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U.S.-CHINA RELATIONS: IMPROVING U.S. COMPETITIVENESS THROUGH TRADE

HEARING

BEFORE THE

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U.S.-CHINA RELATIONS: IMPROVING U.S. COMPETITIVENESS THROUGH TRADE

THURSDAY, APRIL 22, 2021

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

The hearing was convened, pursuant to notice, at 10 a.m., via Webex, in the Dirksen Senate Office Building, Hon. Ron Wyden (chairman of the committee) presiding.

Present: Senators Cantwell, Menendez, Carper, Cardin, Brown, Casey, Crapo, Grassley, Cornyn, Thune, Portman, Toomey, Lankford, and Daines.

Also present: Democratic staff: Sally Laing, Senior International Trade Counsel; and Joshua Sheinkman, Staff Director. Republican staff: Mayur Patel, Chief International Trade Counsel; and Gregg Richard, Staff Director.

OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. I thank all of my colleagues. This is a very hectic morning, and the Finance Committee is meeting to discuss one of the most significant challenges facing the U.S. economy. And that is the decades-long effort by the Chinese Government to manipulate global competition in their favor by any means necessary.

The Finance Committee is coming together to respond to this challenge with Democrats and Republicans on the committee working on new legislation that will take concrete steps to boost America's competitiveness and level the playing field for American workers and American businesses.

This is a bipartisan effort. Senator Crapo and I have been talking in considerable detail about the core issues of how our country can out-compete China, cracking down on the use of forced labor, fighting censorship, protecting U.S. jobs by rooting out the counterfeiters, shoring up supply chains including semiconductors and medical products, and stepping up trade enforcement and oversight.

This is going to be a significant bipartisan push on issues that are front and center for the Senate Finance Committee.

I do want to thank Ranking Member Crapo and the many members of the committee on both sides of the aisle who are contributing and have key ideas on these issues. The committee's proposal will be combined with bills from other committees to form a larger package on building up U.S. competitiveness.

This is a prospect I think both sides of the aisle can get behind. The trade rip-offs and underhanded tactics of the Chinese Government and enterprises have grown at our expense, and they are well known: massive unfair subsidies that destroy any level playing field, theft of innovative intellectual property, shakedowns of cutting-edge technology, policies that meddle in supply chains and hurt our consumers and products, and use of forced labor—absolutely reprehensible on its own, regardless of where it fits into international trade.

With the Great Firewall and other sophisticated trade barriers, the Chinese Government blocks 10,000 websites and a host of American digital service providers. For the few allowed to enter the Chinese market, the price of admission is censorship.

The overall result is untold losses for American companies and their workers. Homegrown tech giants rip off American innovations and thrive in the absence of American competition.

Several of those homegrown firms have outgrown the Chinese market, accessed U.S. financial systems, and invested in American companies. The catch is, this is not just about economic losses for America; these Chinese firms compete unfairly and also export the government's intolerance of free speech.

From solar panels to soybeans to software and everything in between, America's workers, farmers, and our economy writ large have been exposed to China trade cheating for too long. The consequences are visible in Oregon and across the country.

Factories have shuttered. Towns have lost their beating economic hearts. Fewer and fewer workers believe that it will be easier for their families to get ahead in the future. In short, America has spent 2 decades falling further and further behind in a cold trade war. That did not change when it turned hot several years ago.

The previous administration was right to throw out business as usual on trade with China, but their strategy relied more on what some might call Internet muscle and tough talk than serious economic strength. The former President's mean tweets and angry statements did not get results. The agreements the Chinese Government signed mostly rehashed commitments it had already made and broken in the past. Their core trade rip-offs are ongoing.

So today this is about the Finance Committee building a bipartisan coalition to take a different tack. We are pleased to have an opportunity to address these important issues. We have excellent witnesses. I will introduce them shortly. But first let us hear from our friend, Senator Crapo.

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

OPENING STATEMENT OF HON. MIKE CRAPO, A U.S. SENATOR FROM IDAHO

Senator CRAPO. Thank you very much, Mr. Chairman. I appreciate those remarks and your spearheading this effort to make America as competitive as it can possibly be, particularly with regard to China. I am glad to be working with you on legislation to strengthen America's trade policies and practices. That is a potent challenge to the United States on several levels: economic, strategic, and moral.

Republicans and Democrats can and should work together to formulate a China policy that can effectively confront these challenges. There is no need for a Republican or a Democrat policy on China, just an American policy. An American policy is precisely that: it reflects the best of America. It reflects our competitive spirit, our leadership in innovation, and critically our values.

So how do we put such a policy into practice? It is simple: stay true to what made the American experiment a success. In terms of competitiveness, we should not close off our market or engage in protectionism. China closes off its market and provides distorted subsidies to create national champions. We do not fear competition, we embrace it, because American workers, farmers, and businesses have always confronted challenges head-on, and that spirit will never dampen.

American companies become global champions, because the way forward in a free market is to excel, and America excels like no other in a fair fight. And to fight at its best, America must focus on strengthening its competitiveness, which means we need to be smart in our use of tariffs. We need to cut tariffs on imports that support American manufacturing, or on goods consumed by American consumers, especially the middle- and low-income families.

We can achieve that through programs like the miscellaneous tariff bill, and through thoughtful application of the section 301 tariffs on China. Our open market strengthens America strategically.

President Eisenhower told Congress in 1958 that world trade strengthens our friends and increases their desire to be friends. World trade helps to lay the groundwork for peace by making all free nations of the world stronger and more self-reliant.

He was right. That is why it is important that we reauthorize the Generalized System of Preferences program. Developing countries that want to play by the rules should know that the United States will be a reliable trading partner and a fierce friend.

For example, there is no question that if most countries are offered a choice between debt-trap diplomacy like China's Belt and Road Initiative, or the opportunity to have access to the U.S. market which is governed by the rule of law, they are going to pick America. History is instructive in that regard.

In terms of innovation, we should pursue policies that promote and reward creativity, such as strong intellectual property protections. Many of us are rightly repulsed by practices like China's technology theft and its Great Firewall. But the answer is not to construct our own restrictions on data and information, or to create some social credit score for U.S. companies. The answer, like President Reagan said 3 decades ago, is to tear down the wall.

We must directly target those actions that take aim at U.S. companies. We must also negotiate and enforce strong rules through new trade agreements, including at the World Trade Organization.

Last, though perhaps most important, are our values. China's human rights abuses are appalling. The communist regime set its tone on human rights at its inception and it has not improved since. Internationally, we must be sharper in our engagement on human rights by rallying our allies to confront these abuses, including forced labor and the suppression of free speech.

What will bring down those abuses is not U.S. disengagement, but facilitating the opportunity for the Chinese people to engage themselves. Domestically, we have to stay true to our processes. That means our approach is shaped by a course that reflects our American tradition of building consensus through dialogue and debate.

Whatever anyone may claim China has achieved through its system, ask them if they would rather live in a world that reflects its approach to its citizens or ours. Unlike any government official in China, every member present today is here because their constituents chose them through free and fair elections. And each of our members has the right and responsibility to bring their insights into the discussion.

This hearing is a part of that discussion, but it is not the end of it. Moreover, it bears emphasis that Congress is democracy at its best. Concentrating unfettered power in the executive is China's approach, not ours.

Having Congress in the driver's seat on critical trade policy decisions is not a weakness, it is a strength. Chairman Wyden and I still have a lot of work ahead of us to right this ship of state in the world's marketplaces, and I appreciate our partnership in this effort. And we are working together—and with members of our committee—to achieve that in a legislative package that will strengthen America's competitiveness and benefit its farmers, businesses, and innovators.

Thank you for organizing this hearing, Mr. Chairman. I look forward to the testimony from our witnesses.

[The prepared statement of Senator Crapo appears in the appendix.]

The CHAIRMAN. I thank my colleague. And I think, if there is one issue that is central to this country's future, it is being in a position to out-compete China. And I very much appreciate the path that my colleague wants to take. We are going to do this in a bipartisan way. The stakes are enormous, and I thank him for his effort to build the bipartisan coalition.

Let's go now to our witnesses. Mike Wessel is here. He is a Commissioner of the U.S.-China Economic and Security Review Commission. He has extensive experience. We met first decades ago when he was working on Capitol Hill focusing on international trade. He now heads a public affairs consulting firm.

Then we will hear from Aynne Kokas, associate professor of media studies at the University of Virginia and senior faculty fellow at the Miller Center for Public Affairs. She has written extensively about digital trade issues with China, including China's censorship and digital policies and their impact on our country.

Next up will be Clete Willems, a partner at Akin Gump, where he advises multinational companies, investors, and trade associations on international economic issues. And he is a former Deputy Assistant to the President for International Economics, and at the White House he was a trade negotiator.

Finally, we will hear from David Baer, chief operating officer and general counsel for O'Shaughnessy Holding Company, which owns Element Electronics. Element is an American consumer electronics firm that assembles televisions in South Carolina from primarily imported parts. They announced that they were closing and laying off 126 workers in 2018 as a result of the section 301 tariff imposed by the Trump administration.

We have an excellent group of panelists. Let's go first to Mr. Wessel.

STATEMENT OF MICHAEL R. WESSEL, COMMISSIONER, U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION, WASHINGTON, DC

Mr. WESSEL. Chairman Wyden, Ranking Member Crapo, members of the committee, it is an honor to appear before you today. My name is Michael Wessel, and I am a Commissioner on the U.S.-China Economic and Security Review Commission. My testimony today reflects only my personal views.

The Commission is a somewhat unique bipartisan body. We report to and support Congress. In 7 of the last 10 years, we have issued unanimous reports. Where it was not unanimous, there was only one dissenting vote. Our bipartisanship is a reflection of the broader political support for addressing the challenges posed by the Chinese Communist Party.

China is not interested in abiding by international norms. We should stop hoping for change and waiting for it to occur. We need to accept reality and adopt the policies that are in our best interest.

We need to make clear that in debating and addressing the challenges posed by the policies of the CCP, we are not disparaging the people of China. Rising anger and aggression targeted at people of Asian descent here in the U.S. or around the globe is unacceptable.

The Biden administration is engaged in a top-to-bottom review of past actions, identifying its preferred path forward and, importantly, what cooperation and coordination with our allies is possible.

A multilateral approach is important, but it is not the only approach. For years we sought multilateral cooperation but got little help. To paraphrase an old saying, our allies were willing to hold our coat while we bloodied our nose.

Our producers and our workers cannot wait for allies to fully appreciate the impact of China's policies and develop the will to act. The outsourcing and offshoring of jobs and productive capacity to China has created unacceptable vulnerabilities. Americans saw that clearly when we were unable to obtain critical PPE supplies as COVID ravaged our country. China has shown its willingness to politicize and indeed weaponize its supplies of vital products.

At the end of 2020, U.S. corporations were sitting on more than $5.5 trillion in cash and liquid assets. We need to send stronger signals that we want them to invest those funds here to expand production and create jobs. China's new 14th 5-year plan increases support for indigenous innovation and continues an expansive export strategy. Massive over-capacity will continue. Huge subsidies, protectionist and predatory practices, and legal and illegal actions will support their efforts.

The CCP is seeking to advance research and development indigenously. The pace of R&D expenditures by U.S. affiliates in China has grown at a faster pace than domestic investments by their U.S. parents. We need to alter that trend.

China's leaders are also desperate for foreign capital and investment. Changes in international investment indices may result in $400 billion or more of Western capital flowing into Chinese equities. Bond index changes may spur another $200 billion going into China.

Some of our citizens' capital could be invested in companies on the U.S. Entities List and DoD's list of companies supporting China's military. There also appear to be investments by U.S. persons in these companies after they were put on these lists. That must stop.

We need to treat supply chains as integral components of our national and economic security, as well as vital to our critical infrastructure. In the 1980s, America faced competitive challenges from Japan, although they pale in comparison to those posed by China. In 1987, Congress and the Reagan administration worked together to create SEMATEC to reclaim America's momentum in the semiconductor sector.

In 1988, Congress passed the Omnibus Foreign Trade and Competitiveness Act to advance America's ability to compete. Now is the time to consider what steps America should take to protect our interests and prepare for the future. Too much of the focus of our China discussions has been about containing, confronting, or decoupling. Many of the actions and policies of the CCP directly challenge U.S. interests. We need to send a strong signal to the CCP, to our companies, to our people, and the world that we will stand up for our interests. We will compete. We will invest. And we will win.

Thank you, Mr. Chairman.

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

The CHAIRMAN. I thank you, Mr. Wessel. And I like the fact that you closed on the bottom line, which is out-competing China.

Dr. Kokas, welcome.

STATEMENT OF AYNNE KOKAS, Ph.D., SENIOR FACULTY FELLOW, MILLER CENTER FOR PUBLIC AFFAIRS; AND ASSOCIATE PROFESSOR OF MEDIA STUDIES, UNIVERSITY OF VIRGINIA, CHARLOTTESVILLE, VA

Dr. KOKAS. Chairman Wyden, Ranking Member Crapo, and distinguished members of the Senate Finance Committee, it is an honor to be here. My name is Aynne Kokas, and I am an associate professor of media studies at the University of Virginia and a senior faculty fellow at the Miller Center for Public Affairs. My testimony reflects my personal views.

My remarks today will focus on three key points.

First, Chinese laws imperil U.S. tech investment in China and around the world.

Second, Chinese firms with close government ties are rapidly acquiring a wide range of U.S.-based digital media and tech-sector entities.

Third, U.S. firms face pressure to self-censor as a result of U.S. domestic financial pressure paired with Chinese regulations.

With the growth of the Chinese market, U.S. national interests and U.S. commercial interests have diverged. The global tech sector is estimated to reach $5 trillion in 2021. The U.S. is poised to make up 33 percent of that. The Chinese market makes up 14 percent of the global tech economy, but it also offers a tantalizing market growth opportunity for U.S. firms, despite current market entry restrictions.

Further, disaggregating the tech economy from other sectors like automotive, agriculture, and health care, becomes increasingly difficult because of the role that digital management platforms and data integration play in cross-sectoral innovation. However, data security regulation in the United States has historically followed sector-by-sector oversight.

Chinese laws imperil U.S. tech sector investment. Unlike the United States, China centralizes tech oversight across sectors to provide a range of tools for the Chinese Government to access corporate data and IT, including forced data localization and corporate national security audits.

The July 2020 Hong Kong National Security Law permits the Chinese Government to hold people and platforms liable for crimes committed extraterritorially. This puts particular pressure on firms that commit perceived transgressions such as speaking out about Xinjiang and human rights, and by those who offer education online at U.S.-based universities.

Chinese firms have acquired a wide range of U.S. tech and media firms, enhancing both military and economic competitiveness. These include social media platform TikTok, gaming platform Fortnite, and many more.

Beyond games of entertainment, Chinese firms have acquired companies with U.S. operations in the agriculture, health, and manufactured goods sectors and beyond.

Further, Chinese firms can also acquire data from U.S. firms through data broker agreements. Such acquisitions limit U.S. economic competitiveness in data-driven industries where the skills, talent, and data developed in the U.S. advance PRC goals to grow the tech sector, particularly in data-driven AI.

U.S. firms face financial pressures to self-censor. Hollywood studios are shifting content as a result of such Chinese market access pressures, but they are the canary in the coal mine. Other U.S.-based corporations have shut down the speech of fans and employees to preserve access to the Chinese market, as we have seen in the NBA and on the Hearthstone gaming platform.

Delta and Marriott faced economic penalties do to listing Taiwan as an independent entity. H&M stores were delisted from Chinese map platforms for corporate speech about Xinjiang. The list goes on.

National security concerns compete with the fiduciary responsibilities of U.S. companies to grow. The U.S. Government needs to restructure these incentives. My recommendations are as follows.

First, improve U.S. tech sector competitiveness. Increase U.S. Government investment in STEM through agencies like DARPA and the Defense Innovation Unit, and through the adoption of the Endless Frontier Act.

Continuing on Mr. Wessel's statement, it is important to work actively against anti-Asian hate in the United States in order to advance our mission for equality, but also to welcome researchers and technologists to continue their current path to grow their careers here, so they do not get trained here and then return to China to build their careers.

Second, enhance U.S. global data oversight to prevent data exfiltration to non-allies. Build out a national data privacy framework across sectors to prevent consumer data exfiltration to non-allied countries, and join agreements like the CPTPP, formerly TPP, that already have data governance agreements. Require enhanced reporting on how and when firms share data with third-party providers. Limit the sale of U.S. consumer data through efforts such as the Protecting Americans' Data From Foreign Surveillance Act.

Finally, fund Chinese area studies. The lack of secondary and tertiary social science education opportunities to learn about China means that most business people entering the U.S. workforce do not have a working understanding of China's political system, to the detriment of U.S. national security.

Thank you for your time and attention. I welcome your questions.

[The prepared statement of Dr. Kokas appears in the appendix.]

The CHAIRMAN. Dr. Kokas, thank you very much for exceptionally important testimony. We very much appreciate your being here.

Our next witness will be Clete Willems. Where is Mr. Willems?

Mr. WILLEMS. I am here.

The CHAIRMAN. Please proceed, Mr. Willems.

STATEMENT OF CLETE R. WILLEMS, PARTNER, AKIN, GUMP, STRAUSS, HAUER, AND FELD LLP, WASHINGTON, DC

Mr. WILLEMS. Thank you, Senator.

Members of the committee, thank you for the opportunity to testify today.

U.S.-China competition will define the trajectory of the global economy and our collective security for generations to come. Congress will play a critical role in determining the outcome of this competition, and today I offer six suggestions to best position the United States for success.

First, the United States must run faster, with policies to encourage domestic innovation in strategic areas targeted by China, such as artificial intelligence, semiconductors, synthetic biology, 5G, and 6G, among others. I understand the concerns raised by overall government spending levels, but misdirected spending in certain areas should not deter us from well-directed spending in areas critical to U.S. innovation leadership, especially if this spending seeks to enhance the strengths of the private sector instead of replacing it. More R&D spending, public-private partnerships, and narrowly tailored grant programs are a good idea.

Consistent with this, Congress should pass the Endless Frontiers Act, fully fund the USA Telecommunications Act, and CHIPS for America. Such policies will help us run faster, but we are unlikely to run fast enough if we only focus at home. Much of the revenue our companies use to fund innovation comes from sales overseas, and the United States needs a proactive trade agenda to open up markets and set standards in emerging technologies.

We cannot sit on the sidelines while China implements the RCEP and flirts with the CPTPP. Congress should renew Trade Promotion Authority, encourage the administration to finalize negotiations with the U.K. trade agreement, and plot a path forward in the Indo-Pacific. If TPP is not viable, we should consider sectoral agreements with TPP countries in areas like digital trade.

Second, we must better coordinate with allies, including with the WTO. The WTO's current rules do not adequately constrain China's worst practices. Congress should encourage the Biden administration to make ambitious WTO reform proposals, starting with the trilateral initiative with the EU and Japan. The U.S. must also better coordinate on defensive measures like export control that maximize the impact and avoid putting U.S. industry at a disadvantage to foreign competitors not subject to such controls. Additionally, it should prioritize the resolution of transatlantic disputes so we can focus our energy on China.

Importantly, however, we should not give our allies a free pass. They should be expected to stand up to China alongside the United States and refrain from unilateral discriminatory policies of digital services taxes, or the EU's Digital Marketing Act.

Third, the United States should engage directly with China for additional market access. Sales to China support American farmers, workers, and businesses, full stop.

The Phase One deal was a good first step toward a level playing field, with largely successful structural provisions on IP, agriculture, and financial services. The United States should now consider how to move on to Phase Two and obtain structural commitments in other areas.

The administration should also reinstate a tariff exclusion process to provide relief for products that cannot be sourced elsewhere and are not core to China's Made in China 2025.

Fourth, the United States must not become China to beat China. We should avoid policies that replicate the very same practices we are condemning, which are inefficient and undermine our credibility to rally an international coalition to our side. More specifically, we should focus our policy on flexibility, resiliency, and partnerships with trusted allies instead of trying to make everything at home.

Similarly, access to our procurement markets should not be restricted for all foreign actors, but instead traded for reciprocal access to foreign markets. We should resist China's approach of invoking national security unless truly justified, and tread carefully when considering novel policies for investment streams.

Fifth, the U.S. Government should closely align the private sector on policy implementation, including efforts to eliminate forced labor from supply chains. The U.S. Government must also be willing to back U.S. companies in particularly difficult policies like Chinese Government censorship, which is so embedded in the current Chinese Government philosophy that no company could be expected to navigate it on its own.

Finally, we must be clear-eyed about the China challenge and the risk that certain policy choices entail. We should not over-legislate to appear tough, but adopt nuanced policy responses calibrated to the threat posed, with clear, achievable objectives.

If we decouple from China and blindly demagogue all China's people, including many who share our concerns about their own government, we could find ourselves on a dangerous path.

I hope that the policies I have outlined today will provide a better alternative, and I look forward to your questions.

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

The CHAIRMAN. Thank you very much, Mr. Willems. We will have questions in a moment.

Our next witness will be Mr. Baer. Welcome.

STATEMENT OF DAVID BAER, CHIEF OPERATING OFFICER AND GENERAL COUNSEL, ELEMENT ELECTRONICS, WINNSBORO, SC

Mr. BAER. Good morning, Chairman Wyden, Ranking Member Crapo, and members of the committee. My name is David Baer, and I am the chief operating officer and general counsel of Element Electronics. Thank you for giving me the opportunity to share Element's story with the committee.

Element is the sole remaining mass producer of televisions in America. Our factory is located in Winnsboro, SC. As Chairman Wyden noted, Element's U.S. factory was on the brink of closure until Congress's enactment of the MTB and approval of an exclusion from the 301 tariffs completely reversed the situation and leveled the playing field.

As a result, our U.S. factory rapidly grew. At the end of 2020, we were operating all of our eight production lines and had over 520 team members working in our factory. Importantly, our story is about community and people. At Element, we offer living wages and benefits to our employees, over 90 percent of whom are African American. Included in our written submission is information about some of our employees and how they have benefited from the ability of Element to offer good-paying jobs in our community.

However, our success depends on two issues that are completely beyond our control: the restoration of an exclusion from the China 301 tariff, and restoration of the Miscellaneous Tariff Bill.

The most expensive input in an LCD TV is the glass LCD panel. These panels are not available in the U.S. Thus, we must import them. However, we face a severe tariff inversion situation when importing these panels.

The normal tariff on LCD panels is 4.5 percent, while the tariff on the finished TV is 3.9 percent. Thus, the normal tariff structure incentivizes the importation of finished TVs over producing them in the U.S.

To make matters worse, imports of the same finished TVs from Mexico are duty-free. TV producers in Mexico use the same panels that Element imports and the same factory equipment that Element uses, but Mexican producers import those LCD panels duty-free and then export the finished TVs into the U.S. duty-free.

The MTB provided temporary tariff relief to solve this obviously unintentional tariff conflict. So, with the lapse of the MTB, we are once again at a severe competitive disadvantage relative to imports, particularly from Mexico.

In addition, we face an incremental 7.5-percent tariff on LCD panels imported from China as a result of the section 301 tariffs. We agree that the U.S. must aggressively confront the unfair actions of the Chinese Government. However, the U.S. must do so in a way that does not inflict unintended harm on American producers and workers who have no choice but to rely on certain imports from China.

Recognizing the lack of U.S. production of LCD panels and the dominance of China in the LCD panel market, Element received an exclusion from the section 301 tariffs. Like the MTB, that exclusion expired last December. Even with the exclusion in place, Element worked to find non-Chinese suppliers for LCD panels and, for a time, was successful in sourcing LCD panels from sources outside of China. Unfortunately, over the course of 2020, each of these non-Chinese suppliers exited the LCD panel market for TVs as a result of relentless unfair competitive pressure from China. As a result, our factory is again primarily relying on imports from China.

Because of the lapse in both the MTB and the 301 tariff exclusion, we face a combined tariff disadvantage of 12 percent. Nobody can be expected to pay a premium of 12 percent for a TV assembled here. This 12-percent tariff disadvantage makes our factory in the U.S. uncompetitive, and we are currently operating only four production lines, and employment has dropped to 370.

Without a restoration of both the MTB and the 301 exclusion, Element will be forced to move production out of the U.S. This will devastate our workers and our community. Leveling the playing field through retroactively restoring both MTB and the 301 exclusion will allow Element to successfully compete against anyone.

Therefore, on behalf of Element Electronics, our team members, and all their family members, I urge the Congress to enact legislation that would retroactively restore the MTB. And if the administration does not retroactively restore the exclusions from the 301 tariffs, then Congress should enact legislation that requires the retroactive restoration of these exclusions.

Thank you very much for your time, and I am happy to take any questions.

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

The CHAIRMAN. Thank you very much, Mr. Baer. This has been an exceptional panel of witnesses. It is hard to know where to start.

I think, Dr. Kokas, it is a question for you to start, and then we will go to Mr. Wessel, but we want to hear from all of you in these questions.

Doctor, it seems to me what you have done is spelled out how China is using its economic might to export repression. That is essentially what their agenda is all about—incredible economic might—and they are using it to be able to export repression around the world.

So start us off by saying what would be, say, the first two steps, the first two bold steps you would urge the Finance Committee to take to fight China's repressive digital protectionism.

Dr. KOKAS. There are many steps, but two key steps that I would recommend would be to, first, change how U.S. exchanges fund

Chinese entities when they try to enter the U.S., when they try to raise capital in the U.S.

So I've written about, for example, the case of ITE, which grew from Baidu, after Baidu had raised capital on the U.S. exchanges then became a domestic competitor with Netflix. This is a classic example of how the U.S. actually funds the growth of Chinese firms so they can become competitive with U.S. firms.

Another thing I think is important along those same lines is to increase the reporting requirements for how U.S. firms share their data with China and with Chinese partners, as well as how U.S. firms are investing within the Chinese market. So I think additional reporting requirements there are really important.

The other thing is to enhance the use of the Foreign Corrupt Practices Act to make more robust the range of different types of items of value that firms could receive from the Chinese Government, looking specifically at market access.

The CHAIRMAN. That point is well taken. I am particularly attracted to this idea of cutting off access to capital, because I think that is just a no-brainier. We have to do that. Thank you.

Mr. Wessel, I think Dr. Kokas has really kind of led us into an area where you are really one of the authorities, and I think it would be helpful if you would give the committee some sense of the size and scope of the problem.

What is being lost in terms of value, in terms of lost market access, stolen intellectual property rights and displaced American jobs? What is lost when the Chinese cheat?

Mr. WESSEL. Mr. Chairman, thank you for your question. That really goes to the heart of why your committee and others are looking at this issue. It is certainly our interest in the rights, the repression, the other issues, the freedoms, that go to the heart of our values, but our workers have been kicked in the teeth because of the China trade relationship.

Just a couple of quick comments. The Economic Policy Institute indicated that since the accession of China to the WTO in 2018, 3.7 million jobs were lost. The majority of those jobs were in the manufacturing sector.

In 2019, we ran a $134-billion advanced technology products trade deficit. Those are products that, you know, we should be excelling in, we do excel in. They are at the core of what you and your colleagues are seeking to advance, but China, through predatory and protectionist policies, has skewed the balance.

Finally, the Commission on the Theft of American Intellectual Property, a bipartisan commission, has done great work over the years. Their estimates—using their methodology, I computed that in the last 5 years, there has been $2.4 trillion in U.S. IP that has been stolen. That IP supports American jobs, American innovation, and our future.

If we continue to lose at that pace, we will see the decimation of our tech sector, the continued hollowing out of our manufacturing sector, and the loss of our standard of living.

The CHAIRMAN. One last question—and we are going to have to be prompt today, because we have so many members asking questions. How should the committee strike the balance, Mr. Wessel, between breaking down barriers that keep the Chinese market closed to our goods and services, and building up our R&D and domestic capabilities? How would you strike that balance?

Mr. WESSEL. Well, I would say it should be in equal balance, but we have to get progress on both. Certainly, as has already been talked about, our goal is to be able to sell American competitive products in China based on their competitiveness, not based on what China says they are willing to accept that week, or that day.

But second of all, because China has been unwilling—and it is evidenced in all their economic programs—we need to invest in ourselves. We need to out-compete China. Americans can do that. As you know, back in the 1980s, President Reagan, along with the Democratic Congress, created SEMATEC. It was engaged in the MOSS talks. We can walk and chew gum at the same time. We cannot lose sight of doing both at the same time.

The CHAIRMAN. Very good. Thank you very much.

Next is Senator Crapo. And because it is going to be such a hectic morning, followed by Senator Stabenow, Senator Grassley, and Senator Cantwell.

Senator Crapo?

Senator CRAPO. Thank you very much, Mr. Chairman.

I will go to you first, Mr. Baer. And I would like to ask you to be brief in your responses because, as the chairman indicated, we have a lot of ground to cover here quickly.

But I wanted to just highlight the section 301 tariff exclusion issues that you so clearly pointed out are so critical to your company, and the MTB reauthorization—two key pieces of what we need to do in this committee right now.

You very clearly showed how our failure to reauthorize the 301 tariff exclusions for your company was very damaging, and is very damaging. I just wanted to make a point here. Your company is just one example in America. There are hundreds of 301 tariff exclusions that need to be reinstituted across this country in industries of all different types. Is that not correct?

Mr. BAER. Absolutely.

Senator CRAPO. And the failure to be targeted in our imposition of 301 tariffs is critical across our economy. And just the same point, really, with regard to MTB reauthorization. An overwhelming majority of the tariff lines in the MTB are already subject to China section 301 tariffs. And the MTB provides relief on the key inputs that you described for your company with regard to manufacturing.

It is critical, again, not just for your company but across our economy, in businesses large and small that need to be able to stay strong and competitive. Is that not correct?

Mr. BAER. Yes, absolutely. I mean just for us, the combination of the lapsed MTB and the 301 tariffs has cost over 150 jobs over the last few months.

Senator CRAPO. Well, thank you. And that is just repeated across our economy. It is one of the things that we critically need to do in order to be as competitive and as strong as we can be.

Mr. Willems, I would like to go to you for a couple of questions. America's innovative industries, including its digital technology companies, are the envy of the world. And I am concerned that China is taking out its envy of U.S. successes by creating new restrictive tools to target these digital companies, and other technology-related companies, and that other countries are going to follow in this direction if we do not take some action to stop that.

Do you agree? And what can we do about that?

Mr. WILLEMS. Senator, I absolutely do agree. And I think that the first thing we need to do is stand behind our companies. Digital companies, technology companies in the United States, they are our national champions. And if we are going to really compete against China, we need to backstop these companies against China's competitors.

I talked in my opening about a bunch of different ways to do it. I think some of the incentives you all are looking at are a great start. But we also need to engage directly with China and push back on them.

I think that one thing that has not really come into the discussion yet that is important, especially as we are looking at third markets, and when we are looking at China exporting its policies abroad, is creating international rule sets that we can all collectively enforce against China. To me, that is the way to push back on that. And I will finally just add, again it is not just China. You are also right to be concerned about places like Iran that are looking at various policies that are quite troubling, and we need to stand up there as well.

Senator CRAPO. All right; thank you. And I appreciate your help and input in helping us to identify these actions.

Again for your, Mr. Willems; I am interested in a point that you made in your written statement. You wrote that we have to remember that the export of non-sensitive items to China allows its capital, essentially, to subsidize U.S. innovation leadership.

I agree with that. Restrictions on non-sensitive items are counterproductive because other countries will simply backfill our orders to take our place in China's market.

What are some steps that we can do to make sure that our approach is targeted? And how can we ensure that other countries coordinate with us better on trade policy with China to mitigate this backfill issue?

Mr. WILLEMS. I think the area where this really has come up is in the area of export controls, where the U.S. has taken certain interim measures, none of which are justifiable, against Chinese companies, but has not coordinated them. So you have this situation where companies can export into China from other markets the very same products that we can't. And so what you really need to do is to coordinate better on a multilateral basis. And if you do that, you are going to be more effective, and you are not going to hurt the U.S. in the process. So I would look there.

In terms of working with other countries, I think at the end of the day we need to help them understand that it is in their self-interest, and that the same challenges we are facing with China are also affecting their markets. And I think we can get on the same page and push back proactively, and that will be a much more effective approach.

Senator CRAPO. All right; thank you very much.

The CHAIRMAN. I thank my colleague.

Next is Senator Stabenow.

[No response.]

The CHAIRMAN. She has a very hectic morning.

Next, then, would be Senator Grassley.

[No response.]

The CHAIRMAN. Next, then, would be Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman; I appreciate it.

I also appreciate this panel and witness list. I think they have covered a lot of ground. And as you know, we are working in the Commerce Committee on the major portions of the R&D in the Endless Frontiers Act. So I am glad to hear that everybody thinks that is a key component of what we should do moving forward.

And I am so glad to join my Team Northwest colleagues, the chairman of the committee and the ranking member. I say that because I think the Northwest does have a very, already integrated view of the economies of the Pacific Northwest and Asia.

So we already see the complexity of this challenge. That is to say, the 301 tariff exemption expiring causes a great deal of difficulty for a variety of sectors in our economy, a variety of companies. And I think that belies the larger question, which is, we already have such an integrated economy, how do we move forward when we absolutely know we want better behavior out of China as it relates to very important broad public policies, whether that is IT theft, privacy issues, the whole myriad of things?

So I think, Mr. Willems, your comments I totally agree with: flexibility, redundancy, and partnerships. I definitely see those as the opportunity for us to work together. But besides the 301 exemption that my colleague, Senator Crapo, mentioned, what other tools do we need to affect policy moving forward? And my one concern is that somehow, we will go too far and ourselves try to pick winners and losers. And by that, I mean the Federal Government or some enabled aspect of the R&D investment that we are talking about.

So supply chains are already complex. They are already integrated. I like the idea of working with our partners, but how do we—what are the cornerstones of those flexibility, redundancy, resiliency, and partnership issues that we should take forward?

