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Chief FOIA Officer
500 E Street, SW
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Fax: 202-205-2104

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C. 20436

July 21, 2014

Re: USITC's Freedom of Information Act Request 14-28

This is in response to your request dated June 15, 2014, which we received June 20, 2014. In that document you requested, pursuant to the Freedom of Information Act (FOIA), a copy of each response to a Question for the Record (QFR) provided to Congress by the United States International Trade Commission since January 1, 2009.

We have found responsive information to your request. It is enclosed.

Please feel free to call me, or Jacqueline Gross, on 202-205-2000 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa R. Barton", enclosed in a large, loopy oval shape.

Lisa R. Barton
Secretary to the Commission

Enclosure

1. Correspondence dated April, 11, 2011 to The Honorable Edward R. Royce, Chairman, Subcommittee on Terrorism, Nonproliferation, and Trade Committee on Foreign Affairs, United States House of Representatives from Karen Laney, Director, Office of Industries, United States International Trade Commission.



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

April 11, 2011

The Honorable Edward R. Royce
Chairman, Subcommittee on Terrorism, Nonproliferation, and Trade
Committee on Foreign Affairs
United States House of Representatives
253 Ford House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for the opportunity to testify on March 9, 2011 before the Subcommittee on Terrorism, Nonproliferation, and Trade of the House Committee on Foreign Affairs and for the specific follow-up questions provided to me on April 4, 2011. I greatly appreciate your understanding of the constraints imposed upon me with respect to policy actions. My response to your questions is below.

The United States International Trade Commission (USITC) is an independent Federal agency which provides information and objective analysis on matters of tariffs and trade; the agency does not participate in the development of trade policy but provides informational and analytical support to those who do.

The USITC is directed by statute to produce reports on specific trade and tariff matters for the President and Congress. The agency also is authorized by statute to prepare reports on specific trade and tariff matters at the request of its statutory customers: the President, who has delegated his authority to request studies to the Office of the United States Trade Representative (USTR), the Senate Finance Committee, and the House Ways and Means Committee. These customers utilize USITC-generated information and analysis to facilitate their efforts to develop sound and informed U.S. trade policy.

In its quasi-judicial capacity, the USITC also adjudicates cases involving imports that allegedly infringe U.S. intellectual property rights, investigates the effects of dumped and

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subsidized imports on domestic industries, and conducts the injury phase of safeguard investigations. Through such proceedings, the agency facilitates a rules-based international trading system.

USITC staff has reviewed its issued public reports and the data bases to which it has access, to provide responses to the Subcommittee's questions. Based on this review, the following responses to the Members' questions are provided.

- What is the extent of current Chinese contracting at the federal, state and local level in the United States?

Historically, the USITC has not been asked to look at government procurement from this particular perspective and therefore does not have specific information regarding this topic. However, the agency's report, *The Year in Trade 2009*, describes government procurement and trade more broadly. (See <http://www.usitc.gov/publications/332/pub4174.pdf>.) In addition, in past years the agency has issued reports that have examined or reviewed various aspects of government procurement policies in China. (See, for example, the Commission's 2007 report, *China: Description of Selected Government Practices and Policies Affecting Decision-Making in the Economy*, <http://www.usitc.gov/publications/332/pub3978.pdf>.)

Information about federal government spending is published on the Office of Management and Budget Website, <http://www.usaspending.gov/>. Details on particular contracts awarded to foreign recipients (not limited to China) may be obtained from this site.

With regard to state and local information, we are not aware of any one source that provides this information; a query to state and local procurement offices might yield relevant information. We have made inquiries for such information to various organizations, but to date have not been able to determine to what extent such information is publicly available or whether it is in a form that could be compiled in a consistent manner.

- Were the U.S. to prohibit federal, state and local governments from procuring goods or services from Chinese companies until such a time as China joins the World Trade Organization's Government Procurement Agreement, would the U.S. be in violation of WTO rules?

China is not a signatory to the WTO Procurement Agreement. Consequently, we understand that it has neither rights nor obligations under the terms of that Agreement. The Office of the U.S. Trade Representative is best positioned to answer the question of whether the legislation described would be WTO consistent. The USITC is not authorized to take positions on behalf of the United States Government on the consistency of proposed U.S. laws with the U.S. Government's WTO commitments.

- What are some of the steps the U.S. government is taking to encourage China to adopt and implement a consistent commercial legal code?

A number of U.S. government agencies maintain active programs dedicated to improving China's legal code and its enforcement. A recent report by the U.S. Government Accountability Office (GAO) identified the various U.S. government agencies, such as the Departments of Commerce, State, and Justice, involved in efforts to protect and enforce intellectual property rights overseas. (*Overseas U.S. Government Personnel Involved in Efforts to Protect and Enforce Intellectual Property Rights*. GAO-09-402R. Washington, DC: GAO, 2009. <http://www.gao.gov/new.items/d09402r.pdf>.)

The State Department and the U.S. Agency for International Development (AID) also regularly fund legal capacity building projects in China. For example, Temple University's rule of law program, launched in 1999, has educated hundreds of Chinese legal professionals in the executive, legislative, and judicial branches of government. (See, for example, Congressional Research Service. *U.S.-Funded Assistance Programs in China*. RS 22663. Washington, DC: CRS: 2008; and U.S. AID Trade Capacity Building Database. <http://tcb.eads.usaidallnet.gov/data> (accessed April 11, 2011)).

- Does the ITC have an estimate of the economic impact were the U.S. to eliminate China's most favored nation status and China responded in kind?

