

# LECTURE

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## The WTO and the China Challenge

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**Abstract:** *The World Trade Organization (WTO), created to provide an arena for the peaceful settlement of trade disputes, is at the center of much of the debate over U.S. trade policy toward China. There are questions about China's compliance with the terms of its 2001 WTO accession. There are charges that the WTO has proven useless in addressing Chinese violations of these terms, or that it is simply not equipped to do so. Some question whether China should have ever been admitted to the WTO in the first place. What are the facts? How should China's compliance or non-compliance with its obligations be quantified and characterized? Can the WTO be used to address the areas where Chinese compliance continues to lag? Might the U.S. make better use of the WTO in the current U.S.–China trade impasse? Are there areas where the WTO can be reformed to better address challenges raised by China's state-led economic model? A former chief judge at the WTO and two representatives of the American business community addressed an audience at The Heritage Foundation on September 26, 2018, to explain some of the complexities of the issues, and suggest how to navigate the road ahead.*

**Walter Lohman:** Welcome to The Heritage Foundation. I'm Walter Lohman, director of the Asian Study Center here at Heritage. We're here to talk about the World Trade Organization (WTO) and its role in addressing the challenges that the U.S. faces with China on trade. There are two things that really prompted us to do this. First, obviously, there's the current impasse we have in U.S.–China relations over trade issues. There's a long list of problems that go back years, frankly. Whatever problems you're looking at, and the Administration is concerned with many of them, most of them are very well-founded. Some of them, like the size of the deficit, I don't think many

### KEY POINTS

- Current WTO rules offer opportunities to address many Chinese abuses, including local content requirements, forced technology transfer, violations of trade secrets, subsidies, and lack of protection for intellectual property rights.
- The Chinese say that they are strong supporters of the WTO and that they are intent on complying with their WTO obligations. This assurance should be put to the test.
- The Chinese, when they have been brought to the WTO and found not to have acted consistently with their obligations, have good record of complying with the rulings against them.
- WTO reform is necessary in areas such as competition policy, technical standards, national security definitions, administrative licensing, data flows, and the speed of dispute settlement.
- U.S.–China economic dialogue has worked in the past, but to be successful, results must be measurable and commercially meaningful.

This paper, in its entirety, can be found at <http://report.heritage.org/hl1299>

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of us here care about a whole lot, but of course there are serious issues in areas like market access.

The second thing that prompts this program today is what strikes me as an ill-considered indictment of the effectiveness of the WTO, out there on Twitter and elsewhere in public commentary. Certainly, the WTO has its gaps in competencies, and the Chinese have not been consistent in complying with their obligations under the WTO. There's a need for reform. In fact, the U.S. and Japan and the EU just came up with a proposal yesterday to begin to get at some of the WTO reforms that are necessary. But, I think that the indictment of the WTO, the negative narrative about it being useless and all the rest, is just a little too easy. That easy narrative then fuels the trade dispute that we have with the Chinese. I think it's actually fueling the trade war because it leaves the impression that there are no other options than unilateral action by the United States.

There may be things outside the scope of the WTO that we need to address on a bilateral basis. But even on those things, I think we need to proceed with facts, not with impressions of the WTO and rhetoric about how we got to where we are today. To get a fuller understanding of this issue, the role of the WTO in this dispute with China, and to address the larger challenges that China poses to the international system, I reached out to someone who knows these issues better than almost anyone—former two-time chairman of the appellate body of the WTO, James Bacchus. By way of introduction, let me also say that Jim is the Distinguished University Professor of Global Affairs and director of the Center for Global Economic and Environmental Opportunity at the University of Central Florida.

He's also a former U.S. Congressman. He's very well-published, including two books—*Trade and Freedom* from 2004, and the just-released, *The Willing World: Shaping and Sharing a Sustainable Global Prosperity*. I have to say, though, that the affiliation that most recommends him to me personally is the one with the Cato Institute. All those other accomplishments are great, but when I saw that, I thought, we've got to get him over here. Cato is doing, in my opinion, excellent work on trade. Really indispensable at this point in the debate. So, Jim, I'm going to turn the podium over to you and let you talk to us about this issue, and then we'll hear from our other guests. I'll introduce them, and we can get a conversation going. Thank you.