Mr. WILLEMS. Thank you, Senator. It is a great question, and I am glad that we are like-minded on many things. You know, I think the point I was really trying to make is that, when you are looking at supply chains, you want to be thinking about the positive incentives that you can create to make sure that you can rely upon them in any sort of crisis situation.

And some of the things we are looking at in terms of providing the different kinds of funding are R&D and tax credits, to make sure that we have supply chains that are in the United States. I am very comfortable with that. What I have found that is less effective are the discriminatory aspects of it.

Now in terms of your specific question on how we better link them with some of these other countries, I think that you need to be looking at creating standards that we would all meet. And so, if we are talking about the pharmaceutical sector, or we are talking about the technology sector, what are standards that countries like the U.S., Japan, the EU, and Korea all adhere to and that maybe differentiate ourselves from China because they have more of an open model? And those are the kinds of things where we can ensure that there are linkages.

I think we can also look at—allies should all agree together that, in crisis situations, we won't put export restraints on each other. And we will have lower tariffs between ourselves, so that we can better integrate those supply chains.

I do think that part of the conversation has to be an honest look at the fact that once COVID hit and we were in the crisis situation, there were a lot of export restraints imposed around the world. And so, if we have allies that we really trust, and we have common standards between each other, I would think that we could try to agree to some of that.

Senator CANTWELL. Well, I think that is exactly where we should go. In trade in general, I have been very involved in increasing capacity building, increasing enforcement capabilities at USTR, and I actually think here we just need to bolster our trade strategy as it relates to these policies.

On Huawei, I think that is exactly what we should have been doing, running around the globe getting like-minded countries to say we are not going to allow technology exports from countries that basically do not adhere to the rule of law of keeping a government back door out of technology solutions.

Why would we let any government have a back door to technology solutions, let alone one as big as the Chinese market? So I just think we did not rally enough of our international allies soon enough on that.

So what do we have to build here in the United States to give us capacity? If that is 20 more people at the State Department, count me in. Because 95 percent of consumers live outside of the United States.

So we have to be building the capacity to have these conversations on an international basis so that we can go to China with a full panoply of markets, not just the U.S. market, but a panoply of other markets, saying "This is what it is going to take to do business." And the sooner we get at those longstanding U.S. principles that we know that a lot of our allies agree on, I think the sooner we will really have the kind of market power that we want to have with China in implementing these policies.

I agree; I am not being naive. But at the same time, the Northwest does look at them as a market. So we are not going to just X them out either. So I think that this is the better strategy.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague who is so knowledgeable about these issues, and we definitely look forward to partnering closely with her, and I thank her.

Next will be Senator Cornyn—oh, Senator Grassley is here. Senator Grassley, please proceed. We called you earlier. Go ahead.

Senator GRASSLEY. Thank you very much. This is a very important and needed hearing that you are sponsoring. Thank you.

I want to talk about counterfeit goods from China and Hong Kong, which have increased considerably in recent years. And so my question, leading up to asking Mr. Wessel—as Americans turned to e-commerce, criminals took advantage of innocent consumers more than they did before e-commerce. I introduced legislation last week to give the U.S. Customs and Border Protection more authority to share information with rights-holders on suspected counterfeit products. This bill would allow the CBP to share information with its private-sector partners, creating a much stronger network for counterfeit detection. So now to my question.

In addition to information sharing between public and private entities, how can Congress prevent the trade in counterfeit products through trade policy? And how can the information sharing across the public and private sector benefit and secure U.S. trade?

Mr. WESSEL. Thank you for your question, Mr. Grassley. And thank you for your leadership on so many of these issues—the Foreign Sovereign Immunities Act, and many others.

Your question is spot-on, because it is not just the economic losses that come from counterfeit products, but it is the real potential harm to American health and safety from many of those products. Your legislation is an important anchor for that approach. It needs to be supplemented by providing CBP the resources to be able to support that policy. Because, as you know, they often focus on the interdiction of other products and concerns.

And finally, we just need an all-of-the-above strategy to make our various e-commerce platforms, Attorneys General, and others, aware of the problem and coordinated in their response.

Senator GRASSLEY. Thank you.

According to USDA data, total exports of agriculture products covered under the China Phase One agreement were approximately $27 billion in 2020. That means the export target of $33 billion was missed by $6 billion. Despite the missed target, 2020 was the record for exports of agriculture products covered by the agreement.

Mr. Willems, as one of the negotiators on the Phase One deal with China, I appreciate hearing your perspective on the deal. Recognizing the challenges of the global pandemic, do you think China is living up to its commitment in Phase One? And what steps in improving structural reform should the Biden administration make sure China takes before they move to Phase Two?

Mr. WILLEMS. Thank you, Senator. It is a great question, and I agree with the point that you made, which is that we have seen record numbers of agriculture exports to China. And I believe that the reason for that is the Phase One deal. And I would emphasize—I know that there is a lot of attention often paid to the purchasing chapter, and the targets that that set, but I think it is much less important than the structural commitments themselves.

And if you look at agriculture, the reason that we are seeing record numbers is because there were 57 underlying structural commitments that China made to actually change its laws and regulations to allow in chicken, beef, and pork for the first time in years, by changing their actual underlying laws and regulations.

And that is juxtaposed against energy services and manufacturing, where we did not have the underlying chapter and therefore we were not anywhere close to our purchasing commitments, and I think what that shows you is the importance of the structural chapter.

And I would say, in agriculture China is doing a good job. On IT, you can look at the national trade estimates that USTR just put out. I think it is probably a B. You know, they did a lot of what they said. There are a couple of things now in progress that are incomplete.

There are additional financial services, so that has been good. So I think, more or less they have done what they said they were going to do. Obviously there are areas where they have not fully followed through, and we need to put pressure in there.

Moving on, what I would do is, I would look for additional structural commitments. I would not focus as much on purchases. And where I would start is with some of the text that got scuttled in May 2019. As you all may remember, we were very close to what was going to be a somewhat more comprehensive deal with China.

Talks broke down for a variety of reasons, and we only got about half of what we were negotiating. And there was stuff left on the table on services and non-tariff barriers, and additional things on forced technology transfer. I think I would pivot there next, and then work with the allies on some of the more structural things like SOEs and industrial supplies.

Senator GRASSLEY. Thank you. My time is up.

The CHAIRMAN. I thank my colleague.

Senator Cornyn is next.

Senator CORNYN. Thank you, Mr. Chairman. I want to thank you and Senator Crapo for working together on a bipartisan negotiation on the Confront and Compete Against China legislation, including items that are particularly important to me: censorship by foreign governments especially in digital trade, which follows up on my work last year as chairman of the Trade Subcommittee, working with Senator Casey; reasserting congressional authority over trade negotiations through additional oversight; the possible creation of a temporary restraining order or a national security exclusion order on the importation of goods obtained through trade secret theft by foreign governments and state-owned enterprises; identification of unacceptable risks to our supply chains and outgoing investment to unreliable foreign adversaries in the event of an emergency or national security; and finally, reauthorization of the Generalized System of Preferences and Miscellaneous Tariff Bill, and other tariff relief.

And finally, I would like to note that, while the United States may not need an industrial policy per se, it is clear that the entirety of the Chinese Government, from its military to its blog posts, they have one that they are using against us.

So, Mr. Willems, let me ask you a question, if I may, please. You testified last year before the Trade Subcommittee. Senator Casey and I led that effort on how foreign governments like China and Russia use censorship to block market access and cost companies billions of dollars, especially in the digital trade space.

I am grateful that the current package currently being negotiated by the chairman and ranking member includes addressing foreign censorship as a key objective, at my request. I simply do not think we can tolerate American citizens being censored by foreign governments on our own soil.

So let me ask you, if I may, please, can you tell me your thoughts on how we can better address this problem, addressing censorship in the trade space?

Mr. WILLEMS. Certainly, Senator. And thank you for your leadership on several of these issues. I agree with all the priorities that you highlighted.

On censorship in particular, this is a very significant issue. And it is something that is appalling, but it is very difficult for our companies on their own to push back on these policies that are so embedded in this Chinese Government's philosophy. And some of the ideas I believe that you are considering that would have a government role, where the government steps in and shields U.S. companies—I think that is the right approach.

I know there was some talk of putting in place section 301, or a mechanism like that, at USTR to focus on this, where the U.S. Government would come in. They would investigate it and come in and potentially try to push back against it. I think those are the right ways to go.

I think it is challenging, again, for an individual company to push back on this because of just the massive power of the Chinese Government.

Senator CORNYN. Dr. Kokas, can you discuss how the Chinese Government's censorship policies factor into the planning and investments of American businesses?

Dr. KOKAS. I have a few responses to this. One thing that is really important is to enhance financial reporting of the types of investments that we see by Chinese firms within the U.S. So looking specifically at firms like Alibaba Pictures, or Tencent Pictures, which produce films within the U.S. market and are heavily funded by Chinese investments. So I think enhancing financial reporting, particularly in content-producing industries, is very important.

One of the other challenges that we face is that this is a huge challenge for privately held corporations. So it is very difficult to understand how much Chinese investment, and how much Chinese influence, is occurring within privately held media and tech companies.

So I think that one thing that could be interesting would be to look at special reporting for privately held companies about their level of Chinese investment, and their level of data transfers.

Finally, something that is important to protect U.S. companies is data privacy regulations at the national level. And this is important because it will help protect the data of U.S. companies from being transferred to China. Thank you.

Senator CORNYN. Thank you. I have been exploring the creation of an authority that would place, in essence, a temporary restraining order or national security exclusion order under section 337 of the Tariff Act of 1930 that would help block the importation of goods created through trade secret theft by foreign governments or state-owned enterprises.

Mr. Wessel, could you discuss briefly the Commission's work, the International Trade Commission's work, on confronting intellectual property theft, and whether you think this concept might be useful?

Mr. WESSEL. Thank you for your question, Senator Cornyn. I think it is vital. We have seen that the utility of section 337 is somewhat limited in terms of the ability to respond quickly: the burden of bringing a suit, the discovery, and all the other issues that go along with it. So some kind of blanket approach that allows companies to earn their way out of it by proving that they did not engage, rather than having to prove, which is difficult, there are violations, I think has value and is something that the ITC and Congress should seriously consider.

Senator CORNYN. Right now it seems like China steals intellectual property with near impunity, and I would like to see another tool available to the U.S. Government.

Mr. Willems, finally, can you share your experiences with IP theft by China, and how you would view this new tool?

The CHAIRMAN. Mr. Willems, briefly. I think Senator Cornyn is making some very important points. We just have 20-some Senators to go. So please respond to Senator Cornyn's question and then we can move on.

Senator CORNYN. I beg your pardon, Mr. Chairman. I did not have a clock in front of me, so this is my last question.

The CHAIRMAN. I understand. These are important points you are raising.

Mr. WILLEMS. I think it is a good idea to explore other ideas, and we can follow up on that later.

The CHAIRMAN. Very good. I look forward to working with my colleague on that.

Senator Menendez?

Senator MENENDEZ. Thank you. Thank you, Mr. Chairman.

Yesterday, the Senate Foreign Relations Committee, which I chair, voted out, in a bipartisan fashion, the Strategic Competition Act, 21 to 1—which is rare around here these days.

It is the first major proposal to bring Democrats and Republicans together in laying out a strategic approach towards Beijing. The bill ensures the U.S.'s position to compete with China across all dimensions of national and international power for decades to come. And I think we have to be clear-eyed and sober about Beijing's intentions and calibrate our policies and strategy accordingly.

So I look forward to the bill now coming to the floor. And, Mr. Wessel, in your capacity—I do not know if you had a chance to get a sense of the legislation, as a Commissioner on the U.S. China Economic and Security Review Commission, but what do you think about what we did in the bill? What would you like to see that we did not do? How can we make it better? Those are some of the questions I have for you.

Mr. WESSEL. Thank you, Mr. Chairman, and I appreciate the question. I appreciate your leadership and work on this issue for so long. I will be honest. I was unable to track all the amendments, but the underlying issues that the committee reported, the discussion of it, I think indicates a very strong base that deserves support.

One of the critical areas I think you addressed is influence operations. And going to the previous question, that really underlies a lot of the impact on our companies, our workers, our researchers.

We have found academic researchers stifling their own, or censoring their own discussions; journalists being forced to censor their own discussions. And the impact of these influence operations through the United Front Work Department, Confucius Institutes, and other operations, I think has had a pernicious effect.

Your requirement that universities report contributions over a million dollars to determine what impact they may have on free speech, research, et cetera, I think is a critical component, along with many of the other provisions that the committee adopted yesterday.

Senator MENENDEZ. Well, thank you. We look forward to you having a chance to review the totality, and any insights you have, we welcome.

Would you say that—trade is obviously one of our challenges with China, but isn't it much bigger than trade?

Mr. WESSEL. It is much bigger than trade. Again, it goes to the entire operation of markets: free speech, the overall competitive equation in terms of what is happening to our own workers here, for example. Just the threat of offshoring or outsourcing has limited wage gains and has resulted in companies deciding on certain investment postures. And so it has had an overall negative effect.

And as you well know, in Africa and many other places, what has been happening with the Belt and Road Initiative, through debt diplomacy and other Chinese CCP actions, has corroded international norms.

Senator MENENDEZ. So it is fair to say that making investments here at home, as China has made in their country, is critically important in order that we not only confront China but compete with China?

Mr. WESSEL. I think it is vital. You know, I go back to President Reagan, who was known as being a free-market advocate, who supported SEMATEC and other investments in the U.S. It is not choosing winners and losers in the overall sense. It is choosing to make America the winner in this process.

Senator MENENDEZ. Let me just ask finally, when the U.S. entered into the Phase One agreement with the Chinese Government on trade and investment issues, China agreed to purchase $100 billion in U.S. manufacturing, agriculture, services, energy exports per year for 2 years following the agreement.

We are now a year into this agreement, and Congress and the general public have no idea whether China is meeting the terms of the Phase One agreement. One hundred billion dollars for U.S. manufacturing and agriculture is not exactly chump change that we can afford to ignore.

Is there currently any way for Congress to know whether China is following the terms of Phase One? Should we be putting our trust that China is complying with Phase One? Because I do not know that I will personally do that.

Mr. WESSEL. I certainly would not. Again, I am a Democrat, but I use the Reagan line, "trust but verify." I think USTR, Department of Commerce, and others have the ability to track on a very granular basis what we are selling. But I also think it is important to recognize that we should allow competitiveness to choose what China buys, not simply what they choose.

So for example, Senator Grassley asked about Phase One. I would like to see China open its market to crushed soybeans, not just the underlying product. I want to see value-added products, the best we have to offer getting in there, not just the products that they want to buy at a commodity level that often become industrial tourists—products that they transform into products that come right back into our markets.

Senator MENENDEZ. Well, I will close, Mr. Chairman, by just saying I would like to know: have they complied? And this is one of the reasons I think that our efforts to have an IG at USTR are so important, and we would have greater insights at the end of the day. Thank you very much.

The CHAIRMAN. Thank you, Senator Menendez. And I want to know that information as well. So we will be working closely with you.

Our next two panel members will be Senator Thune and then Senator Carper. Yes, both of them are here.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman. Thanks for holding this important hearing. Let me just say to begin with, that the China that joined the World Trade Organization in 2001 was a very different country than it is today. China is now the world's second largest economy and a strategic competitor of ours across multiple fields, particularly in key areas, if you look at, for example, 5G, advanced technologies, artificial intelligence, quantum computing. China is a military power in the Asia-Pacific and has undertaken arguably the world's largest infrastructure program, the Belt and Road Initiative, across all corners of the globe.

Yet at the World Trade Organization, China continues to self-designate as a "developing country," just as they did in 2001, in order to justify lower levels of trade commitments. Self-designating as a developing country not only provides China with trade advantages vis-à-vis the U.S. and other countries, but it undermines the institution of the WTO.

Mr. Willems, is it economically justifiable for China to continue to self-designate as a developing country at the WTO? And what steps should the United States take to accelerate WTO reforms? And what would some of those reforms look like?

Mr. WILLEMS. Thank you, Senator. I agree very strongly that it does not make any sense for China to be classified as a developing country. What a developing country does in the WTO system is, it generally allows you to get away with lower levels of commitment in negotiations. And it does not make sense for the second largest economy in the world to say they are not going to take on commensurate commitments to the United States.

What the United States tried to do under the Trump administration that I think was a good idea was to put in place objective criteria which would graduate, if you met that criteria. That includes things like being a member of the OECD, having a significant proportion of global trade, being a member of the G20. And when you apply those criteria to China, they would graduate.

I think what you need to do here is you need to encourage other countries to self-graduate. Korea is one that showed some leadership here and said, "You know what, we're not going to call ourselves a developing country anymore."

I think we need to push other countries to do that, and then also push for more objective criteria over time. You know, in terms of a broader WTO reform proposal, this is an area where proposals need to be more forward-leaning. We need to get proposals in there that deal with China's worst practices. The trilateral with the EU and Japan is a great idea, but it needs to get to an outcome that we can just put into the WTO. So we really do need to prioritize that.

And I do think the U.S. should engage in dispute settlement forums, which is an area that they did not engage in quite as much as when I was part of the Trump administration. It does not mean we give up the changes we need to see, but let's go out there with some proactive proposals and see what we can do. And I think there are a lot of ways that we can do that that I would encourage this administration to pursue.

Senator THUNE. Fifteen countries, including China, signed a major trade deal last November. The deal calls it a Regional Comprehensive Economic Partnership, or RCEP, to form the world's largest trading block, and covers about a third of the global GDP.

With RCEP now a reality, and America not a party to the Trans-Pacific Partnership, what should be the top trading priority for the United States to compete and lead in the Asia-Pacific?

Mr. Willems, you can start with that, and then anybody else who wants to comment on that.

Mr. WILLEMS. Yes, I enthusiastically will jump in here and say we need to get in the game in the Asia-Pacific. I understand that Senators and others, including the former President, may have had problems with TPP, but the answer to me was not to walk away. The answer was to renegotiate those aspects of it that we did not think were sufficient.

That is exactly what we did with USMCA in a strong bipartisan consensus, and I think that was great. So let's do that with TPP. But again, if that is not viable for some reason, let's at least look at building block agreements with countries in that region. I mean, digital trade is an area where we can start; there is a lot of like-mindedness. Start with building blocks in key sectors and then try to build it over time.

So again, ideal for me would be the comprehensive TPP we negotiated. But if that's not feasible, if we cannot do that for some reason, let's at least start with building blocks with TPP countries.

Senator THUNE. Do we need to renew TPA?

Mr. WILLEMS. Senator, I think it would be a good idea to have that authority, because it gives us credibility at the negotiating table, and it also makes sure that Congress has a direct say in what the administration is doing.

Senator THUNE. Thank you.

Mr. Chairman, my time has expired. Thank you.

The CHAIRMAN. Thank you, Senator Thune. We will be working closely with you.

Senator Carper and Senator Portman are next.

Senator Carper?

Senator CARPER. Thanks, Mr. Chairman. Welcome to all of our witnesses.

I want to follow up on Senator Thune's line of questioning and focus on TPP. I think one of the best ways we could have moved forward in terms of trade in the last decade was the TPP. And the idea that we pulled out of it, pulled out of a trading block that included us and 12 other nations, 40 percent of the world's trading, and we walked away from it? China was on the outside, kept on the outside because of its bad behavior issues, and we walked away. When I think of some of the dumbest things that we have done in recent years in terms of trade, that is high on the list.

I just wondered if each of you could, if you have not already spoken—Mr. Willems has already spoken—but could each of you take just a few minutes to share your thoughts on the benefits of taking a multilateral approach to trade to remain competitive with China?

And my second follow-up question to that would be, in your view is there a possibility that negotiations can somehow resume and put Humpty Dumpty back together again with respect to TPP?

Mr. WESSEL. Thank you, Senator Carper. Let me start quickly. First of all, as I said in my testimony, multilateral approaches are key. That is what we should be seeking. But at the same time, we cannot wait for our multilateral partners to wake up to the real challenge that China's economic and other activities pose to them and their people. We have to act on our own.

As to the TPP, let me—as my testimony also indicated, I chair the staff chair of the Labor Advisory Committee. When President Obama looked at the TPP early on, I was one of those brought into the situation room to have a deep discussion about what the architecture was going to be. And I think many of us thought that engaging in that way could be helpful.

The ultimate agreement, though, which would have allowed 37 percent of a vehicle to qualify under the rules of origin, that would have allowed Vietnam for example to comply with labor law requirements by having a 5-cent minimum wage, and that would suffice——

Senator CARPER. Mr. Wessel, I am sorry. I am going to ask you to hold it right there. Let's go to our other witnesses. Thanks so much.

Same question.

Dr. KOKAS. Thank you so much, Senator Carper. This is a really important question, and I think, as I said in my remarks, I think it is important to rejoin the CPTPP, as it is now.

One thing that I would like to highlight is, the challenge of multilateral agreements does not move us forward as quickly as we could. In my research, one of the things that I have identified is that there are multi-stakeholder tech standard organizations, like the IETF or the ACSM, that have the capacity to build out tech standards and do not require the same level of overall coordination as a multilateral organization.

Now the U.S. Government has held back from funding participation in these organizations. However, that is not the case with the Chinese Government. And I realize we do not want to out-China China; however, it is important to have a voice at the table for these crucial standard-making bodies. Thank you.

Senator CARPER. Mr. Willems, you have already spoken a little bit on this, so I am going to ask you to respond more fully and directly to my question, if you would.

Mr. WILLEMS. Sure. I thought what Mr. Wessel said was right on. I think rules of origin for automobiles in the TPP agreement might have been a tad too permissive. That is an area that I might look at if I were to negotiate it. And there are also areas that you could also look at.

The reality is that TPP now unfortunately—I think the negotiations were more or less concluded in 2012 or 2013. So it is a little bit outdated, and we have improved things through the USMCA. So I think you would want to do more or less a side-by-side in certain areas and figure out where we can benefit from your collective bipartisan wisdom in the updates that you helped the past administration make on USMCA and apply those to TPP. Now we may not want to do everything. It is a different set of countries, but I do think the rules of origin updates are somewhere to look. And maybe you do not go quite as far as in the North American market, but probably beyond where you were before. And if you could pin that down, then I think you could try to update some of the other areas and get an agreement that the U.S. can return to.

Senator CARPER. Thanks so much, Mr. Chairman. I suspect I am out of time. Could I flag a question for the record with respect to the section 301 tariff exclusion process?

The CHAIRMAN. Sure.

Senator CARPER. I would ask the witnesses, for the record, what should Congress do to reform its process in order to provide greater certainty and predictability for American companies?

Thanks, very much.

The CHAIRMAN. Senator Portman?

Senator PORTMAN. Thank you, Mr. Chairman. And thanks to you and Senator Crapo for holding this hearing, one, because it is important to talk about our challenge with China, but most importantly, because you are developing a package to look at how we, in fact, do what you said at the outset, which is, and I am quoting, "Take concrete steps to level the playing field for American workers."

I could not agree with you more, and I think we have an opportunity here with this broader legislation that is moving to have the Finance Committee be involved in that.

So, as you know, Senator Brown and I introduced one proposal recently to update our anti-dumping and countervailing duty laws. And it is really an attempt to help with regard to the real world out there as to how China is evading the existing laws, which were strengthened in what's called the Level the Playing Field law. This is our Level the Playing Field Act 2.0, and it looks at these issues that I think every single one of us has had to address.

Certainly we know about steel, where 15 years ago China had about 15, 18 percent of the steel production in the world. Now they have about half of it. And they are dumping it in various places, and sometimes through third parties and third countries that send it to the United States, and therefore avoid our anti-dumping or countervailing duty laws.

Sectors like chemicals, ship building, cement, paper, glass, aluminum, all face the same over-capacity issue. And whether it is polyester textured yarn from North Carolina, or lawn mowers from Nebraska, or metal file folders from Delaware, or woven ribbons from Maryland, or xanthum gum from Oklahoma, or woven sacks from Louisiana, every member of this committee has been facing this one way or the other.

So our legislation would make it easier for manufacturers to win cases when China moves its factories to new countries in order to escape the application of U.S. trade remedies, and it would give the Commerce Department new tools to go after China's Belt and Road Initiative by accounting for trade-distorting subsidies given by China to producers in other countries.

So, Mr. Wessel and Mr. Willems, I hope you are familiar with our legislation. We sent it to you for your analysis, and we got some input from you. Do you both agree that this committee should consider this Level the Playing Field 2.0 legislation to update our existing trade remedy laws and better address the reality which is the global nature of China's non-market behavior?

Mr. WESSEL. Thank you, Senator Portman. Thank you for Level the Playing Field Act 1.0, and 2.0. I think your legislation, along with Senator Brown, is critical, especially as we face the recovery out of the pandemic.

One of the critical provisions in the bill is to look at profitability in a different way. We have companies that were shut down during the pandemic. Now that they are restarting, if they start earning a small profit, that could be used against them as they try to fight massive subsidized and dumped products by the Chinese who, as you know, have over-capacity in solar, and aluminum, and steel, and countless other industries.

The provisions in your and Senator Brown's bill are the tool chest that America needs to compete.

Senator PORTMAN. Thank you.

Mr. Willems?

Mr. WILLEMS. Yes, Senator, I appreciate your leadership on this issue. Conceptually, I definitely agree with what you are trying to do. And I do think that we need to find a way so we are not constantly playing Whack-A-Mole as China uses subsidies and over-production to avoid our duties.

If you look at third-country subsidization, and third-country dumping, those are areas the European Union has also been focused on. So I think it is a great opportunity for a joint proposal there.

I will have to come back to you. I have not had a chance to look at every specific of your new legislation, so I will get back to you on that. But I love the idea overall. I would also say, as I alluded to in earlier remarks, we have to do a better job on this stuff with the WTO, and I would look to try to do rules there. And then I would look to try to figure out a way to reverse some past decisions that have undermined our ability to counteract Chinese subsidies, such as the Public Body's Decision as we call it, which hurt our ability to use countervailing duties against state-owned enterprises.

It was wrongly decided, and I think we need to figure out a way to fix that.

Senator PORTMAN. Thank you. And thanks, Mr. Chairman.

The CHAIRMAN. I thank my colleague.

Next is Senator Cardin.

Senator CARDIN. Mr. Chairman, thank you very much. Let me thank all of our panelists. The U.S.-China trade issue is one of the most important issues that we have to get right.

It is very challenging, when we look at the fact that we are promoting market economies and China wants to dominate through a government-controlled economy; when we want to protect intellectual property and China wants to take intellectual property and use it for their own advantage; that we want to promote trade with other countries so that all economies can do better; and where China is using their trade leverage in an effort to promote their rules in regard to a government-controlled economy.

So we have challenges. In 2015, I was responsible for including in the Trade Promotion Authority, as a principal negotiating objective, good governance and anticorruption. Now obviously, we are not in a position to enter into a trade agreement with China that would be, I think, strong on the governance issue, but my question—and I will start with Mr. Wessel—my question is, do we have adequate trade remedies and tools today to deal with the corruption and the anticompetitive nature of our relationship with China? Or do we need stronger tools in order to put us on a level playing field as it relates to governance issues and anticorruption issues?

Mr. WESSEL. Thank you for your question, Senator, and for your leadership in 2015 and beyond. I think that the short answer is, we need new authorities. We need new tools, and we need new enforcement measures.

There are some on the books that could be better enforced, but when it comes to good governance, corruption—which goes to the heart of many of the degrading policies around the globe—I think a lot more can be done and should be done by Congress.

Senator CARDIN. Well, I hope you will be—and all the panelists will be—free in giving us suggestions as to what we should be considering as we take up our relationship with China.

I know we have our traditional trade remedies, but it seems to me they were not created to deal with the circumstances of good governance and corruption. So it would be helpful if you could help us fine-tune our tools, or suggest new tools, in order to deal with the challenges we have with China.

Look, I am for competition. But it has got to be on a level playing field. And today it is not on a level playing field.

Mr. Wessel, I want to raise one additional issue as it relates to China—as to how we use trade. China's activity in the China Sea is anything but in our national security interests, as they try to dominate the South China Sea. That obviously affects the free flow of commerce and presents national security threats. But it also affects trade directly.

So what should we be considering in our trade relations with our allies and partners, and with China, to deal with influencing China's nefarious activities in the China Sea?

Mr. WESSEL. Well, Senator, thank you. I do not know that there are any easy answers to that question. We have been trying, as you know, for quite some time. China's decision to ignore the UNCLOS decision on the nine-dash line and other activities, their reef and rock rebuilding activities, as well as the use of fishing boats as sort of a civilian militia around many of these islands, and what they did with Vietnam in terms of their oil rig—I think it is pernicious. It is corrosive. And it is continuous.

And I think we need to engage in a much deeper relationship with our partners there, and have a coordinated strategy to address the trade and other impacts that we see.

Senator CARDIN. Well, I will invite again all the panelists to give us suggestions in this regard, because I want you to know, as Senator Menendez mentioned, we passed, by an overwhelming majority on the Senate Foreign Relations Committee, a major bill as it relates to China.

One of the amendments that we could not consider, but would have passed overwhelmingly, was Senator Rubio's amendment that I was a co-sponsor of, that would have dealt with taking action against China because of their activities on the China Sea through the use of sanction-type activity.

We will use that. Sometimes that is a blunt instrument, and it would be better if we had a more fine-tuned way of dealing with China's activities in the China Sea. So I welcome your thoughts. Otherwise, I think Congress will look for a more direct way to respond to China's activities.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cardin.

Next is Senator Toomey.

Senator TOOMEY. Thank you very much, Mr. Chairman. My first question is for Mr. Willems.

The United States currently has 25-percent tariffs on steel imports and 10-percent tariffs on aluminum imports from most countries, including many close allies of the United States. As you know, they were authorized by the Trump administration under section 232 of the Trade Expansion Act of 1962.

In my view, this has alienated to some degree our allies, who correctly view these tariffs as an unwarranted move to protect the domestic industry, not a national security issue. So my question for you is, do you agree with the view that the imposition of these steel and aluminum tariffs under section 232 has undermined our country's ability to work with our allies in confronting China's many objectionable practices?

Mr. WILLEMS. Thank you, Senator. I have not been a strong proponent of the 232 action that President Trump took. I was very involved in the interagency process when we considered how to move forward. I agreed with the President that there was a very serious concern with Chinese excess capacity disturbing global markets. But my view was that it was hurting Europe, it was hurting Japan, it was hurting our allies around the world just like it was hurting us.

And so I would have preferred a concerted solution where we all worked together to isolate the bad practices coming out of China. I think that would have been a better approach.

Senator TOOMEY. Thank you.

So, Mr. Chairman, I mean, I do not think there is any question that the 232 tariffs weakened our ability to work with allies to confront China. I would also argue that 232 steel and aluminum tariffs have been harmful to the U.S. economy, by an objective measure. They have cost us a lot of manufacturing jobs—maybe as many as 75,000. They have increased steel and aluminum prices and made U.S. exports less competitive. I would argue it was a misuse of executive authority. Remember, the Department of Defense determined that the steel and aluminum tariffs were not necessary to meet defense requirements.

Nevertheless, the Commerce Department decided to recommend the use of section 232 to target imports that do not threaten national security. These tariffs have not accomplished any of the stated goals. They have done nothing to decrease steel over-capacity. They have had an absolutely minimum impact on steel imports from China.

And worst of all, Mr. Chairman—and this is why I am bringing this up—there is nothing we in Congress can do about it. Now the Biden administration is in the process of reviewing this, and I am hoping that they will recognize the domestic economic damage and the global implications, and they will make the right decision and lift these tariffs.

But the fact is, Congress has no choice but to sit on our hands and passively wait on the administration to make a decision in an area—that is to say, collecting taxes and duties—that the Constitution delegates explicitly to us. And that is why I think we need to reform the underlying statute to reassert the responsibility that we have in this area.

If removing these tariffs is an important part of working with our allies, and working with our allies is important in combating China, then it should be the prerogative of this committee to reform what I think is the excessive delegation of authority. And we should do it in any legislation this committee considers when dealing with China.

So as you know, Mr. Chairman, I introduced a bill last year with Senator Warner. We had over 60 groups across a wide range of diverse industries; we had a number of Democrats and Republicans who co-sponsored the legislation on the committee and off the committee. And the premise is simple. It just restores responsibility over tariffs, which is to say taxes, to Congress—where the Constitution actually puts it.

It does not take away the ability of the President to use section 232 for legitimate national security purposes, it just requires that Congress authorize that.

Colleagues, Congress is, after all, the first branch of government, and we have explicit constitutional responsibilities, and they include trade. I think we should act that way. So I introduced this legislation when there was a Republican in the White House. I continue to support it when there is a Democrat in the White House, because for me this is not about party politics. Irrespective of who the President is, I think Congress should accept this responsibility.

We can take an important step in that direction, Mr. Chairman, by including section 232 reform in the upcoming China bill, and I hope we will do exactly that. Thank you.

The CHAIRMAN. I thank my colleague. As he and I have talked about before, there is no question in my mind that Donald Trump misused the tariff concept. What we are waiting to see is how President Biden is going to look at it. And I am very hopeful that we will see a fresh approach.

Next is Senator Brown.

[No response.]

The CHAIRMAN. And I do not see the Senator.

Next would be Senator Cassidy.

Senator CASSIDY. Hello, everybody.

Commissioner, I am very interested in trade-based money laundering; if you will, the partnering, if you will, or coupling of the money laundering of illicit dollars with licit trade and the way tens of billions of dollars have been moved out of the United States annually.

Any sense of the magnitude by which this may be occurring with trade with China?

Mr. WESSEL. I apologize, Senator; I do not know. I can tell you, though, briefly that last week the China Commission held a hearing where we looked at China's aggressive expansion on digital currency. And that has serious repercussions for money laundering, lowering the ability or reducing the ability of our sanctions regimes to work.

