliminate all such prohibited export subsidies when it joined the WTO.[5] There is a safe harbor from this prohibition on export subsidies for official export credits, but only if those export credits comply with the terms of the *OECD Arrangement on Export Credits.*[6] Export credits that do not comply with the terms of the *OECD Arrangement* are prohibited under WTO rules. Though China has been invited to join the *OECD Arrangement,* it has declined to do so. And, even though China is now the world's largest provider of export credits by far, it appears to be routinely flouting the terms of the *OECD Arrangement,* significantly undermining its relevance and posing a substantial threat to the competitiveness of U.S. exporters and their workers.

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[4] Agreement on Subsidies and Countervailing Measures (SCM Agreement), Article 3.

[5] *Protocol on the Accession of the People's Republic of China,* WT/L/432 (Nov. 10, 2011) at ¶10.3; *see also Report of the Working Party on the Accession of China,* WT/MIN(01)/3 (Nov. 10, 2011) at ¶¶167–168.

[6] SCM Agreement, Annex I, item (k).

In 2012, the U.S. ExIm Bank estimates that the Export-Import Bank of China (China ExIm) issued $45 billion in new medium- and long-term export credits, almost one-and-a-half times the value of such credits newly issued by the U.S. ExIm Bank in 2012.[7] An additional $50 billion in export credits is estimated to have been provided by the China Development Bank.[8] In all, China provided over $3 in export credits to Chinese firms for every dollar provided by the U.S. to its exporters.

China ExIm explains that the purpose of its programs is to support the export of Chinese products and improve their competitiveness in the international market, and it describes the export seller's credit as a loan with large amount, long maturity, and preferential interest rate.[9] While China ExIm reveals little information about the rates that are charged under these programs, there are various secondhand reports indicating that the terms of this financing are highly concessional, with some sources citing rates as low as two, one, or zero percent.[10] This information has led the U.S. ExIm Bank to conclude that China's export financing does not comply in practice with the terms of the *OECD Arrangement.*[11]

To bring a successful WTO challenge to these subsidy programs, the U.S. must make out a *prima facie* case that the Chinese government provides export financing, that the financing is contingent on export performance, and that the rates at which the financing is provided are below market rates. Each of these elements seems relatively straightforward to establish based on publicly available information. While there is little transparency regarding the rates at which much of China's export credits are provided, the People's Bank of China does put out regular circulars indicating that at least one category of export credits, for high- and new-technology products, is subject to a rate that is lower than the Bank's own benchmark rate for "commercial" loans. According the China ExIm, such high- and new-tech products account for more than a third of their export sellers' credit disbursements.[12] Once this *prima facie* case is made, the burden would shift to China to come forward with sufficient information and argument to demonstrate that its export credits nonetheless comply with the terms of the *OECD Arrangement* and are thus not prohibited under WTO rules.

Instead of mounting a WTO challenge to China's export credits, the U.S. has instead opted to pursue negotiations with China to regulate its export financing activities. Rather than seeking China's accession to the *OECD Arrangement,* however, the U.S. is negotiating with China to agree to "international guidelines" for official export credits that, while "consistent with international best practices," also "tak[e] into account varying national interests and situations."[13] The description of the negotiations raises concerns that China is seeking to avoid a WTO dispute by agreeing to guidelines that fall short of the requirements of the *OECD Arrangement,* which would be a significant step backward from the rules that have governed export financing for decades.

Yet even the modest goals of the negotiations may be too ambitious for the U.S. and China to meet. While the negotiations originally intended to result in agreement by 2014, no final agreement has been announced to date. Moreover, the most recent public statements regarding the negotiations suggest that any agreement may be limited to certain sectoral guidelines, and not result in a universal set of rules covering all export financing activity. In July of this year, the U.S. and China explained that negotiations had begun in earnest on guidelines for the ships and medical equipment sectors, and that such a sectoral agreement was hoped for by 2014.[14] While it is unknown how much medical equipment is supported by China's

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[7] Export-Import Bank of the United States, *Report to the U.S. Congress on Export Credit Competition and the Export-Import Bank of the United States* (June 2013) at 18.

[8] *Id.* at 143.

[9] *See* The Export-Import Bank of China, "Introduction;" The Export-Import Bank of China, "Export Seller's Credit."

[10] *See, e.g.,* Ryan J. Orr and Jeremy R. Kennedy, "Highlights of recent trends in global infrastructure: new players and revised game rules," *Transnational Corporations,* Vol. 17, No. 1 (April 2008) at 108–109; Deborah Brautigam, *China's African Aid: Transatlantic Challenges,* the German Marshall Fund of the United States (April 2008) at 25–26. *See also* Terence P. Stewart, et al., *China's Support Programs for Automobiles and Auto Parts under the 12th Five-Year Plan* (Jan. 2012) at 60.

[11] Export-Import Bank of the United States, *Report to the U.S. Congress on Export Credit Competition and the Export-Import Bank of the United States* (June 2013) at 18.

[12] China ExIm 2012 Annual Report at 15.

[13] U.S. Department of the Treasury, "Joint U.S.-China Economic Track Fact Sheet—Fourth Meeting of the U.S. China Strategic and Economic Dialogue (S&ED)," (May 4, 2012).

[14] U.S. Department of the Treasury, "Joint U.S.-China Economic Track Fact Sheet—Fifth Meeting of the U.S.-China Strategic and Economic Dialogue" (July 12, 2013).

export financing, ships account for less than 11 percent of China's export sellers' credit disbursements in 2012.[15]

Moreover, in the midst of these negotiations, the Government of China has repeatedly denied officials from the U.S. Department of Commerce the ability to verify the amounts of export financing benefitting Chinese producers in the context of countervailing duty investigations on imports from China on an array of products, including solar cells, wind towers, and shrimp.[16] In one such instance, when Commerce officials asked if they could query China ExIm's loan database (a standard practice to verify the extent of government subsidies), China ExIm officials refused, stating they could not permit Commerce to view the database, that Commerce "should trust them" in this matter, and that it would be "nonsense" for Commerce to view the database if they did not trust their statements.[17]

Absent greater cooperation and transparency from China regarding its export financing programs, the U.S. should not hesitate to challenge these prohibited export subsidies at the WTO. China is already bound by WTO rules that prohibit export credits that do not comply with *OECD Arrangement,* and permitting China to provide ever greater sums of export subsidies in defiance of these rules serves only to further undermine U.S. competitiveness and, as a result, production, investment, and jobs here in the U.S.

B. Discrimination by State-Owned Enterprises

State-owned enterprises (SOEs) have had, and continue to have, a dominant presence in the Chinese market, and the Government of China has professed a policy of strengthening political control of SOEs and consolidating their position in key sectors. During the negotiation of China's accession to the WTO, Members voiced their concerns regarding the role of the Chinese Government in the decisions and activities of SOEs,[18] and China agreed to a number of important disciplines on their SOEs as a result.

Article III:4 of the GATT prohibits discriminatory treatment of imported goods—while there is a limited carve-out to this obligation for government purchases of goods for governmental purposes, the exception does not apply when SOEs procure goods for commercial purposes. Nor is there any exemption for SOEs outside of the purchasing context, such as in their negotiation of joint venture agreements. National treatment obligations in the GATS have a similar scope, though they only apply to sectors in which Members have made positive commitments.