**James Bacchus:** Thank you so much, Walter, and thank you all for coming this morning. It's a pleasure to be at The Heritage Foundation, you do great work, too. Heritage has always understood that when we speak of human freedom, we have to include trade. Free trade is an opportunity for more human freedom. One of my roles in the world that Walter did not mention is my role as a professor of international law at Zhejiang University in Hangzhou in China, which has the largest law school in China. I teach there from time to time about international law, international trade law, and the international rule of law, which I believe is important to freedom everywhere.

After my last visit to Zhejiang University, I was escorted back to the airport by one of my brightest students, a young man who always had many questions. As we were riding to the airport, he turned from the front seat and asked me, "Professor, who is your favorite American President?" I replied, "Abraham Lincoln." He smiled and said, "Abraham Lincoln is my favorite President too." Then he proceeded to quote the Gettysburg Address in its entirety, word for word. I thought to myself, How many of us in the United States can do that? I also realized that my young student shared the American idea of freedom.

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## China can only rise ... if the Chinese people become more free, including economic freedom.

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It is my impression that the Chinese people do not want to become Americans, but they are yearning to be free. They want to be Chinese, but they want to be free and it is very much in our interest, as Americans, for the Chinese to be free. To be free, they have to rise economically, because only with economic opportunity, trade, and commerce can there be more opportunities to be free. So, the question is, How should China rise? More particularly, How can China rise?

In my view, China can only rise, it can only climb the ladder of competitive advantage in the world, if the Chinese people become more free, including economic freedom. The vast amount of the economic growth in China over the past generation has come from the embrace of private enterprise and the innovations of a growing private sector in China. It does not come from the inefficient, debt-ridden

state-owned enterprises. Yet, the Chinese focus, at this point, seems to be away from the market, away from economic freedom, and back toward state control, state-driven efforts at growth, and discrimination against foreign participation in growth. All that, in my view, will not lead to a lasting and shared economic growth for the Chinese people.

So, my comments today are offered as a friend of the Chinese people, because I believe that what they should be doing is what the U.S. should be asking them to do. It is something in our mutual interest, and that is to embrace free trade and economic freedom, both in China and the United States.

When I was a young man at the Office of the United States Trade Representative (USTR) as a trade negotiator, I had the privilege of helping to implement the first bilateral trade agreement between China and the United States. Later, while I was in the Congress, I was a strong supporter of getting normal trade relations, called “most favored nation” status at the time, to China. This was even before China became a member of the WTO. While I was with the WTO, I was a strong supporter of Chinese membership. As a judge on the appellate body of the WTO, I had the responsibility of judging the first appeal in a dispute that engaged China in a WTO settlement, and I happened to rule in favor of China and quite a few other complaining parties in a dispute over steel safeguards imposed by the United States.

I don’t want to disillusion you, but the United States of America does not always fulfill every one of its obligations under the WTO treaty. So, I have watched as China has become a member of the WTO and has benefited from membership in the WTO enormously. As I go back and forth between here and China several times a year, I realize that China has a much better understanding of the benefits it derives from membership in the WTO than we do here in the United States, and that is especially so now. This underlies the current trade confrontation between the two countries.

How is it that we can help China rise while also helping ourselves to continue to grow economically and sustainably? The best way is certainly not to build walls between China and the United States. It is not to impose new tariff barriers. In my view, virtually all of the tariffs that the current Administration has applied, not only to China, but to many other countries during the past two years, are illegal under international law. Seventeen cases have

been filed against the United States of America so far this year in WTO dispute settlement. We’ll see what my successors on the appellate body have to say, if indeed there is an appellate body in the next year or two. At the end of this week, because of inexcusable, shameful political intimidation by the United States of America and its refusal to join the consensus to appoint and reappoint members of the appellate body, the final court of appeals in WTO dispute settlement will be down to just three judges.

It takes at least three judges to decide an appeal, and we now have the interesting situation in which the United States of America is stone-walling efforts to provide the appellate body with its full complement of seven judges and at the same time, criticizing the appellate body and WTO panels for the fact that their process of dispute resolution is getting slower because they don’t have enough judges.

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## We should be relying more on the WTO and not less.

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What should we be doing with respect to our relations with China? We should be relying more on the WTO and not less. Instead of undermining WTO obligations, instead of circumventing WTO rules, instead of violating WTO rules, we should be employing WTO rules to secure the changes that we seek in China. China has a right to rise; China does not have a right to violate its WTO obligations. The Chinese tell us that they are strong supporters of the WTO and they are intent on complying with their WTO obligations. This assurance should be put to the test.