But as to money laundering directly, I will have to get back to you after talking to our committee staff.

Senator CASSIDY. Sounds great.

Mr. Willems, I really liked your testimony, because on the one hand—you know, I have been bouncing between committee hearings. I apologize to everybody. But I think you mentioned the need to strike a balance.

You cannot be antagonistic, nor can you be a folding chair. There has to be some sort of push-back. At the same time, there has to be continued engagement, and you gave some particulars there. So let me just kind of specifically mention that.

Again, I have this interest in international money laundering. And it does occur to me, though, that that requires the cooperation of both countries. You have to have transparency into banking transactions. The Commissioner just mentioned the potential for this cryptocurrency to facilitate transactions for which inherently—they are crypto.

Do you have any kind of practical suggestions on how we could engage the Chinese Government to cooperate with us on money laundering—which, by the way, may be part of their capital flight, and I gather capital flight is a major issue. So I do think there is a vested interest.

So, any thoughts on that?

Mr. WILLEMS. Well, I would certainly agree with your overall concept, as reflected by my statement that engagement needs to be part of our answer. I have not spent a ton of time on money laundering issues, so I do not have a sophisticated answer for you, but I do think that finding a way to work together, through some of the international institutions and other initiatives like the G20 that we are tangentially involved with, those kind of things make sense to me.

We have to find ways to partner. Because even as we are pushing back on the problems, trying to solve them together is in our interest.

Senator CASSIDY. I am not sure who this question is directed towards. It has occurred to me that the labor standards and the environmental standards in China are either nonexistent or not enforced. Indeed, you could call it a negative enforcement if you include slave labor.

And on the other hand, we have treaties with Mexico and the CAFTA–DR that require labor and environmental standards. Now in a sense, this turns out to be a subsidy to China, allowing them to undercut the cost of production within one of these other countries, because they do not have to comply. And the cost of compliance inherently adds cost.

One, do you agree with that observation? And I open that up to anyone who feels qualified to speak. And secondly, what do we do about that? Because otherwise there will be a giant sucking sound of business from Central America to China. And when that occurs, people lose jobs, and they tend to migrate to the United States.

Mr. WILLEMS. Senator, I can jump in quickly and just say, it is something I have written about a little bit in the past, and I put forward a WTO reform proposal. And one of the ideas there was to try to impart those kinds of standards into the international rule set so that they do apply to China, just as they apply to countries with which we have an FTA.

I agree with you, China should not have a leg up on us, both allies and partners, through FTAs.

Mr. WESSEL. Senator, yes, I agree with your comment a thousand percent. The AFL–CIO, I believe in 2004, had filed a 301 petition regarding China's labor rights violation. The petition was not accepted.

I think that needs to be updated, because I think, since that time, we have all seen what effect China's failure to promote labor rights, freedom, et cetera, has had on our own workers. So I would suggest that we update that petition and bring it forward, as we also look at doing what Clete is saying about bringing this into the WTO. But until the WTO acts, we cannot afford to allow the continued impact on our own people.

Senator CASSIDY. Mr. Chairman, I yield back. Thank you.

The CHAIRMAN. Thank you, Senator Cassidy.

Next is Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

Mr. Wessel, it is good to see you again. Would you agree, Mr. Wessel, that China has never engaged in a good-faith effort to reduce over-capacity?

Mr. WESSEL. I would agree 100 percent; yes, sir.

Senator BROWN. So, Senator Portman and I have recently introduced legislation, I think you know, to strengthen our antidumping and countervailing duty, building on the Level the Playing Field Act of 5 years ago, to challenge unfair trade practices and reduce the impact of over-capacity and support workers in Ohio and Oregon, and Senator Casey's Pennsylvania, and all.

Do you agree this legislation will help support Ohio steelworkers and protect U.S. jobs?

Mr. WESSEL. Senator, I think it is not only Ohio steelworkers, but workers all across the country. Because, as you know, it is steel, it is aluminum, it is chemicals, it is solar up in Senator Wyden's area. It is about 15 to 17 sectors that are in over-capacity, and that decimates U.S. production and employment.

So I think the tools you are talking about are vital, and they reflect the changing nature of China's competition.

Senator BROWN. So, walk through for the committee why the Brown-Portman bill will help to create more of a level playing field across those 17 industries?

Mr. WESSEL. Well, as you know—and I think Clete just used the comment Whack-A-Mole—China's over-capacity is like a Whack-A-Mole problem. Not only do they change the nature of the product, which then creates a new competitive pressure here, but they are flooding other countries' markets with their core products.

You will remember several years ago, oil country tubular goods, we had a trade case against China. We successfully won that. They then sent hot-rolled coil into Korea that was transformed in a minor way. Korea uses no OCTG, but they started shipping it to the U.S., and again we lost production and employment here in the U.S.

That is just one example across hundreds, if not thousands, of products. Each trade case takes about a year and a half for the first results, and as much as five for a final, and costs generally between $1.5 million and $3 million. But that does not even talk about the injury that has occurred to the company and the workers.

Many companies never come back, as you know, and you have seen that in your State. So the tools you have provided in your and Senator Portman's legislation would make it easier to address serial dumping. It would make it easier in a situation like today, where companies are just coming back to profitability. But that can be used against them at the ITC.

So I would say, all of the tools you are providing are ones that U.S. companies and workers need.

Senator BROWN. Thanks, Mr. Wessel. I remember learning that new acronym and having it burned into my brain, OCTG, as we made those pipes in Ohio. We made them all over the country. And we saw, as Mr. Willems said, the Whack-A-Mole show.

I remember when they went to Korea. And Korea had no industry of that type, was at zero before that happened. So thank you.

Chair Wyden and Ranking Member Crapo, thanks so much for the hearing, first of all, for doing this, and for your ongoing work to address China's anticompetitive trade policies, combined with Brown-Wyden and all the things we have done together and will continue to do together that are really important.

As this committee moves forward with this bipartisan legislation so American workers and manufacturers can compete, I would like to ask you, Senator Crapo and Senator Wyden, to work with me and Senator Portman to include our Eliminating Global Market Distortions To Protect American Jobs as part of this effort. We can together strengthen our trade remedy laws. And I will give back time, but I ask unanimous consent to include a few letters of support for this legislation in today's record.

The CHAIRMAN. Without objection, so ordered.

[The letters appear in the appendix beginning on p. 52.]

Senator BROWN. Thank you, and I yield back the rest of my time, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Brown, and we look forward to working closely with you.

Next is Senator Lankford.

Senator LANKFORD. Mr. Chairman, thank you. And to our witnesses, thank you as well for your work on this exceptionally important issue.

I have to tell you, in this day and age I am amazed at the number of American companies that are still looking to China to do manufacturing, after all the intellectual property that they have stolen, after their immense human rights abuses and what they have done. And I am particularly astounded with the number of American companies that will boycott States in the United States, that will make public statements about different things, but have no problem doing business in China, which has one of the worst human rights records in the world; which limits a free press and takes away any right to vote for any individual in a meaningful way in China; which does surveillance laws on their people; which violated their word on Hong Kong, and said basically Hong Kong will have some sort of autonomy until 2047. And then, when it was not convenient, they just broke their word on that and consumed Hong Kong with their surveillance network. They do forced abortions on individuals and limit the number of children that families can have. They limit free access to faith, free access to a free press, free access to assembly.

All of those things are common in China, not to mention the prison camps of the Uyghurs and the multitude of other issues that they have done, as we have talked about, economically, today. So there are serious issues with any companies doing business in China. They need to be clear-eyed on the real risk of having a communist government be your partner for your business.

And it needs to be very clear for American companies that are going to speak ill of America but seem to have no problems with engaging in China and the things the Chinese Government does there. So I would encourage companies to be awake as they deal with their interactions with China.

Saying all that, there are a billion people there. There are a lot of companies that want to do business with a billion people and are engaged in that process. So I want to be able to talk to some of the things that China is doing that we need to pay attention to, and I would like to start with rare earth minerals and critical minerals.

China has been very strategic in trying to isolate the critical minerals market and rare earth minerals. We have, quite frankly, allowed them by limiting production of critical minerals here in the United States, and have just exported that work to China to manage.

Now we are behind the eight ball in many ways on trying to be able to catch up on those critical minerals that are needed for solar panels, for batteries, for steel production, for so many items in our cellphones—everything else.

So let me ask, Mr. Willems, do you have ideas on the critical mineral side of things that we can continue to do to be able to catch up and to be able to level the playing field that we have abdicated to China?

Mr. WILLEMS. Thank you, Senator, and I appreciate all of your remarks. I will say, on critical minerals, I mean there has been a lot of discussion in this administration. They have a supply chain executive order. They are looking at this. I think we are looking forward to their recommendation.

One thing I will say, though, if we are serious about this, I really do think that permitting and being able to produce these minerals in the United States has got to be a core part of that. And I understand that some have environmental concerns about that, but we need to find a way that we can do it in an environmentally friendly way in the United States. Because otherwise, I think we are tying our hands behind our back.

We cannot just subsidize our way out of this. I also would really look at partnerships with other countries. Australia is a country that has done a lot of work in this area. And I think we should look at leveraging institutions like the Development Finance Corporation to have joint partnerships and projects with Australia.

So those are two ideas that I would put into the mix, and I very much look forward to the results of the Biden administration's review.

Mr. WESSEL. Senator?

Senator LANKFORD. Go ahead.

Mr. WESSEL. Senator, if I could just add quickly, the NDAA that Congress just passed, I guess with a veto override earlier this year, included a new provision that would expand rare earth mineral utilization by DoD from mines to magnets. Prior to that, the DoD was required to procure products, the final products, from an allied country, essentially, but it allowed Chinese rare earth minerals to be the underlying basis.

The new provisions should help get those four U.S.-based mines back online. It is going to take a bit of time, but we need to do that, with investments as well as broader provisions.

Senator LANKFORD. I completely agree.

Mr. Willems, I want to follow up on a WTO question with you as well. China talks about how they are co-equal to the United States, and they are another world superpower, until it comes to WTO. And then suddenly they shrink back and say, "We are a developing poor country, and we need extra subsidies, and we do not need to pay our fair share in."

What reforms need to be done to WTO? Because China has an outsized influence in that, and a veto in the dialogue.

Mr. WILLEMS. There are a lot of reforms that need to be done by the WTO. I have a paper that I wrote on this, and I would love to share that with you and talk further. I know we are almost out of time, but I will say, to your point, the developing country status is right at the top of the list.

If China claims that it is a co-equal partner in the global community with the United States, it needs to treat itself like one at the WTO. And we need to have objective criteria that say, given their significant size and the power of their economy, they have got to take on every single commitment that the United States does.

Senator LANKFORD. Thank you. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. I thank my colleague.

At this point, it is Senator Casey, and we are just going to keep going. It has been a challenge, but Senator Crapo and I are determined to make sure that everybody has a chance to get heard on this crucially important topic.

Senator Casey?

Senator CASEY. Mr. Chairman, thank you very much. I know we are well into the vote, so I will try to be brief and try to be under time.

Mr. Wessel, I will direct my question to you, maybe two questions at the most. We have all seen too clearly the cost of relying on China, which is a non-market economy, for our Nation's critical capabilities, especially with respect to personal protective equipment. We also have very little visibility on what other vulnerabilities might exist with respect to production dependencies in other sectors of our economy.

Last month, the U.S.-China Commission held a hearing to examine how U.S. capital investment in China props up the Chinese Government's military-civil fusion and ultimately compromises the U.S. national security. Some witnesses noted that the U.S. does not have a mechanism to assess how outsourcing by U.S. companies to countries of concern may compromise our national security and the security of supply chains that Americans depend upon.

Senators Cornyn, Stabenow, and I have a proposal to increase visibility on vulnerable supply chains, to review outbound—outbound—investment of critical capabilities to foreign adversaries and non-market economies like China, to assess and address dependencies and vulnerabilities of our critical supply chains.

Mr. Wessel, do you agree the U.S. should establish outbound investment review?

Mr. WESSEL. I do. And I think the structure that you have been advancing—I have talked to your staff—allows for the flexibility in terms of viewing this, but will gain the necessary information as well as control where critical products are at risk.

Senator CASEY. Well, thanks very much. I will propound additional questions to you in writing. And I will conclude with this, Mr. Chairman, in the interests of time.

I know that Ranking Member Crapo and his staff have raised concerns with respect to elements of this proposal. I think it is important the U.S. has visibility on vulnerable supply chains, and also critical that we know when national critical capabilities are being offshored for foreign adversaries.

I hope we can work together to reach a resolution on your concerns. I think this is a critically important issue. And I will yield back 2 minutes and 30 seconds because I know the vote is on. Thanks very much.

Senator CRAPO [presiding]. This is Senator Crapo. I believe Senator Wyden has stepped out to go to the vote, so I am going to go next to Senator Daines.

Senator DAINES. Yes, thanks, Senator Crapo.

I spent over half a decade in China in the private sector. We were launching, marketing, and selling American brands to compete, back in the 1990s, against the state-owned enterprise brands. And we beat them handily, by the way. It was nice to see the American brands winning.

I have led a lot of codels to China, getting more U.S. Senators engaged to understand what is going on on the ground there, to see the innovation ecosystem that they are building in China, and what that means for the United States and the world.

I have seen first-hand the challenge and the repression implemented by the Chinese Communist Party, as well as the need to hold China accountable for its unfair trading practices and existing commitments.

It is also essential, I believe, that the U.S. make needed investments in research and development. How we run faster here in America, in terms of global competitiveness and beating China into these next-generation technologies, is we are truly going to have to race to be more competitive and be more innovative.

And that is why I strongly support Senator Young's Endless Frontier Act. I appreciate his leadership on this issue, which I think will help ensure the U.S. maintains its competitive edge in scientific and technology innovation, supporting high-tech jobs around our country, and right there in Montana.

I want to start with a question for Mr. Willems. In your testimony, you highlight the importance of ensuring the U.S. runs faster. I agree with that. As it relates to competing against China, you reference the Endless Frontier Act as a good start, which I agree with.

As Congress considers a proposal to ensure the U.S. remains a global leader in innovation and technology, how should we target investment to ensure that we expand upon the competitive advantages a free market economy provides and do not displace them?

Mr. WILLEMS. It is a great question, Senator, and I do think that that is an important point that I tried to make in my opening, that the reason the U.S. has been the world's leader for years in innovation is because of our free markets and our market economy, which is different from China.

China has been successful in very targeted areas where it has had a ton of money and therefore been able to develop innovative technology. So I think what we do not want to do is to just throw a bunch of money out the door and hope that we beat them. I think we need to interface with the private sector directly and say, "Where in particular are you going? And how can we help you get there?"

I think some of the things in the Endless Frontier Act that talk about working with universities are critical. I think tax credits for innovation for our companies are important, in addition to the things that are in that bill.

Again, I think we need to, as we are moving forward—we need to not abandon our principles, because they are the source of our strength. And especially I think, if we are looking at supply chains, we need to not become a closed-off society where we aren't competing, working with others around the world. We need to leverage each other, the things we bring to the table.

And 5G and 6G are good examples where we have not been able to do everything at home in the United States. We have some companies that are involved there, but we are going to need to work with Japan and others.

So it is all about the positive incentives, and to realize we cannot do everything ourselves, and we need to maximize our abilities to have our companies work with others, work with——

Senator DAINES. Mr. Willems, thank you. I am going to jump in on the specific issue of polysilicon. It is a critical component to nearly everything: semiconductors, next-generation batteries, other technology essential for long-term competitiveness and growing our economy.

For years, the U.S. polysilicon industry has been targeted by China, and retaliatory tariffs are actually threatening a lot of our high-wage manufacturing jobs in places like REC Silicon in Butte, MT. What can be done to strengthen the U.S. semiconductor and battery supply chain and reduce our dependence on China for these critically important materials?

Mr. WILLEMS. I do think that we need to fully fund the CHIPS for America Act, which was included as part of the NDAA last year. We authorized the program; let's fund that program.

I would also look at the tax incentives that were included there that I think were left on the cutting room floor. That would help for additional fabrication in the United States. We also need to keep helping additional design in the United States.

And the other thing on semiconductors, is we need—if we are going to take export control measures against China, we need to coordinate those with others. And we need to allow our semiconductor companies to sell nonsensitive materials to China. Because ultimately what that does is, that helps make China subsidize our companies.

So look, on the most sensitive stuff, you may have to shut the door. But on stuff that is not sensitive, let's let our companies sell overseas so we put China in the position of helping us——

Senator DAINES. I am sorry to interrupt you, but could you give a quick comment on—I am concerned about critical minerals in China's control there. What risk does the U.S. face should China restrict access to these critical minerals? And how can we mitigate the threat? I know I am out of time, so you will have to make it a quick answer.

Mr. WILLEMS. Sure. They have done it before, and we sued them at the WTO and won when they tried to do that. I think we need to keep disciplines there internationally, but we also need to partner with others to diversify our supply chains and our source of supply. And I mentioned in an earlier question that Australia would be a good partner on some of those things. I would also look at Canada and others who have some resources, as well as our own.

Senator DAINES. Thank you.

Mr. WESSEL. Just very quickly, on polysilicon, we should act against the forced labor that is producing the polysilicon in the Xinjiang region. It is something that has been raised, and that could have a big impact as well.

Senator DAINES. Thanks, Mr. Wessel. Thanks, Senator Crapo.

Senator CRAPO. Thank you very much, Senator Daines. And I am not sure if we have any Senators back from the votes yet, so I am going to go through a few names here. And if none of the Senators is back yet, I have a couple of questions of my own that I did not get to ask before.

Is Senator Warner available?

[No response.]

Senator CRAPO. Senator Young?

[No response.]

Senator CRAPO. Senator Whitehouse?

[No response.]

Senator CRAPO. Senator Sasse?

[No response.]

Senator CRAPO. Senator Hassan?

[No response.]

Senator CRAPO. Senator Barrasso?

[No response.]

Senator CRAPO. Senator Cortez Masto?

I believe she is—I have been told she is close to——

Senator CORTEZ MASTO. I am here; thank you.

Senator CRAPO. Oh, good. Go ahead.

Senator CORTEZ MASTO. Thank you, Mr. Chairman and Ranking Member.

So this is a great conversation, and I so appreciate the written testimony.

Let me start with the panel on technology competition. You know, it is clear that competing with China in this technology sector will entail a whole-of-government response. And that is why I have been working on legislation to conduct a review every 4 years that will collect, coordinate, and outline the national posture on key technology issues.

I think by clearly identifying our goals, and appropriately investing, we can ensure the United States is globally competitive for decades to come. But my question is, what role do you see technology development and innovation playing in the broader global competition landscape? And would you agree that it would be helpful to have a strategic posture across many Federal agencies to be competitive on various technologies such as 5G, AI, and green energy?

Let me open that up and maybe start with Mr. Willems.

Mr. WILLEMS. Thank you, Senator. I think it is a good idea for us to be more strategic and to coordinate better across the agencies. I think that is an area that we have struggled with a little bit in recent years, and I think making sure we have an overall strategic plan is important.

I also like the idea that you are constantly updating priorities, and you are constantly reviewing them. And I do think this is where—the point I was making earlier—where having the private sector come in and help us understand where they are going and where they need help, is the way to do it.

You do not want to have a completely top-down approach where the U.S. Government is deciding we are going to do X, and then throw subsidies out the door. But we need to have this constant feedback loop with our industries, so we know exactly what they need. So that should be in there as well.

Senator CORTEZ MASTO. Thank you.

Anyone else? Any other comments on this question?

Mr. WESSEL. I would just say that I think it is spot-on. If we look at what is happening now with the auto sector being starved for semiconductors, that has resulted in production and employment loss. Technology is now embedded in virtually all our products—production processes and the products themselves. So it is no longer some esoteric issue. It goes to the core of America's competitiveness.

Senator CORTEZ MASTO. Thank you.

And, Dr. Kokas, I see you had your hand up.

Dr. KOKAS. Yes, I did. Thank you, Senator Cortez Masto. So a national posture on tech issues is essential. In my conversations with partners and allies in Japan, the European Union, and Australia, one of their major critiques is that it is very difficult to collaborate with the United States because there is not a clear, affirmative vision of what U.S. tax policy actually is.

The second issue that I would point out is the importance of having aligned tech policy across different agencies for cybersecurity purposes. So agencies like the Social Security Administration have not historically had a large cybersecurity mandate. However, they have, increasingly, data that could be very useful in targeted hacks.

And finally, I think that it is particularly important to look at a national policy in order to be able to deal with Chinese acquisitions of global firms that gather data within the United States.

So currently, the CFIUS process does not address that. I am thinking specifically of Syngenta as the largest Chinese acquisition outside of the U.S. They gather huge amounts of U.S. agricultural data, but it was an acquisition of a Swiss firm.

So by having strong U.S. tech policies, we can actually identify which types of data, and which particular sectors, are most important to address nationally and manage issues like that that are not currently addressed in that process. Thank you.

Senator CORTEZ MASTO. Thank you. I so appreciate that.

Another area I want to focus on with all of you, while we are here, is the technology standards. One key area we address as we look at global competitiveness in technology is the standard setting process, right? Standard specifications define performance requirements for materials, products, and services related to technologies around the world.

I believe it is critical that we absolutely look at this for emerging technologies. The Chinese Government has already established goals to set global standards for emerging technologies like 5G and 6G, the Internet of Things, artificial intelligence. And again, I am working on legislation to establish this interagency task force that will develop really a strategy for emerging technology standard setting to help us affirm our leadership on this issue.

So I wonder if you would be willing to discuss the importance of the U.S. involvement in standard setting, and how critical it is at this point in time.

Dr. KOKAS. Thank you, Senator Cortez Masto. Very briefly, one thing that I think has received a lack of attention is the participation of Chinese Government entities in multi-stakeholder organizations.

We have discussed a lot about multilateral considerations, and I think that is crucially important. However, these are things that could immediately change on a dime. And when bringing this up to colleagues in the Department of Commerce, one of the things that they have highlighted is that this is a U.S. policy decision.

I think that we are really leaving things on the table by allowing Chinese regulators to participate actively in multi-stakeholder organizations and professional organizations that are really setting the standards based upon how the U.S. has structured the global regulatory environment by putting corporate interests first.

However, U.S. corporations currently have multiple different masters, shall we say, and our interest is both in their relationship with the Chinese Government and the U.S. Government. By not sending U.S. Government entities to these professional organizations, we are enabling the Chinese Government to take leadership in crucial areas. I am thinking particularly in facial recognition technology.

Senator CORTEZ MASTO. Thank you. Thank you so much. I know my time is up. Thank you for this great discussion today.

Senator CRAPO. Thank you, Senator Cortez Masto.

I am going to check again. I understand several Senators are on their way back. Are there any Senators who have not had a chance to ask questions who are——

Senator WARNER. Senator Warner.

Senator CRAPO. Senator Warner, you are up.

Senator WARNER. All right; thank you, Mr. Ranking Member, Mister Almost Chairman.

Let me add—I am not going to ask a question on this, but I want to echo what Senator Cortez Masto just asked and Dr. Kokas's comments. This is an area where, candidly, I think America went to sleep. We went for 50 years assuming for almost every technological innovation, even if we did not invent it in America, that we would set the standards, the protocol, the procedures.

And you know, I see this in 5G—I was a telcom guy. We did not flood the zone with our engineers and our technical people. China is flooding the zone and, consequently, setting standards. You mentioned facial recognition. I am fearful that that is going to grow into AI across the board.

We have already seen China set standards on 5G. And the standards are so important because it is not just about what radio spectrum we use or what technical specs; it really does creep into things like transparency and respect for human rights.

I think it is so important. And if you look, China has even got a document, China 2035, where they have laid out by issue area where they hope to set the standards.

So, Dr. Kokas, I want to say, a corollary of that is where U.S. companies are actually almost enabling—under the guise that nobody can miss the Chinese market, they are willing to sacrifice their values that they would never sacrifice in our country or, for that matter, in virtually any other western country, to kind of get access to this market.

I actually think sometimes helping China with censorship surveillance, social control—a couple of years ago, I wrote the Google CEO with Chairman Wyden about the company's efforts to literally work with the Chinese Government to build a surveillance-enabled search engine in China, totally counter to anything Google has said about their values.

How do we address this entity where actual American companies are willing and obliging Chinese efforts to advance, not only their economic dominance, but the goals of the CCP. And when I mention China, it is important to mention my interest is with the CCP and Xi Jinping, and it is not with the Chinese people or the Chinese diaspora, particularly Chinese Americans. But shouldn't we—how do we hold U.S. companies accountable to the kind of values they espouse here when they then quietly are willing to work to advance the goals of the CCP in terms of their surveillance state?

Dr. KOKAS. So thank you so much, Senator Warner, and it is a pleasure to answer the question, as a proud professor at the University, and a proud Virginian.

So I think that this is a multi-pronged question, and there is not one specific answer. One area where I think the U.S. can make a huge difference is by passing a comprehensive data privacy framework which prevents U.S. companies from exporting, exfiltrating data to China, or Chinese companies that are operating within the U.S. from exfiltrating data back to China.

I think this is essential, because it also strengthens consumer privacy within the U.S. It also is truly important, because we have a situation in the U.S. where companies are—we have used the words Whack-A-Mole multiple times, but companies are changing their privacy policies by the day.

As I write about these things, I have to have alerts for when TikTok is changing their transparency policy. The legislative calendar does not work at that pace. So there needs to be legislation, and there needs to be reporting in place for how companies are sharing their data abroad.

That's something we can do within the U.S. This is also important because we do not know precisely the ownership stakes, or the ownership relationships, of privately held companies that have relationships with China. I am thinking in particular of Epic Games and Fortnite that have huge amounts of data, and we have no idea how they are sharing it. All that we have reliance on is what the company says, and they say that they do not share their data with their Chinese partners, but there is really no way that I have to identify and actually test that. But that is an important first step.

Senator WARNER. I appreciate that, and I do appreciate the work you have done and am proud that you are doing it at the University of Virginia.

I just, in my last 25 seconds, want to make the case not only to the panel—and Mr. Wessel has actually helped on some of this. I believe the Chinese model, which I call kind of authoritarian capitalism, is where they allow dramatic domestic competition in emerging technologies, always then getting a Chinese champion that emerges, dominates in the Chinese market, and then that Chinese champion is advanced abroad.

We have seen that in the case of Huawei—the $100-billion backstop. We see it in the case of semiconductors—$150-billion investment. Many of us on this committee are working in a bipartisan way to make a substantial investment in the semiconductor industry—$50 billion in emerging appropriations under the so-called CHIPS Act with my good friend John Risch and many on the committee.

We need to make that law very shortly. We also need in an area, I would argue where we are not only behind because we don't even have an American player but could potentially lose the game in 5G, to go beyond 5G to ORAN—Open Radio Access Networks.

We have a similar type of emergency appropriation that is broadly endorsed by American and other companies, about moving to this more software-based system in ORAN. And I have gone too long, so the pitch is to my colleagues. I would love to talk to you more individually. I think this legislation will be the second week of May, and I think sending a broad bipartisan signal that America is willing to get back in the game in terms of these cutting-edge technologies, standard setting, and also the key research, is critically important.

And with that, I will yield, Mr. Chairman, or Senator Crapo; but thanks for giving me the extra minute.

Senator CRAPO. You bet. Thank you. And I appreciate your focus and what you are saying.

Next is Senator Young.

Senator WARNER. Senator Young has been a leader on this. Let me just, as he comes on, give him a shout-out as well. He has been the key leader on the underlying legislation.

Senator CRAPO. Yes, he has been very strong on this.

[No response.]

Senator CRAPO. I am going to go through a few more names. Senator Whitehouse?

[No response.]

Senator CRAPO. Senator Sasse?

[No response.]

Senator CRAPO. Senator Barrasso?

[No response.]

Senator CRAPO. Senator Warren?

[No response.]

Senator CRAPO. Senator Scott?

[No response.]

Senator CRAPO. We do expect a couple of those back right away, and so while we are waiting for them, I have a question for you, Mr. Willems, on the TRIPS Agreement.

When you were in the Trump administration, you were part of the team that worked to stop forced technology transfers to China. Some have argued that the TRIPS intellectual property waiver would amount to exactly that, a forced transfer of MRNA vaccine technology to China, and other vaccines, and would be delivering a competitive advantage to countries that are increasingly viewed as our adversaries, at taxpayer expense.

Do you agree? And how do you evaluate that?

Mr. WILLEMS. Thank you, Senator. Unfortunately, I do agree, and I am very concerned about the Biden administration's consideration of a waiver of intellectual property protections at the WTO, which ostensibly would help distribute more vaccines for COVID around the world.

Look, I will be the first to say the more we can distribute the vaccines around the world and help other people is great. But the problem is, this is actually not the right way to do it. IP has not been an impediment to vaccine distribution, and we have actually had our companies do licensing agreements with companies in India.

So the notion that IP is somehow causing a problem here is wrong, and it really, I think, is just this longstanding effort by India and others to undermine U.S. IP at the WTO.

And then to the specific point you made, let's keep in mind that the technology that we are talking about, the MRNA technology, this was something that was funded by DARPA, by our Department of Defense, as a national priority that helped facilitate the production of these vaccines. And the notion that we would go to the WTO and basically say, technology transfer of DARPA-funded research to China, which has specifically identified this in its Made in China 2025 plan—the fact that we would aid and abet Made in China 2025 is crazy to me.

And so I really hope the administration realizes that is not the right way forward. I think there are other things we can look at. I think, you know, funding—funding distribution is fine. If you are facilitating licensing agreements that are done on voluntary terms, that is fine. But I think if we are having an honest conversation about this, we also need to look at our export policies and say, how do we export more of this stuff from the United States?

I know a lot of Senators are familiar and are interested in building a stronger domestic pharmaceutical sector, but let's use this as an example. Let's help them send the vaccines around the world and sanction our supply chain in America.

Senator CRAPO. Thank you. Do any of the other witnesses have an opinion on this issue that they would like to share?

Mr. WESSEL. Senator, thank you for the question. I have worked hard at this. I disagree with Clete's comments on a very limited waiver for this product. I think we are facing such a large problem globally that we have to bring this into line. But we also need to do better about preventive measures, the ability to make sure our early-warning systems are better, et cetera. But I would do this as a one-off, but restrict it to this product.

Dr. KOKAS. Senator Crapo?

Senator CRAPO. Yes?

Dr. KOKAS. Just two quick points on this.

So first of all, I would like to agree with Mr. Wessel that if we are not able to actually bring the COVID–19 pandemic under control, there will not actually be a global economy, or efficient global trade for us to discuss.

So I think that there is a reason for the limited exception here. But the other thing that I think is really important to underscore that seems to be the focus of the committee hearing, is that the MRNA vaccine technology emerged from the funding of basic research in the United States. And advancing the funding of basic research, not specifically applied research but basic research, is essential in order to ensure American competitiveness.

We do not know how long—it is a very long time horizon, so there tends to be a focus on strictly applied technologies, but this underscores the importance of not just funding things that we can use within the next year or 2 years, but things that build out our innovation ecosystem for the next 20, 30, 40 years. Thank you.

Senator CRAPO. Thank you.

Mr. WILLEMS. And if you would indulge me for just 20 seconds, I agree with Mr. Wessel on so many things, but I would note that the proposal that India and others are making at the WTO is not limited. They are basically asking to waive broad portions of this intellectual property agreement, ostensibly because of its vaccine issue, but really it is a much broader proposal. And I think there are just better ways to do it. We do not need to give our technology up to China and others who facilitate exports to the United States.

Mr. WESSEL. Again, I would do it as a one-off. I understand the concerns and share those, because IP really goes to the heart of America's competitiveness.

Senator CRAPO. All right, thank you. Thank you both very much.

Have we had—well, for example, I am told Senator Young is coming back. Senator Young, are you back yet?

[No response.]

Senator CRAPO. Any other Senators who have made it back yet?

[No response.]

Senator CRAPO. All right; I am going to go on with another question then. This one is to you, Mr. Baer. One of the issues with the section 301 exclusion process that I have seen, in terms of companies coming to me and asking for help in trying to get a 301 exclusion, is timeliness. It takes a significant amount of time to get the 301 exclusions through the process and put into place.

And now to have them expire and have to go through that process again, I would think is a little disconcerting. Would it be helpful to businesses like yours—and as we talked earlier, issues across our country in this context—if there were some kind of a timeline, or a time frame required for responsiveness to these kinds of issues?

Mr. BAER. Yes, most certainly. You know, I certainly understand the program, and it operates differently than business. And you know, probably for very good reason. But certainly, the length of time that some of these things have taken has been a challenge for us, where we are almost to May now and we are still trying to fight to get our exclusions back.

So certainly some sense of timeliness, or at least expectation of time frames, would be helpful.

Senator CRAPO. All right; thank you.

Mr. BAER. Thank you.

Senator CRAPO. Anybody else want to weigh in on the section 301 exclusion process or issues?

Mr. WILLEMS. Sure, Senator. I would just say, I think the administration should update the process as soon as possible. We want to help our companies like Mr. Baer's. And I think there are some changes we might want to make to it as well, to make sure it is more transparent and actually works for companies, and that they have some sense of certainty.

So I would strongly support what he just said.

Senator CRAPO. All right; thank you very much. I still do not see any Senators having made it back yet. Are there any?

[No response.]

Senator CRAPO. Okay; I am going to go on to another question then. And this is one I would like to throw out generally. It is with regard to semiconductors.

Senator Wyden and I—and many of the others on this committee and other Senators in the Senate—are very committed to strengthening and improving America's competitiveness in the semiconductor industry in response to Chinese anticompetitive conduct and subsidization, as well as activities across the globe in other countries.

