

**Testimony by Ambassador Demetrios J. Marantis
Hearing on the U.S.-China Economic Relationship
Before the House Committee on Ways and Means
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Chairman Camp, Ranking Member Levin, distinguished Members of the Ways and Means Committee:

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

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

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

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

KEY CHALLENGES

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

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

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

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

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

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

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

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

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

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

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

ACTION AND RESULTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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