It has become a truism in the U.S. media that the WTO does not offer any opportunities for resolving our very real concerns about how China is treating American products and American businesses. Nowadays if you say something often enough that’s not true, it seems that people begin to believe it. This is just one example of how we’re being told things that simply are not true.

Certainly, the WTO is in need of improvement and modernization. Certainly, there are places where we need to improve WTO rules, but there are many WTO rules that right now offer opportunities for us in engagement with China and dispute settlement. We should proceed with even more dispute

settlement against China in the WTO, even as the Chinese should do what they are doing, which is to respond to our illegal actions with WTO complaints of their own.

The purpose of the WTO is to provide an arena for the peaceful settlements of trade disputes. The WTO has resolved, in the course of the past 20 years and more, a total of more than 500 international trade disputes, positively, successfully, lastingly. Moreover, the mere presence of a rule-based global trading system provides an atmosphere in which most countries comply with most all their trade obligations, in most all of their commerce every day. Disputes are resolved because the disputing parties know that there is a binding dispute settlement system backed by the last resort of economic sanctions. These disputes never get to the WTO.

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The Chinese, when they have been brought to the WTO and found not to have acted consistently with their obligations, have had a good record of complying with WTO rulings against them. Indeed, in some respects they have a better record of compliance than the United States of America, which drags its feet endlessly in compliance. Think of the zeroing disputes over anti-dumping rules.

What are some of these opportunities that we should be pursuing in the United States, in our disputes with China over trade? First of all, many people say, “Well you can’t really pin down the Chinese because so much of what they do is elusive.” It’s hard to challenge them by identifying the measure in WTO terminology that must be challenged, the measure being the actual action by the state that consists of a WTO violation. But the truth is that the jurisprudence in the WTO takes a broad view of what a measure can be, and there have been any number of cases in which the United States itself has been able to do a great deal of excellent legal work in identifying measures that are elusive in China and

elsewhere. I am confident that this can be done by the USTR, the legal office for trade disputes, if it is charged with doing so.

Look, for example, at the “Made in China 2025” industrial strategy of the Chinese. A strategy that, I believe, will not lead to lasting economic growth or technological leadership by China, but will take the Chinese in the opposite direction; then we can see a number of opportunities for the United States to challenge it. Where there are, for example, local content requirements, where there are requirements that Chinese goods and services be used instead of imported goods and services. These requirements are illegal under WTO rules. They can be challenged and there is a whole string of WTO cases in which local content requirements have been held to be in violation of WTO rules.

There’s also the issue of technology transfer. We’re told that there’s simply no recourse in WTO rules for challenging requirements of the Chinese for technology transfer, yet if you look at the Accession Agreement that China signed, it binds China. As a member of the WTO, you find there are specific provisions prohibiting forced technology transfer. These provisions can give rise to claims in WTO dispute settlements against such required technology transfer.

We’re concerned about the loss of trade secrets, and we should be. This is a big concern of U.S. companies doing business in China. We say there’s no recourse in the WTO, and yet there is a specific article in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) that provides protection for trade secrets. In fact, the protection provided for trade secrets in the WTO intellectual property (IP) agreement, the TRIPS Agreement, goes considerably beyond anything that has been said about trade secrets in other international intellectual property conventions. Yet, we’re ignoring the opportunity provided by this article to support claims in WTO dispute settlement against China where China has violated this obligation.

I’m also of the view that there is an opportunity for the United States to bring a systemic case in the WTO against China relating to the continuing failure of the Chinese government to protect intellectual property rights throughout China. A whole section of the TRIPS Agreement deals with enforcement. Most WTO obligations are negative obligations—what I refer to with my law students as “don’ts.” Don’t do

this. Don't do that. For example, don't discriminate against foreign providers and foreign goods in favor of local providers and local goods—but the intellectual property convention has a section on enforcement of intellectual property rights. Patents, copyrights, trademarks, trade secrets and more, and this section of the TRIPS Agreement is an affirmative obligation—it's a do, not a don't.