One of the big things that has already been discussed about that is the CHIPS Act, somewhere between $30 billion and $50 billion of direct grant support for the American semiconductor industry. That is primarily a spending issue. It would really be resolved, most likely, in one of the spending bills moving on the Senate floor, or in the appropriations process.

But we have been looking very carefully at, within the jurisdiction of the Finance Committee, what types of activities or solutions would be helpful; for example, a development tax credit or an R&D tax credit or some other type of ability to incentivize the growth and the strengthening of our semiconductor industry.

I would just like some of you who may have thoughts on this to kind of free wheel with me here for a second and discuss what we could do to go beyond the CHIPS Act to do what is necessary to strengthen our semiconductor industry.

Mr. WESSEL. Senator, I will take a crack at that, if I can, and thank you for the great question. And certainly, the CHIPS Act being fully funded is the first step. But this committee has significant jurisdiction.

First of all, for example, in trade agreements the ability to include these kind of technology products as part of content requirements often is done more generally, and there are things that could be done, as was done in part in USMCA, to look at new technologies and how we can use procurement as a pull-through. That is number one.

Number two, there is often what is called "the valley of death" between research and deployment. And I think the committee could look more at how we expand the deployment of these technologies without running afoul of WTO's subsidy protocols and disciplines.

The ability to test the development and deployment of technologies, these chip fabs, as you know, as well as the equipment used to produce semiconductors, are extremely expensive. So taking something from the lab bench to the shop floor to the clean room floor is a difficult process. I think that is something where there are a lot of tax rules and other provisions under the jurisdiction of Finance that could come into play.

Mr. WILLEMS. I would just add—I mean I do think, as you alluded to, some of these tax credits that are within your jurisdiction are the way to go. And in particular, if you look at the semiconductor supply chain, there are some things we are doing well, and there are some things we have not done as well, and we really need to look at the foundries and fabrication of semiconductors and find ways to actually manufacture in the United States.

But I also will make a broader point here, which is that, in addition to the specific targeted things for the industry, we also need to look at the general condition of this business in the United States, and that is the overall tax policy that gets to how easy it is to make new facilities, site these facilities in the United States, and it also looks at how well you can export from America.

And as I alluded to before, when we are looking at export control measures, we need to be careful that they do not make it too difficult for us to send our products abroad. And we need trade agreements so we have new markets for ourselves as well.

So I think all those things are important.

Senator CRAPO. Thank you. Anybody else?

[No response.]

Senator CRAPO. All right, I am going to go—I am going to ask again if any of our Senators have made it back.

[No response.]

Senator CRAPO. For our witnesses, we have four votes going on right now. And I am guessing that a lot of our Senators are just feeling like they are caught up on the floor until they get through this—oh, here is Senator Wyden. We can ask him how to proceed.

Senator, can you hear me?

The CHAIRMAN. I can. I can.

Senator CRAPO. We do not have any other Senators back, and have not had anybody back for probably 5 or 10 minutes. And I have run out of my questions. And so I do not know whether you want to wrap up the hearing, or whether you expect other Senators to come back, but the ball is returned to you.

The CHAIRMAN. Senator Crapo, let's make sure we have asked staff about it. My understanding is, on both sides, our side and your side, we gave a last call for Senators who would like to participate.

So your side does not have any additional——

Senator CRAPO. My understanding is, we are not aware of anybody on our side who is asking to participate at this point.

The CHAIRMAN. Let me just check with our side. Nobody is waiting.

Well, what I will do is—and I welcome you to as well, Senator Crapo, if you would like to—I am just going to give a short closing statement. And that also will give us a chance to see if members come back.

I want to thank our witnesses. Terrific panel, because——

Senator CRAPO. Senator Wyden, I have to—they are calling me because I have to get back to this next vote, so I am going to slip out now. You can wrap it up.

The CHAIRMAN. Perfect. Thank you, Senator Crapo.

I want to thank our witnesses, because you gave us exactly the kind of information we need to get to the bottom line, which is to out-compete China.

And my colleagues today have raised a variety of critical issues with respect to our trading, our relationships, digital trade, censorship, agriculture, theft of intellectual property, monetary policy, the list goes on.

And to me, the diversity of topics shows that this is a substantial, difficult, multi-pronged issue that China presents. I appreciated Mr. Wessel describing the size of the problem: $2.4 trillion in lost intellectual property, $134-billion trade deficit in advanced technology, an estimated 3.7 million lost jobs since 2001.

Dr. Kokas described China's efforts to export repression. That is how I would characterize it. And we always think about exports—what they are doing is exporting repression through their digital and censorship policies.

Mr. Willems and Mr. Baer captured the impact of these anti-competitive practices in the United States.

So we look forward to working with all of you on a clear-eyed and effective legislative response to these anticompetitive practices. My view is, this legislation—and the bipartisan approach we are pursuing—is an example of trade done right. Because it says, at the center, we are going to make sure that American workers have a chance to compete fairly.

Now I believe Senator Stabenow of Michigan, for whom these China issues are very important, is on her way to the hearing. So I think at this point, with your leave, we will take a 5-minute recess and we will wait for Senator Stabenow, because these are important issues to her, and we will be back out of here at the conclusion of her questions and will wrap up. So my thanks to all of you.

[Brief recess.]

The CHAIRMAN. All right, I thank our guests for their patience. Our colleagues are so interested in participating in this. I believe Senator Bennet is ready to ask questions. Is that true?

[No response.]

The CHAIRMAN. Senator Bennet?

[No response.]

The CHAIRMAN. I had been told at one point that Senator Bennet was here, and Senator Warren was interested. Do we have any Senators? This is almost like making a public appeal.

[No response.]

The CHAIRMAN. All right. What we will do is, we will recess for an additional 5 minutes. And I think you can tell the end is in sight, and we thank all of you very much for your patience.

[Brief recess.]

The CHAIRMAN. To our witnesses, thank you all for your exceptional patience. It has been a terrific hearing, and we are going to adjourn, recognizing that, with the bedlam of today, it is not possible to be everywhere at once. Our thanks, and we are adjourning today. But as far as our involvement with all of you, it is to be continued.

Thank you, very much.

Mr. WESSEL. Thank you.

Mr. WILLEMS. Thank you very much.

Dr. KOKAS. Thank you.

Mr. BAER. Thank you.

[Whereupon, at 12:48 p.m., the hearing was concluded.]

APPENDIX

Additional Material Submitted for the Record

Prepared Statement of David Baer, Chief Operating Officer and General Counsel, Element Electronics

Good morning, Chairman Wyden, Ranking Member Crapo, and members of the committee. My name is David Baer, and I am the chief operating officer and general counsel of Element Electronics. Thank you for giving me the opportunity to share Element's story with the committee.

Element is the sole remaining mass producer of televisions in America. Our facility is located in Winnsboro, SC and at the end of 2020 was operating at essentially full capacity. That means all eight production lines were running and we had over 520 team members working at the facility. This success shows that with a level playing field our workers can out compete anyone. Importantly, our story is about community and people—at Element we offer living wages and benefits to our employees, over 90 percent of whom are African American. For many of our employees, Element is literally a family business with multiple generations working together at our facility. I have included in our written submission information about some of our employees and how they have benefited from the ability of Element to offer good-paying jobs in our community.

However, the success of our employees and our community depends on two issues that are completely beyond their control: the continuation of tariff relief under the China 301 tariff exclusions and the Miscellaneous Tariff Bill, otherwise known as the "MTB."

With respect to the MTB, it is important to understand that the most expensive input into the LCD TVs produced by our team in South Carolina is the glass LCD panel. These panels are not available in the U.S. Thus, Element must import these panels. Element faces a severe tariff inversion situation when importing these panels. The normal tariff on LCD panels is 4.5 percent while the tariff on finished LCD TVs is 3.9 percent. Putting a higher tariff on an essential part as compared to the imported finished TV obviously incentivizes the importation of finished TVs over U.S. production. To make matters worse, imports of finished LCD TVs from Mexico are duty-free under USMCA. TV producers in Mexico use the same panels that Element imports and the same factory equipment that Element uses—but Mexican producers import those LCD panels duty-free and then export the finished TVs into the USA duty-free.

The 2018 MTB provided temporary relief for the tariffs on imported LCD panels. Unfortunately, the MTB lapsed at the end of last year, and, as a result Element is once again at a severe competitive disadvantage relative to imports, particularly duty-free imports from Mexico.

In addition to the lapse in the MTB, Element is also now paying an additional 7.5-percent tariff on any LCD panels imported from China as a result of the section 301 tariffs. Element deals with the unfair competitive pressures from imports from China every day. We have seen firsthand how the Chinese Government subsidizes and controls Chinese companies and the Chinese economy. The United States must aggressively confront the actions and policies of the Chinese Government. However, the United States must also be careful not to inflict unintended harm on American producers and workers who have no choice but to rely on certain imports from China.

Recognizing the lack of U.S. production of LCD panels and the dominance of China in the LCD panel market, Element received an exclusion from the section 301 tariffs. Like the MTB, that exclusion expired last December. Even with the exclusion in place, Element worked to find non-Chinese suppliers for LCD panels and for a time was successful in sourcing LCD panels from sources outside of China. Unfortunately, over the course of 2020 each of these non-Chinese suppliers exited the LCD panel market for TVs as a result of relentless unfair competitive pressure from China. Now, Element is once again forced to rely on imports from China as we search for alternative sources of supply, which do not currently exist.

As a result of the lapse in the MTB and the 301 tariff exclusion, Element has gone from operating at full capacity and over 520 team members at the end of the year to operating just 4 lines, and employment has dropped to 370 team members. Although Element continues to produce to meet its ever-increasing demand from its customers, it is impossible to remain competitive in the face of an overnight 12-percent tariff disadvantage to our competition, most of whom are using Chinese materials assembled in Mexico. Without a restoration of the MTB and the 301 exclusions, Element will be forced to move production out of the USA. This will devastate our workers and our community.

Demand for Element TVs is strong. Just a few weeks ago, Element was named Walmart's 2020 Supplier of the Year in the entertainment, toys and seasonal category. However, no one can be expected to pay a premium of 12 percent for a TV produced in the US. Leveling the playing field through retroactively restoring the MTB and Element's exclusion from the 301 tariffs will allow Element's employees to once again successfully compete against anyone. Moreover, passing this bipartisan legislation will allow Element and many other companies to get back to doing what we do best—employing hundreds of hard-working Americans in good paying jobs in a community that relies on Element as one of its primary sources of economic growth. Therefore, on behalf of Element Electronics, our team members and their families, I urge Congress to enact legislation that would retroactively restore the MTB, and if the administration will not use the authority it has to retroactively restore the exclusions from the 301 tariffs, then Congress should enact legislation that requires the retroactive restoration of these exclusions.

Thank you for your time, and I am happy to answer any questions you may have.

Questions Submitted for the Record to David Baer

Questions Submitted by Hon. Mike Crapo

Question. Under section 301 of the Trade Act of 1974, the previous administration imposed four rounds of additional tariffs on approximately two-thirds of Chinese imports to the United States. However, to avoid undue harm to American consumers and manufacturers, the USTR initiated a tariff exclusion process for certain Chinese products subject to these additional tariffs.

Is it fair to say that without the exclusion from section 301 tariffs, Element Electronics would have had to cut back on employment—in particular, on well-paying manufacturing jobs? If so, can you tell me why?

Answer. Yes, that is very accurate. The most expensive and significant component in the production of an LCD TV is the LCD panel. China is the primary source of LCD panels as a result of Chinese producers driving non-Chinese suppliers out of the market. As a result, Element and all of our competitors in China and Mexico rely on LCD panels produced in China. Element received an exclusion from the section 301 tariffs for LCD panels and in combination with the benefits of the MTB, Element increased production and employment. At the end of 2020 we employed over 520 team members and paid a living wage and benefits. With the lapse of the section 301 exclusion and the MTB at the start of 2021 and the resulting overnight imposition of an additional 12 percent duty, Element's South Carolina plant became uncompetitive, particularly against tariff free imports from Mexico. As a result, we have had to reduce employment and production—we are now down to only 370 team members. We will likely need to continue to downsize our U.S. production in favor of foreign production without retroactive reinstatement of our 301 exclusion and the MTB. The lapse of the section 301 exclusion and the MTB has already caused the loss of good paying jobs and the rapid retroactive restoration of the exclusion and MTB is needed to prevent further job losses.

Question. An overwhelming majority of the tariff lines in the MTB are already subject to China section 301 tariffs. Moreover, the MTB provides relief on inputs key to U.S. manufacturing. Without MTB renewal, U.S. manufacturers will spend additional money they could have used on jobs and competitiveness.

Do you agree that failing to renew MTB legislation has already adversely impacted manufacturers, and that every day Congress fails to renew it is another day that hurts industry's ability to create U.S. jobs?

Answer. I absolutely agree. Under the normal U.S. tariff structure, Element faces a severe tariff inversion problem. The tariff on LCD panels, the key component, is 4.5 percent while the tariff on finished TVs is 3.9 percent. Thus, the normal tariff structure provides an incentive to import finished TVs rather than produce them in America. The situation is even more dire with regard to imports from Mexico, Element's most significant competition. Imports from Mexico are duty-free. The MTB levels the playing field for Element and puts our team members on an equal footing with imports from Mexico and other countries. If Congress were to prohibit imports from China from benefiting from the MTB than Element would have no means to level the playing field against imports from Mexico or other countries. Congress would effectively be telling Element to move its production to Mexico. The lapse of the MTB has already made our South Carolina facility uncompetitive and we have had to lay off over 150 team members. Rapid and retroactive restoration of the MTB and the exclusion from the section 301 tariffs is needed to prevent further job losses.

QUESTION SUBMITTED BY HON. THOMAS R. CARPER

Question. Over the past several years, tariffs on China and subsequent retaliatory tariffs have caused significant economic disruptions for U.S. businesses and farmers. I have heard from many constituent companies who have invested significant time, money, and resources navigating the process for securing an exclusion from these tariffs. However, unfortunately, these exclusions expired at the end of last year, and no new exclusion process has opened. Recently, I joined Senator Portman, and several of my Senate colleagues on both sides of the aisle, to encourage USTR to restart an exclusion process.

However, the last exclusion process was far from perfect, and left many questions about speed, transparency, and fairness.

Moving forward, in your view, what should Congress do to reform this process in order to provide greater certainty and predictability to American companies?

Answer. Element was able to obtain an exclusion from the section 301 tariffs and as a result was able to rapidly grow and increase employment. However, Element faced significant uncertainty with regard to the status of its exclusion request once filed as we had no idea when a decision would be made. In order to mitigate this uncertainty, Element would request that if an exclusion process is restarted any application for the restoration of a previously granted exclusion be automatically approved at the outset of that process and new applications are subject to clear timelines.

QUESTION SUBMITTED BY HON. PATRICK J. TOOMEY

Question. Last December, the Trump administration declined to renew the exclusion process for section 301 tariffs, further hurting American businesses and consumers in the midst of a pandemic. Many businesses already facing supply chain challenges related to COVID–19 have been unable to quickly shift production to other countries or facilities without compromising their procurement process or product quality.

Since January 2021, when the section 301 exclusion process lapsed, CBP has assessed just under $9,000,000,000 in additional taxes on American companies and consumers—yet the Biden administration has thus far given no indication of a plan to reinstate the 301 exclusion process.

How would small and mid-size businesses be helped by the reinstatement of the section 301 product exclusions, especially during this period of economic recovery?

Answer. Element is the quintessential American small business success story. We moved LCD TV production back to the U.S. from China, located our facility in Winnsboro, SC, a small town that suffered from high unemployment, particularly among the African American community, and grew from less than 100 team members to over 520 team members by the end of 2020. Over 90 percent of our team members are African American and we are able to pay a living wage and benefits. However, the lapse of the exclusion from the section 301 tariffs has made our facility and team members uncompetitive against imports, particularly imports from Mexico. As a result, we have already had to lay off over 150 team members. The rapid and retroactive restoration of the exclusion from the section 301 tariffs and the MTB is needed to prevent further job losses.

SUBMITTED BY HON. SHERROD BROWN, A U.S. SENATOR FROM OHIO, AND HON. ROB PORTMAN, A U.S. SENATOR FROM OHIO

AMERICAN IRON AND STEEL INSTITUTE ET AL.

April 19, 2021

The Honorable Sherrod Brown
United States Senate
503 Hart Senate Office Building
Washington, DC 20510

The Honorable Rob Portman
United States Senate
448 Russell Senate Office Building
Washington, DC 20510

Dear Senators Brown and Portman,

As the trade associations representing America's steel producers, fabricators and workers, we write to express our full support for the Eliminating Global Market Distortions to Protect American Jobs Act of 2021 (S. 1187), introduced on April 15, 2021. We thank you for your continued leadership and commitment on the critical trade issues included in this legislation.

The steel sector is a core part of the U.S. manufacturing base and is essential to our national and economic security. The U.S. companies and their workers who produce and fabricate an array of steel products rely on the availability and effectiveness of the U.S. antidumping (AD) and countervailing duty (CVD) laws to counter the harmful impact of unfairly traded imports into the U.S. market. These laws are our first line of defense to offset unfair advantages enjoyed by our foreign competitors who leverage their governments' financial largesse and protected home markets to penetrate the U.S. marketplace at the expense of our jobs and livelihoods. Your bill will vastly improve the ability of these laws and the U.S. agencies charged with enforcing them to address foreign efforts to circumvent the remedies Congress intended—remedies that allow the industry to grow jobs, develop infrastructure and serve an economy recovering from the ravages of the COVID–19 pandemic.

As Congress considers the steps needed to restore and sustain our country's competitiveness in the years ahead, America must ensure that there are fair and effective rules of commercial engagement—an imperative that would be achieved by the enactment of this legislation. Specifically, your legislation elaborates improvements to the structure and application of the AD and CVD laws which will permit the enforcement agencies to more certainly and swiftly address a range of practices which undermine the relief from unfair trade practices that U.S. industry has worked to secure. Passage of your bill is essential if our country is to overcome the difficult challenges of global economic competition which lie ahead.

Our industry's survival is imperiled by an immense global over-capacity in steel production, capacity which is sustained through foreign government subsidies, supports and other intervention and the facilitation of aggressive export practices intended to dump that excess production in others' markets. Until these kinds of market distortions are no longer a factor in the global marketplace, the United States will need the most effective trade laws and enforcement regime possible to ensure that there is a level playing field where U.S. steel and other manufacturing industries can compete and thrive. Your bill will be instrumental in securing that goal.

The steel industry and its workers thank you for your leadership and stand prepared to work with you to advance this legislation in the 117th Congress.

Sincerely,

Kevin M. Dempsey
President and CEO
American Iron and
Steel Institute

Philip K. Bell
President
Steel Manufacturers
Association

Roger B. Schagrin
Executive Director and
General Counsel
Committee on Pipe and
Tube Imports

Laurence Lasoff
Counsel
Specialty Steel Industry
of North America

Charles J. Carter, S.E., P.E., Ph.D.
President
American Institute of
Steel Construction

CAMBRIA

"Cambria sincerely thanks Senator Portman and Senator Brown for their meaningful and bipartisan efforts to strengthen and modernize America's trade remedy laws," said Marty Davis, President and CEO of Cambria. "As the largest domestic manufacturer of quartz slab surfaces, Cambria has experienced firsthand the damages to our workers as a result of unfair international trade practices by China. Cambria has long worked with the U.S. Government to ensure a level playing field for our industry, yet certain repeat offenders have routinely avoided antidumping and countervailing duties by employing sophisticated transshipping schemes. Passage of the Eliminating Global Market Distortions to Protect American Jobs Act will equip authorities with the necessary tools to protect American jobs and will ensure family-owned companies such as ours remain competitive in the global marketplace."

COMMITTEE ON PIPE AND TUBE IMPORTS (CPTI)

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April 21, 2021

The Honorable Sherrod Brown
U.S. Senate
Washington, DC 20515

The Honorable Rob Portman
U.S. Senate
Washington, DC 20515

Re: Eliminating Global Market Distortions to Protect American Jobs Act of 2021

Dear Senators Brown and Portman,

We write on behalf of the U.S. steel pipe, tube and fittings producers who are members of the Committee on Pipe and Tube Imports (CPTI) in 31 States with over 35,000 employees to express our support for the Eliminating Global Market Distortions to Protect American Jobs Act of 2021, S. 1187. We thank you for your continued leadership and commitment to ensure that U.S. trade laws remain strong and accessible for the industry and its workers who rely on a level playing field.

The steel pipe, tube and fittings industry have successfully used the trade laws to challenge unfair trade practices—which include over 100 antidumping (AD) and countervailing duty (CVD) cases over the past 3 decades. The remedies provided through the imposition of duties have enabled these companies and their workers to recover and compete.

Our association has been a leading supporter of the trade laws and has worked with Congress to ensure that these laws remain in place. We know these laws are effective and we recognize that Congress should revisit them to ensure they are consistent with the ever-changing patterns of global trade.

As Congress considers the steps needed to restore and sustain our country's competitiveness the CPTJ and its members plans to be part of the Nation's economic recovery—from supplying the auto, construction and energy sectors to being part of an innovative infrastructure network. We agree that the provisions as outlined in S. 1187 provide a critical framework to ensure these laws remain in place.

We encourage members in the Senate to join you in support of this legislation as it moves through the legislative process.

Sincerely,

Roger B. Schagrin
Executive Director and General Counsel

Tamara L. Browne
Director, Government Affairs

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(703) 264-1690
https://www.kcma.org/

April 21, 2021

The Honorable Sherrod Brown
U.S. Senate
Washington, DC 20515

The Honorable Rob Portman
U.S. Senate
Washington, DC 20515

Dear Senators Brown and Portman,

As the country's leading trade association representing U.S. kitchen cabinet manufacturers and their employees in hundreds of communities across the country, we write to express our support for the Eliminating Global Market Distortions to Protect American Jobs Act of 2021, S. 1187 which was introduced on April 15, 2021. We thank you for your continued leadership and commitment to ensure that U.S. trade laws remain strong and accessible for manufacturers impacted by unfair trade.

In recent years, the domestic kitchen cabinet manufacturers were hard hit by unfairly traded imports from China. These imports resulted in financial losses, production cuts and reduced employment for the industry. The industry took action and filed AD/CVD petitions on imports from China which concluded in March 2020 with the imposition of AD and CVD duties. Our industry welcomed this decision and since that time has worked hard to regain its footing in the market.

These petitions marked the industry's first experience using the trade laws and we were very pleased with the results. We know these laws are the first line of defense to counter unfair trade practices and we remain committed to work with Congress to ensure they remain in place.

As Congress considers the steps needed to restore and sustain our country's competitiveness the kitchen cabinet industry wants to be part of that recovery. S 1187 includes important provisions which will ensure access to these laws.

We encourage members in the Senate to join you in support of this legislation as it moves through the legislative process.

Sincerely,

Betsy Natz, CEO

PREPARED STATEMENT OF HON. MIKE CRAPO, A U.S. SENATOR FROM IDAHO

Thank you for those remarks, Mr. Chairman, and for spearheading this effort to out-compete China, in particular. I am glad to be working with you on legislation to strengthen America's trade policies and practices.

China is a potent challenge to the United States on several levels—economic, strategic and moral. Republicans and Democrats can—and should—work together to formulate a China policy that can effectively confront these challenges. Put plainly, there is no need for a Republican or Democrat policy on China, just an American policy.

An American policy is precisely that: it reflects the best of America. It reflects our competitive spirit, our leadership in innovation, and critically, our values. So how do we put such a policy into practice? Simple—stay true to what made the American experiment a success.

In terms of competitiveness, we should not close off our market or engage in protectionism. China closes off its market and provides distortive subsidies to create national champions. We do not fear competition; we embrace it, because America's workers, farmers, and businesses have always confronted challenges head-on, and that spirit will never dampen.

American companies become global champions because the way forward in a free market is to excel, and America excels like no other in a fair fight. And to fight at its best, America must focus on strengthening its competitiveness, which means we need to be smart in our use of tariffs. We need to cut tariffs on inputs that support American manufacturing, or on goods consumed by the American consumer, especially middle- and low-income families.

We can achieve that through programs like the Miscellaneous Tariff Bill, and through thoughtful application of the section 301 tariffs on China. Our open market strengthens America strategically. President Eisenhower told Congress in 1958 that world trade:

> . . . strengthens our friends and increases their desire to be friends. World trade helps to lay the groundwork for peace by making all free nations of the world stronger and more self-reliant.

He was right. That is why it is important we reauthorize the Generalized System of Preferences program. Developing countries that want to play by the rules should know that the United States will be a reliable trading partner and a fierce friend.

For example, there is no question that if most countries are offered a choice between debt-trap diplomacy like China's Belt and Road initiative, or the opportunity to have access to the U.S. market, which is governed by the rule of law, they are going to pick America. History is instructive in that regard. In terms of innovation, we should pursue policies that promote and reward creativity, such as strong intellectual property protections.

Many of us are rightly repulsed by practices like China's technology theft and its Great Firewall. But the answer is not to construct our own restrictions on data and information, or create some social credit score for U.S. companies. The answer, like President Reagan said 3 decades ago, is to tear down the wall. We must directly target those actions that take aim at U.S. companies. We must also negotiate and enforce strong rules through new trade agreements, including at the World Trade Organization.

Last, but perhaps most important, are our values. China's human rights abuses are appalling. The Communist regime set its tone on human rights at its inception, and it has not improved since.

Internationally, we must be sharper in our engagement on human rights by rallying our allies to confront these abuses, including forced labor and the suppression of free speech. What will bring down those abuses is not U.S. disengagement, but facilitating the opportunity for the Chinese people to engage themselves.

Domestically, we have to stay true to our processes. That means our approach is shaped by a course that reflects our American tradition of building consensus through dialogue and debate. Whatever anyone may claim China has achieved through its system, ask them if they would rather live in a world that reflects its approach to its citizens—or ours?

Unlike any government official in China, every member present today is here because their constituents chose them through free and fair elections. And each of our members has the right and responsibility to bring their insights into the discussion. This hearing is part of that discussion, but it is not the end of it.

Moreover, it bears emphasis that Congress is democracy at its best. Concentrating unfettered power in the executive is China's approach, not ours. Having Congress in the driver's seat on critical trade policy decisions is not a weakness, it is a strength.

Chairman Wyden and I still have a lot of work ahead of us to right this ship of state in the world's marketplaces, and I appreciate his partnership in this effort. And we are working together, and with members on the committee, to achieve that in a legislative package that will strengthen America's competitiveness and benefit its farmers, businesses, and innovators.

Thank you for organizing this hearing, Mr. Chairman. I look forward to the testimony from our witnesses.

PREPARED STATEMENT OF AYNNE KOKAS, PH.D., SENIOR FACULTY FELLOW, MILLER CENTER FOR PUBLIC AFFAIRS; AND ASSOCIATE PROFESSOR OF MEDIA STUDIES, UNIVERSITY OF VIRGINIA

Chairman Wyden, and distinguished members of the U.S. Senate Finance Committee, it is an honor to be here. Funding from title VI, the Fulbright U.S. student program, the East-West Center, the Woodrow Wilson Center, the National Endowment for the Humanities, and the Kluge Center at the Library of Congress, has been central to my ability to research and teach about China at the University of Virginia and as a student in public universities in California and Michigan. To maintain American competitiveness, there is a crucial national security need to fully fund the study of China by American students and scholars.

My remarks today will focus on five key findings:

1. U.S. corporate profit in key media sectors depends on access to the Chinese market and adherence to Chinese regulations. This shapes the U.S. digital landscape.
2. Chinese laws imperil U.S. tech investment in China.
3. Chinese firms with close Chinese Government ties are rapidly acquiring a wide range of U.S.-based digital media and tech sector entities.
4. Chinese financial interest in U.S. media firms is already leading to censorship and disinformation.
5. The U.S. market's economic dependence on China is changing how companies talk about censorship.

A NOTE ABOUT SELF-CENSORSHIP

For the past year, when receiving calls from journalists to discuss this topic when I have been speaking with journalists about U.S.-China media relations, some assumed that I would not want to go on the record about my thinking due to the sensitive nature of this topic. The PRC Government has increased reprisals against scholars, including sanctions of Newcastle University professor Jo Finley Smith and German academic Adrian Zenz. The environment for research about China has deteriorated rapidly, as have extraterritorial threats to speech. I am here speaking frankly and want to acknowledge the intensifying pressures against doing so.

U.S. corporate profit in key sectors depends on access to the Chinese market and adherence to Chinese regulations. This shapes the U.S. digital landscape.

The global tech sector is estimated to reach USD 5 trillion in 2021 (Business of Technology 2021). The U.S. is poised to make up 33 percent or USD 1.6 trillion of that (Business of Technology 2021). The Chinese market makes up 14 percent of the global tech economy but it also offers a tantalizing market growth opportunity for U.S. firms (Business of Technology 2021). With the growth of the Chinese market, U.S. national interest and U.S. commercial interests have diverged.

For example, the U.S. entertainment market size in key industries is roughly the same size or smaller than China's market size. The evolution of the commercial media industries makes this crystal clear. The size of the Chinese gaming market is USD 41 billion versus USD 60.4 billion in the United States (Thomala 2021). In China there are 704.8 million social media users. The U.S. market, by contrast, is slightly more than a third the size at 223.02 million (Tanovska 2021). China overtook the U.S. theatrical distribution market in 2020 for the first time ever (Davis 2021). This shapes the content production landscape for media conglomerates creating multi-platform IP such as the Marvel Cinematic Universe range of films, games, theme park rides, merchandise, etc. (Kokas 2017). It is in the clear financial interest of U.S. firms to serve the Chinese market.

Further complicating regulation, disaggregating the "tech" economy from other sectors like retail, entertainment, transportation, health care, and others, becomes increasingly difficult because of the role that digital management platforms and data integration play in cross-sectoral innovation (Nambisan et al. 2017). However, data security regulation in the United States has historically followed sector-by-sector oversight, with the Health Insurance Portability and Accountability Act (HIPAA) as a prime example. Unlike the United States, China has increasingly centralized its tech oversight to include all sectors, and to provide a range of tools for the Chinese government to access corporate data.

CHINESE LAWS IMPERIL U.S. TECH SECTOR INVESTMENT IN CHINA

U.S. tech firms are in an increasingly challenging political landscape vis-à-vis China. In June 2017, China implemented the Cybersecurity Law of the People's Republic of China (zhonghua renmin gongheguo wangluo anquan fa), which now acts as the baseline for present day guidelines (Standing Committee of the National People's Congress 2016, Creemers, Triolo, and Webster 2018). The law requires that data is stored within China and that organizations and network operators submit to government-conducted security checks. What this means in practice is that any firm that stores data in the PRC makes that data accessible to the Chinese Government regulators, including Apple, which moved the iCloud data for Chinese iCloud accounts to Chinese Government-run servers in 2017. Such policies are contagious. For example, in 2018, Vietnam's National Assembly passed a law requiring both foreign and domestic firms to store data generated in Vietnam to be stored there (Jacob 2020).

The December 2019 "Provisions on the Governance of the Online Information Content Ecosystem" (wangluo xinxi neirong shengtai zhili guiding) asserts potential criminal or civil liability for consuming, producing or sharing "negative" information (guojia hulianwang xinxi 2019, China Law Translate 2019). With U.S. universities now conducting classes online in China, what this means in practice is that students, teachers and universities can be surveilled, or held criminally or civilly liable in China for information they access or share. It also holds platforms civilly or criminally liable.

On July 3, 2020, the Standing Committee of China's National People's Congress released a draft Data Security Law (shuju anquan fa) (Rafaelof et al. 2020). The law makes industry, telecommunications, natural resources, public health, education, defense, and finance regulators accountable for monitoring data created in their respective domains. The law also provides a basis for the establishment of a data security review system that can review any activities that influence or might influence national security data.

The July 2020 "Law of the People's Republic of China on Safeguarding the National Security in the Hong Kong Special Administrative Region, colloquially known as the Hong Kong National Security Law, permits the Chinese Government to hold people and platforms liable for crimes committed extraterritorially, which puts particular pressure on firms with large Chinese operations (The National People's Congress 2020). What this means in practice is that any individual or firm that is perceived by the Chinese Government to violate China's national security could be held liable for those crimes. This means that the Chinese Government has provided itself legal cover to penalize U.S. firms for perceived transgressions (ranging from listing Taiwan as a country to speaking out about Xinjiang human rights abuses and beyond) not just in China, but outside of China (BBC News 2018, Paton 2021). This same principle applies to firms that offer education online to students in the United States, but also maintain operations in China.

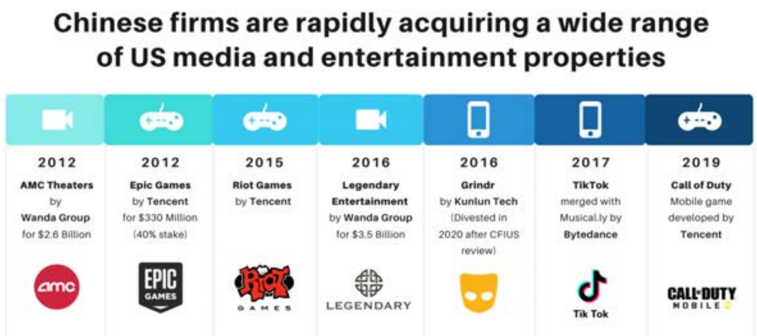
Chinese firms have acquired a wide range of U.S. tech and media firms.

Chinese firms are rapidly acquiring U.S. media distribution platforms in film, gaming, and social media. Entertainment platforms operating in the United States such as social media entertainment platform TikTok, and connected gaming platforms Fortnite, Call of Duty, and League of Legends, among others are wholly or partially owned by Chinese firms (see Figure 1 below). In these cases, beyond censorship of content at the production stage, we are also seeing either actual or potential censorship of public debate.