China made additional, specific commitments to respect the principle of non-discrimination in SOE purchasing decisions. In its Protocol of Accession and accompanying Working Party Report, China agreed that SOEs shall make purchases based solely on commercial considerations, that foreign enterprises will have an adequate opportunity to compete for such contracts on a non-discriminatory basis, that China will not influence, directly or indirectly, the purchasing decisions of SOEs, and that SOEs' commercial purchases will not be subject to government procurement exceptions.[19] These commitments apply to purchases of both goods and services, and they appear to require non-discrimination not only for imports but also for foreign-invested firms in China.

China appears to be in violation of these important commitments. In the telecommunications sector, for example, China's big three state-owned operators reportedly purchase under a government directive to buy domestic components and equipment.[20] The government's policy is reflected in the telecom operators' discussion of their purchasing arrangements. China Unicom, for example, purchases equipment through contracts with its state-owned parent, and it warns investors that the arrangement may not be in the best interests of shareholders.[21] Under the arrangement, the state-owned parent gets three percent of the contract cost for purchases of domestic equipment but only one percent of the contract cost for imported equip-

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[15] China ExIm 2012 Annual Report at 15.

[16] *See* Memorandum from Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, "Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Verification of the Questionnaire Responses Submitted by the Government of China" (Aug. 15, 2012) at 16.

[17] *Id.*

[18] *Report of the Working Party on the Accession of China,* WT/MIN(01)/3 (Nov. 10, 2011) at ¶44.

[19] *Report of the Working Party on the Accession of China,* WT/MIN(01)/3 (Nov. 10, 2011) at paras. 46, 47, 342; *Accession of the People's Republic of China,* WT/L/432 (Nov. 23, 2011) at Sec. 1(2).

[20] USTR, *2011 National Trade Estimate Report on Foreign Trade Barriers* (March 2011) at 64.

[21] China Unicom 2008 Form 20–F at 10.

ment,[22] creating an incentive for the parent company to procure equipment from domestic producers even if it is more expensive than imported equipment.

Discrimination also appears in the form of domestic content and localization provisions in Chinese SOEs' sourcing and joint venture contracts. In the wind-energy sector, for example, the state-owned producer Sinovel contracted to purchase wind turbine components from American Superconductor for delivery from 2009 to 2011. The contract set out a "localization schedule" under which converters which American Superconductor had produced with foreign material would instead be produced with Chinese materials.[23] By 2010, American Superconductor reported that it had successfully localized the supply of components for its converters to China.[24] More recently, as part of an agreement to establish a joint-venture with a Chinese SOE to produce trucks in China, Daimler similarly agreed to "localize" the production of the truck engines to China.[25]

The U.S. and other countries expended significant negotiating effort and bargaining capital to secure accession commitments from China regarding SOEs that go above and beyond the rules in the WTO Agreements. The U.S. has continued to press China to honor these commitments, and obtained promises of compliance in the context of the Strategic and Economic Dialogue and other fora.[26] Yet, after twelve years and substantial evidence that these commitments have not been honored, there has been no formal challenge to enforce the obligations that China undertook. This lack of formal enforcement is particularly problematic given current efforts to build upon these SOE disciplines in new trade and investment agreements. While new and stronger rules are certainly needed, the U.S. must also send a strong signal that the existing rules will be effectively enforced.

C. Technology Transfer and Other Investment Conditions

As part of its accession to the WTO, China committed to be bound by the obligations contained in the Agreement on Trade-Related Investment Measures (TRIMs Agreement). Pursuant to Article 2 of the TRIMs, Members shall not apply any trade-related investment measure that is inconsistent with the national treatment obligation or the elimination of quantitative restrictions obligation contained in Articles III and XI, respectively, of the GATT.[27] The Annex to this provision provides an illustrative list of trade-related investment measures that would be inconsistent with Article 2, including measures that require an entity to purchase or use domestic products or that limit an entity's importation, purchase, or use of imported products based on the amount of the entity's exports.[28] In addition to complying with TRIMs, China also committed in its Accession Protocol to, "eliminate and cease to enforce trade and foreign exchange balancing requirements, local content and export or performance requirements made effective through laws, regulations or other measures."[29] Moreover, China agreed not to enforce provisions of contracts imposing such requirements.[30] China also agreed to ensure that any means for approving investments in China not be conditioned on: "whether competing domestic suppliers of such products exist; or performance requirements of any kind, such as local content, offsets, the transfer of technology, export performance or the conduct of research and development in China."[31]

While China has revised or eliminated some measures to conform with these obligations, measures continue to remain in place that impose—whether through formal requirements or "encouragement"—local content and export requirements, as well as technology transfer and research and development requirements. As explained in the *2013 National Trade Estimate Report on Foreign Trade Barriers:*

> some laws and regulations 'encourage' exportation or the use of local content. Moreover, according to U.S. companies, some Chinese government officials, even in the absence of applicable language in a law, regulation or agency rule, still

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[22] China Unicom 2009 Form 20–F at 83.

[23] American Superconductor Corp. Form 8–K (June 5, 2008) at Ex. 10.1.

[24] American Superconductor Corp. Form 10–Q (Aug. 5, 2010) at 18.

[25] "Germany's Daimler to Make Trucks in China," *Agence France Presse* (Sept. 26, 2011); "Final Approval Issued by Chinese Authorities: Way Clear for Daimler's Truck Joint Venture with Foton," Daimler.com (Sept. 26, 2011).

[26] *See, e.g.,* USTR, *2013 Report to Congress on China's WTO Compliance* (Dec. 2013) at 70–71.

[27] Agreement on Trade-Related Investment Measures Art. 2.1.

[28] *Id.,* Annex ¶ 1.

[29] *Protocol on the Accession of the People's Republic of China,* WT/L/432 (Nov. 10, 2011) at ¶7.3.

[30] *Id.*

[31] *Id.*

> consider factors such as export performance and local content when deciding whether to approve an investment or to recommend approval of a loan from a Chinese policy bank . . . .[32]

Although such measures are inconsistent with China's WTO obligations, policies tying foreign investment to export performance, local content, technology transfer, and research and development investments appear to continue to be present in a variety of industries throughout China.

For example, a foreign tire company that started producing in China in 2008 was required by its business license to commit to export all of its production for the first five years of its operation.[33] Additionally, the *Catalogue Guiding Foreign Investment in Industry,* with the most recent update entering into force in January 2012, lists industries that are encouraged, restricted, or permitted.[34] As explained in the most recent WTO Trade Policy Review of China, "[f]oreign investment in the restricted category may be permitted, subject to approval, if export sales are over 70% of total sales of the product."[35] Industries listed in the most recent catalogue as "restricted" include, *inter alia,* chemical raw material products manufacturing, non-ferrous metal smelting and rolling processing, and common and special purpose equipment manufacturing.[36] The U.S. has exerted substantial efforts to obtain revisions to the Catalogue and other measures that restrict investment and thus provide leverage to obtain export and local content commitments, as well as other commitments from investors.[37] However, in its most recent report on China's WTO compliance, USTR notes its disappointment that China has not always been responsive to these efforts.[38]

Moreover, as noted in *The President's 2013 Trade Policy Agenda,* the United States and other WTO Members have "continually reported that some Chinese government officials, who typically retain a high degree of discretion when reviewing investment applications, still considered factors such as technology transfer and local content when reviewing investment applications."[39] In the area of technology transfer, for example, such violations continue to persist due to provisions in Chinese law and regulations that require that any technology provided by a foreign investor as part of a joint venture agreement be "advanced" and be appropriate to help the venture compete (including internationally);[40] furthermore, all such technology transfer agreements must be submitted for government approval.[41] Various foreign firms have been subject to localization or technology transfer requirements in order to be able to invest in China and/or sell to Chinese firms (particularly state-owned firms, as noted in Section II.B, above).