If the United States eliminated China's MFN status and China responded in kind, we would expect tariffs to change. Tariffs on China's imports from the United States would increase because China's non-MFN duties are substantially higher than MFN duties, as reported by the WTO. (<http://tariffdata.wto.org/ReportersAndProducts.aspx>.) Similarly, tariffs on U.S. imports from China would increase because China would be subject to the col. 2 duties in the U.S. tariff schedule, which are substantially higher than the col. 1 (MFN) duties. U.S. imports from China have been subject to the MFN (col. 1) duty rates since 1980, well before China joined the WTO in 2001. A comprehensive and detailed analysis would be required to quantify the effects of such changes under current economic conditions. Although USITC staff explored the effect of MFN removal on China in 1997, the Commission has not addressed this issue in any of its statutory studies to date.

To ascertain the possible WTO ramifications of such actions, the Committee may wish to contact the Office of the U.S. Trade Representative and the U.S. Department of State.

- Which U.S. government agencies would a U.S. business report to if it felt it was a victim of foreign intellectual property theft; specifically, a patent violation?

There are several U.S. government agencies to which a U.S. business that is confronted by intellectual property violations might turn. Each of these agencies have areas in which they play a primary or leading role, although there may also be areas in which the authority of these agencies overlaps. Consequently, the most relevant agency will depend on the nature of the issue that the U.S. business is seeking to resolve. For instance, if a U.S. business is confronting a market access issue, it might look to the U.S. Trade Representative for guidance and a possible remedy. On the other hand, the USITC administers section 337 of the Tariff Act of 1930, which provides a possible remedy for owners of U.S. intellectual property who are confronting infringing goods imported into the United States. Other agencies or Departments, such as the U.S. Department of Commerce, may be available to provide other types of guidance and monitor unfair foreign trade practices.

The USITC plays an important role in protecting U.S. intellectual property rights, including patents. Under section 337, the USITC conducts investigations into certain unfair practices in import trade in response to complaints filed by owners of U.S. patents or other U.S. intellectual property. Most complaints filed under this provision involve allegations of patent infringement or trademark infringement involving imports. When a complaint is filed and an investigation instituted in response, the Commission will assign the case to an administrative law judge to conduct a investigation and a hearing under the Administrative Procedures Act. These investigations generally are concluded within 16-20 months and normally will include extensive discovery, briefing, and hearing testimony before the administrative law judge issues an initial determination in the matter. The initial determination constitutes the ALJ's recommended decision in the case and that recommended decision can be adopted without change, modified, or reversed by the Commission.

If the Commission determines that there is a violation of section 337, it generally issues remedial orders that direct Customs to exclude the infringing products from entry into the United States and/or orders directing entities to cease and desist from further violations of the subject intellectual property right. These cease and desist orders generally, for example, preclude the sale of any inventories of infringing goods that are located in the United States.

The number of investigations conducted by the USITC has increased three-fold in the last six years and many of these recent investigations have involved products from China. (In FY 2010, there were 30 new Section 337 investigations (accounting for 59% of all new investigations commenced that fiscal year) in which Chinese entities were named as respondents or Chinese imports were otherwise accused of infringing U.S. intellectual property rights.)

The WTO dispute settlement process provides an avenue for addressing some of these issues as well, although the avenue is not directly available to private businesses. However, a U.S. business could urge the Office of the U.S. Trade Representative to initiate a dispute before the WTO. USTR has brought a total of 11 disputes involving Chinese measures to the WTO for resolution. Several of these disputes involve alleged restrictions of various types on access to the Chinese market and or differential treatment of foreign producers or their products in China. We understand that in response to some of these WTO actions, China has taken steps to reform several of its measures. The 11 disputes are:

- DS309 Value-Added Tax on Integrated Circuits (18 March 2004)
- DS340 Measures Affecting Imports of Automobile Parts (30 March 2006)
- DS358 Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments (2 February 2007)
- DS362 Measures Affecting the Protection and Enforcement of Intellectual Property Rights (10 April 2007)
- DS363 Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products (10 April 2007)
- DS373 Measures Affecting Financial Information Services and Foreign Financial Information Suppliers (3 March 2008)
- DS387 China — Grants, Loans and Other Incentives (19 December 2008)
- DS394 Measures Related to the Exportation of Various Raw Materials (23 June 2009)
- DS413 Certain Measures Affecting Electronic Payment Services (15 September 2010)
- DS414 Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States (15 September 2010)
- DS419 Measures concerning wind power equipment (22 December 2010)

The U.S. Intellectual Property Enforcement Coordinator, located in the Office of Management and Budget (OMB), is examining intellectual property impairment and has either taken action or recommended steps to address patent infringement and theft of intellectual property rights. Its Annual Report on Intellectual Property Enforcement was released on February 7, 2011. U.S. Customs and Border Protection also recently reported a 34 percent increase in intellectual property seizures in fiscal year 2010 compared to the previous year.

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In addition, a number of U.S. government agencies monitor and respond to Chinese business policies and practices related to exports and imports. A U.S. business that believes that its patent or other intellectual property is being infringed or the value of its rights impaired by foreign activities may bring that information to the attention of the International Trade Administration of the U.S. Department of Commerce (e.g., Trade Remedy Compliance, Market Access and Compliance; Patent and Trademark Office) and the Office of the U.S. Trade Representative (e.g., Offices of Monitoring and Enforcement, Intellectual Property and Innovation, Services and Investment, and China Affairs). Other agencies responsible for specific lines of commerce, such as United States Department of Agriculture, also monitor Chinese trade activities in their subject areas.

I hope the information provided will be useful. Please do not hesitate to contact Joshua Levy, Congressional Relations Officer, at (202) 205-3151, if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Laney", with a stylized flourish at the end.

Karen Laney
Director, Office of Industries