Chinese-owned social media platform TikTok was the most downloaded app worldwide in Q1 2021 (Perez 2021). The platform has over 100 million U.S.-based users (TikTok 2020). It is now a backbone of the U.S. tech economy, despite being owned by a Beijing-based firm.

Major gaming companies including Epic Games, Riot Games, and Blizzard are partially or wholly owned by Chinese tech firm Tencent. Blockbuster titles like Fortnite, League of Legends, and World of Warcraft are now made by firms with at least partial Chinese ownership. Together, these games account for nearly USD 4 billion in the U.S. economy (Spangler 2020).

Figure 1: Timeline of Chinese Investment in Major U.S.-based Media and Entertainment Firms



Sources: *Variety, Hollywood Reporter, Wall Street Journal*; Image Credit: Aileen Zhang

Such acquisitions make an impact on U.S. economic statecraft, where the skills and talent developed in the U.S. advance PRC goals to grow the tech sector, and in particular, data-driven AI.

Even with the forced divestment of Grindr in June 2020 to San Vicente Acquisition LLC as a result of CFIUS oversight (Wang, Alper, and Oguh 2020), the data that the firm gathered during its ownership by Beijing-based Bytedance remains vulnerable to Chinese oversight. Paired with Chinese Government hacks of the Office of Personnel Management and others, the strategic risk of extensive data integration, and the use of U.S. consumer data to advance Chinese commercial and military AI efforts, is already omnipresent.

Here I highlight key corporate acquisitions in the field of media and entertainment. However, Chinese acquisitions of firms that generate sensitive data in the U.S. occurs in the agricultural sector, the health sector, the manufactured goods sector, and beyond as I detail in my forthcoming book from Oxford University Press. In addition to corporate acquisitions, Chinese firms can also acquire data from U.S. firms through data broker agreements (Chen 2019).

Chinese financial interest in U.S. media firms is already leading to censorship and disinformation.

These shifts in market power are changing our digital landscape three ways.

Firms Change the Content They Produce

On the Disney+ platform, there is no content related to Hong Kong, and controversial Disney property *Kundun* (1997) is not available on the platform. In film, despite having a contract with the United States Navy for logistical support, Sony censored Tom Cruise's iconic leather pilot's jacket because it had a patch from Taiwan in the 1986 version of the film. In 2019 the animated film *Abominable,* originally produced in conjunction with DreamWorks Animation, but ultimately released by China's Pearl Studios, included a contested nine-dash line naval sovereignty claim in the South China Sea.

Figure 2: Map of Chinese South China Seas Maritime Claim in *Abominable* (2019)

Source: *South China Morning Post*

We are seeing shifts in the types of narratives and productions that emerge from Hollywood as a result of interest in building a market in China. Disney's *Mulan* was filmed in part in Xinjiang, with the collaboration of government agencies there that have been involved in carrying out human rights abuses against the Uyghur people. The film's narrative of suppressing minorities from China's Western regions also reflected Chinese government narratives that undergird Uyghur human rights abuses (Kokas 2020).

Film production decisions support entire multi-platform media and tech economic ecosystems. They feed into what we see on digital platforms, as well as the types of related products that studios produce including video games, theme park rides, toys, and even educational materials. The development process is highly subjective; as such it is very difficult to know when a project is modified or passed on because of potential issues with the Chinese market. Emails released through the Sony hack revealed multiple instances, most notably in the cases of *Pixels* (2015), *Robocop* (2014), and *Captain Philips* (2013), where studio executives discussed and/or implemented content changes due to concerns about access to the Chinese market (Baldwin and Cooke 2015). Due to the Sony hack, we know that studio executives do take this into account. However, the key challenge is that it goes against the financial best interests of any studio executive to ever admit to it. Moreover, it is easy to frame censorship as a business decision to maximize market access, much like adapting any other product to local preferences.

Firms Defend Censorship Due to Economic Interests

While such censorship or narrative decisions that favor the Chinese market were concerning when the U.S. was the largest market in the world, they become even more central with China as the world's largest film market. This trend is likely to continue at least through 2021 due to the sluggish return of the in-person U.S. entertainment sector due to COVID.

We are already seeing a dramatic shift in terms of how leaders in the U.S. media industries discuss censorship as a result of Chinese market interests (Kokas 2018). In the Q&A session following promotional meeting at the Consumer Electronics Show on January 6, 2016, Netflix Chairman Reed Hastings referred to changes in content that the firm might need to make in order to distribute their content in China as "airplane cuts," diminishing the significance of a U.S. firm censoring their content as a business decision for distribution to a market of 1.3 billion people (Roettgers, 2016). In 2017, he followed up by reinforcing that the U.S. and Chinese film industries have a "shared future," underscoring the enmeshment of Hollywood's growth imperative with the government-supported rise of the mainstream Chinese film industry (MPAA's Charles Rivkin's Opening Address at the 2017 U.S.-China Film Summit, 2017).

Disney refrained from commenting on boycotts due to statements by star Liu Yifei regarding Hong Kong or specifically addressing criticisms that the film was shot in Xinjiang. Only a week after the film's digital release, after Chinese authorities banned coverage of the film in China, did Disney comment. The firm's Chief Financial Officer, Christine McCarthy state, at a Bank of America conference, the film caused "a lot of issues," a statement which could also be interpreted to mean financial issues for the company, particularly given the context (Toh 2020).

Hollywood studios were, in many respects, a canary in the coal mine with regard to the influence U.S. media and technology corporations are facing with respect to content censorship. Other U.S.-based entertainment corporations have shut down the speech of fans and employees in an effort to curry favor with Chinese government officials and preserve access to the Chinese market.

- Blizzard, which is partially owned by Chinese tech firm Tencent, shut down pro-Hong Kong speech by Ng Wai Chung (known as Blitzchung) in its Hearthstone Esports champion's league for voicing support of the 2019 Hong Kong protests. Blizzard then banned two broadcasters who moderated the platform when he spoke out. When pressed, the CEO responded with:

  "Blizzard had the opportunity to bring the world together in a tough Hearthstone esports moment about a month ago, and we did not. We moved too quickly in our decision making, and then, to make matters worse, we were too slow to talk with all of you. When I think about what I'm most unhappy about, it's really two things: The first is we didn't live up to the high standards that we really set for ourselves, and the second is we failed in our purpose, and for that, I am sorry, and I accept accountability," failing to mention the company's censorship in its apology (Blizzard President Addresses Hong Kong Controversy—Blizzcon 2019, 2019).

- When Houston Rockets general manager Daryl Morey tweeted out support for the Hong Kong protests, the Chinese Government temporarily stopped broadcast of key NBA games. The NBA shut down fan protests due to the suppression of Morey's views.
- Users have expressed concerns about TikTok shutting down content related to like Uyghur detentions in China and democracy protests in Hong Kong (BBC News 2019, Kuo 2019). Independent computer security researchers at the Citizen Lab conducted research that was inconclusive as to whether TikTok censors social media posts (Lin 2021). The report does note the possibility that the app could face pressure due to parent company Bytedance's legal responsibilities as a PRC-based firm (Lin 2021).

Firms Face Financial Pressure to Prioritize Chinese Market Growth

Commercial media and tech platforms in the United States shape public discourse. China is an increasingly important market for investors in endowments and pension funds that hold these firms that also keenly watch for the growth of American blue-chip stocks. Those with equities with China exposure are under pressure to maximize their quarterly and annual performance, not just to enrich investment banks or individual shareholders, but to back up overall stock market performance. There is a fundamental tension between the national security concerns of Chinese corporate influence over the U.S. digital landscape and the commercial pressures U.S. companies face in an increasingly competitive marketplace.

And yet, in these circumstances where media conglomerates have increased pressure to grow, where media market growth is largely occurring in China, the United States has also reduced public funding for media. Thus, the prevailing voices in the media landscape are heavily dependent on the Chinese market, and by extension, Chinese regulators.

RECOMMENDATIONS

My book *Hollywood Made in China* (University of California Press, 2017) and my forthcoming book on Chinese consumer data gathering in the United States from Oxford University Press formed the basis for many of the recommendations that I will share with you today. The books represent the culmination years of fieldwork in China, including one year funded by a U.S. student Fulbright grant. Below are three recommendations to improve U.S. tech competitiveness through trade:

- **Improve U.S. tech sector competitiveness**
  - Increase U.S. Government investment in the tech sector both through research agencies like DARPA and the Defense Innovation Unit and through the adoption of the Endless Frontier Act.
  - Enhance funding for STEM education at the secondary and tertiary levels to increase the competitiveness of U.S.-trained researchers.
  - Continue to support a robust framework for skills-based immigration in the STEM fields, paired with transparent pathways for immigration to support researchers who seek to remain in the United States.

   ◦ Work actively against anti-Asian hate in the United States to create a hospitable environment for researchers and technologists who immigrate to the United States.

- **Enhance U.S. and Global Data Oversight to Prevent Data Exfiltration to Non-Allies**
   ◦ Enhance tech sector collaboration across developed democracies as outlined in the Democracy Partnership Act.
   ◦ Build out a national data privacy framework to prevent consumer data exfiltration to non-allied countries following the data adequacy standards established by the European Union and Japan.
   ◦ Companies treat data as an asset that they can leverage for financing or sell. As such, it is reasonable to require enhanced reporting on how and when firms share data with third-party providers. This includes support for congressional efforts to increase the rigor and transparency of financial reporting standards for U.S.-based firms, through mechanisms like H.R. 1815, currently under consideration in the Senate Committee on Banking, Housing, and Urban Affairs.
   ◦ Limit the sale of U.S. consumer data through efforts such as the Protecting Americans' Data From Foreign Surveillance Act.
- **Fund Chinese area studies** so that executives can better understand the implications of their business decisions related to China. The lack of secondary and tertiary social science education opportunities to learn about China means that most people entering the U.S. workforce do not have a working understanding of China's political system. This is in stark contrast to knowledge of college-educated Chinese nationals about the United States.

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QUESTIONS SUBMITTED FOR THE RECORD TO AYNNE KOKAS, PH.D.

QUESTIONS SUBMITTED BY HON. RON WYDEN

Question. While the Chinese Government's hacks of millions of Americans' personal information have gotten plenty of attention, the Chinese Government can also acquire Americans' data legally, including by buying it from unregulated data brokers. This information can then be used to supercharge espionage campaigns, including against U.S. government officials.

Do you agree that the data-related threats posed by China extend beyond data acquired through hacking, and would you support efforts by Congress to restrict the export of Americans' personal data to countries like China that are likely to exploit it to the detriment of our national security?

Answer. There are a wide range of data-related risks posed by China extending beyond data acquired through hacking. The key risks that I see include the following:

- Personal data acquired legally by Chinese firms operating in the United States.
- Personal data acquired legally by Chinese firms working in business partnerships with U.S. firms.
- Personal data acquired legally by firms of any national origin operating in the United States and then sold to Chinese firms as part of data broker agreements.
- Personal data acquired legally by non-Chinese and non-American firms that partner with or sell data to Chinese firms.

I think efforts to restrict the flow of data present significant potential challenges in several key ways. First, it is expensive and unwieldy to track where consumer data goes if the only intervention is on preventing its movement. Second, because this is a digital ecosystem, restricting data flows requires agreements with third nations. Most countries have trade relationships with both the United States and China, so it is difficult to assess which countries would require data restrictions.

Question. Are there other measures that you believe would help protect Americans' personal data from getting into the hands of hostile foreign governments?

Answer. Developing a more robust data privacy system in the United States is of the utmost importance. This includes limitations on the type of data that all companies can gather, improvements in systems of notification for consumers when companies gather their data, and efforts to learn from fellow developed democracies like the European Union and Japan about the strengths and weaknesses of their data privacy regulations. An additional benefit of working with allies and partners is establishing free data trade zones where policymakers can be reasonably confident that data is not traveling (at least not legally) to hostile third-party actors.

I strongly support the broad aims of the Protecting Americans' Data From Foreign Surveillance Act, in that the export of data, and in particular, the sale of data via data brokers, presents a significant risk to American national security. The challenge remains how to limit the sale to "hostile" countries. Digital "swing states" like Brazil, Indonesia, South Africa, and others present a significant challenge in that data sold to these countries don't have robust digital oversight and also have trade relationships with the U.S. and China. It is heartening to see a focus on solving these important problems in the Senate.

Question. As you mentioned in your testimony, China's closed-off Internet and censorship practices have impacts far beyond China's territorial borders. The Great Firewall and content regulation affect content creators and would-be exporters in the United States and around the world. The Chinese government has also sought to build its global influence through engagement and leadership at multilateral institutions, such as the World Intellectual Property Organization (WIPO) and international standards-setting organizations.

In your view, where are there opportunities for the United States to increase engagement with our allies and at multilateral institutions? How can the United States use this engagement to counter the Chinese government's vision of the Internet and promote the values of an open Internet, freedom of speech, and freedom of the press?

Answer. Yes. There are clear opportunities for the United States to engage more actively not just in multilateral organizations, but in international standards-setting organizations and professional organizations where much of the micro-level policy-making for new standards occurs. It is important to address these issues at multilateral institutions like the World Intellectual Property Organization and the United Nations International Telecommunications Union. However, perhaps even more challenging is addressing standards-setting in professional and industry associations. The U.S. Government does not, for the most part, participate in standards-making efforts led by the private sector as a matter of policy and principle. However, many organizations remain open to government participation from other countries. There is also the challenge of participation in industry associations by Chinese firms with robust Chinese Communist Party committees and internal policy influence, as well as more general pressure to comply with Chinese Government audits and guidance as a condition of operating successfully in the market.

QUESTION SUBMITTED BY HON. MAGGIE HASSAN

Question. In addition to forcing U.S. businesses to transfer technology, the Chinese Government also engages in intellectual property theft. This is an issue for U.S. businesses with a presence in China and for domestic U.S. companies that the Chinese Government targets with cyberattacks.

For U.S. businesses with a presence in China, how do data localization requirements—which require U.S. companies to store data in China—affect their vulnerability to intellectual property theft?

Answer. Data localization requirements dramatically increase the vulnerability of U.S. firms to intellectual property theft. Imagine the equivalent, that a Chinese firm operating in the United States would be forced to store their data on a U.S. Government server. We can use the example of TikTok because of its recent prominence in these debates. When the Trump administration sought to force a sale of TikTok, the Chinese Government put algorithms developed through user data on its export control list for national security reasons. The U.S. Government and think tanks around the world have been trying to figure out precisely what type of national security risk TikTok may or may not pose. Now, imagine that all of their data was stored on a server that the U.S. Government could directly access. Not only would it be possible to determine with much greater precision the type of potential security risk presented by the platform, it would also be possible to leverage that export-controlled algorithm to enhance corporate growth in the United States. That is what is happening in China with data localization regulations.

Here I used an example in the tech sector. However, what is most concerning about the data localization policies is that they apply across sectors. Tech firms like Apple have sophisticated data security operations in place and have still faced challenges. However, firms across the value chain operate in China, many of which do not have Silicon Valley-level data security budgets—from metalworking companies to firms that license industrial processes and beyond.

PREPARED STATEMENT OF MICHAEL R. WESSEL, COMMISSIONER,
U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Chairman Wyden, Ranking Member Crapo, and members of the committee, it is an honor to appear before you today to address this important topic.

My name is Michael Wessel, and I am a Commissioner on the U.S.-China Economic and Security Review Commission. I also serve as the staff chair of the Labor Advisory Committee to the USTR and Secretary of Labor. While my testimony is informed by these positions, my service in Congress for more than 2 decades as a congressional staffer and other work, my testimony reflects my personal views and are not on behalf of any other entities.

The Commission was created by Congress in 2001 in conjunction with the debate about the grant of Permanent Normal Trade Relations (PNTR) to China, paving the way for its accession to the World Trade Organization. The Commission was tasked with monitoring, investigating and submitting to Congress an annual report on the national security implications of the bilateral trade and economic relationship between the United States and the People's Republic of China, and to provide recommendations, where appropriate, to Congress for legislative and administrative action.

The grant of PNTR ended the annual debate about whether to extend most-favored nation status to China. But as it passed PNTR, Congress created the Commission because it did not want to forego the annual review of our relationship with China. Since the creation of the Commission, Congress has extended and altered our mandate as the U.S.-China relationship evolved.

The Commission is a somewhat unique body: we report to and support Congress. Each of the four congressional leaders appoint three members to the Commission for 2-year terms. In 7 of the last 10 years, we have issued unanimous reports. In the 3 years where it was not unanimous, there was only one dissenting vote. In many ways, the evolving challenges and opportunities posed by the relationship with China have united us in our analysis. Our bipartisanship is a reflection of the broader political support in this country for addressing the challenges posed by the Chinese Communist Party's (CCP's) approach.

This hearing occurs at a critical time. Tensions with China have risen as a result of its continued predatory trade policies, its rampant human rights abuses in Xinjiang, Tibet and other parts of the country, its illegitimate territorial claims and militarization in the South and East China seas, its corroding of democratic rights and freedoms in Hong Kong, its increased pressures on Taiwan, its Belt and Road Initiative, its use of economic leverage and outright coercion against U.S. allies like Australia, its efforts to direct and dominate standards setting bodies, and its expansive political, economic, security and diplomatic actions across the globe.

China is pursuing its own interests. It is not interested in abiding by international norms. In fact China seeks to minimize these norms and the universal values that underpin them by attempting to recast them as "Western." We should stop hoping and waiting for change in the CCP's outlook or policies. Rather, we need to accept the reality of China's approach and adopt the policies and responses that are in *our* long-term best interest.

Let me start by making clear that in debating and addressing the challenges posed by the policies of the CCP, we are not disparaging the people of China. Rising anger and aggression targeted at people of Asian descent here in the U.S. or around the globe is unacceptable. We must be careful in our debates. But we must not allow the CCP efforts to coopt these important discussions to advance its influence.

The Trump administration challenged China on many fronts. Now the question is how to respond to China's plans and policies and what will be the architecture underlying our approach for the future. The Biden administration is engaged in a top-to-bottom review assessing past actions, identifying its preferred path forward, and, importantly, what cooperation and coordination with our allies is possible.

A multilateral approach is important. But it is not the only approach. For years we sought multilateral cooperation on issues ranging from China's over-capacity in steel, aluminum and other sectors to China's efforts to dominate the global roll-out of 5G with Huawei and ZTE equipment at its core, and in many other areas. To paraphrase an old saying, our allies were willing to hold our coat while we bloodied our nose.

Our allies now appreciate, to a greater extent, the challenge posed by China's predatory and protectionist policies though they may still hesitate to act or may have a different sense of urgency when it comes to addressing these challenges. Our producers and our workers cannot wait for our allies to fully appreciate the impact of China's policies and develop the will to act—for their own interests and for their own people.

The outsourcing and offshoring of U.S. jobs and productive capacity to China has created some unacceptable vulnerabilities. Americans experienced head-on the impact of this outsourcing last year with too many unable to obtain critical personal protective equipment (PPE) to protect themselves and those around them as COVID–19 ravaged our country.

In 2019, before the pandemic, the U.S.-China Commission held a hearing on the challenges posed by our growing reliance on China's biotech and pharmaceutical products. Our reliance was built up over many years as China's industrial policies created incentives, market barriers and market access requirements that expanded their capabilities often with the support of our own companies. We are, in my view, unacceptably reliant on China for our active pharmaceutical ingredients (APIs), which are some of the building blocks for the life-saving and life-sustaining drugs our people take. The United States sources 80 percent of its APIs from overseas, and a substantial portion of U.S. generic drug imports come either directly from China or from third countries like India that use APIs sourced from China.[1]

We no longer make penicillin in this country, as we abandoned the fermentation capacity for this drug years ago. We are dependent on China for many other critical drugs.

China's government has shown its willingness to politicize and indeed, weaponize, its supplies of critical products. It threatened to withhold rare earth products from Japan many years ago and did so against the U.S. recently. As the world was grappling with devastating effects of the global pandemic, China's government engaged in the so-called "mask diplomacy,"[2] offering scarce PPE products to countries in return for recognition and support of its policy objectives. It is doing this again with regard to its supplies of COVID–19 vaccines.[3]

We need to treat supply chains as integral components of our national and economic security as well as vital to our critical infrastructure. The past years have seen multiple warning shots across the bow of our country ranging from inadequate supplies of PPE to rare earth minerals and magnets to products like grain oriented electrical steel vital to power transmission. Globalization has shown its limits and its risks and it's time to act.

We must confront the policies of the CCP. But we must not naively expect them to change. We must compete. We must reduce our dependence on China for vital supplies and technologies.

This is a critical time because many of our multinational firms, which were essentially sidelined during the COVID–19 pandemic, are beginning to plan for the future. Data from the Financial Accounts of the U.S. (formerly the Flow of Funds report) indicate that at the end of 2020, U.S. corporations were sitting on more than $5.5 trillion in cash and liquid assets.[4] Many of these companies are now making plans for how to deploy those funds.

My view is that they should be investing in production and job creation here in the U.S. The allure of accessing China's market has waned in significant ways, but companies are looking for a signal from Congress and the administration as to the direction of future policy. Congress has acted on a number of fronts in past years, including in passing FIRRMA and the CHIPS Act, to make clear that we will respond to predatory practices, we will preserve our key technologies and we will promote American competitiveness. That must be the path forward.

We need to send stronger signals that we want them to invest those funds *here* to expand production and create jobs.

China recently adopted its 14th Five-Year Plan.[5] Along with supporting policies from the past, the CCP wants to for the future by capturing leadership in technologies that will be foundational for the next wave of innovation and growth. It wants to increase support for indigenous innovation to meet the China's domestic needs while continuing to have an expansive export strategy. General Secretary Xi has termed this China's "dual circulation" strategy.

For the U.S. this means that China will continue to advance the development of key sectors such as new materials, quantum computing, biomedicine, artificial intelligence, electric vehicles and others. It will support these sectors and technologies with massive subsidies, protectionist and predatory practices and through legal and illegal means. It will use an "all of the above" strategy to achieve its goals.

U.S. goods trade with China continues to show a significant imbalance. While the size of the U.S. goods trade deficit with China is deeply troubling to me, more important has been the composition of that trade deficit. The year 2020, of course, was

[1] U.S. Food and Drug Administration, *FDA at a Glance: FDA-Regulated Products and Facilities,* April 2017; U.S.-China Economic and Security Review Commission, *Hearing on Exploring the Growing U.S. Reliance on China's Biotech and Pharmaceutical Products,* written testimony of Katherine Eban, July 31, 2019, 1.

[2] Mercator Institute for China Studies, "The PLA's Mask Diplomacy," in China Global Security Tracker No. 7, August 3, 2020, *https://bit.ly/2QlH2bc.*

[3] Yanzhong Huang, "Vaccine Diplomacy Is Paying Off for China: Beijing Hasn't Won the Soft-Power Stakes, but It Has an Early Lead," *Foreign Affairs,* March 11, 2021, *https://fam.ag/3gqr36A.*

[4] *https://www.federalreserve.gov/apps/fof/DisplayTable.aspx?t=l.102,* lines 2–11.

[5] Karen M. Sutter, Michael D. Sutherland, "China's 14th Five-Year Plan: A First Look," Congressional Research Service, January 5, 2021, *https://bit.ly/3dvpItg.*

an aberration. In 2019 the U.S. ran a trade deficit in advanced technology products (ATP) with China of $134.4 billion. That should be an issue of considerable concern.

China continues to build up massive productive capacity that has resulted in significant over-capacity in a growing number of sectors beyond the steel and aluminum sectors that have, appropriately, garnered attention. Chemicals, fiber optics, and other sectors are also in over-capacity as a result of CCP policies. This over-capacity has undermined the efforts of market-based companies in other countries to compete and survive. In some sectors, such as steel, the CCP has made repeated promises to reign in over-capacity, to dismantle operations and to limit production. Each of those promises has been broken.

There have been international dialogues to try to address the problem in steel fostered primarily at the Organisation for Economic Co-operation and Development (OECD). China, however, never really engaged in a good faith effort to reduce over-capacity; rather, it used the forum to delay action. This is similar to how it approached many of the talks within the Strategic and Economic Dialogue where engagement was used by the CCP as an alternative to action.

The CCP is seeking to advance research and development (R&D) indigenously, with the support of foreign firms and through a variety of programs including the so-called "Thousand Talents" program. Many foreign firms have dramatically expanded their R&D investments and activities in China to respond to CCP policies and incentives, to improve potential market access in China and to support their China-based operations. The connection between R&D and production is well known with operations often being located in proximity to each other.

The pace of R&D expenditures by U.S. affiliates in China has grown at a faster pace than domestic investments by their U.S. parents. According to a report issued by the U.S.-China Commission, expenditures by U.S. multinational enterprises is China grew an average of 13.6 percent year-on-year since 2003, compared with 7.1 percent for all U.S. multinational foreign affiliates and just 5 percent for multinational parents in the U.S. in the same period.[6] This acceleration of the pace of investment in China, as opposed to in the U.S. by American- headquartered companies must be addressed.

Efforts by the CCP to promote "cooperation" should be viewed with skepticism. The CCP is more interested in winning than in the proverbial "win-win"

At the same time, China's leaders are desperate for capital and for foreign investment. China's debt-to-GDP ratio has increased at one of the fastest paces of any major country, now estimated at 288 percent at the end of Q3 2020.[7] Although shadow banking has been somewhat reigned in since 2016, massive debt is still out of control.

China has pressured international benchmark index developers like Morgan Stanley Capital International (MSCI) to include Chinese equities in its emerging market index and increase the weighting of Chinese issues. MSCI succumbed to the pressure. Unless the trendline changes, the inclusion of Chinese securities by major international index providers like MSCI, FTSE Russell, and others could lead an estimated $400 billion or more of foreign capital to flow into Chinese equities.[8] Changes in bond indices may result in another $200 billion of foreign capital flowing into China to purchase bond issues.

The *South China Morning Post* earlier this week reported that Citigroup is planning to apply for permission to "open a new wholly-domestic securities business in China. . . . The American bank plans to apply by the second half of this year for licenses that would allow it to underwrite domestic securities, engage in advisory

[6] Kaj Malden, Ann Listerud, "Trends in U.S. Multinational Enterprise Activity in China, 2000–2017," U.S.-China Economic and Security Review Commission, July 1, 2020, *https://bit.ly/2QAQCHg*.

[7] World Bank, *From Recovery to Rebalancing: China's Economy in 2021,* December 2020, 28. *http://documents1.worldbank.org/curated/en/297421610599411896/pdf/From-Recovery-to-Rebalancing-China-s-Economy-in-2021.pdf.*

[8] Bobby Lien and David Sunner, "Liberalization of China's Portfolio Flows and the Renminbi," Reserve Bank of Australia Bulletin, September 19, 2019; Salley Chen, Dimitris Drakopoulos, and Rohit Goel, "China Deepens Global Finance Links as It Joins Benchmark Indexes," International Monetary Fund Blog, June 19, 2019; MSCI, "Assets in Global Equity ETFs Linked to MSCI Indexes Reach All-Time High of $707 Billion," November 10, 2017; Joyce Chang, "J.P. Morgan Perspectives: China's Index Inclusion: A Milestone for EM as an Asset Class," JPMorgan.

services on local deals and conduct trading for clients, as well as engage in stock futures."[9]

Yet the CCP still refuses to allow the Public Company Accounting Oversight Board (PCAOB) access to the work papers of major U.S. accounting firms to ensure that the books and records accurately reflect the facts. While any investment in a major Chinese company bears additional risks due to the power of the CCP the fact that there is no transparency should severely limit the scope of foreign investment.

It is not just the issue of "buyer beware," although some observers argue that investors assume responsibility for their investment and must bear that losses that may result. It is also the potential risks to the U.S. taxpayer posed by these investments and possible federal exposure. For example, capital losses can offset capital gains under our tax laws—meaning that tax revenues would essentially support losses on these equities and bonds. The Pension Benefit Guaranty Corporation (PBGC) could potentially have to play a role if investments in these kinds of issues degraded the economic viability of a pension plan covered by the agency.

The Federal Thrift Savings Plan (TSP) had considered utilizing the MSCI index that would open up investments in Chinese securities to Federal employees and our men and women in uniform. These investments may directly challenge our national and economic security interests. Over the last several years, increasing numbers of Chinese companies have been placed on the Entities List[10] as well as on the Department of Defense's list of companies supporting the People's Liberation Army.[11] Many of these companies are still included in some international indexes and U.S. funds are still flowing to these companies. Indeed, U.S. investors reportedly continued to invest in these entity list and DOD-identified companies *after* they were publicly identified as being on these lists.

CONCLUSION

In the 1980s, America faced competitive challenges from Japan. While those challenges, in retrospect, pale in comparison to those posed by China, there are lessons to be learned. Japan was dominating the automotive sector. Japan was dramatically expanding its leadership in semiconductors. Japan had closed its market to U.S. products in key sectors, including telecommunications, electronics, pharmaceutical and medical equipment, and forest products. The Reagan administration initiated the Market-Oriented Sector Selective (MOSS) talks to address Japan's anticompetitive practices. Voluntary restraint agreements were adopted.

In 1987 Congress and the administration worked together to create SEMATECH to reclaim America's momentum in the semiconductor sector. SEMATECH was a non-profit consortium of 14 U.S.-based semiconductor firms that pooled resources and revitalized U.S. R&D in advanced chip manufacturing.

Following these and other initiatives, Congress considered and passed the Omnibus Foreign Trade and Competitiveness Act of 1988 (Pub. L. 100–418) that included a broad array of provisions to advance America's ability to compete. It was an act that updated existing authorities, and created new ones, to give America the tools needed to compete in new sectors and to address new challenges.

Now is the time to consider what steps America should take to protect our interests and prepare for the future. Too much of the focus of our China discussions has been about containing, confronting, or decoupling. Many of the actions and policies of the CCP directly challenge U.S. interests. We need to send a strong signal to the CCP, to our companies, to our people, and the world that we will stand up for our interests, we will compete, we will invest, and we will win.

QUESTIONS SUBMITTED FOR THE RECORD TO MICHAEL R. WESSEL

QUESTION SUBMITTED BY HON. RON WYDEN

Question. China's investments in infrastructure—both its own and other countries'—are well known. The Chinese Government has prioritized building roads,

[9] Chad Bray, "Citigroup to seek licenses for new wholly-owned securities business in China," *South China Morning Post,* April 19, 2021, *https://bit.ly/3twGiOR.*

[10] Department of Commerce, Bureau of Industry and Security, *https://bit.ly/2QispFJ.*

[11] Department of Defense, section 1237 of FY99 NDAA Communist Chinese military companies list, *https://bit.ly/2QispFJ.*

bridges, rail, ports, and digital systems that support the economy, trade, and the movement of people. Through its Belt and Road Initiative, the government has also used infrastructure as a literal inroad to access developing countries' markets and engage in soft-power diplomacy.

In the United States, our infrastructure investments have lagged behind. As a result of chronic underfunding of infrastructure, State and local governments have struggled to perform routine maintenance, let alone invest in new projects that would create jobs, foster economic opportunity, and help us develop a more modern, sustainable, and resilient infrastructure system. I am hopeful that in the 117th Congress, we can finally pass a robust, comprehensive infrastructure package that will set a new standard for investing not only in traditional projects like rail, roads, bridges, and ports, but also broadband and human services infrastructure like child care and elder care.

In your view, how would increased Federal investment in infrastructure of all kinds support trade and improve American competitiveness with China?

Answer. Investments in physical and human infrastructure can dramatically enhance America's competitiveness overall and support our efforts to compete directly with China. The investment deficit in U.S. infrastructure has not only hobbled our ability to support exports via our ports and airports but has driven up the cost of doing business as companies have had to deal with transportation impediments such as crumbling roads and bridges. Our inadequate broadband impedes the education of our people and access to resources and information. Our failure to provide infrastructure supporting child care and elder care diminishes our educational attainment for our kids, reduces the productivity of our families and saps the resources of our Nation. Investments in infrastructure, broadly defined, would have a significant positive impact on our Nation's international competitiveness.

QUESTIONS SUBMITTED BY HON. MIKE CRAPO

Question. With regard to your discussion of diversifying supply chains away from China, many argue that such a dialogue must include addressing the expiration of the Generalized System of Preferences (GSP) program. The effect of its expiration raises material costs for American manufacturers and is significant for U.S. companies. GSP's expiration also imposes a general detrimental impact on exports from developing countries.

Would you agree then that the GSP's expiration tends to make China more competitive?

If so, in your opinion, is today's combination of GSP expiration and section 301 tariffs contributing to the problematic supply chain shifts seen in recent years?

Answer. The expiration of GSP is expected to be a short-term issue as Congress reviews the underlying authority and what changes are appropriate. I do not believe that China is advantaged during this period.

Question. New research recently released jointly by the World Bank and World Trade Organization concludes that liberalized trade policies: (1) increase women's wages, (2) increase economic equality between genders, and (3) create better jobs for women.

Given this, if the goal is to promote women's equality as part of the United States trade agenda, should Congress consider expanding the products eligible for beneficial tariff treatment in programs like the GSP?

Answer. The products eligible for beneficial tariff treatment under programs like the GSP should be reviewed and updated but, in my view, that should be with an eye towards reducing the scope of products covered to identify those that truly achieve the goals of GSP and to eliminate product coverage for items that undermine U.S. production and jobs. In terms of trade equity for women, I believe that legislation such as that authored by Senator Casey, the Women's Economic Employer in Trade Act (S. 4008) should be part of the committee's efforts.

QUESTIONS SUBMITTED BY HON. THOMAS R. CARPER

Question. Over the past several years, tariffs on China and subsequent retaliatory tariffs have caused significant economic disruptions for U.S. businesses and farmers.

I have heard from many constituent companies who have invested significant time, money, and resources navigating the process for securing an exclusion from these tariffs. However, unfortunately, these exclusions expired at the end of last year, and no new exclusion process has opened. Recently, I joined Senator Portman, and several of my Senate colleagues on both sides of the aisle, to encourage USTR to restart an exclusion process.