The automotive sector is one sector where these types of investment conditions are evident. For example, China waives requirements that foreign investors seeking to produce complete automobiles must enter into joint ventures with majority Chinese ownership if the venture is located in an export processing zone.[42] China has also used investment approval measures to access technology for new energy vehicles (NEVs). In March 2011, the National Development and Reform Commission issued a draft *Catalogue Guiding Foreign Investment in Industry* that proposed a new limitation on foreign ownership in NEV parts manufacturing facilities in China to no more than 50 percent.[43] After repeated efforts by the U.S., China removed the 50 percent limit for almost all of the key components of NEVs in the final version issued in January 2012, but retained the restriction on NEV batteries.[44] This is a significant limitation on foreign ownership in the NEV industry, because batteries are one of the critical components of most NEVs. By requiring foreign investors to partner with domestic firms, and by requiring domestic firms to have "mastery" over

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[32] USTR, *2013 National Trade Estimate Report on Foreign Trade Barriers* at 91.

[33] U.S. International Trade Commission, *Certain Passenger Vehicle and Light Truck Tires from China,* Inv. No. TA–421–7, USITC Pub. 4085 (July 2009) at 34, n.190.

[34] *See* Trade Policy Review Body, *Trade Policy Review Report by the Secretariat China,* WT/TPR/S/26/Rev.1 (July 20, 2012) at ¶45.

[35] *Id.* at ¶48.

[36] *Catalogue for the Guidance of Foreign Investment Industries* (amended in 2011), *available at* http://english.mofcom.gov.cn/article/policyrelease/aaa/201203/20120308027837.shtml.

[37] USTR, *2013 Report to Congress on China's WTO Compliance* (Dec. 2013) at 80–81.

[38] *Id.* at 81.

[39] U.S. Trade Representative, *The President's 2013 Trade Policy Agenda* at 27.

[40] Regulations for the Implementation of the Law on Sino-Foreign Equity Ventures, art. 41 (July 22, 2001).

[41] *Id.* at Arts. 3–4.

[42] *Policy on Development of Auto Industry* (May 21, 2004) at Article 49.

[43] *See* USTR, *2013 National Trade Estimate Report on Foreign Trade Barriers at 69. See also* USTR, *2013 Report to Congress on China's WTO Compliance* (Dec. 2013) at 83–84.

[44] *Id.*

the technology involved in such ventures, China ensures that any foreign investor in the critical technology will be sharing that technology with its Chinese joint venture partner. USTR notes that it remains difficult to assess the extent to which China has implemented the commitments it made to comply with its WTO commitments in the NEV sector as far back as 2011.[45]

Despite repeated requests from the U.S. to eliminate these WTO-inconsistent policies, and repeated assurances from China that such measures are not enforced, USTR continues to express its concern that investment approvals in China are conditioned on export performance, local content, technology transfer and research and development investment requirements. All such requirements are explicitly prohibited under terms the U.S. negotiated with China when it joined the WTO. While some requirements appear to be imposed on an *ad hoc* or informal basis, others are based in the provisions of Chinese law and policies, and form a sufficient basis for challenge at the WTO. The U.S. should work to develop the facts and arguments necessary to challenge these harmful policies at the WTO and bring China into compliance with its commitments.

D. Subsidies to Strategic and Emerging Industries

When China joined the WTO, it agreed not only to eliminate prohibited subsidies such as export subsidies, but also to be subject to WTO rules which make subsidies which are not prohibited actionable if they cause serious prejudice to another Member. When a government makes a financial contribution that is specific to an industry or region, and that contribution confers a benefit, WTO rules permit other Members to challenge those subsidies if they displace their exports, cause lost sales, suppress or depress prices, or increase the subsidizing country's share of world trade in the subsidized good. Since 2006, the U.S. has investigated hundreds of subsidy programs benefitting dozens of goods exported from China to the U.S., including, among others, reduced tax rates for companies in preferred industries and regions,[46] [47] preferential policy lending from state-owned banks at below market rates at the central and provincial levels,[48] the provision of electricity and key raw materials by SOEs for less than adequate remuneration (LTAR),[49] [50] the provision of land by central and local governments for LTAR,[51] and numerous grant programs.[52] In response to the lack of transparency in China regarding the broad array of subsidy programs it maintains, as well as its failure to notify the WTO of these programs as required by WTO rules, in 2011 the U.S. submitted a counter subsidy notification to the WTO that covers hundreds of subsidy programs at the central and sub-central levels of the Chinese government.[53] These include export subsidies and domestic content subsidies, as well as other injurious subsidies.[54] More than two years later, action to eliminate these subsidies still has not occurred.

To date, however, the U.S. has only challenged prohibited subsidies provided by China at the WTO—it has not taken any action to challenge non-prohibited subsidies that are nonetheless causing harm to American industries and workers both in the U.S. market and abroad. Instead, industries seeking relief from such subsidy programs must file a countervailing duty case and seek import duties to offset those subsidies; even if relief is obtained, it only covers competition in the U.S. market, not in China or third-country markets. While disputes challenging actionable subsidies are fact-intensive and thus complicated to pursue, providing companies and workers with only partial relief through the domestic trade remedy system imposes major long term costs on our ability to compete.

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[45] USTR, *2013 Report to Congress on China's WTO Compliance* (Dec. 2013) at 83.

[46] *Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 78 Fed. Reg. 48416 (Dep't Comm. Aug. 8, 2013), and accompanying Issues and Decision Memorandum at 6.

[47] *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010,* 78 Fed. Reg. 21594 (Dep't Comm. Apr. 11, 2013) and accompanying Issues and Decision Memorandum ("KASR IDM") at 7–8.

[48] *Drill Pipe From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011,* 78 Fed. Reg. 47275 (Dep't Comm. Aug. 5, 2013) and accompanying Issues and Decision Memorandum at 11–13.

[49] *Id.* at 13–14.

[50] KASR IDM at 9–12.

[51] *Drawn Stainless Steel Sinks From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 78 Fed. Reg. 13017 (Dep't Comm. Feb. 26, 2013) and accompanying Issues and Decision Memorandum ("Steel Stinks IDM") at 22–24.

[52] KASR IDM at 13–14, 15; Steel Stinks IDM at 25–28.

[53] *See Subsidies—Request from the United States to China Pursuant to Article 25.10 of the Agreement,* G/SCM/Q2/CHN/42 (Oct. 11, 2011).