However, the last exclusion process was far from perfect, and left many questions about speed, transparency, and fairness.

Moving forward, in your view, what should Congress do to reform this process in order to provide greater certainty and predictability to American companies?

Answer. Since the imposition of tariffs under section 301 and section 232, I believe that there has been renewed attention on the need to secure our domestic supply chains. Reversing more than 30 years of outsourcing and offshoring will take time and there will be some market problems in the process. But the COVID–19 pandemic and the inability of America to provide the necessary products for our people, the current problems in the auto sector from semiconductor production outsourcing and other supply chain problems all are the result of flawed trade policies. Exclusions should not be the normal course of business and should be time-limited, where they are provided, to spur the development of domestic capacity. Clearly, America is not going to meet all of its domestic needs and we must continue to engage the world. At the same time, we must ensure we can meet the critical needs of our people. The Biden administration's work on supply chains should help provide the necessary framework for Congress to consider.

QUESTIONS SUBMITTED BY HON. SHERROD BROWN

IP THEFT

Question. In March 2018, USTR finalized an investigation into Chinese forced technology transfer and IP theft and issued a report that found that "the act, policies, and practices of the Government of China related to technology transfer, IP, and innovation covered in the investigation are unreasonable or discriminatory and burden or restrict U.S. commerce."

We must do more to protect against foreign adversaries that target the IP of U.S. manufacturers and firms, deter those Chinese firms that may consider engaging in IP theft, and send a clear signal that there will be serious repercussions going forward for Chinese actors that engage in this misconduct.

In addition to the various other trade and legal tools available to American firms to combat IP theft by China, do you think it would be helpful for Congress to provide the President and future administrations with additional tools, including sanctions against those determined to have been involved in IP theft, to help deter and address IP theft by Chinese actors?

Answer. Existing actions to deter IP theft by China have had only limited impact. Hundreds of billions of dollars of U.S. intellectual property is lost each year, injuring our Nation's companies and their workforce. We should strengthen our resolve in terms of using all available tools as well as provide additional tools including sanctions against individuals and companies participating in, supporting or directing the theft of our IP.

ACTIVE PHARMACEUTICAL INGREDIENTS

Question. In your testimony you argue that the U.S. is unacceptably reliant on China for our active pharmaceutical ingredients and for many critical drugs.

Senator Cassidy and I are working on bipartisan legislation to create an active pharmaceutical reserve here in the U.S. to provide some resiliency to our supply chain and help protect against any potential threats in the figure—whether they be public health threats like the COVID–19 pandemic, natural disasters, or even politicized threats.

In addition to the President's recent executive order on America's supply chains steps, are there steps Congress should take to ensure supply chain resiliency and reduce our dependence on China for critical goods like essential medicines?

Answer. The COVID–19 pandemic exposed our Nation's unacceptable vulnerabilities in terms of pharmaceutical and medical supplies. The dependence of the

U.S. on China has reached a critical point where it is not only a health security threat, but a national security threat as well. Expanding our Nation's ability to respond to crises is imperative. Creating a an API reserve could be an important component of a strategy. We must also assess what our reliance is for a broad range of life-saving and life-sustaining drugs and enhance our ability to secure supplies of all the necessary ingredients via domestic sources or trusted and secure allies. We must also ensure that the development of biosynthetic medicine in this country has the support that is needed.

QUESTIONS SUBMITTED BY HON. MAGGIE HASSAN

Question. The Chinese Government uses anti-competitive pricing and trade policies to gain an edge in manufacturing products that are critical for our economic and national security. As you testified to the Senate Committee on Commerce, Science, and Transportation last year, these unfair policies affect multiple supply chains across critical industries—including medical supplies, steel, aluminum, solar cells, and rare earth minerals.

Among the Chinese Government's various predatory pricing strategies, which would you highlight as broadly affecting the security of multiple critical U.S. supply chains?

Answer. The security of critical U.S. supply chains in a number of products has been adversely impacted by an array of policies promoted by the Chinese Communist Party. Most important has been the financial support provided to favored industries and sectors in China that have fueled dumping and subsidies that have injured market-based suppliers. In addition to the financial support, China has utilized performance requirements, market access impediments and many other tools to advance its goals.

Question. I am working on a bipartisan basis to promote R&D investment in the United States, including through bipartisan tax legislation with Senators Young, Cortez Masto, Portman, and Sasse. The U.S.-China Economic and Security Review Commission's 2020 report highlights trade restrictions used by the Chinese Government to require U.S. companies to localize manufacturing—which ultimately leads to greater R&D investment in China.

Can you explain how these unfair trade restrictions have affected the levels of R&D investment in the U.S. and China? What are the implications of these manufacturing restrictions for U.S. economic and national security?

Answer. The policies of the CCP have, in too many instances, essentially required U.S. companies to set up manufacturing operations in China as a condition of gaining market access. In addition, the subsidies, performance requirements and predatory and protectionist policies initiated by the CCP have created other incentives for U.S. companies to locate there. There is also a clear and direct relationship between manufacturing and the associated R&D that goes on. A 2020 report prepared by the staff of the U.S.-China Economic and Security Review Commission, based on publicly available data, indicated that U.S. companies increased the rate of R&D investments in China at a significantly higher pace than the R&D investments made in their domestic operations here in the U.S. We have already seen the devastating consequences of the offshoring of manufacturing production to China. The long-term implications for our economic and national security from the migration of R&D are also significant and requires not only further scrutiny, but action.

Question. Many U.S. companies operating in China have been subject to technology licensing requirements that the Chinese Government effectively uses to obtain the products of R&D by U.S. businesses.

How has forced technology transfer affected the competitiveness of U.S. companies and the ability of the U.S. to maintain a leading edge in innovative industries?

Answer. The CCP's technology acquisition strategies have had a devastating impact on U.S. competitiveness. It is a tribute to the ingenuity, creativity and spirit of our companies and their workforce that America continues to be a leader in so many sectors. But that leadership has been corroded by the CCP's policies. In the last 5 years alone, the U.S. saw almost $2.4 trillion in IP stolen. The bipartisan Commission on the Theft of American Intellectual Property in its 2021 update indicated that IP industries support more than 45 million U.S. jobs. The CCP's policies and programs are putting U.S. leadership in innovative industries in serious jeopardy.

QUESTIONS SUBMITTED BY HON. ELIZABETH WARREN

Question. COVID–19 may have highlighted the problem—but it didn't create it. Even before the pandemic, experts were sounding the alarm on a critical supply chain weakness: our Nation's overreliance on foreign countries for drugs, and the active pharmaceutical ingredients—or "APIs"—needed to make them. Today, the United States imports nearly 80 percent of APIs from foreign countries— including China. As a result, the drugs that millions of Americans rely on to treat conditions like high blood pressure and kidney disease aren't manufactured in the U.S.—and even when those drugs are manufactured here, they rely on key materials sourced from one of our geopolitical adversaries.

The U.S. has some restrictions in place that should theoretically prevent our overreliance on China for pharmaceutical products. For example, the Department of Defense is only supposed to buy drugs from countries that comply with the Trade Agreements Act—which doesn't include China. But despite this requirement, about 25 percent of pharmaceutical ingredients used in military hospitals originate from China. How is China able to subvert these rules?

Answer. The Trade Agreements Act of 1979, to which China is not a signatory, requires that pharmaceutical products used in military hospitals be purchased from signatory countries. Unfortunately, the CCP's industrial policies have resulted in China often being the sole source of supply of API's that are used in products produced in China or in other countries. India, for example, is heavily reliant on China for its APIs. If non-TAA-compliant products are not available, DOD is authorized to waive the requirements of the Act and procure those goods.

Question. What are the consequences of our inability to domestically produce critical drugs for U.S. national security and competitiveness?

Answer. To some degree, we have already seen the potential impact of being unable to produce critical drugs and medical products for national security and competitiveness. For example, the sidelining of the Aircraft Carrier USS Theodore Roosevelt due to a COVID outbreak is a real-world example of how a pandemic can impact our national security. While there were other factors contributing to the sidelining of the carrier, proper equipment, vaccine and therapeutics might have diminished the threat. The CCP has shown its willingness to "weaponize" supplies and also use them for diplomatic advantage. Our dependence on China, rather than having domestic capabilities to produce a wide- range of products is a serious national security and competitiveness threat.

Question. We can't expect to compete with China when we're so dependent upon it for lifesaving drugs— and meanwhile, our overreliance on China poses serious national security risks, sells out American workers, and makes American patients less safe. That's why President Biden has committed to onshore API manufacturers, and why I've worked closely with Senator Smith and Senator Rubio to rebuild our domestic drug supply chain. Senator Rubio and I have a bill requiring a review of foreign investment in the U.S. drug supply chain and its impacts on domestic manufacturing. And Senator Smith and I have a bill that makes a $5 billion investment to manufacture critical drugs and APIs here in the U.S.—and supports the market for these drugs by requiring our government agencies to buy them.

Would a review of our supply chain and a $5-billion investment in domestic drugs (plus the Federal Government's commitment to purchase them), help strengthen the U.S.'s economic competitiveness with respect to China?

Answer. There is no doubt that investments in our domestic ability to produce drugs and their components, coupled with ensuring that the demand for domestically produced products will exist resulting from Federal purchases, would have a dramatic positive impact on reshoring medical supply chains.

QUESTIONS SUBMITTED BY HON. TODD YOUNG

Question. In your testimony, you shared perspective on the dangerous level of reliance on Chinese manufacturing for many necessities in our lives. Penicillin, semiconductors, minerals—these are just a few items on a lengthy list.

The pandemic has exposed the risk associated with a supply chain fully dependent on China—and we've seen the Chinese use this to their own advantage.

I know the administration has started a top-down review of the supply chain, but I think we need something more permanent, more comprehensive, and more accessible.

This can be achieved through aggregated demand mapping for industries critical to our economic health, national security, and public safety. I have raised this before the committee and am actively working on legislation to require construction of a database to achieve this.

With that in mind, what value do you see in creating a comprehensive understanding of our supply chain vulnerabilities? Should the United States also be concerned with supply chain diversions to nearby countries that are actually still intertwined with China?

What strategies can we use to help businesses actively seeking to divert their supply chains from China and back to the United States where possible?

Answer. A comprehensive understanding of our supply chain vulnerabilities across a broad range of products critical to our economic health, national security and public safety is a common-sense approach. The COVID pandemic should be a wake-up call to expedite the development of such an assessment and it should be updated on a continuous basis.

The CCP has shown its desire to influence the policies and approaches of countries intertwined with China, such as those participating in the Belt and Road Initiative and those questioning the CCP's approach to Taiwan, Hong Kong, and on other matters. We should evaluate supply chains that are at risk of China's influencing the policies of those countries and take appropriate actions to protect U.S. interests.

There are a broad array of strategies that the U.S. can adopt to help business actively diver their supply chains back to the U.S., where possible. In part, the CCP's actions have been a wake-up call to our business leaders about the risks to their businesses operating in China and, indeed the safety and security of their personnel working in country. The U.S. must do more to invest here in ensuring that our people have the skills needed, that our research and development resources are robust, that our infrastructure supports our economy and that we use the power of Federal procurement to ensure that American tax dollars are used to promote American production and jobs. These are just a few of the policies that are needed.

Question. It is estimated that roughly 55 percent of Americans own stocks—with most investing through professionally managed funds.

In today's marketplace, it is unsurprising that a mix of investments would be allocated to international markets; however, Chinese companies have been growing considerably, and it is difficult to discern the complete picture of their influence in financial markets.

It is very possible that American investments are contributing to the health of the Chinese financial system, but the true extent is unknown. The U.S. should seek strategies to both identify potential risks to our financial viability and ensure American investors enjoy a stable environment.

Should we be concerned about this, and how can we help business community combat integration from malign Chinese actors whose proceeds and profits funnel back to the Chinese military?

Answer. The CCP has actively engaged in increased efforts over the past several years to access sources of foreign capital. As an example, reportedly pressure was put on MSCI to allow Chinese "A" shares to be included in its emerging market index and to increase the "weighting" of those shares. Testimony before the U.S.-China Economic and Security Review Commission indicates that this and other actions may result in more than $400 billion in international capital going into Chinese equities and another $200 billion into Chinese bonds.

The administration has the legal authority to identify companies that pose a threat to U.S. national security interests and place them on an Entity List and has recently identified Chinese companies assisting the People's Liberation Army. Evidence indicates that U.S. persons have invested in these entities after their being listed by the U.S. Government as the only existing limitation is on doing trade with these companies. Investments post identification should be prohibited and existing investments should be unwound. Other policies should be evaluated to ensure that U.S. companies are not aiding and abetting companies advancing the capabilities of the Chinese military, that support human rights abuses, and engage in other acts that are counter to U.S. interests.

Question. From my lens on the Foreign Relations Committee and on this committee, I see China's actions and intentions from different angles.

The rate of Chinese investment in other countries is growing exponentially, and we see nations making concessions like supporting China politically or allowing unfettered access to their resources.

While it is no secret that Chinese influence extends to nearby countries in the region—like Vietnam, Thailand, Indonesia—this influence is hitting closer to home, particularly in the Northern Triangle of Central America.

Given the increasing unrest in Central America that has been driving scores of people to overwhelm our borders, the last thing these countries need is unrepayable debt from China.

Should China escalate levels of foreign direct investment in Central America, as we know they plan to do, what is at stake for the national and economic security of the United States?

Answer. The CCP has expanded its economic, diplomatic and military relations across the globe. We must carefully assess their foreign direct investment in Central America, as well as the Caribbean and the rest of this hemisphere to determine what their intentions are, what the implications of their investments are and how we should respond, if at all. In many of its investments in other areas of the world, we have seen their investments foster "debt-trap" diplomacy, as well as fueling corrupt activities. These and other concerns demand greater attention wherever they arise, but certainly are even deeper when they occur in our own back yard.

QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

Question. You noted in your testimony the importance of a multilateral approach to addressing the challenges we face with respect to China. Referring to previous American efforts in this area, you noted: ". . . our allies were willing to hold our coat while we bloodied our nose."

I think that's an accurate assessment.

Can you elaborate on how we can work with our allies to put maximum pressure on China to achieve lasting and meaningful change in how they conduct business in the international markets?

Answer. During the Trump administration, and as evidenced by the early approach of the Biden administration, I believe the U.S. has shown the CCP and the world that the predatory actions of the CCP will not be tolerated. The willingness to confront the CCP's actions and act on behalf of U.S. interests must be the clear approach going forward and the consistency of that approach should hopefully incent other nations to join in the effort to curtail the CCP's unacceptable approaches. The CCP is looking to take advantage of opportunities and we must deny them those opportunities when the challenge and threaten U.S. interests.

Question. And how does the EU-China investment agreement impact our ability to work with our allies in Europe to counter China's manipulative market practices and human rights abuses?

Answer. The EU-China investment agreement raises a number of questions about how we may be able to work with our allies in Europe, although the path forward is still in question. We must engage our allies in Europe to challenge China's manipulative market practices and human rights abuses where we can. At the same time, if our allies are unwilling to find cooperative strategies, we must advance U.S. interests.

Question. The WTO was formed to establish a trading system based on "open, market-oriented policies" per the 1994 Marrakesh Agreement which established the organization. Despite modest improvements, China's markets are not "open." Their policies are not "market-oriented." China is no longer a "developing nation" despite its WTO status.

Market-distorting subsidies, intellectual property theft, forced technology transfer, forced labor, and industrial over-capacity in China aren't anomalies. They are the cornerstones of China's economic policy.

Is there any reason to believe the WTO currently has the necessary tools or the will to address the challenges the world is facing with respect to China?

Answer. The World Trade Organization could certainly do more with its current tools to address the predatory and protectionist policies of China, but those efforts will presumably fall short for a number of reasons. First, the Appellate Body is in serious need of reform and has exceeded its authority on a number of significant matters. Second is that the Appellate Body has, at the same time, constrained its ability to address China's practices by imposing unnecessary burdens which impede the ability to promote market-based practices. Finally, as the WTO is a consensus-based organization, it is difficult to believe that China will ever agree to meaningful disciplines and enforcement measures regarding its activities.

Question. What WTO reforms are needed to make it a more effective "cop on the beat" with respect to China?

Answer. See above; however, it is difficult to see that the WTO would be an effective "cop on the beat." Market-based actors must develop a set of rules which they can abide by and effectively enforce, which also limit China's ability to game the system.

Question. Chinese over-capacity of steel, aluminum, cement, chemicals, and numerous other industrial inputs is part of a broader strategy to drive down prices and put international competitors out of business. Chinese state-owned enterprises (SOEs) and export subsidies hurt American businesses and workers. In Wyoming, our soda ash producers and steel pipe and tubing producers know firsthand how difficult it is to compete with China in the marketplace.

Where should the U.S. focus our efforts to counter China's export subsidies and over-capacity?

Answer. In past years the effort to address China's export subsidies and over-capacity has focused on multilateral dialogue. China initially refused to participate in the talks but when pressure rose, they finally agreed to come to the table. As expected, however, they delayed action and sought to create a debate as to whether they really was a problem, as they continued to amass further capacity and injure industries and workers in the U.S. and around the globe. Multilateral engagement is vital that lead to effective disciplines with automatic enforcement measures.

Question. What can Congress do to make U.S. companies competitive when they are forced to compete directly with China's SOEs?

Answer. The CCP has proffered enormous benefits on its SOEs ranging from subsidies to domestic market preferences to outright theft of intellectual property from their competitors, in addition to many other practices. It's a tribute to the strength, ingenuity, and creativity of our companies and their workforce that we have been able to withstand many of the attacks on their markets and their operations. Our companies should not have to compete directly against China's SOEs without the support of our government. We can adopt automatic self-initiation enforcement measures to more effectively respond to dumping and subsidies. We can provide greater resources to fight cyber and human espionage. We can expand "war chest" funding at some of our agencies to support our companies, where appropriate. We must also develop stronger multilateral measures to respond to the unfair acts of the CCP's SOEs on a coordinated basis.

Question. The Chinese Communist Party continues to commit terrible human rights abuses. The Uyghurs, a religious and ethnic minority in China, have experienced brutal repression at the hands of the Chinese Government. They continue to be subjected to torture, imprisonment, and forced labor.

At least 1 million Uyghurs have been put in internment camps by the Chinese Communist Party. Around 100,000 Uyghurs and ethnic minority ex-detainees have reportedly been used as forced labor in textile and other industries in China.

How effective have U.S. actions been at addressing the human rights abuses and the use of forced labor?

Answer. Unfortunately, it has only be of late that the existing tools to address human rights abuses and the use of forced labor against the Uyghurs have been utilized. They need to be expanded to include other products and consideration of a region-wide WRO must be initiated. In addition, it is important to recognize that the Uyghurs are not the only population in China that is under attack nor are these abuses limited to being perpetrated by the CCP. Enforcement of internationally recognized human rights, including workers' rights, must be a higher priority.

Question. What more should the United States do on transparency and enforcement?

Answer. The CCP has denied any abuse of human rights and the use of forced labor. Yet they have blocked access to any form of inspection to verify the allegations that have been made. This lack of transparency should shift the enforcement burden to create a rebuttable presumption that the alleged abuses are, in fact, taking place. Multiple parliaments and experts have identified the actions against the Uyghurs as genocide, and the world must act.

PREPARED STATEMENT OF CLETE R. WILLEMS,
PARTNER, AKIN, GUMP, STRAUSS, HAUER, AND FELD

Chairman Wyden, Ranking Member Crapo, distinguished members of the committee, thank you for the opportunity to appear before you today to discuss how to improve U.S. competitiveness vis-à-vis China. The U.S.-China competition will define the trajectory of the global economy for generations to come. The Government of China's efforts to dominate today's industries and those of the future with unfair trade practices pose a serious threat to long-term U.S. competitiveness and leadership. Likewise, the Government of China's efforts to export its non-democratic model of censorship, propaganda, and surveillance around the world pose a serious threat to our values and way of life. Democrats and Republicans must work together to counter this threat and ensure the United States remains more economically competitive and globally influential than China for years to come.

During today's hearing, I will offer suggestions on how to best achieve this objective based on my experience negotiating with China on the Phase One deal and in persuading U.S. allies to adopt robust policy responses on China in multilateral fora, including the World Trade Organization (WTO) and Group of Seven (G7). Some of my ideas are derived from the China strategy that I helped develop as part of the National Security Council (NSC) and National Economic Council (NEC). I will also draw on my experience helping companies navigate China's market and adjust to recent U.S. policy on China, although the comments I provide are solely my own.

Ultimately, Congress—along with the administration, the private sector, and key U.S. allies and trading partners—will all play a critical role in determining the outcome of the U.S.—China competition. I hope my suggestions today help provide elements of a roadmap that leads to success.

"RUN FASTER" WITH DOMESTIC INNOVATION INCENTIVES *AND* TRADE AGREEMENTS

First, winning this competition undoubtedly requires the United States to "run faster." In particular, the United States should adopt policies to encourage domestic innovation, especially in critical areas that China is targeting due to their strategic importance, such as artificial intelligence, semiconductors, synthetic biology, 5G and 6G, among others.[1] I share the concerns of some policymakers about overall government spending levels, but misdirected spending in certain areas should not deter us from well-directed spending in other areas critical to continued U.S. innovation leadership.

Appropriately directed government spending should enhance the strengths of the U.S. market-led economic system and strengthen the U.S. private sector instead of attempting to replace it. The Endless Frontiers Act and other legislation that focuses on research and development, public-private partnerships, collaboration with universities, and narrowly tailored grant programs are a good start. Congress should also fully fund the USA Telecommunications Act and CHIPS for America Act as well as consider tax incentives to spur innovation for critical industries.[2]

Such policies will help us "run faster," but we are unlikely to run "fast enough" if we only focus at home. Much of the revenue our companies use to fund innovation is derived from sales overseas, and the United States should negotiate trade agreements that break down barriers to American goods and services. The United States cannot afford to sit on the sidelines while China implements the Regional Comprehensive Economic Partnership (RCEP) and considers the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Our inaction puts

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[1] The Endless Frontiers Act and Executive Order on America's Supply Chains (EO14017) target many of the appropriate sectors.

[2] This includes the tax components of the CHIPS for America Act (S. 3933 in the 116th Congress). The tax components of this package could also be broadened to include design.

U.S. companies at a disadvantage, depriving them of revenue that could be used to fund greater innovation. We also miss the chance to set standards in key areas like technology transfer, subsidies, state-owned enterprises (SOEs), and digital trade that promote our economic model over China's.

Congress should renew Trade Promotion Authority, encourage the administration to finalize the U.S.-U.K. trade agreement, and plot a path to new agreements in the Indo-Pacific region. If a comprehensive agreement with our former TPP partners is not viable, we should consider targeted sectoral agreements with TPP countries in areas like digital trade and build on that approach over time.[3] Concurrently, we should robustly implement the U.S.-Mexico-Canada agreement, which was enacted by Congress with historic bipartisan support.

BETTER COORDINATE WITH ALLIES

Second, any effective China policy requires better coordination with U.S. allies. In addition to negotiating and implementing bilateral and regional trade agreements, we should coordinate on WTO reform and other efforts to set global rules and standards for emerging technologies and critical industries.

The United States has used the WTO to address harmful Chinese policies, including export restraints on rare earth metals[4] and licensing of intellectual property on non-market terms, among others.[5] But despite successes like these, the WTO has not effectively constrained many of China's practices and is falling short of its mandate to widely promote market-oriented free and fair trade. The WTO does not include agreements governing forced technology transfer or SOEs, it allows China to claim "developing country status" and gain a negotiating advantage despite its global stature, and dispute settlement proceedings take too long and have undermined our ability to use trade remedies to counter China's massive industrial subsidies.

Congress should encourage the Biden administration to make ambitious proposals to fix the WTO's problems as soon as possible, including through its trilateral initiative with the EU and Japan,[6] plurilateral agreements on e-commerce and other issues, and robust dispute settlement reform proposals that would restore the system's functionality in exchange for meaningful changes. My paper "Revitalizing the WTO" lays out potential reform proposals in detail.[7]

The United States must also better coordinate with allies on defensive measures taken in relation to China. Many recent export control actions are justified, but due to a lack of multilateral coordination there are reports of production shifting to other countries without similar measures in place.[8] In the future, such controls should be coordinated to maximize impact and avoid putting U.S. industry at a disadvantage to foreign competitors. Such measures should also be narrowly tailored to allow exports for non-sensitive items to ensure American goods and services can compete globally and support jobs at home. To the extent that Chinese companies continue to purchase such non-sensitive items from U.S. technology companies, this puts China in the position of subsidizing U.S. innovation leadership.

The United States should also prioritize resolving disputes with allies, such as the longstanding WTO disputes related to Large Civil Aircraft,[9] section 232 tariffs on steel and aluminum, and digital services taxes. Resolving these disputes will require flexibility on both sides, but such flexibility is worthwhile if it allows us to avoid

[3] *See, e.g.,* Wendy Cutler and Joshua P. Meltzer, "Digital trade deal ripe for the Indo-Pacific," available at: *https://www.brookings.edu/opinions/digital-trade-deal-ripe-for-the-indo-pacific/.*

[4] *China—Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum (United States),* WT/DS431.

[5] *China—Certain Measures Concerning the Protection of Intellectual Property Rights* (United States), WT/DS542.

[6] Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States, and the European Union, January 14, 2020, available at: *https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/january/joint-statement-trilateral-meeting-trade-ministers-japan-united-states-and-european-union.*

[7] *See, e.g.,* Clete Willems, "Revitalizing the WTO," available at: *https://www.atlanticcouncil.org/wp-content/uploads/2020/11/Revitalizing-the-WTO-Report_Version-11.6.pdf.*

[8] *See, e.g.,* Stu Woo, "The U.S. vs. China: The High Cost of the Technology Cold War," *Wall Street Journal,* October 22, 2020, available at: *https://www.wsj.com/articles/the-u-s-vs-china-the-high-cost-of-the-technology-cold-war-11603397438.*

[9] *European Communities and Certain Member States—Measures Affecting Trade in Large Civil Aircraft (United States),* WT/DS316; *United States—Measures Affecting Trade in Large Civil Aircraft—Second Complaint (European Union),* WT/DS353.

wasting time and energy fighting each other that is better spent on building trust and coordinating on China.

Importantly, this does not mean the United States should not leverage existing measures or give countries a free pass on policies that harm U.S. interests. For example, in exchange for lifting its section 232 tariffs on steel and aluminum, the United States should ask partners to commit to actions to reduce the impact of Chinese excess capacity on global markets, track transshipment, and limit import surges into the United States. Likewise, on digital services taxes, the United States should continue to move forward with its section 301 investigations until others agree to drop unilateral measures that unfairly target U.S. companies for revenue while exempting domestic competitors. The United States should also not tolerate policies like the EU's proposed Digital Marketing Act, which is both discriminatory and includes elements would force U.S. companies to turn over their technology.[10] Mechanisms like the proposed U.S.-EU Trade and Technology Council could be used to resolve differences on digital-related issues and set standards for future technologies.

FURTHER ENGAGE WITH CHINA BILATERALLY

Third, the United States should engage directly with China to press for additional market access openings and modifications to China's policies. Sales to China support American farmers, businesses, and workers. Just as China harnessed U.S. consumption and growth to grow its economy, so too the United States should benefit from increased consumption and a level playing field in the second largest economy in the world.

The Phase One deal did not fix all of our problems with China, but it helped achieve important structural reforms to China's intellectual property laws, substantially reduced barriers to U.S. agricultural exports, begun to pry open the financial services sector, and condemned the policy of forced technology transfer. According to the Trump and Biden administrations, China has met the majority of its structural commitments [11] and U.S. agricultural exports to China are at record levels.[12] The Phase One deal is also one of the only bilateral dialogues currently in place and thus one of few existing mechanisms to discuss and potentially solve problems. For these reasons, it is in the strong U.S. interest to maintain the deal.

In addition to continuing with Phase One, the United States should consider whether there is a viable path to Phase Two. China is admittedly unlikely to fully address issues like industrial subsidies or state-owned enterprises (SOEs) in a bilateral context, but we can make additional progress that benefits U.S. industry and workers. As a starting point, I recommend harvesting the text on services, non-tariff barriers, and forced technology transfer [13] on which the U.S. and China were making progress before negotiations on a more comprehensive deal broke down in May 2019.

Any Phase Two deal should also focus on structural issues instead of purchases. Although the Phase One agricultural purchasing commitments helped spawn record sales to China, this is because the purchasing commitments are coupled with a robust underlying structural chapter that requires China to actually change its laws. The purchasing commitments on manufacturing, services, and energy have not fared as well because of the lack of a corresponding structural chapter. As this illustrates, it is the structural commitments that matter, not the purchasing ones.

Another benefit to a Phase Two deal is that it could lead to a tariff reduction on certain Chinese imports and U.S. exports. To be clear, I supported the initial imposition of the 301 tariffs on China to create leverage to persuade China to drop its unfair trade practices. But there is no question that existing U.S. tariffs—and Chi-

[10] Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act), available at: *https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608116887159&uri=COM%3A2020%3A842%3AFIN.*

[11] Interim Report on the Economic and Trade Agreement Between the United States of America and the People's Republic of China: Agricultural Trade, U.S. Department of Agriculture, October 2020, available at: *https://ustr.gov/sites/default/files/assets/files/interim-report-on-agricultural-trade-between-the-united-states-and-china-final.pdf; see also* 2021 National Trade Estimate Report on Foreign Trade Barriers, March 31, 2021 (discussing China's implementation of the Phase One Deal at length), available at: *https://ustr.gov/sites/default/files/files/reports/2021/2021NTE.pdf.*

[12] *See, e.g.,* USDA China data: *https://www.fas.usda.gov/regions/china.*

[13] The Forced Technology Transfer chapter of the Phase One deal does not include all of the components that the United States and China were originally negotiating.

na's corresponding retaliation—are having an adverse impact on U.S. businesses, farmers, and workers. This is especially true with respect to those that obtain production inputs from China that cannot be sourced elsewhere or who have lost market share in China to international competitors. Therefore, it is in our interest to seek additional changes in China's policy (and Chinese tariff relief) in exchange for U.S. tariff relief. In this regard, it is important to recall that section 301 statute indicates that tariffs imposed pursuant to it are not intended to be permanent, but to temporarily provide the United States leverage to achieve negotiated outcomes.[14]

At the same time, the Biden administration should also consider reinstating a tariff exclusion process to provide relief for products that cannot be sourced elsewhere and are not core to China's Made in China 2025 ambitions. This will make a policy that maintains leverage over China more economically sustainable over the long term.

DON'T BECOME CHINA TO BEAT CHINA

Fourth, the United States must avoid the impulse to "become China to beat China." More specifically, we must not adopt policies that replicate the same Chinese practices we are condemning. Such policies will be inefficient at best, and at worst will harm our economy and credibility to rally an international coalition in our favor. The strength of the U.S. economy and the core of our innovation leadership comes from our market-based system and rules-based trade that rewards entrepreneurialism, fair competition, and the rule of law. This should not be sacrificed.

For example, in an attempt to respond to supply chain challenges, we should not seek to source all products domestically. We should also not double down on procurement policies that discriminate against foreign products and services. These evoke core elements of the Made in China 2025 plan. Supply chain efforts should instead focus on positive incentives like increased spending and tax credits combined with efforts to improve supply diversity, flexibility, redundancy, and partnership with trusted partners and allies. Similarly, access to our procurement markets should not be restricted for all foreign actors, but instead traded for reciprocal access to foreign markets. This can help promote the same levels of economic growth as Buy American while saving taxpayer dollars in the process.

The United States should also resist invoking "national security" to support broad trade barriers unless it is truly justified. Indeed, China's expansive view of national security as it applies to its economy underpins many of the policies the United States finds most problematic and was a common excuse as to why China could not meet U.S. demands during negotiations on the Phase One deal. Invoking national security in questionable circumstances and against key allies gives China carte blanche to justify a whole range of policies with questionable national security claims while at the same time undermining the WTO legal architecture.

Congress should also tread carefully when considering novel policies like outbound investment screening regimes that would significantly expand the role of government in company investment decisions.[15] Broad interventions into how U.S. companies operate and invest abroad risk mirroring the distortive role the Government of China often plays in the allocation of resources by its companies. Such a regime could also impair the ability of U.S. businesses and workers to compete globally from the United States and advantage their competitors in foreign countries not subject to similar restrictions and reviews.

CONSULT CLOSELY AND CONTINUOUSLY WITH THE PRIVATE SECTOR ON POLICY CHOICES

Fifth, the U.S. Government and private sector should closely align on efforts to address the challenges posed by China. It is entirely reasonable for the U.S. Government to set standards about U.S. company behavior in China, including that U.S. companies not utilize forced labor in their supply chains or directly support companies affiliated with China's military. However, U.S. policymakers should consult closely with industry on such action to receive input on how to best design any measures and provide businesses with time to adjust to changes in U.S. policy. The Biden administration's efforts to reach out to numerous U.S. companies during its

[14] 19 U.S.C. § 2411(b) specifies that action under the statute is taken "to obtain the elimination of [the] act, policy, or practice" that "is unreasonable or discriminatory and burdens or restricts United States commerce."

[15] America LEADS Act, S. 4629, 116th Congress, as introduced, section 411.

100-day supply chain review is a welcome development, and hopefully the policies derived from that effort fully reflect industry input.

The U.S. Government should also be willing to back U.S. companies facing particularly difficult Chinese government policies, such as Chinese government censorship, an issue I had the opportunity to testify on before this committee last year.[16] Some of the ideas that I shared at that time remain relevant, but I would also endorse other ideas, such as a Special 301 on censorship activities.[17] This is a good example of the U.S. Government adopting a core role in pushing back on a policy that is so embedded in the current Chinese Government's philosophy that no company could navigate it sufficiently on its own.

BE CLEAR-EYED ABOUT THE CHINA THREAT AND THE RISKS FROM CERTAIN POLICY CHOICES

Finally, we must be clear-eyed about the extent of the threat posed by China and the risk that certain policy choices entail. If we over-legislate on this issue in a way that undermines our long successful market economy principles and view every single Chinese action and Chinese company as a threat, we could unintentionally undermine our greatest strengths and even bring ourselves to the brink of conflict.

Yes, China's Made in China 2025 plan and subsequent 5 year plans threaten U.S. innovation leadership in critical industries of the future, but the health of China's economy as a whole appears more tenuous. As numerous analysts have pointed out, China's economic growth data is unreliable and China remains heavily reliant on inefficient SOEs.[18]

Further, while China's plans for Military-Civil Fusion are truly concerning,[19] not every company in China is a Communist Chinese Military Company (CCMC). Indeed, some very prominent Chinese companies appear to be quite out of alignment with their government at the moment.

As a result of factors like these, U.S. policy-makers should adopt nuanced policy responses that are calibrated to the threat posed and intended to achieve clear objectives instead of overly-broad approaches that may do more harm than good. Indeed, if we seek to fully sever ties with China and blindly demagogue all Chinese entities and people, including the many that share our concerns about their own government's policies, we could find ourselves on a dangerous path.

One important lesson that I learned as a negotiator on the Phase One deal with China, witnessing Chinese Government officials openly arguing with each other in front of our delegation, is that China is not a monolithic country. Much like the United States, China is composed of individuals with very different perspectives and companies with very different relationships with their government. To ensure that our policies lead to our desired outcomes, we need to develop clear standards to help discern between different groups of individuals and companies in China so we can continue to engage with and to build up those who share our values and can help promote long-term peace, prosperity, and a level playing field between our countries. That is better than many of the alternatives.

I look forward to continuing to work with the committee on all of these important objectives.

QUESTIONS SUBMITTED FOR THE RECORD TO CLETE R. WILLEMS

QUESTIONS SUBMITTED BY HON. MIKE CRAPO

Question. America's innovative industries, particularly its digital technology companies, are the envy of the world. My concern is that China is taking out its envy

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[16] Clete R. Willems, Testimony before the Senate Committee on Finance, Subcommittee on International Trade, Customs, and Global Competitiveness, hearing on "Censorship as a Non-Tariff Barrier to Trade," June 30, 2020, available at: *https://www.finance.senate.gov/imo/media/doc/30JUN2020WILLEMSSTMNT1.pdf.*

[17] America LEADS Act, S. 4629, 116th Congress, as introduced, section 415.

[18] *See, e.g.,* Shehazd H. Qazi, "The Great Chinese Rebound? Not So Fast," *Barron's,* January 26, 2021, available at: *https://www.barrons.com/articles/the-great-chinese-rebound-not-so-fast-51611622798.*

[19] *See* "Military-Civil Fusion and the People's Republic of China," U.S. Department of State, available at: *https://www.state.gov/wp-content/uploads/2020/05/What-is-MCF-One-Pager.pdf.*

of U.S. successes by creating new restrictive tools to target these innovators—and that other countries will follow in this direction.

Do you agree?

Answer. Yes. I share your concerns about actions that China and other countries around the world are taking to target U.S. digital technology companies. Many of China's actions are longstanding and extremely broad in scope, such as censorship, forced technology transfer, and discrimination in favor of "national champion" companies, including through market access limitations on foreign companies. Together, these polices often have the effect of preventing U.S. digital technology companies from being able to offer their products or services in China at all.

Unfortunately, the European Union is also targeting U.S. digital technology companies, including through digital services taxes that single out American companies for revenue while excluding domestic competitors. The current Commission is also advocating a digital sovereignty agenda that includes proposals like the Digital Markets Act. This proposal is targeted at U.S. companies like digital services taxes, but also includes provisions that would require U.S. companies to turn over trade secrets, user data, and algorithms to competitors.

Finally, numerous other countries around the world are including digital services taxes outside of the context of the multilateral OECD negotiations.

Question. What can we, in Congress, do about it?

Answer. First, Congress should be vocal about its concerns about these policies. That helps strengthen the administration's hand in dealing with our trading partners. Congressional leadership on digital services taxes in particular has been very helpful in illustrating to the EU that neither political party in the United States will tolerate the unfair targeting of U.S. companies for revenue.

Second, Congress should take legislative action that strengthens the administration's hand in dealing with these issues. This includes ideas like a Special 301 to address censorship and an investigation into the EU's proposed Digital Markets Act.

Finally, Congress should discuss with the administration how to create international rules at the WTO and in FTAs to deal with issues like censorship, propaganda, data localization, and the targeting of user data, among other key issues, to prevent China from promoting its model of governance around the world. An Indo-Pacific digital trade strategy is a good place to start.

Question. I am interested in the point made in your written statement about how U.S. exports of non-sensitive items to China put China in the position to subsidize U.S. innovation leadership. The implication is that overly restricting non-sensitive items may not only deny our companies a safe path of needed capital for innovation, today, but also deny these same companies market access to China in the future, and even for pure off-the-shelf items. As other countries move in to backfill non-sensitive U.S. orders, these new foreign relationships with China may eventually take the place of the U.S. in the China market, generally.

What are some steps the United States can take to make sure our approach to restricting non-sensitive items is targeted and safe?

How can we ensure that other countries coordinate with us better on export restrictions and trade policy with China, to mitigate the backfilling problem?

Answer. The United States should lay out clear objectives before taking export control actions and ensure that the measures adopted are designed to achieve that objective without unintended consequences. For example, to the extent that there are concerns that a certain company could use a particular technology to threaten U.S. national security, the measure adopted should be designed to prohibit the export of that item to that company from the United States or a third country. That likely will involve coordinating with that third country either directly or by restricting the item in one of the many multilateral export control fora. At the same time, the measure should not necessarily apply to the export of all other items to that company to the extent that those other items do not raise similar concerns. When a foreign entity continues to purchase non-sensitive items from a U.S. company that provides additional revenue for the U.S. company to use for research and development and maintain an innovation advantage.

Question. You served in the Trump administration as part of the team that worked to stop forced technology transfers to China. Some have argued that the TRIPS intellectual property waiver would amount to exactly that—a forced transfer of mRNA vaccine technology to China and other countries—and "would be delivering a competitive advantage to countries that are increasingly viewed as our adversaries, at taxpayer expense."

Do you agree?

Answer. The Biden administration's goal of ensuring a vaccine supply to the rest of the world is laudable, especially at a time when much of the world is suffering from COVID–19. However, I am very concerned with the Biden administration's recent decision to negotiate on a TRIPS waiver for vaccines at the WTO. Even proponents of this policy recognize that it will not result in more vaccine production during 2021, and it has numerous adverse consequences.

First, there is no evidence that intellectual property rights have been an impediment to vaccine production and distribution. Numerous U.S. and EU companies have already voluntary licensed technologies to companies capable of production in foreign countries, such as the Serum Institute in India. Larger problems at the moment appear to be the imposition of export restraints on vaccines and the raw materials needed to produce them as well as the lack of idle manufacturing capacity capable of producing vaccines using this novel technology. Solutions should be addressed toward these issues instead of IP. To make matters worse, some in industry have expressed concerns that the negotiations on the TRIPS waiver could actually reduce vaccine production by increasing the global scramble for raw materials, including by entities not yet capable of producing vaccines.

Second, such a policy will enable countries like China to violate U.S. mRNA patents without any repercussion, bringing them closer to their Made in China 2025 objective of dominating the global market for biotechnology and undermining long-standing bipartisan efforts to push back against China for IP theft. It is also important to recognize that mRNA technology is not only limited to vaccine production, but could have broad application in many other areas.

Third, this policy also appears to threaten our attempts to build an alliance with the EU at the WTO. Indeed, the early response from our European allies makes clear that they were not consulted with before the Biden administration announced its new policy, undermining recent efforts to cultivate the alliance to better push back on China's unfair practices.

Congress should encourage the Biden administration to abandon this misguided path and instead seek to export vaccines from the United States. This would help address legitimate concerns about needing to help the rest of the world respond to the COVID crisis without the same adverse consequences. At the same time it would also help achieve the bipartisan objective of further strengthening the biopharmaceutical sector and supply chain in the United States.

QUESTION SUBMITTED BY HON. THOMAS R. CARPER

Question. Over the past several years, tariffs on China and subsequent retaliatory tariffs have caused significant economic disruptions for U.S. businesses and farmers. I have heard from many constituent companies who have invested significant time, money, and resources navigating the process for securing an exclusion from these tariffs. However, unfortunately, these exclusions expired at the end of last year, and no new exclusion process has opened. Recently, I joined Senator Portman, and several of my Senate colleagues on both sides of the aisle, to encourage USTR to restart an exclusion process.

However, the last exclusion process was far from perfect, and left many questions about speed, transparency, and fairness.

Moving forward, in your view, what should Congress do to reform this process in order to provide greater certainty and predictability to American companies?

Answer. First and foremost, Congress should work with the administration to make sure that an exclusion process is reinstated so that the many exclusions that were originally granted as a result of a lack of domestic availability are quickly reinstated and made retroactive.

Second, in moving forward with the consideration of new exclusions, Congress should consider four enhancements: (1) greater transparency about the rationale for decisions; (2) additional due process, such as having a hearing following written comments; (3) eliminating time restrictions on exclusion requests and instead adopting a "rolling process"; and (4) including an appeals process.

QUESTIONS SUBMITTED BY HON. PATRICK J. TOOMEY

Question. Key to the U.S.-China relationship is working with allies, and one of the most important ways that the United States can address the China threat is by pursuing negotiations on new free trade agreements (FTAs). China is aggressively pursuing new trade deals, and in this past year has joined the Regional Comprehensive Economic Partnership (RCEP) and has pursued a comprehensive agreement on investment with the European Union (EU). The Biden administration, in contrast, has said that the United States will not pursue or sign any new trade agreements until the U.S. makes "major investments in American workers and our infrastructure."

Pursuing new FTAs would not only have beneficial economic effects—supporting domestic manufacturing through increasing manufacturers' market access—but would also have strategic implications. Reciprocal free trade agreements with a country like Taiwan would not only be a boon for our domestic manufacturers, but would also be important for our national security.

What do you think are our biggest opportunities for pursuing new strategic free trade agreements, and how can such agreements be written to combat the threat of Chinese unfair trade practices?

Answer. As I noted in my testimony, it is critical for the United States to adopt an offensive trade agenda that seeks to open new markets for U.S. workers and businesses and create rules that promote U.S. free and open market-based solutions over Chinese alternatives. Such a strategy should include bilateral, plurilateral, and multilateral agreements.

Among the different options, I believe that Congress and the Biden administration should prioritize the Indo-Pacific region where China's influence is the strongest and where the U.S. commitment to greater economic engagement has been called into question by our withdrawal from the TPP. Ideally, the United States should attempt to negotiate with CPTPP countries on changes to the agreement necessary for the United States to rejoin. To the extent that this is not politically possible, the United States could instead negotiate building block agreements with CPTPP countries in priority areas like digital trade.

Congress and the administration should also prioritize the completion of negotiations with the United Kingdom and Kenya. As I understand it, our negotiations with the United Kingdom were quite advanced during the Trump administration and this work should not go to waste, especially in light of the close relationship between the United States and United Kingdom and the potential for a "gold standard" agreement in numerous areas. I would also continue to prioritize Kenya given China's efforts to gain influence in the African continent.

Finally, the WTO is also critical to any effective China strategy. The Biden administration should build on the numerous proposals made by the Trump administration to address problems with the negotiating function, including the U.S.-EU-Japan trilateral work, and complement them with new proposals to improve the dispute settlement function.

Question. If the United States wants to encourage a free and open Indo-Pacific and counter Chinese influence in the region, do you agree that accomplishing that task will include working with like-minded countries in the region, like Taiwan, to liberalize trade?

Answer. Yes, I believe that greater economic engagement with Taiwan holds great promise and the United States should consider an FTA. However, this will require Taiwan to address longstanding concerns about U.S. market access for agricultural products such as beef and pork to illustrate their commitment to a substantive trade deal. To the extent that the administration is not ready to move into full FTA negotiations with Taiwan, I would also endorse recent comments by Ambassador Tai to try to expand the economic relationship in other ways. For example, any efforts at joint standard setting in critical technologies or linking U.S. supply chains with key allies and partners should include Taiwan.

Question. President Trump's Phase One deal with China achieved some gains in discouraging China's problematic behavior as it related to investment, intellectual property protection, and forced technology transfer, but it kept in place the vast majority of the section 301 tariffs. It also lacked any reforms of some of the most significant unfair trade practices—China's industrial subsidies and general preferential treatment of state-owned enterprises.

While it is important to ensure that our trading partners live up to their international trade commitments, I am concerned about the use of tariffs as a primary remedy. Do you believe that tariffs are the best mechanism to address Chinese unfair trade practices?

What policy alternatives can the Biden administration instead utilize to better target bad actors?

Answer. I believe that targeted tariffs can help create leverage to address trade concerns as envisioned by both section 301 of the 1974 Trade Act and WTO rules. At the same time, I agree that there are limits to the use of this tool and that at some point additional tariffs may become more harmful than good.

For example, Lists 1 and 2 of the section 301 action against China were narrowly targeted toward products that were substitutable or a core part of Made in China 2025. In other words, these tariffs were designed to be more harmful to China than to the United States, and in light of this, they were helpful in getting China to the negotiating table and leading to the Phase One deal. On the other hand, subsequent tariff lists were not as well targeted and in many cases are significantly harming U.S. companies. In light of this, I agree with you that the Biden administration (and other U.S. administrations in the future) should consider alternatives to tariffs.

Overall, when considering alternatives to tariffs, the United States should consider measures that are more harmful to foreign companies than U.S. ones or that are reciprocal to the type action that the United States is attempting to address. Certain tax measures, fees on services, or other types of limits on investment or market access may be worth considering. Ultimately, however, the goal of all of these measures should not be to create a lasting trade barrier but to persuade the other country to change its unfair practices.

QUESTIONS SUBMITTED BY HON. TODD YOUNG

Question. For years, digital trade and the cross-border flow of data has been at the forefront of global trade agreements with e-commerce growing at an exponential rate.

Unfortunately, the global digital economy is complex and it can be difficult to advance U.S. interests unilaterally. As we work on future trade negotiations, the U.S. will need to focus on protecting key national interests, but also work cohesively with our international allies.

Can you speak to the importance of implementing a national strategy focused on maintaining U.S. global tech leadership by pursuing a digital trade agenda that holds China accountable, but also supports businesses dependent on e-commerce?

Answer. To be successful, any strategy that aims to improve U.S. competitiveness in digital trade should have an offensive and defensive component. Key elements of "offense" should include the adoption of additional incentives in the United States, such as the Endless Frontier Act; lower tax rates and less burdensome regulation to create an overall more conducive climate for innovation in the United States; joint standard-setting on emerging technologies with key allies through the EU-U.S. Trade and Technology Council and other forums; and the pursuit of trade agreements with key partners, including through the WTO. In this regard, I would prioritize digital trade agreements with the Indo-Pacific region and the e-commerce negotiations at the WTO.

Question. Last year, China and 14 other Asia-Pacific nations signed the Regional Comprehensive Economic Partnership, which in some instances will bind China to rules for digital commerce.

With that said, China has been developing its own legal frameworks for governing digital rules, and as the world's second-largest economy, they still have an advantage when negotiating terms for future trade deals with emerging nations.

Therefore, it remains in our strategic interests for the U.S. to assert oversight over China's digital rule-makings and to make sure our allies in the Asia-Pacific are not negatively pressured by China's presence.

If the U.S. were to continue developing a plurilateral digital trade agreement with Japan that builds off current principles, would this effectively add geopolitical pressure for China to adhere to international standards?

Answer. Yes. Although I was a proponent of the bilateral Phase One negotiations with China and believe that there is merit in Phase Two, we will realistically only effectively pressure China to adhere to international standards on key digital issues through a coordinated plan with like-minded allies. Consistent with this we should seek a plurilateral agreement in the Indo-Pacific region with robust digital trade provisions and WTO negotiations on the same issues.

QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

Question. The WTO was formed to establish a trading system based on "open, market-oriented policies" per the 1994 Marrakesh Agreement which established the organization. Despite modest improvements, China's markets are not "open." Their policies are not "market-oriented." China is no longer a "developing nation" despite its WTO status.

Market-distorting subsidies, intellectual property theft, forced technology transfer, forced labor, and industrial over-capacity in China aren't anomalies. They are the cornerstones of China's economic policy.

Is there any reason to believe the WTO currently has the necessary tools or the will to address the challenges the world is facing with respect to China?

What WTO reforms are needed to make it a more effective "cop on the beat" with respect to China?

Answer. I do not believe that the WTO has all of the necessary tools to constrain China's unfair trade practices. Indeed, the WTO lacks rules covering many of the issues raised in your question such as forced technology transfer, industrial subsidies, state-owned enterprises, and forced labor. It is also unacceptable for China to claim "developing country" status and therefore seek a lower level of obligation than the United States in ongoing negotiations. China is the second largest economy in the world, the world's leader in certain sectors, and aspires to improve its global stature. Consistent with this, China should be treated the same as the United States at the WTO.

The WTO's dispute settlement system is also in need of reform. It takes too long for countries to get a resolution, and in certain disputes the WTO has adopted reports that undermine the ability of the United States and others to use trade remedies to push back against China's unfair practices.

I have written extensively about how to update the WTO to better deal with China and am happy to continue to engage with you on these ideas: *https://www.atlanticcouncil.org/in-depth-research-reports/report/revitalizing-the-wto/*.

Question. The Phase One agreement negotiated by the Trump administration was very important to American exporters. Wyoming's farmers, ranchers, and energy producers applauded the deal.

While agriculture purchases have been positive for U.S. agriculture exports to China, American energy exporters, services and manufacturing industries are still waiting for China to fulfil their commitments. You mentioned the importance of coupling structural commitments with purchase commitments in order for Phase One and future agreements with China to bear fruit.

What can we do today in Congress to ensure China meets its Phase One purchase obligations with respect to energy, services, and manufacturing?

And is it wise to proceed with a Phase Two agreement prior to China meeting its commitments under the Phase One deal?

Answer. As I noted in my testimony, one of the primary reasons that China's purchases of U.S. agricultural goods hit record levels in 2020 despite the COVID pandemic was the extensive set of structural commitments included in the Phase One Deal, with which China appears to have largely complied. There are not similar underlying commitments for energy or manufacturing and the services commitments are much less extensive than for agriculture.

Moving forward, I believe that the United States should continue to press China to meet all of the commitments in the agreement, but to press for structural commitments in the energy, services, and manufacturing areas. This will help ensure that China's increased commitments are predicated primarily on market forces instead of state intervention. This should be an overarching goal of the United States with respect to China's economy.

I do not believe that enforcing Phase One and negotiating Phase Two should be mutually exclusive. We can hold China accountable for the commitments it has made while not standing idle on trying to achieve additional successes for U.S. workers and businesses with respect to the many market access barriers that still exist. In fact, substantial progress was made during the Phase One negotiations with respect to additional market access openings in manufacturing and services, among other areas. We should build off of that progress in a potential Phase Two deal.

Question. Chinese over-capacity of steel, aluminum, cement, chemicals and numerous other industrial inputs is part of a broader strategy to drive down prices and put international competitors out of business. Chinese state-owned enterprises (SOEs) and export subsidies hurt American businesses and workers. In Wyoming, our soda ash producers and steel pipe and tubing producers know firsthand how difficult it is to compete with China in the marketplace.

Where should the U.S. focus our efforts to counter China's export subsidies and over-capacity?

What can Congress do to make U.S. companies competitive when they are forced to compete directly with China's SOEs?

Answer. Addressing issues with China's export subsidies and over-capacity will require a multi-pronged effort that includes:

(1) Pressuring China on these issues bilaterally, including through a potential Phase Two deal. The United States had been negotiating text with China on these issues before talks broke down in May 2019.

(2) Working with close allies and partners to pressure China directly. For example, as a condition for removing U.S. steel and aluminum tariffs on the EU, the EU should commit to efforts to address Chinese excess capacity.

(3) Creating high standard trade agreements that include provisions prohibiting export subsidies, over-capacity, and other of China's most unfair trade practices.

(4) Working through multilateral institutions to address these issues. This includes a revamped Global Forum on Steel through the OECD and bringing disciplines on these issues into the WTO. The trilateral work with the EU and Japan holds promise with respect to the WTO, but the three parties need to expedite work on text.

Question. The Chinese Communist Party continues to commit terrible human rights abuses. The Uyghurs, a religious and ethnic minority in China, have experienced brutal repression at the hands of the Chinese government. They continue to be subjected to torture, imprisonment, and forced labor.

At least 1 million Uyghurs have been put in internment camps by the Chinese Communist Party. Around 100,000 Uyghurs and ethnic minority ex-detainees have reportedly been used as forced labor in textile and other industries in China.

How effective have U.S. actions been at addressing the human rights abuses and the use of forced labor?

What more should the United States do on transparency and enforcement?

Answer. To date, it is unclear whether U.S. actions have resulted in a dramatic change in China's appalling practices in the Xinjiang region.

In order to better address this problem, the United States should coordinate any subsequent sanctions-related action with allies, building off recent efforts to work with the EU, U.K., and Canada. The United States should also closely work with the private sector to determine how to best root out forced labor from supply chains to ensure that measures are effective and not overbroad.

PREPARED STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON

The Finance Committee meets this morning to discuss one of the most significant challenges facing the U.S. economy: the decades-long effort by the Chinese Government to manipulate global competition in their favor by any means necessary.

The Finance Committee is coming together to respond to this challenge. Democrats and Republicans are working on new legislation that will take concrete steps to boost this country's competitiveness and level the playing field for American workers and businesses.

That bipartisan effort will get right at the core issues of how our country can outcompete China. Cracking down on the use of forced labor. Fighting censorship. Protecting U.S. jobs by rooting out counterfeits. Shoring up supply chains, including semiconductors and medical products. Stepping up trade enforcement and oversight. This will be a significant bipartisan push on issues that are front and center for this committee.

I want to thank Ranking Member Crapo and many members of the committee who've contributed. The committee's proposal will be combined with bills from other committees to form a larger package on building up American competitiveness. That's a prospect I think both sides of the Senate ought to be able to get behind.

The trade rip-offs and underhanded tactics the Chinese Government and enterprises have employed to grow at our expense are well known. Massive, unfair subsidies that destroy any level playing field. Theft of innovative intellectual property. Shakedowns of cutting-edge technologies. Policies that meddle in supply chains and hurt American consumers and producers. The use of forced labor, which is absolutely reprehensible on its own, regardless of where it fits into trade.

With the Great Firewall and other sophisticated trade barriers, the Chinese Government blocks 10,000 websites and a host of American digital service providers. For the few allowed to enter the Chinese market, the price of admission is extreme censorship.

The overall result is untold losses for American companies and their workers. Homegrown Chinese tech giants rip off American innovations and thrive in the absence of American competitors. Several of those homegrown firms have outgrown the Chinese market, accessed the U.S. financial system, and invested in U.S. companies. The catch is, this isn't just a matter of economic losses for America. These Chinese firms competing unfairly also export their government's intolerance of free speech.

From solar panels to soybeans to software and almost everything in between, America's workers, farmers, and our economy writ large have been exposed to China's trade cheating for far too long. The consequences are visible in Oregon and all across the country. Factories have shuttered. Towns have lost their beating economic hearts. Fewer and fewer American workers believe it'll be easier for their families to get ahead in the future than it was in the past.

In short, America has spent 2 decades slowly falling further and further behind in a cold trade war. That didn't change when it turned hot over the last 4 years.

The previous administration was right to throw out business as usual on trade with China, but their strategy relied more on what some people might call "Internet muscles" and tough talk than serious economic strength. The former President's mean tweets and angry statements didn't get results. The agreements the Chinese government signed mostly rehashed commitments it had already made and broken in the past. Its core trade rip-offs are ongoing.

It's time to take a different tack. And today's hearing will help shape fresh approaches to address China's cheating.

I'm pleased to have this opportunity to discuss these important issues today. The committee is joined by an excellent panel of witnesses, and I look forward to Q&A.

COMMUNICATIONS

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The agriculture related parts of the U.S.-China Phase One Agreement resulted in U.S. agricultural export growth and improved economics for U.S. farmers and ranchers in 2020. The expanded sales to China in the agreement have had a direct impact on the domestic production, processing, and transportation of agricultural goods. The product-specific obligations and regulatory commitments in the agreement are providing new opportunities for growth in many agricultural export categories. A full execution of the Agreement is important for the future ofU.S. agriculture.

The Agreement was signed on January 15, 2020 and entered into force on February 14, 2020. China committed to purchase on average at least $40 billion annually and $80 billion in total of U.S. food, agricultural and seafood products over 2 years. According to the Agreement, these purchases by China will be on a commercial basis at market prices and purchases may reflect seasonal marketing patterns.

The purchase commitments cover the calendar years 2020 and 2021. Annex 6.1 of the Agreement identifies the products included in the commitment.

Phase One laid out a plan for China to purchase $12.5 billion in agricultural products above what they purchased in 2017, which was chosen as a baseline because it was the last "normal" year of trade between China and the United States before the retaliatory tariffs. In 2017, the U.S. exported $20.8 billion in products covered by the agreement to China. This would imply that in 2020, China would have to import $33.4 billion in U.S. agricultural products to fully meet the terms of the agreement. This is equivalent to a 60% increase over 2017 exports. The agreement also laid out that over the course of 2020 and 2021, total exports of U.S. agricultural products to China would increase by $73 billion, which is equivalent to $80 billion in Chinese imports once shipping and freight are added.

According to USDA data, total exports of agricultural and related products covered under the agreement reached approximately $27.2 billion in 2020, an increase of $6.3 billion over 2017 levels, equivalent to a 30% increase. This, of course, means the export target of $33.4 billion was missed by over $6 billion. Despite the missed target, 2020 was a record year for exports of agricultural products covered by the agreement, in nominal dollars.

Though U.S. agricultural exports overall missed the target of a 60% increase over 2017 levels, some specific products had increases. For example, the following products all set new nominal export levels to China in 2020: pork ($2.1 billion), poultry ($761 million), tree nuts ($705 million), hay ($445 million), beef ($304 million), peanuts ($239 million) and pulses ($51 million). Meanwhile, exports of some other products, though they did not set records, exceeded 2017 levels: corn, at $1.2 billion, was 693% above 2017 levels and wheat, at $570 million, was 62% above 2017 levels. Soybean exports, the largest agricultural commodity exported to China, were $14.2 billion.

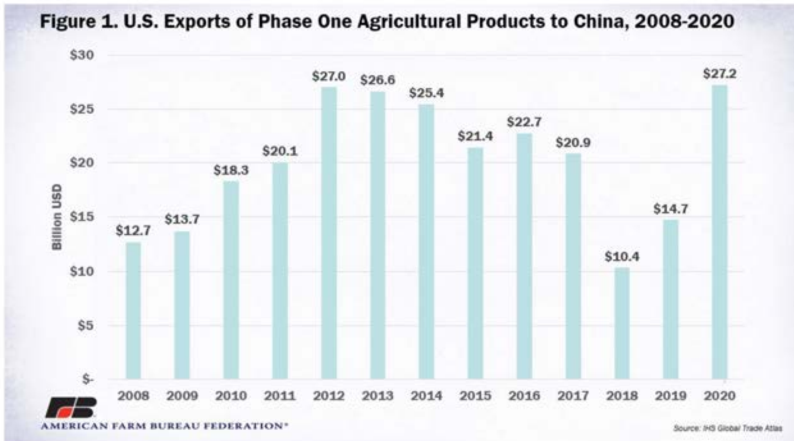

Figure 1. U.S. Exports of Phase One Agricultural Products to China, 2008-2020

In 2020 U.S. agricultural exports reached a new record of $27.2 billion and the U.S. share of total Chinese agricultural imports rebounded from the levels seen in 2018 and 2019. However, the U.S. still only has 14% of the total Chinese agricultural import market of nearly $170 billion. In calendar year 2019, U.S. agricultural exports to China (including distilled spirits, fish products and ethanol which are included in the agriculture product category in this agreement) totaled $14.2 billion, compared to $10.4 billion during the same period in 2018.

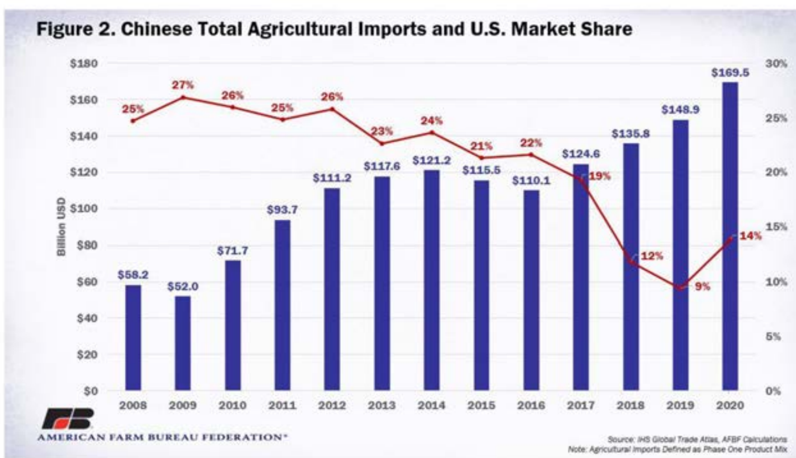

Figure 2. Chinese Total Agricultural Imports and U.S. Market Share

It is useful to compare the actual performance in 2020 to the targets included in the Phase One Agreement. According to U.S. Trade Representative fact sheets,[1] "China has agreed to purchase and import on average at least $40 billion annually of U.S. food, agricultural, and seafood products, for a total of at least $80 billion over the next 2 years." Further, in Chapter 6 of the agreement,[2] some guardrails around the $40 billion average are added: "For the category of agricultural goods identified in Annex 6.1, no less than $12.5 billion above the corresponding 2017 baseline amount is purchased and imported into China from the United States in

[1] *https://ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china/phase-one-trade-agreement/fact-sheets.*

[2] *https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic_And_Trade_Agreement_Between_The_United_States_And_China_Text.pdf.*

calendar year 2020, and no less than $19.5 billion above the corresponding 2017 baseline amount is purchased and imported into China from the United States in calendar year 2021." Finally, the fact sheet adds, "on top of that, China will strive to import an additional $5 billion per year over the next 2 years."

There are several key elements in USTR's statement. One is the reference to U.S. agricultural imports of "on average at least $40 billion." This element is important because it does not commit China to import $40 billion each year, but rather gives China flexibility for different levels of imports in 2020 and 2021; these could be significantly different. The key to understanding the Chapter 6 component is knowing that U.S. agricultural exports to China in 2017 were $20.9 billion.

USTR's fact sheet [3] sheds some light on how $40 billion could be achieved in the Phase One Agreement. The fact sheet states that "products will cover the full range of U.S. food, agricultural, and seafood products." When agriculture-related products, like distilled spirits, ethanol, and fish products, are included it is easier to reach the export goal, but $27 billion is still short of $40 billion.

A continuing concern is the retaliatory tariffs China may apply on nearly 100% of U.S. ag exports. Though the Phase One Agreement does not address the tariffs, China currently offers importers exemptions to their retaliatory tariffs on nearly 700 types of goods from the United States, including farm and energy products.

The USTR fact sheet points out that "China and the United States recognize that purchases are to be made at market prices based on commercial considerations." Between this language and the high-level view of China's imports, it seems clear that the U.S. is going to have to work to reach $40 billion in agricultural exports. In order to achieve this level of agricultural exports, the U.S. will have to win market share away from other competitors and the product mix may be different from what the U.S. has exported in the past. Market share will be won on a product-by-product basis, with different competitors for each product.

In the Phase One Agreement, China has also committed to eliminate market access barriers, shorten the time for products to get to market, increase transparency and encourage the use of international standards. In biotechnology, the approval process will be more transparent, predictable, efficient and science based. The approval process will take no more than 24 months, and China's evaluations will be based on international standards.

The Agreement streamlines and establishes time frames for regulatory actions by China for meat, poultry, seafood, dairy, infant formula, rice, potatoes, nectarines, blueberries, avocadoes, barley, alfalfa pellets, hay, feed additives, distillers' dry grains (DDGs) and pet food. China and the U.S. have begun to open their markets to bilateral trade in poultry products. For beef, China has eliminated cattle age requirements, recognized the U.S. beef traceability system, and recognized international standards for cattle production. Facility registrations are being streamlined so that imports from U.S.-inspected and approved facilities with the proper certificates are allowed.

Over 3,500 U.S. processing facilities have been approved for export to China. China has also committed to implement food safety measures that are science-based and risk-based. For fruits, vegetable and plant-based feed products, China will finalize phytosanitary protocols for potatoes, nectarines, blueberries, avocadoes, barley, alfalfa hay pellets and cubes, almond meal pellets and cubes, and timothy hay.

Following the 2019 U.S. win in a WTO case brought against their administration of tariff-rate quotas (TRQs), China is obligated to improve corn, wheat, and rice TRQ allocation methodology and will not inhibit the filling of TRQs.

Conclusion

During the first year of the Phase One Agreement, U.S. agricultural exports to China have significantly increased from $14.7 billion in 2019 to $27.2 billion in 2020. The missed target for China purchases in 2020 also has implications for 2021, given that the Phase One Agreement for purchases of agricultural products involve a 2-year commitment. To achieve the 2-year, $73 billion commitment, U.S. agricultural exports to China in 2021 will need to reach about $45.8 billion. Going forward, the U.S. will need to use the expanded access provisions in the Agreement to compete for market share, and the product mix will be more diverse from what the U.S. has exported in the past.