[54] *See id.*

This ability to compete is particularly threatened in the seven "Strategic and Emerging Industries" (SEIs) in which China plans to invest a reported $1.5 trillion dollars over the coming years. China's 12th Five-Year Plan for National Economic and Social Development (2011–2015) identifies seven priority SEIs and aims to increase their contribution to GDP from the current 2 percent level to 8 percent by 2015 and 15 percent by 2020.[55] Achieving this goal would require the sectors to grow more than seven times over in size over less than a decade—a massive undertaking that could likely not be achieved without displacing foreign competitors from the market. Indeed, the Government of China's explicit goal is to displace global competitors in each of the seven sectors; it aims to become a global leader in each of these industries by 2030.[56]

The seven SEIs are key industries that many countries will be hoping to pursue in the coming years: (1) energy saving and environmental protection; (2) new generation of information technology; (3) biotechnology; (4) high-end equipment manufacturing; (5) new energy; (6) new materials; (7) new energy vehicles.[57] China's State Council first identified these industries in its Decision on Accelerating the Fostering and Development of New Strategic Industries announced in 2010. China will provide SEIs with preferential policies, incentives, and funds that media reports indicate could reach $1.5 trillion from 2011 to 2015.[58]

In 2012, China issued three catalogues on SEIs development. Among these, the Development Priorities of Key Generic Technologies and Key Products in Strategic Emerging Industries issued by MIIT in July 2012 stands out because it identifies major research and development units and major companies, as well as government policies and funds designed to spur development in each category. However, only a small number of companies listed have any foreign investment, as the list heavily favors Chinese-invested firms, particularly state-owned enterprises and national champions.[59] MIIT further suggested that another catalogue should be used by other Chinese government departments to "issue targeted supporting fiscal and taxation policies."[60]

The Chinese government has decided to dedicate a tremendous amount of resources to help these industries develop and overtake global competitors. If China succeeds, it will be because the subsidies it provides to these industries enable them to take market share from other producers, including industries in the U.S. The U.S. is closely following the SEI program, and it has urged China to be more transparent about subsidies provided to these industries.[61] As part of this monitoring, the U.S. should ensure that any negative impact the SEI policy does have on U.S. producers and workers is quickly and effectively redressed, including through WTO dispute settlement if merited.

III. Conclusion

Holding China accountable to its WTO commitments should be one of the very top trade priorities of the U.S. government. China is our largest trading partner, and continued violations by China distort trade and investment, contribute to a growing trade deficit, harm U.S. producers and workers, and undermine innovation. USTR has made significant strides in its China enforcement efforts in recent years, and those efforts are paying off in successful WTO dispute settlement outcomes and negotiated commitments obtained bilaterally from China. As China's role in the world trading system continues to grow, however, its responsible compliance with the rules of the road remains sorely lacking. In the four areas identified in this testimony, there appear to be meritorious WTO disputes that would affect billions of dollars in subsidies, the development and safeguarding of critical technologies, and industries that support thousands of American jobs. Additional enforcement resources and intensified enforcement efforts would deliver significant benefits to U.S. firms, workers, and communities.

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[55] China's 12th Five-Year Plan for National Economic and Social Development at Chapter 10, translation available at http://www.britishchamber.cn/content/chinas-twelfth-five-year-plan-2011-2015-full-english-version.

[56] *Emerging Strategic Industries: Aggressive Growth Targets,* China Strategy, HSBC Global Research (October 19, 2010).

[57] China's 12th Five-Year Plan for National Economic and Social Development at Chapter 10, translation available at http://www.britishchamber.cn/content/chinas-twelfth-five-year-plan-2011-2015-full-english-version.

[58] *See* Ping Gong and Jessica Wang, *China's 12th Five-Year Plan: An Overview* (May 18, 2011).

[59] USTR, *2013 National Trade Estimate Report on Foreign Trade Barriers* at 98.

[60] *Id.*

[61] USTR, *2013 Report to Congress on China's WTO Compliance* (Dec. 2013) at 46–47.

PREPARED STATEMENT OF THEA MEI LEE

JANUARY 15, 2014

Good morning, Chairman Brown and Chairman Smith, members of the Commission. Thank you for inviting me to testify on behalf of the twelve and a half million working women and men of the AFL–CIO on China's compliance with its World Trade Organization (WTO) obligations and how that record impacts American workers.

I would like to start by congratulating the Commission for its excellent work over the past thirteen years, particularly under the leadership of the current chairmen. It is essential that the U.S. Congress and the White House pay attention to the breadth of issues that affect our economic and national security relationship with China, and the CECC has helped to bring needed attention to human rights, democracy, and rule of law.

Too often, our bilateral dialogues focus solely on narrow commercial concerns. As the CECC pointed out in its 2013 report, though, workers' rights, human rights and rule of law issues are also central to American workers, consumers and businesses. We urge that these concerns be made an integral part of all bilateral U.S.-China economic dialogues and that our government seek more effective avenues for raising these concerns within the multilateral framework of the WTO and other international bodies.

When China joined the WTO more than twelve years ago, the AFL–CIO and many other organizations raised concerns about:

(1) whether WTO rules were adequate to protecting workers' rights and the environment, promoting democracy and development, addressing currency manipulation or supporting U.S. jobs and manufacturing;

(2) whether China would comply with WTO commitments, and, if not, whether WTO enforcement measures would be adequate;

(3) whether the U.S. government had the will and/or the tools to use WTO mechanisms effectively to protect the interests of American workers and domestic producers, rather than just the interests of multinational corporations.

On all these fronts, after twelve years, the results have been disappointing, and American workers and domestic businesses pay a high price every day for these failures.

Rapid industrialization and export growth in China far outpaced the development of regulatory institutions, laws, and enforcement capacity. Workers' rights, environmental protections, and consumer safety did not naturally and automatically improve, while foreign investment and exports grew rapidly. WTO rules were ineffectual at addressing any of these problems. While the Obama Administration has taken several important and effective trade actions to protect U.S. interests, these have not matched the scale of China's non-compliance.

In addition, other developing countries striving to protect workers' rights and improve living standards have lost market share and investment to China. The Chinese government's currency manipulation continues to be a concern, and the U.S. government has failed to use international trade tools effectively to counter this intervention. In fact, the WTO's paralysis in the face of currency manipulation by China and other countries highlights an enormous gap in international trade rules. Finally, China's workers continue to see their most fundamental rights routinely violated, worker insecurity and unrest continues to grow, and the Chinese government continues to crack down on most forms of dissent.

Trade Impact

Our trade deficit with China has almost quadrupled in nominal terms since WTO accession—from $84 billion in 2001 to an estimated $320 billion in 2013. Robert Scott of the Economic Policy Institute has estimated that the growth in the U.S. trade deficit with China between 2001 and 2011 displaced about 2.7 million American jobs.[1] Our imbalanced trade relationship with China has resulted in a huge transfer of intellectual property as a result of Chinese intellectual property theft, as well as forced technology transfers. The Chinese government's continuing violation of its workers' fundamental labor rights has limited not only the economic pros-

[1] "The China Toll: Growing U.S. trade deficit with China cost more than 2.7 million jobs between 2001 and 2011, with job losses in every state," Robert E. Scott, EPI Briefing Paper, Economic Policy Institute, August 23, 2012 (available at: http://www.epi.org/publication/bp345-china-growing-trade-deficit-cost/).

pects of its own people, but has diminished opportunities for American workers as well.

China's actions are continuing to distort global trade and investment patterns and stymie our still weak recovery. The government of China's failure to honor its WTO commitments has had dire consequences for U.S. workers and the American economy, causing businesses to shut their doors and leaving their former workers unemployed.

Perhaps even more disturbing than the aggregate growth in the U.S. trade imbalance with China is the composition of our imports and exports. In 2013, we ran a trade deficit with China in advanced technology products of $106 billion – up more than ninefold from less than $12 billion in 2002 and $31 billion more than our overall ATP deficit. In fact, we ran trade surpluses in ATP with most of our other trading partners in 2013, and no other country had an imbalance larger than $16 billion. This should raise many questions about the underlying policies skewing this important trade balance.

Among the key issues that must be addressed are:

Currency

If China increased the value of its currency to the level it would be if free market forces were able to prevail, the resulting growth in the United States could create 2.25 million new U.S. jobs, according to a 2011 EPI report.[2] According to the report, if the value of the Chinese currency, the yuan, and satellite currencies, such as those in Hong Kong, Taiwan, Singapore, and Malaysia, were increased by 25 percent to 30 percent against the dollar, the U.S. gross domestic product would grow as much as $285.7 billion, creating up to 2.25 million U.S. jobs. Creating that many jobs would reduce the U.S. unemployment rate by at least one full percentage point. By labeling China as a currency manipulator, and pursuing countervailing duties on Chinese imports to offset the unfair advantage of the artificially low value of the yuan if China failed to take immediate corrective action, the Administration could address this problem in a WTO-consistent manner. Brazil, another WTO member, has taken initial steps in this area. However, it is one in which the U.S. should take the lead. Addressing China's currency manipulation would likely be the single most effective action the U.S. government could take with respect to China's trade policy.

Existing domestic and international law permits the U.S., alone or in tandem with other nations through the WTO or IMF, to address this manipulation as a prohibited subsidy. To the extent that the Administration believes it does not, the Administration should support the Currency Exchange Rate Oversight Reform Act.

Selective Use of Value Added Tax (VAT) Rebates

China continues to utilize selective rebates as a way to promote exports of its products in a trade distorting manner. While the original GATT allowed for a system of general rebates, the intent of the GATT (and subsequent WTO) was to address the overall system of indirect taxation and not to allow for the exclusion to be used in a trade distorting manner. In the absence of an American VAT, the AFL–CIO continues to believe that the U.S. should seek the elimination of the exclusion of VAT rebates within the WTO to level the playing field, as Congress has called for in the past. In the interim, the Administration should seek to eliminate the ability of a country to engage in selective rebating.

Export Restraints

The United States deserves substantial credit for the export restraint case against China regarding raw materials, including bauxite, coke, fluorspar, and other products, and for the follow-up case regarding export restraints on 17 rare earth minerals, as well as tungsten and molybdenum. The WTO's decision on the raw materials case made clear that China is engaged in facial violations of its WTO commitments. Despite the WTO's decision, China continues to limit the export of more than 300 products with only 84 of those products included in its first reserved schedule. China must bring its policies into compliance with its commitments—to do otherwise injures U.S. producers and their workers. As the U.S. considers further action, due regard should be given to commodities on which existing AD/CVD orders are in place or where similar domestic U.S. interests might be adversely affected.

[2] "The Benefits of Revaluation: Full revaluation of the Chinese yuan would increase U.S. GDP and employment, reduce the federal budget deficit, and help workers in China and other Asian countries," Robert E. Scott, EPI Briefing Paper, Economic Policy Institute, Jun. 17, 2011 (available at: http://www.epi.org/publication/revaluing—chinas—currency—could—boost—us—economic—recovery/)

Auto Parts

The President's leadership in saving General Motors and Chrysler has had an enormous positive effect on our economy, investment and, most important, jobs. Action by the Administration to address China's illegal duties on U.S. auto exports and its most recent request for consultations on illegal export-contingent subsidies are deeply appreciated. Nevertheless, as documents shared with the United State Trade Representative (USTR) earlier this year clearly identify, there are other practices and programs in place that are detrimental to auto and auto parts makers producing here in the U.S. , as well as their employees. Those items should continue to receive the highest priority within the ITEC and action to address these policies must be pursued. We reiterate that, as much as we appreciate an aggressive enforcement strategy, in many cases, by the time a case is filed, permanent damage has often been done to an industry and its workers. We continue to urge a proactive approach and the creation and use of mechanisms that can make effective changes as soon as WTO-inconsistent behavior is recognized.

Prohibited Subsidies (Generally)

Article 3 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) prohibits WTO members from granting subsidies that are contingent on export performance or on the use of domestic over imported goods. China committed to eliminate all prohibited subsidies when it joined the WTO—but it has not done so. Instead, it has put a tremendous amount of energy into disguising its subsidy programs or modifying them to be facially WTO-compliant. Illegal, mercantilist subsidies (including currency manipulation discussed above) have proliferated enormously, to the detriment of American workers and businesses.

In June 2011 pursuant to a petition filed by the United Steelworkers, the Administration was able to secure agreement (under threat of WTO action) to end illegal subsidies in the wind energy sector, but this success was hard fought, expensive, and left lost jobs and reduced market share in its wake. Because China has repeatedly failed to publish all its subsidies, as required by WTO rules, even explicit, on-the-books subsidies can only be found at great expense. Aside from such specific subsidy programs, China provides a number of benefits to its exporters that are *de facto* dependent on export performance, such as low-cost or free land, infrastructure, industrial inputs, tax rebates, cash transfers disguised as loans, and below-market export insurance. Due to this lack of transparency, we strongly recommend that the U.S. investigate other critical sectors, including aerospace, autos, electronics, and shipbuilding, for such hidden subsidies.

The American labor movement simply does not have resources on its own to pursue a Section 301 complaint against every Chinese violation of its WTO commitments. Nor would such a strategy be effective in protecting and promoting jobs: by the time a union collects enough evidence to pursue a case effectively, thousands of workers may have lost their jobs and the factories that employed them may have already closed or moved overseas. Therefore, we urge the Administration to act affirmatively to monitor and address prohibited Chinese subsidies in their many forms.

National Treatment

Article III, Section 4 of the GATT 1994 requires WTO Members to accord imported goods treatment no less favorable than that afforded to domestic goods in respect of all laws or regulations affecting their internal sale or use. Laws that condition the receipt of an advantage on the use of domestic over imported goods—local content requirements—are a classic example of a policy that violates this Article. In paragraph 3(a) of its Protocol of Accession to the WTO, China also agreed to accord foreign firms treatment no less favorable than that accorded to domestic firms with respect to the procurement of inputs and the conditions under which their goods are produced, marketed, or sold. China violates these commitments on a regular basis in a variety of sectors.

For example, the wind sector subsidy program challenged at the WTO also violated the national treatment principle because it required Chinese wind turbine manufacturers receiving grants under the program to use key components made in China rather than imports. In July 2012, the USTR won a WTO case challenging measures with respect to China UnionPay, which has had a monopoly over the handling of domestic currency payment card transactions. Such a policy clearly discriminates against American and other non-Chinese financial services providers—the win, though beneficial for the U.S. financial services sector, illustrates the weakness of the piecemeal approach toward China's WTO compliance. As China defends each new case, it has time to implement alternate policies.

Given the USTR's long-standing recognition that China has failed year after year to abide by its commitment to provide national treatment for U.S. goods and services, we urge you to make clear that continued discrimination will not be tolerated.

Market Access

China has never provided the kind of market access that it promised when it joined the WTO. It has used a variety of mechanisms, including obscure licensure and certification requirements and official supplier lists, to ensure that its own firms dominate the market. As a result, China imports almost no finished goods, thereby harming employment in the United States and obligating American firms to conduct business through joint ventures with Chinese partners.

Even financial services firms, loathe to take on China and thereby risk losing what little access they do have to the vast Chinese market, have urged the Administration to act forcefully to ensure China opens its banking and insurance sectors. In 2009, the WTO ruled that China unfairly restricted the ability of U.S. firms to sell DVDs, music, books, software and other copyright-intensive material in its market (not only restricting access, but building a market for counterfeit goods). Despite this ruling, China continues today to restrict access to films, music, books, and other entertainment, including certain internet sites (particularly those that carry news and information). Such restrictions harm our members and cost jobs in the United States. China also continues to demand that U.S. manufacturers transfer technology and production in return for market access. Industries like aerospace, machine tools, and shipbuilding have been significantly impacted by this market distorting mechanism.