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[3] *https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Phase_One_Agreement-Ag_Summary_Long_Fact_Sheet.pdf.*

BRADFORD/HAMMACHER GROUP OF COMPANIES
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May 6, 2021

U.S. Senate
Committee on Finance

Our companies consist of The Bradford Exchange and Hammacher Schlemmer, headquartered in Illinois with offices in Florida, Ohio and New York. Hammacher was founded in 1848 and Bradford in 1973. Bradford has about 600 employees, and Hammacher about 125, all in the United States. Bradford also has some employees outside the U.S. We are 100% employee owned, and regarding our workforce, over 60% of our employees are female.

Bradford is the largest affinity direct marketer of art-based products in the U.S. We specialize in creating and direct marketing jewelry, collectibles, home décor, giftware, checks, coins, apparel and handbags. We offer unique, high quality products not available elsewhere. We sell through direct mail, print media, direct response mailers, catalogs, and eCommerce. Nearly all of our products are custom designed by us, and approximately 76% are manufactured in China. We serve the middle class with the average age of our customer being 60 with an average household income of $64,000.

Giving is one of the Bradford's core values, and for decades our employee-owned company has come together to help those less fortunate. We traditionally sponsor an annual holiday food drive in December to support the hungry in the Chicagoland area, and promote events such as toy drives to benefit needy children. Our employee blood drive is also another fundamental social impact initiative that we carry out every year to support our community. In addition, Bradford routinely donates to the following associations, programs and causes:

Associations and Programs

- The Greater Chicago Area Food Depository
- The Niles Food Bank
- Toys for Tots
- POW Association
- Firefighters Association
- Animal Welfare Groups
- Abused Children Association

Medical Research and Support

- Down Syndrome Research
- Breast Cancer Research
- Cerebral Palsy Research
- Leukemia Research
- AIDS Research
- ALS Research
- Nursing Association

We believe that domestic competitiveness translates to social equity and community impact. To that end, free trade is vital to us. We buy approximately 45 million dollars of products from outside the U.S. annually. Due to our complex global supply chain, many of these items must be imported from China.

When tariffs were imposed in 2019, we promptly started phasing out our Chinese production, moving much to Indonesia, Cambodia, India and Mexico. It took some time, but we were making progress, with limitations due to the artistic and intricate nature of our products. Then COVID–19 hit. Global production was substantially curtailed. However, because of its nationwide shut down, China was able to quickly control COVID spread and reopen its factories. Indonesia, Cambodia, India and Mexico were not. Thus, from January through March of 2021, more of our products have come from China. When production resumes in Indonesia, Cambodia, India and Mexico, we plan to continue shifting production away from China, but, given the massive resurgences happening in southeast Asia, that could be some time. Shifting all production away from China is unfeasible because of the following reasons.

First, most of our products require complex, costly tooling. We do not have the tens of thousands of dollars per product and many months to have new tooling made and delivered to factories in other countries.

Second, many of our products are handcrafted and hand painted. They require sophisticated artisans. We have spent many years helping factories in China develop the talent required for our products. We are not aware of any countries other than China that have the artists with the skills and in the numbers necessary to make many of our products.

Third, many of our products are licensed by major entertainment businesses such as Walt Disney or Major League Baseball. Those licensors require us to use only certified factories. The certification process can take many months to verify that the factories have policies that ensure fair labor practices. To our knowledge there are few certified factories in other countries that make many of the products that we sell.

Fourth, where possible we have moved production of our product to countries other than China and relocated final assembly of product to the U.S. where practical. Yet, production of the majority of our products remains in China, and there are no sources of supply in the United States to make the quantity and quality that we need. In fact, for many of our products, there are no such sources of supply anywhere else in the world other than China.

Lastly, if the tariffs are continued, the price of our products to consumers will be substantially higher—essentially a tax on the consumer. No revenue would be generated for U.S. companies, and no jobs would be created in the U.S.

One additional point. One of our suppliers has told us that our price will be going up because a U.S. sourced chemical is used in the product, and China is retaliating by increasing tariffs on USA origin chemicals. Some of those chemicals are from major U.S. manufacturers (such as Dow Chemical). If we reduce our purchases of products from China, the U.S. chemical companies will have reduced sales. These retaliatory tariff actions are a viscous cycle.

Outside of these critical points as it relates to our import model, there are other macro policy considerations to bring to bear given the tone of the Biden Administration. On February 24th, President Biden signed an executive order to conduct a review of American supply chains in order to better understand reliance on foreign manufacturing. Notably, the order focuses on high- priority supply chains, including semiconductors, high-capacity batteries, rare earth metals, and medical supplies.

The executive order includes two distinct phases. The first phase includes a 100-day review process of high-priority supply chains, including semiconductors, high-capacity batteries, rare earth metals, and medical supplies. Following this review, the second phase of the order expands the review process to include a wider range of sectors, including the production of equipment for defense, public health, energy, and transportation. One year after the order is issued, the task force will submit recommendations to the administration, such as diplomatic agreements or trade-route edits. It is believed the executive order is largely focused on providing the Biden Administration with a greater understanding of the United States' reliance on Chinese exports.

None of our imported products fall within the President's critical supply chain framework.

In sum, we urge Congress to advise the United States Trade Representative (USTR) to do the following:

(1) To renew Section 301 tariff exclusions that were granted,
(2) To permit the filing of Section 301 tariff exclusion requests for exclusion requests that were not granted, and
(3) To refrain from placing Section 301 tariffs on American companies that are providing affordable jewelry, dolls, electric trains, festive articles, clocks, music boxes and decorative plates to average Americans.

Significantly, there should be **special treatment for companies that are employee owned.** We care about our business because we care about our employees and community—that's what makes us different. Without your support, the survival of potentially hundreds and possibly thousands of jobs in the United States could be at risk.

We thank you for this opportunity to submit a Statement for the Record and welcome any forum to discuss further how we can be of service to the American economic recovery.

Thank you.

Sincerely,

Richard Tinberg
President

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Statement of Michael G. Bindner

Chairman Wyden and Ranking Member Crapo, thank you for the opportunity to submit these comments for the record to the Committee on this topic.

The exit of Donald J. Trump from the White House almost instantly improved our trade relationship with China. Since both sides want to return to normal, it should happen rather quickly. Let us not do so too quickly. There are significant human rights abuses that should be addressed before we dot the i's and cross the t's. Let us not waste a good crisis to deal with the plight of the Uygurs. If not now, when? See our attachment, which contains our prior comments on slave labor and supply chains.

While competitiveness is a good thing, justice is a better thing. Consumers may have to pay a bit more for goods produced at home and abroad, but there are worse things.

The Chinese economy depends on migrant labor, with rural migrants going to the coasts to work, but taking their social service systems with them. Peasants do not receive the same benefits as workers from urban China. They are sitting on a time bomb.

Eventually, these migrants will object to the locality system imposed upon them and demand the same level of pay, benefits and consumerism as is earned by those designated as urban. When this occurs, the valuation of the Yuan will occur, assuming that the Chinese Communist Party survives. We do not make this assumption, however.

Chinese workers are not the only ones getting the short end of the stick in international trade. The CEO/Donor Class attack on unions for the past 30 years trades "competitiveness" for worker rights. It has taken its toll on the American worker in both immigration and trade.

Cheap goods and food are part of the equation, but not the only part. Tax policy is a major driver. That has been facilitated by decreasing the top marginal income tax rates so that when savings are made to labor costs, the CEOs and stockholders actually benefit. When tax rates are high, the government gets the cash so wages are not kept low nor unions busted. As Chinese workers are not allowed to unionize, the working class in both nations become expendable factor in production rather than human beings.

Increasing marginal tax rates will help. I am confident that a second reconciliation will make that happen, although the proposed rate increases on the richest taxpayers are not large enough to make a major difference. Until there is basic change in the economy, anything this Committee does will be a mere Band-Aid.

True competitiveness for workers can only come from ownership and control of not only the shop floor, but also supply chain decisions. If labor rates for overseas subsidiaries provide the same standard of living received by American workers in the same jobs (with more equal pay scales between them), there will be no thought of competitiveness. If common ownership includes common consumption, global price competition effects will be muted.

The question is how to get there. Merely encouraging worker investment in the market is not enough. It must be targeted toward direct control of the workplace.

The USA accounts proposed by President Clinton had the same feature, although as a supplement to the Social Security benefit rather than a partial replacement, although this feature would be muted by enactment of value added taxes. The flaw in using foreign investment to make up for lost worker revenue is that eventually foreign workers either radicalize or become consumers and demand their own union rights.

The tendency for consumerism to follow industrialization is why globalization is a poor substitute for expanding the domestic population. Increases to the Child Tax Credit (and adding refundability) in the American Recovery Plan Act were a good first step, but we stop walking too soon. These changes need to be made permanent and sustainable. Government distribution of the benefit is fine when attached to unemployment and disability insurance payments.

Workers need the money regularly, as part of pay. In the short term, the quickest way to distribute money is to offset pre-payment of these credits as part of wages against quarterly income tax payments by corporate and individual filers. In the long term, comprehensive tax reform is required. Our current proposal is included in a second attachment.

An employer-paid subtraction VAT is the best means for distribution of the child tax credit in real time. This will decrease resistance to larger credits and, along with funding either public or private health care (as another credit), will end much of the incentive to resort to franchising, the gig economy and 1099 employment to dodge requirements for direct employment of full-time workers.

Separating out taxation of capital gains and income into an asset value-added tax will end the need for all but the wealthiest workers to file income taxes at all. Ending direct filing should be a bipartisan goal. For a while, it certainly helped Mike Huckabee when he proposed it in 2008. Expanding provisions to avoid taxation of capital gains to all shareholders who sell to qualified ESOPs will kick start employee ownership.

Another essential step toward employee control is repeal of the Taft-Hartley Act prohibitions on concentrated pension fund ownership. Once we are farther down that road, we can discuss how changing the flow social insurance payments might speed up the process. Seen from the perspective of employee owners, there will be less resistance.

Over a fairly short period of time, much of American industry, if not employee-owned outright (and there are other policies to accelerate this, like ESOP conversion) will give workers enough of a share to greatly impact wages, management hiring and compensation and dealing with overseas subsidiaries and the supply chain—as well as impacting certain legal provisions that limit the fiduciary impact of management decision to improving short-term profitability (at least that is the excuse managers give for not privileging job retention).

As previously stated, employee owners will find it in their own interest to give their overseas subsidiaries and their supply chain's employees the same deal that they get as far as employee ownership plus an equivalent standard of living. The same pay is not necessary, currency markets will adjust once worker standards of living rise.

Over time, this will change the economies of the nations we trade with, as working in employee-owned companies will become the market preference and force other firms to adopt similar policies (in much the same way that, even without a tax benefit for purchasing stock, employee-owned companies that become more democratic or even more socialistic, will force all other employers to adopt similar measures to compete for the best workers and professionals).

China could end its peasant labor system in advance of revolution. Hopefully quick adoption of our suggestions to expand employee ownership is more likely than revolution in China. If not, trade wars and rumors of trade wars will always be with us, along with the damage they do to both the financial markets and the real economy.

Eventually, trade will no longer be an issue. Internal company dynamics will replace the need for trade agreements as capitalists lose the ability to pit the interest of one nation's workers against the other's. This approach is also the most effective way to deal with the advance of robotics. If the workers own the robots, wages are swapped for profits with the profits going where they will enhance consumption. This is the type of competitiveness we should be fostering.

I have not forgotten about the need to increase marginal rates. Separate consumption, employer, asset and high salary taxes will stack payments and remove shelters, which is something the current system does not do.

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.

Attachment from Finance: Fighting Forced Labor: March 18, 2021

. . . The other issue with China, as well as south Asia and the global south, is defacto slavery. Boycotting the products of slavery worked in fighting the Confederacy. The mass migration of slaves had more of an impact. A boycott of Xinjiang cotton and tomatoes is problematic during a pandemic, but generally it cannot succeed as a stand-alone action. Even though it may hurt in the short run, we should still do it.

To make a boycott work, we cannot do it alone. At minimum, Islamic nations must join in as well and start linking the cause of the Uygurs to the New Silk Road. The ethnic Turkmen range from modern Turkey to Xinjiang, so a little solidarity on their part could go a long way. If we do go this route, the whole effort to interfere in Iran must end. We cannot be with South Asian Muslims on some things and expect solidarity with them on others.

On the moral front, I am not sure we have room to talk. We hold migrants in stark conditions prior to deportation. If you doubt it, visit Lewisburg Federal Prison. Also stop in the Federal Prison Industries factory while you are there. Visit any food processing plant with large immigrant workforces (send people undercover) and see how many workers were trafficked and how local law enforcement reacts when they decide they want to leave. Examine the plight of sex workers in the United States and see how many of their pimps have arrangements with local police.

Our best weapon is our example. As long as slavery exists in the United States, our moral voice is compromised. Again, I am not saying to ignore this situation. I am saying to go “All In” to really fight slavery. Also, call it slavery. On the same subject, examine the Chinese treatment of peasant workers at their factories. There is a two-level society, and American consumers benefit from this. Our commitment to abolishing slavery cannot live only in the fringes.

This is not to say that loopholes cannot be closed, although we must stop our own unfair trade practices as well. American food should not show up in countries just before harvest when doing so depresses the price of local agricultural products. Poverty begets slavery. Making others poor is an invitation to exploitation.

Poor farmers can either be individual or tenant farmers who are essentially peons. The drive for lower food prices for American consumers comes at a human cost. This is especially true when only one buyer dominates the market, as is sometimes the case for export to America (if not often). Poor factory workers never have access to collective bargaining. This factor also drives down wages in American factories—often those with immigrant labor bearing the brunt of bad working conditions, poor wages and lax enforcement. The major difference is that being blacklisted in the United States for attempting to organize is rarely deadly, as it can sometimes be overseas.

Improved enforcement takes money and the willingness to accept higher food prices. More inspectors with more authority are needed at home and abroad. Government or third party inspection is vital to make sure work is safe, fairly compensated and able to organize. We cannot expect worker protection in China or Guatemala if we do not insist on it in North Carolina and Alabama.

Attachment—Tax Reform, Center for Fiscal Equity, March 5, 2021

Individual payroll taxes. These are optional taxes for Old-Age and Survivors Insurance after age 60 for widows or 62 for retirees. We say optional because the collection of these taxes occurs if an income sensitive retirement income is deemed necessary for program acceptance. Higher incomes for most seniors would result if an employer contribution funded by the Subtraction VAT described below were credited on an equal dollar basis to all workers. If employee taxes are retained, the ceiling should be lowered to $85,000 to reduce benefits paid to wealthier individuals and a $16,000 floor should be established so that Earned Income Tax Credits are no longer needed. Subsidies for single workers should be abandoned in favor of radically higher minimum wages.

Wage Surtaxes. Individual income taxes on salaries, which exclude business taxes, above an individual standard deduction of $85,000 per year, will range from 6.5% to 26%. This tax will fund net interest on the debt (which will no longer be rolled over into new borrowing), redemption of the Social Security Trust Fund, strategic, sea and non-continental U.S. military deployments, veterans’ health benefits as the result of battlefield injuries, including mental health and addiction and eventual debt reduction. Transferring OASDI employer funding from existing payroll taxes would increase the rate but would allow it to decline over time. So would peace.

Asset Value-Added Tax (A–VAT). A replacement for capital gains taxes, dividend taxes, and the estate tax. It will apply to asset sales, dividend distributions, exercised options, rental income, inherited and gifted assets and the profits from short sales. Tax payments for option exercises and inherited assets will be reset, with prior tax payments for that asset eliminated so that the seller gets no benefit from them. In this perspective, it is the owner's increase in value that is taxed.

As with any sale of liquid or real assets, sales to a qualified broad-based Employee Stock Ownership Plan will be tax free. These taxes will fund the same spending items as income or S–VAT surtaxes. This tax will end Tax Gap issues owed by high-income individuals. A 26% rate is between the GOP 24% rate (including ACA–SM and Pease surtaxes) and the Democratic 28% rate. It's time to quit playing football with tax rates to attract side bets.

Subtraction Value-Added Tax (S–VAT). These are employer paid Net Business Receipts Taxes. S–VAT is a vehicle for tax benefits, including

- Health insurance or direct care, including veterans' health care for non-battlefield injuries and long-term care.
- Employer paid educational costs in lieu of taxes are provided as either employee-directed contributions to the public or private unionized school of their choice or direct tuition payments for employee children or for workers (including ESL and remedial skills). Wages will be paid to students to meet opportunity costs.
- Most importantly, a refundable child tax credit at median income levels (with inflation adjustments) distributed with pay.

Subsistence-level benefits force the poor into servile labor. Wages and benefits must be high enough to provide justice and human dignity. This allows the ending of state administered subsidy programs and discourages abortions, and as such enactment must be scored as a must pass in voting rankings by pro-life organizations (and feminist organizations as well). To assure child subsidies are distributed, S–VAT will not be border adjustable.

The S–VAT is also used for personal accounts in Social Security, provided that these accounts are insured through an insurance fund for all such accounts, that accounts go toward employee ownership rather than for a subsidy for the investment industry. Both employers and employees must consent to a shift to these accounts, which will occur if corporate democracy in existing ESOPs is given a thorough test. So far it has not. S–VAT funded retirement accounts will be equal-dollar credited for every worker. They also have the advantage of drawing on both payroll and profit, making it less regressive.

A multi-tier S–VAT could replace income surtaxes in the same range. Some will use corporations to avoid these taxes, but that corporation would then pay all invoice and subtraction VAT payments (which would distribute tax benefits. Distributions from such corporations will be considered salary, not dividends.

Invoice Value-Added Tax (I–VAT), Border adjustable taxes will appear on purchase invoices. The rate varies according to what is being financed. If Medicare for All does not contain offsets for employers who fund their own medical personnel or for personal retirement accounts, both of which would otherwise be funded by an S–VAT, then they would be funded by the I–VAT to take advantage of border adjustability. I–VAT also forces everyone, from the working poor to the beneficiaries of inherited wealth, to pay taxes and share in the cost of government. Enactment of both the A–VAT and I–VAT ends the need for capital gains and inheritance taxes (apart from any initial payout). This tax would take care of the low-income Tax Gap.

I–VAT will fund domestic discretionary spending, equal dollar employer OASI contributions, and non-nuclear, non-deployed military spending, possibly on a regional basis. Regional I–VAT would both require a constitutional amendment to change the requirement that all excises be national and to discourage unnecessary spending, especially when allocated for electoral reasons rather than program needs. The latter could also be funded by the asset VAT (decreasing the rate by from 19.5% to 13%).

As part of enactment, gross wages will be reduced to take into account the shift to S–VAT and I–VAT, however net income will be increased by the same percentage as the I–VAT. Adoption of S–VAT and I–VAT will replace pass-through and proprietary business and corporate income taxes.

Carbon Value-Added Tax (C–VAT). A Carbon tax with receipt visibility, which allows comparison shopping based on carbon content, even if it means a more expensive item with lower carbon is purchased. C–VAT would also replace fuel taxes. It will fund transportation costs, including mass transit, and research into alternative fuels (including fusion). This tax would not be border adjustable.

Summary

This plan can be summarized as a list of specific actions:

1. Increase the standard deduction to workers making salaried income of $425,001 and over, shifting business filing to a separate tax on employers and eliminating all credits and deductions—starting at 6.5%, going up to 26%, in $85,000 brackets.
2. Shift special rate taxes on capital income and gains from the income tax to an asset VAT. Expand the exclusion for sales to an ESOP to cooperatives and include sales of common and preferred stock. Mark option exercise and the first sale after inheritance, gift or donation to market.
3. End personal filing for incomes under $425,000.
4. Employers distribute the child tax credit with wages as an offset to their quarterly tax filing (ending annual filings).
5. Employers collect and pay lower tier income taxes, starting at $85,000 at 6.5%, with an increase to 13% for all salary payments over $170,000 going up 6.5% for every $85,000—up to $340,000.
6. Shift payment of HI, DI, SM (ACA) payroll taxes employee taxes to employers, remove caps on employer payroll taxes and credit them to workers on an equal dollar basis.
7. Employer paid taxes could as easily be called a subtraction VAT, abolishing corporate income taxes. These should not be zero rated at the border.
8. Expand current state/federal intergovernmental subtraction VAT to a full GST with limited exclusions (food would be taxed) and add a federal portion, which would also be collected by the states. Make these taxes zero rated at the border. Rate should be 19.5% and replace employer OASI contributions. Credit workers on an equal dollar basis.
9. Change employee OASI of 6.5% from $18,000 to $85,000 income.

GUARDIAN TECHNOLOGIES
26251 Bluestone Blvd.
Euclid, OH 44132

May 6, 2021

U.S. Senate
Committee on Finance

Guardian Technologies ("Guardian") is a consumer products company that develops and sells consumer durables for mass retail to improve the home environment. These products include air purifiers, humidifiers and dehumidifiers, fans, heaters, diffusers, and therapy lights. Guardian was founded in 2005 and is headquartered in Cleveland, Ohio. The company employs 25 full-time workers in Cleveland and 30 to 60 part-time workers on a seasonal basis. To reach American consumers, Guardian works with brick-and-mortar and online retail partners, including Amazon, Costco, Best Buy, Walmart, Target, Home Depot, and Kohl's.

Guardian's GermGuardian brand portfolio includes the company's various air purification units. The GermGuardian air purifiers incorporate UV–C, HEPA filters, and other technologies to reduce harmful microscopic particulate in the air. UV-C light helps reduce airborne bacteria, viruses, mold spores, and works with Titanium Dioxide to reduce volatile organic compounds. Guardian has partnered with The Association of Home Appliance Manufacturers (AHAM) and all GermGuardian air purifiers are notably AHAM verified.

The COVID–19 pandemic has greatly affected the demand for air purifiers for a variety of different indoor environments. Guardian has a longstanding history producing these purifier units and is proud to be contributing to this critical supply chain. While demand has increased for air purifiers, the market has also been flooded with foreign products that have made false claims and provided consumers with a lower quality product. In 2019, GermGuardian products held the greatest unit brand share in the industry. In 2020 Levoit, a Chinese competitor, overtook GermGuardian to be the top product in the marketplace. Though Guardian currently imports technologies from China, as part of Lasko Products, a century old American company, they are proud to support American jobs and American manufacturing. Levoit is a pure-play Chinese company with a shell company headquartered in California that provides little to no economic impact for the country's manufacturing base. These foreign purifiers also often fail to meet the AHAM verification standards of clean air environments.

Guardian Technologies represents an American company providing American solutions to the pandemic response efforts with air purification products for government buildings, schools, and small businesses.

The Miscellaneous Tariff Bill (MTB) will provide Guardian Technologies much needed duty relief on many products critical for the United States' economic recovery following the COVID–19 pandemic. Without the MTB, Guardian will find itself at a disadvantage to its Chinese competitors and will lose its ability to maintain current U.S. employment levels.

American businesses, consumers, and government entities are currently being encouraged and incentivized to purchase and utilize air purification units for indoor spaces in order to aid in the reopening of American schools and businesses. However, these same purification units are being unfairly targeted by Section 301 tariffs. It is counterintuitive for these products to both be targeted by tariffs upon their import and granted consumer relief once distributed in the United States. This inefficient structure disproportionately burdens Guardian Technologies and similar American air purification businesses.

In sum, we urge Congress to advise the United States Trade Representative (USTR) against placing Section 301 tariffs on American companies that are providing critical products for reopening the American economy and are at an unreasonable competitive disadvantage with Chinese finished product imports. In addition, the swift passage of the MTB will ensure that our business can get baseline support for operations during the pandemic.

We thank you for this opportunity to submit a Statement for the Record and welcome any forum to discuss further how we can be of service to the American economic recovery.

Sincerely,

Brian Zollar
Director of Business Development

LASKO PRODUCTS, LLC
820 Lincoln Avenue
West Chester, PA 19382

U.S. Senate
Committee on Finance

Lasko Products, LLC ("Lasko") is a 115-year-old U.S. company and one of the only remaining U.S. manufacturers of portable fans and other similar small appliances. The company is headquartered in West Chester, Pennsylvania and employs more than 1,000 U.S. workers, including more than 800 production workers at its plants in Texas, Tennessee, and Pennsylvania. Lasko sells more than 15,000,000 fans and 5,000 heaters in the United States annually. We are the largest manufacturer of fans and heaters in the United States, by far.

Our company has a proud tradition of diversity in the workplace and community involvement. More than 57% of Lasko's workforce is comprised of minority workers and the company is proud to provide competitive pay and benefits to its workforce. Lasko has donated twenty acres of soccer fields in Franklin, Tennessee to the local YMCA youth soccer program. Lasko's presence in West Chester, Pennsylvania is also evidenced by the Oscar Lasko YMCA and the Lasko Tower at the Chester County Hospital.

Lasko's U.S. workers manufacture a variety of components, assemble internally made and externally sourced components, package finished fans and distribute these products to Lasko's customers. Whenever practical, Lasko uses U.S.-sourced components and raw materials, such as steel and resin.

Lasko's products are built from a variety of components, including steel box fan bodies, plastic fan bodies, fan blades, bases, grills, and a variety of small parts. The company manufacturers many of these components at its U.S. facilities and has invested heavily in a variety of American made machinery and tooling at each of its plants. As Lasko's sales of domestically manufactured products have grown in recent years, the company has invested in increasing manufacturing capacity, resulting in increased U.S. employment. We have actively hired new employees throughout the past year's COVID–19 pandemic and continue to do so today.

Lasko's U.S. made products compete primarily with Chinese-manufactured products. Lasko's retailer customers will purchase from Chinese manufacturers instead of Lasko when the price differential is as low as $0.10 to $0.20 per unit. As a result, Lasko operates on very low margins and relies heavily on sourcing high quality/low-cost components, efficient manufacturing processes, high volume, high inventory levels, and strong customer service to compete. It is often said that "pennies matter" when it comes to remaining competitive with Chinese manufacturers.

The Miscellaneous Tariff Bill (MTB) will provide Lasko much needed duty relief on motors and other important components, a critical input for Lasko's fan manufacturing operations. Without the MTB, Lasko will find itself at a disadvantage to its Chinese competitors and will lose its ability to maintain current U.S. employment and production levels.

There is also notably an ongoing Section 301 tariff on heaters imported from China that negatively impacts Lasko's products. While all manufacturers face this same tariff, Chinese manufacturers are given government rebates in return, enabling them to provide aggressive pricing without passing on the tariff cost to American consumers in the marketplace. This rebate and resulting pricing give Chinese companies a disproportionate advantage in the US marketplace for the same imported good.

If Lasko loses any of its major retailer customers to Chinese manufacturers, the company may be forced to shrink or close its U.S. manufacturing facilities. This could result in the loss of hundreds of U.S. manufacturing jobs. Further, if Lasko is forced to close plants or reduce operations, there will be a significant ripple effect on local economies, jobs, suppliers, service providers and a multitude of related industries that support Lasko's operations in the United States. As a result, Chinese manufacturers would also increase their U.S. market share. Clearly, this would not be consistent with the developing trade policies of this administration.

In sum, we urge Congress to advise the United States Trade Representative (USTR) against placing Section 301 tariffs on American companies that (1) have a substantial manufacturing footprint and legacy in the United States, (2) have demonstrated meaningful supply chain shifts out of China since the Section 301 investigation, (3) are at an unreasonable competitive disadvantage with Chinese finished product imports, and (4) demonstrate stewardship in diversity, equity, inclusion and community investment. In addition, the swift passage of the MTB will ensure that our business can get baseline support for operations during the pandemic.

We thank you for this opportunity to submit a statement for the record and welcome any forum to discuss further how we can be of service to the American economic recovery.

Very Respectfully,

Ed Vlacich
Chief Executive Officer

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Arpil 27, 2021

Introduction

The Rail Security Alliance (RSA) is a coalition of North American freight railcar manufacturers, suppliers, unions, and steel interests committed to ensuring the economic and national security of our passenger and freight rail systems. On behalf of our coalition, thank you for the opportunity to submit a statement for the record before the committee to communicate to you the work of RSA and the importance of protecting U.S. competitiveness and North American manufacturing jobs in critical industries such as rail. Given the hearing will examine challenges facing global competition with China and strengthening America's trade policies, we wanted to give you an update on the domestic freight rail industry and challenges they are facing.

As way of background, RSA was formed in response to the merging of China's two rail manufacturers into one massive 100% state-owned enterprise (SOE), the China Railway Rolling Stock Corporation (CRRC). CRRC, by their calculation, controls roughly 83 percent of the global rail market, with the intent to "conquer" the remaining 17 percent, per the company's own public acknowledgment.[1] As a state-owned enterprise, CRRC has access to unlimited state funding that allows them to win rail contracts around the world by underbidding competitors. CRRC has made aggressive and alarming incursions into the U.S. rail market using state-backed financing, below-market pricing, and other anti-competitive tactics and has used the lingering economic effects of the COVID–19 pandemic to continue its domination of global market share. Alarmingly, CRRC was named one of 20 companies by the Department of Defense that it says is owned or controlled by China's People's Liberation Army.[2] CRRC has won four U.S. metropolitan transit contracts—through severely underbidding its competitors by way of unlimited financing from the Chinese government—in Boston, Chicago, Los Angeles, and Philadelphia.

Threat of CRRC to the Freight Rail Industry

The North American freight industry is not immune to the advances by CRRC either. Their current foothold in the U.S. transit industry creates an opportunity to pivot into freight rail assembly, a subsector of rail not protected by the same Buy America requirements as transit rail. CRRC has attempted to enter the U.S. freight rail manufacturing sector with a joint venture, Vertex Rail, in North Carolina. Fortunately, that effort failed. CRRC also launched American Railcar Services, with a separate assembly facility headquartered in Miami, FL, and maintaining its assembly operations in Moncton, New Brunswick. This venture also failed.

Our concerns regarding CRRC's transition from transit railcar manufacturing to freight railcar manufacturing is best highlighted by the recent experience of the rail industry in Australia. CRRC entered the Australian freight rail market in 2008, and within less than 10 years, decimated the sector. The result was four domestic suppliers being forced out of business and the rail market left solely to CRRC.[3] We risk the same in the United States if this industry is not protected. We applaud action already taken by Congress in supporting the rail industry such as its passage of the Transit Infrastructure Vehicle Security Act (TIVSA), but more needs to be done to ensure this vital industry survives the pandemic and can stay competitive with China.

The COVID–19 pandemic has had devastating effects on the U.S. economy and has greatly impacted the freight railcar manufacturing and supply industry. Freight railcar orders and backlog are plummeting due to the effects of the pandemic, with 65,000 jobs at risk if the U.S. domestic railcar manufacturing industry collapses.[4] According to industry experts, tens of thousands of jobs in the freight rail industry have already been furloughed or lost due to the massive slowdown in production and the cancelation of orders, with the potential for even more significant losses if immediate action is not taken to stabilize the industry. Downstream effects will be felt in every sector that supplies the freight railcar industry, from iron and steel manufacturers to factory equipment suppliers. We do not want to lose these domestic industries and end up becoming reliant on countries such as China for these materials.

We urge Congress to act to protect over 65,000 American freight rail manufacturing jobs. Given current economic conditions, the U.S. industry remains concerned that CRRC could see this as a prime opportunity to move into the U.S. market more aggressively and pursue breaking into the freight market. Representatives Schneider and LaHood have introduced legislation, H.R. 2289, that would provide short-term investment tax credits to encourage the replacement or modernization of North America's freight railcar fleet with higher-capacity, more fuel-efficient vehicles. This legislation aids in the stabilization of jobs in the railcar manufacturing industry in

[1] @CRRC_global, "Following CRRC's entry to Jamaica, our products are now offered to 104 countries and regions. So far, 83% of all rail products in the world are operated by #CRRC or are CRRC ones. How long will it take for us conquering the remaining 17%?" Twitter, January 11, 2018. *https://twitter.com/CRRC_global/status/951476296860819456.*

[2] U.S. Deputy Secretary of Defense David L. Norquist Letter to Senator Tom Cotton, June 24, 2020. *https://www.cotton.senate.gov/files/documents/Sen%20Cotton%20NDAA%20FY%201999%20Sec%201237%20Response%2006242020.pdf.*

[3] Oxford Economics, *Will We Derail U.S. Freight Rolling Stock Production?*, May 2017, at 16.

[4] *Ibid,* at 4.

response to the COVID–19 pandemic and includes proper safeguards to ensure that CRRC does not take advantage of federal taxpayer dollars.

Ensuring American Freight Industry Stays Competitive

While the RAILCAR Act is an important step to jumpstart the industry after the effects of the pandemic, more is needed. Over the past few years, RSA has worked closely with Obama Administration, Trump Administration, and now Biden Administration to educate them on the threats of Chinese SOEs in the rail sector. We appreciate efforts to take some measures to curb these threats including placing Section 301 tariffs and the U.S. Trade Representative's (USTR) investigations into China's technology transfer and intellectual property theft in this sphere. We also applaud the fact that USTR has put tariffs on most rail parts from China. While important, these steps are not enough to put an end to CRRC's goal of dominating our rail sector and permanent policy action is needed.

RSA is in the process of working with leaders in Congress in drafting much needed legislation with input from industry stakeholders and bipartisan support in Congress. The legislation would put North American content standards in place, prohibit sensitive technology from Chinese SOEs from riding on freight railcars and ensure freight railcars are manufactured or assembled in North America. We urge Congress to act to help to protect the freight industry from foreign dominance and ensure the industry remains viable for generations to come. Permanent solutions will help to ensure the North American freight rail market remains competitive and requires those in the industry to play fairly.

Thank you again for the opportunity to submit testimony and we stand available as a resource if you have any questions.

Respectfully submitted,

Erik Robert Olson
Vice President

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