Intellectual Property Rights

China's abject refusal to enforce intellectual property rights (IPR) is a problem of long standing. From movie studios, to book publishers, to software giants, American businesses—and those they employ—are losing income every minute of every day. In 2010, at a hearing before the House Ways and Means Committee, even the U.S.-China Business Council, the trade organization for U.S. firms doing business in China—not an organization with a strong record of challenging China's policies—said:

> "China's poor record of IPR protection influences what products foreign companies are able to sell in China's market; counterfeit products made in China often show up in other markets as well. Only one-third of respondents in USCBC's most recent survey of China's business environment say that the poor IPR environment does not impact them. And, for companies in certain sectors, like movies and software, the issue is without doubt their top problem in China and needs to be addressed." (John Frisbie President, U.S.-China Business Council, Testimony before House Ways and Means Committee, June 16, 2010)

Likewise, the Business Software Alliance reports that nearly four out of every five computer programs installed on personal computers in China in 2009 were being used illegally. U.S. firms cannot stay in business and continue to employ hard-working Americans with an 80 percent theft rate. While China has initiated some reforms in this area, the results have been incremental at best. More must be done.

China's violations of intellectual property rights are not limited to copyrights, servicemarks, and trademarks. Increasingly, China is engaging in theft of patents—including "downstream dumping" by violating the patents involved in the manufacturing process. Law enforcement officials have identified instances where the Chinese have sought to pirate plans for proprietary production equipment—resulting in dramatically lower costs of production. Today, China's IPR violations threaten U.S. producers across the board. At all levels of IPR, China's record is abysmal.

State-Owned Enterprises

Upon WTO accession, China agreed that it would ensure that state-owned and state-supported enterprises (collectively, SOEs) would make purchases and sales decisions based solely on commercial considerations.[3] It also agreed that it would not influence commercial decisions except in a WTO consistent manner. This promise, like so many others, has been broken. China's state-owned and state-supported enterprises receive raw materials and other inputs at below market rates, and have access to preferential debt and equity financing, including soft "loans" from state-owned banks that do not need to be repaid. Moreover, they are consistently operated

[3] The AFL–CIO does not oppose SOEs per se and does not seek to privatize them. However, especially given America's lack of a comprehensive manufacturing strategy or adequate governmental support for that sector, without strict disciplines on the behavior of SOEs, U.S. workers and producers remain at risk from those entities.

in a manner that gains them market share—rather than profits. A private enterprise would not long remain in business if it failed to respond to the market, but, because state resources prop them up, Chinese SOEs not only can, but do. While losing money by selling goods at below market prices, they force U.S. competitors out of business. The overcapacity that China is intentionally pursuing in industries like glass and steel will eventually be needed, once international competitors have all folded.

Increased outward investment by Chinese SOEs is becoming a greater issue every day. Several Chinese entities have already entered into or announced transactions that could pose problems for U.S. producers and their workers. Tianjin Pipe, a Chinese SOE, is investing $1 billion in a Texas facility. However, we know little about its cost of capital and whether it will operate on the basis of commercial concerns. So long as China refuses to comply with its SOE commitments, U.S. workers remain at risk.

We believe that the USTR should ensure that SOEs and any other entities acting with state-delegated authority do not undermine the competitiveness of private enterprise or the rights, pay, and benefits available to their workers. Nor should these entities be allowed to skew supply chains or engage in predatory practices in the U.S. or third country markets, thereby destroying jobs for American workers.

Workers' Rights

While the WTO does not include specific commitments regarding fundamental labor rights, they are important on their own merits and as they relate to trade. Furthermore, the 1998 Singapore WTO Declaration did commit WTO members to "respect, promote, and realize" the core ILO standards as delineated in the ILO Declaration of Fundamental Principles and Rights at Work. Nevertheless, the Chinese government fails to guarantee these core labor standards. China shirks its duties to its own people, as well as to the international community, by failing to uphold fundamental labor rights for its citizens.

Multi-national employers and brands, their Chinese contractors, and even Chinese employers outside international supply chains have frequently adopted business models premised on this relative lack of human rights and labor standards, for example, by failing to ensure workplaces are free from child and forced labor or to abide by laws with respect to wages, hours, and conditions of work. Taking advantage of, and acquiescing to, the government's failure to enforce its own labor laws or secure fundamental rights means firms operating in China, whether in private hands or state-supported, operate with an unfair advantage over U.S. competitors: it is not just that labor costs less in China, it is that government practice aims ensure low costs and a workforce that is officially limited in its ability to act collectively to better its wages, benefits, and conditions of employment. Chinese workers, seeing the failure of their own government to protect their rights, have in recent years engaged in numerous wildcat strikes to take back the rights and benefits their own government failures to secure for them.

Given that the Bipartisan Trade Promotion Authority Act of 2002 included the goals, among others, "to foster economic growth, raise living standards, and promote full employment in the United States," and "to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO," we urge the USTR to address this issue in no uncertain terms. A violation of labor rights anywhere is a violation of labor rights everywhere. China's current labor policies hurt not only Chinese workers, but American workers who must compete economically with forced and child labor; discriminatory pay and conditions of employment; and a lack of opportunity to freely associate and collectively bargain.

In sum, the AFL–CIO believes that the Chinese government's approach to international trade and investment since its accession to the WTO demonstrates that China was an inappropriate candidate for WTO membership. China has shown little commitment to the rules-based system. Its strategies have wreaked havoc on the American manufacturing sector. Anything the U.S. can do to hold China accountable and to ensure that American workers do not bear the brunt of this policy mistake will be welcome.

PREPARED STATEMENT OF TIMOTHY WEBSTER

JANUARY 15, 2014

Chairman Brown, Cochairman Smith, Members of the Commission, and ladies and gentleman, it is my pleasure and honor to speak with you this morning. I would like in particular to thank Lawrence Liu, Staff Director of the Commission, for contacting me back in October, and inviting me here today. His loyal service over the

past eight years has been an enormous asset, helping educate not only Members of Congress and the Executive branch, but also the general public both in the United States and around the world. I routinely assign testimony from Commission roundtables and hearings to my law students at Case Western Reserve.

Throughout the US, but especially here in Washington, there is a pervasive belief that China is an international trade scofflaw. By manipulating its currency, subsidizing domestic industries and dumping goods in the US market, China is a scourge whose baleful influence harms us all. My recent research, which will appear later this year in the *Michigan Journal of International Law,* tries to temper this view through empirical observation. Specifically, I have examined China's record of implementing ten decisions rendered by the World Trade Organization's Dispute Settlement Body ("DSB") over the past decade.

I find that China has a strong, but increasingly *imperfect,* record of implementing DSB decisions. For reasons I will explain, I conclude that China is, at base, a *system maintainer,* not a *system challenger.* Part of using any system—whether the rules of football or of civil procedure—involves tactical manipulation. A smart lawyer, coach, or WTO member strategically deploys procedural rules to benefit its side to the greatest extent possible. Sometimes a member even breaks the rules. That has been, I submit, China's experience with the DSB over the past decade.

In the first wave of cases, concluded before 2007, China either settled cases, or revised its domestic regulations to accord with WTO rulings, relatively quickly. These cases involved minor adjustments to subsidies, tax refunds, and financial incentives that China provided to both state-owned enterprises and foreign-invested enterprises.

After gaining greater familiarity with WTO dispute settlement procedures, China has become an increasingly sophisticated WTO litigant. It is now more willing to use the DSB's procedures to minimize the effects of unfavorable WTO rulings. In a series of cases over the past five years, China has begun to test the limits of what is possible, rather than conceding at the earliest stages.

This testing may include probing internal DSB procedures. For example, China failed to submit a compliance report in one case, and then explained that it was not bound to do so because the dispute was resolved (DS 340). Likewise, as we know from our colleague in the steel industry, China sought an unusually long period of time in which to implement the electrical steel case decision (DS 414). China suggested that it needed nineteen months, far in excess of the fifteen-month ceiling suggested by WTO rules, whereas the US believed the number was closer to four months. Unable to resolve this difference China and the US submitted the issue to an arbitrator, who determined that eight and a half months would be a "reasonable period of time."

But it also involves decisions, outcomes rendered by the DSB. First, China has appealed unfavorable decisions, even when the appeal lacks merit, presumably to postpone revising the offending regulation. In so doing, China has bought itself a year or two of time before the decision becomes final (DS 340, DS 363).

Second, China has failed to make the necessary changes to its legal system within the prescribed "reasonable period of time." In the publications and entertainment case, which required major changes to its censorship regime and film distribution system, China failed to make all necessary changes within the 14-month period (DS 363).

Third, China has left in place many regulations that the DSB found inconsistent with WTO disciplines. In the publications case just cited (DS 363), a national regulation prohibiting foreign investment in news, radio, television and internet services remains in effect. Indeed local-level regulations, promulgated years after the DSB found the measure inconsistent, cite this regulation, and bid local officials to "earnestly and thoroughly implement" it. The US and China signed a Memorandum of Understanding in May 2012, though they disagree about its significance. China believes it has achieved full implementation, while the US views the MOU as significant progress, but not a final resolution. Inconsistent regulations remain in effect in the financial information services case as well (DS 373). One regulation in particular continues to subject foreign service-providers to onerous requirements not placed on domestic outfits.

In light of these shortcomings, what should the United States do?

First, since the US is usually the "plaintiff" in cases against China, it is well positioned to guide the enforcement action. The US could push the DSB to specify which laws and regulations must be revised. As WTO panel may find a dozen or more Chinese regulations in violation of WTO disciplines. Does China need to change all of them? Some of them? It would be helpful to have a roadmap explaining how China should implement the decision. I believe the US should bring about greater clarity to the legal steps prescribed by the DSB.

Second, the US needs to focus on enforcement. My research shows that many regulations remain in effect, even after the DSB found them inconsistent. I would argue that China has an obligation to annul such regulations, and that the US should apply pressure on China to ensure their annulment. In addition, many local- or provincial-level regulations reference these inconsistent national regulations. It is possible, then, that inconsistent regulations emit an "enforcement afterglow" at the local or provincial level.

Third, the US needs additional capacity. As I have argued in a prior paper, China understands the US far better than the US understands China. This is a systemic imbalance, to be addressed by educating more Americans about China, its language, political culture, and legal system. To be sure, the Commission plays a vital role in disseminating sophisticated information about China, but it is not enough. The narrower issue is the insufficient number of US trade officials who speak and read Mandarin, understand the Chinese legal system, and can monitor China's compliance efforts. US officials may not know that inconsistent regulations remain in effect, or that they are referenced by lower-level regulations after they have been annulled. Accordingly, it is difficult to ascertain when China has changed its laws and regulations, when it has not done so, and what the overall effect of these implementation efforts is. I am pleased to note that the Interagency Trade Enforcement Center (ITEC) is currently looking to hire Mandarin-speaking trade analysts. I would urge even more efforts if this type as well as the allocation of funds to hire Chinese legal experts, and to train the next generation of trade officials with China expertise.

Fourth, the US also needs to live up to its end of the bargain. A recent study by the Congressional Research Service lists a dozen WTO decisions that the US has not fully implemented. China frequently raises these implementation failures when the DSB meets in Geneva. As the chief architect of the WTO, and its dispute settlement procedures, the US has a special obligation to implement WTO decisions. Our failure to do so erodes confidence in the international trade regime we have worked so hard to create and perpetuate. Implementing our obligations would also give us additional moral authority when calling on other states to implement theirs.

To sum up, China is now an active litigant in the world trade system. It mounted the learning curve of WTO dispute resolution during its first five years of membership, and now artfully deploys the procedural mechanisms and features of the DSB. One could say that we got what we asked for. By welcoming China into the WTO, the US now has a forum in which to challenge the compatibility of China's domestic regulations with the international trade law that the US helped write. It was only a matter of time before China learned the rules of the game. Now that it does, we can expect a savvier adversary in WTO proceedings, one less likely to fold at the first threat of litigation, and one that will use procedural tactics and other tools to challenge our claims. We should also anticipate that China will not only annul inconsistent regulations, as it has traditionally done, but also leave a small subset of inconsistent regulations in place. The latter problem, I believe, can be addressed by additional scrutiny from US trade officials.

I thank you for your attention and look forward to your comments and questions.

PREPARED STATEMENT OF HON. SHERROD BROWN, A U.S. SENATOR FROM OHIO; CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

JANUARY 15, 2014

I'd like to welcome everyone to this hearing on "China's Compliance with the World Trade Organization and International Trade Rules."

Today I am calling on China to fully comply with all of its World Trade Organization commitments and fully and faithfully implement all of the WTO rulings against it.

This Commission believes we have a special obligation to monitor China's WTO compliance.

By adhering to a rules-based system, with clear obligations, China can take its role in supporting the global economic system – a system based upon transparency, respect for property rights, and adherence to the rule of law.

We admire China's rich history, appreciate its difficult and complex challenges, and support the aspirations of the Chinese people to make their country a safer, cleaner, and more prosperous nation.

And we believe that fairer trading policies and the promotion of the rule of law in China will not only benefit Americans, but the Chinese people as well.

Just last week, I applauded the announcement that Fuyao Glass Industry Group, a Chinese producer of auto safety glass, will redevelop the former General Motors plant in Moraine, Ohio.

This is a great example of how fair trade can benefit both sides, by giving a Chinese company access to our highly-skilled workforce and creating up to 800 new jobs for Ohioans.

But to truly have a fair trading relationship that benefits both sides, there must be a level playing field.

The Chinese government must do more to abide by its WTO commitments, protect the rights of workers, and support a clean environment.

The United States Trade Representative or USTR, which unfortunately could not send a representative here today, just released its 2013 Report to Congress on China's WTO Compliance.

And though it acknowledges some areas of improvement, it paints a sobering picture of the Chinese state's efforts to intervene in the economy and unfairly help Chinese businesses, despite its WTO commitments not to do so.

For example, China still has not agreed to the WTO Government Procurement Agreement. By not doing so, our businesses miss out on the opportunity to compete for potentially $100 billion in government contracts every year. China has agreed to submit another offer this year, but progress has been frustratingly slow.

Another issue USTR noted in its report is China's imposition of duties in retaliation for countries bringing WTO cases against them.

In one of those cases involving grain-oriented electrical steel, China not only lost in a WTO challenge, but now appears to not be complying with the ruling.

I applaud the USTR's announcement on Monday that it is now requesting China to enter consultations in this case. One of those businesses impacted is AK Steel, and we are grateful that their General Counsel, David Horn, is here today to tell us more about this case.

Finally, China's currency manipulation continues to harm our workers and our economy.

A December 2012 report by the Peterson Institute of International Economics found that currency manipulation by foreign governments cost the U.S. between 1 million and 5 million jobs, increasing the U.S. trade deficit by $200 billion to $500 billion per year.

In 2012, our trade deficit with China broke $300 billion for the first time and is expected to do so again when the 2013 figures come out.

These massive trade deficits are unacceptable and cost jobs in places like Toledo, Akron, and towns and cities all over this country.

That's why I've reintroduced the Currency Exchange Rate Oversight Reform Act of 2013 and urge members in both chambers to act swiftly on this measure.

I want to thank our excellent panel of witnesses for being here. I look forward to their thoughts on what more we in Congress and on this Commission can do to ensure China complies with its WTO commitments.

PREPARED STATEMENT OF HON. CHRISTOPHER SMITH, A U.S. REPRESENTATIVE FROM NEW JERSEY; COCHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

JANUARY 15, 2014

In 2001, China acceded to the World Trade Organization. At that time China's economy was liberalizing. It was a vast and promising market, and foreign businesses were eager to see the imposition of the WTO's set of rules and principles bring some order to the Chinese investment and legal systems. Some also hoped that bringing China into the WTO would improve its record on human rights, though I and several other members of this Commission were skeptical. This hearing will revisit questions previously addressed by this Commission, namely, has China honored its commitments as a member of the WTO? Has China embraced human rights and the rule of law, as the optimists hoped?

Sadly, the answer is no. As this Commission's most recent Annual Report documents, China continues to massively violate the most basic human rights of its own people and to systematically undermine the rule of law. Today, ethnic minorities are repressed. Freedom of religion is denied to those who worship outside state-sanctioned institutions. Believers are harassed, incarcerated, and tortured. The abuse of women and the draconian repressive one-child policy which has involved egregious abuses such as forced abortions and forced sterilizations remains firmly in place. Those who stand up to the central government and advocate for human rights are also detained and tortured.

It is not only the activists who suffer, but also their families and loved ones as well. As 2010 Nobel Peace Prize winner Liu Xiaobo continues to serve an 11-year prison sentence for peacefully advocating for political reform, his wife, Liu Xia, is forced to endure the extreme isolation of house arrest and is now reportedly experiencing severe depression. Self-taught legal activist Chen Guangcheng's own nephew languishes in prison while other members of Chen's family are kept under surveillance and harassed. Last month I chaired a hearing of the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations that gave voices to five young women who called upon the Chinese government to free their wrongfully imprisoned fathers. The citizens of China deserve far better than leaders who use such ugly methods to bolster their own political power.

As a member of the WTO, China has experienced tremendous economic growth and become increasingly integrated into the global economy, benefitting greatly in the process. So how is it doing on living up to its obligations? Terribly. China agreed to abide by the WTO principles of non-discrimination and transparency. However, U.S. companies are still forced to compete with China's large state-owned sector that benefits from unfair policies designed to favor Chinese producers.

U.S. exporters continue to face many barriers when trying to enter the Chinese market. Some of these barriers are obvious, such as China's indigenous innovation policy and restrictive investment regime. Others are more subtle and difficult to substantiate, such as reports from U.S. companies that Chinese officials sometimes require the transfer of valuable technology to gain market access or investment approval. These barriers represent blatant violations of WTO rules.

China's investment in the United States has sky-rocketed in the past few years as Chinese companies invest in everything from real estate projects to the pork producer Smithfield Foods. It, however, remains difficult for U.S. companies to access the Chinese market. China's multi-billion dollar government procurement market also remains largely closed to U.S. bids, and the Chinese government has dragged its feet on taking steps to open it.

China's record of protection of intellectual property rights, a fundamental WTO obligation, is abysmal. Infringement of our companies' IP leads to lost sales in China, the U.S., and other countries; lost royalty payments; and damaged reputations. The United States government and U.S. companies have been the victims of repeated and sustained cyber-attacks by Chinese entities. In 2013, the Commission on the Theft of American Intellectual Property reported that the U.S. loses hundreds of billions of dollars in IP theft, and estimated that China accounts for 50 to 80 percent of these losses.

Even China's internet censorship serves to keep American products and services out of the Chinese market. Both the New York Times and Bloomberg websites are blocked in China, reportedly resulting in the loss of millions of dollars in revenue. In December, the Chinese government delayed the visas of as many as two dozen foreign journalists. This blatant attempt at intimidation not only threatened these journalists' livelihoods, but also the closure of the China bureaus of several U.S. media organizations.

The level playing field promised as part of China's WTO accession has not been achieved. China has used the WTO as a tool to strike back against other members who legitimately challenge China's imposition of antidumping and countervailing duties. China has also become extremely adept at appearing to comply with WTO decisions without addressing the actual problems. This has caused great harm to U.S. companies, from automobile and steel manufacturers to publishing houses and movie studios.

In November 2013, the Chinese government once again released a plan outlining how they reform their economy. Only time will tell if these proposals will lead to meaningful reform. Until China's leaders are truly committed to embracing the rule of law and fundamental human rights, this plan, like those before it, will be full of nothing but empty promises.

PREPARED STATEMENT OF HON. CARL LEVIN, A U.S. SENATOR FROM MICHIGAN; MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

JANUARY 15, 2014

I am pleased the CECC is holding this hearing on China's Compliance with WTO and International Trade Rules. This is an important issue in need of close monitoring given China's past poor record of compliance. When Congress voted to grant China PNTR status upon its accession to the WTO it established the CECC as part

of that legislation precisely to monitor China's progress in achieving its WTO commitments and in transitioning to the rule of international law.

Twelve years after acceding to the WTO, there is broad consensus that China has fallen far short in achieving the positive changes many expected WTO membership would bring about regarding complying with the international trade rules it committed to. In many ways, China continues to play by its own rules in the global marketplace; setting industrial policies to promote identified and favored domestic industry sectors and heavily subsidizing state owned enterprises.

The following quote from USTR's 2013 Report on China's WTO Compliance provides a succinct assessment of China's behavior as a WTO member:

> *With the state leading China's economic development, the Chinese government pursued new and more expansive industrial policies, often designed to limit market access for imported goods, foreign manufacturers and foreign service suppliers, while offering substantial government guidance, resources and regulatory support to Chinese industries, particularly ones dominated by state-owned enterprises.*

Especially troubling to me are China's lack of intellectual property rights protections, failure to act against wide-spread counterfeiting, and theft of American technology and trade secrets in cyber space. As far back as 2011, the National Counterintelligence Executive said in its annual report to Congress that "Chinese actors are the world's most active and persistent perpetrators of economic espionage." USTR's Special 301 report stated that "Obtaining effective enforcement of IPR in China remains a central challenge, as it has been for many years." The report continued "This situation has been made worse by cyber theft, as information suggests that actors located in China have been engaged in sophisticated, targeted efforts to steal [intellectual property] from U.S. corporate systems."

Additional concerns include China's continued currency manipulation which gives Chinese exports an unfair price advantage, its abusive use of trade remedy laws for retaliatory purposes rather than for their permitted use to respond to prohibited trade actions and anti-competitive policies that favor China's domestic renewable energy technology sector, China's automotive sector, and other domestic sectors targeted for growth.

The United States must continue to hold China to its WTO commitments and initiate WTO challenges where appropriate. Doing anything less will continue to put American companies, workers and farmers in the position of continuing to have to compete against the resources of an entire country rather than individual companies.