It says you must protect intellectual property rights. That article, that section, has been in the TRIPS Agreement for 25 years. We have had the opportunity all along to bring a systemic case of intellectual property violations against China and we have refrained from doing so. There is also the issue of subsidy. We're told that WTO rules are inadequate to challenge the subsidies that are provided, through the Made in China 2025 program and through other efforts by the Chinese government to prop up state-owned enterprises. I think we need more subsidies rules. We need to improve our agreement that relates to subsidies and countervailing measures in the WTO treaty. But there are many provisions in that agreement that exist right now, and can be used to give rise to claims against Chinese subsidies. A week before he left office, President Obama had his trade team file a case against China's agricultural subsidies, which are rising and often not notified to the WTO as they should be. This case is in process. The United States has a strong case. I'm sure China will do a thorough job in defending it. The Chinese have an excellent team of trade lawyers in Beijing.

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This is the way to resolve disputes about subsidies. Subsidies provided by the Chinese can be challenged by many aspects of the subsidies agreement where they are conditioned on export performance, or where they're conditioned on using local inputs, not foreign inputs, into the making of products. Government subsidies are automatically illegal under WTO rules. And where there is a subsidy that is specific to certain industries or enterprises and that has adverse effects in the marketplace, those subsidies

are also illegal under WTO rules. There are, at this point, dozens of cases in the WTO that have been resolved under the subsidies' agreement where such subsidies have been found to be illegal, and where countries have then withdrawn them.

In bringing these cases, the United States should not go it alone. United States should enlist the European Union, Japan, Canada, and others that are equally concerned about some of these issues. And it's my belief that, if China is found to have violated these obligations in the WTO treaty, and if China then complies with the rulings of the WTO as it has generally done quite well over the past 17 years, then China will be more likely to grow economically and the Chinese people will be more likely to rise.

There's much else that can and should be done in negotiations. The U.S. needs to proceed with a bilateral investment treaty with China. China needs to keep its pledge to sign the WTO government procurement agreement. We need new negotiations in the WTO as part of this WTO reform effort that is now beginning to address some of the gaps that do exist in the rules. I could cite many examples, but to cite just one: To what extent should government be able to require investors to engage in joint ventures as a condition of entering their marketplace?

Beyond this, we need to act now in ways separate and apart from dispute settlement, but also within the WTO. The United States and China are far apart in their efforts, somehow, to resolve this trade impasse. Negotiations are going nowhere. At this point, there are no plans to resume negotiations. The latest round of tariffs imposed by the United States, illegally, has caused the Chinese to cancel a planned visit here. They have, since that time, rejected an offer to engage in new negotiations. Just yesterday they said they feel the United States is engaging in bullying tactics. I think it is. The Chinese have imposed retaliatory tariffs, which I think are also illegal, and everything is beginning to get out of hand. There's a danger that all this will spin out of control. We're seeing some early signs in the United States that investors are postponing some of their investment plans. We're hearing warnings from Walmart and other retailers about price increases on the near horizon. We're seeing the beginnings of some disruptions in the supply chains of U.S. technology and other companies. The stock market has not yet internalized what's happening in international trade.

It seems like 2018 will be a good year for the stock market and the U.S. economy, but we should be thinking about 2019. The Chinese are continuing to struggle with their efforts to find the right balance between growth and stability. Their recent retreat from market forces to more state control of the economy, I think, will not produce lasting economic growth or technological advances. There is a burden of debt in China. Infrastructure is slowing, in terms of its increase. Growth overall is slowing. This trade confrontation has, to date, not done much to affect the Chinese economy, but it is not a welcome development for China as it continues to try to rise.

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One of the little-noted provisions in the WTO dispute-settlement understanding is Article V, which provides for mediation. Any party to any dispute, any member of the WTO engaged in a dispute with another member, or members, can request mediation in the WTO at any time. This is an alternative to standard dispute-settlement mediation. It can occur even as litigation occurs. It offers the opportunity for some type of agreed settlement between the United States and China that can resolve their trade concerns, mutually, without violating the rights of other WTO members.

For example, if the Chinese were to agree that they were going to direct more of their purchases to American producers, they would then be discriminating against producers from other countries that are members of the WTO. This would be a WTO violation. Managed trade is generally not consistent with WTO obligations. I believe the United States and China should give some thought to seeking WTO mediation. A thoughtful, objective, neutral mediator might be able to help the two countries find the common ground for a positive solution to this trade dispute.

The Chinese have professed, over and over again, their support for the WTO and for free trade. Mediation would be an opportunity for China to prove that it means what it says. It would put this Chinese

pledge to the test. The Chinese should be willing to mediate. Of course, the President of the United States has shown nothing but disdain for the WTO. He denounced the WTO again yesterday in his remarks at the United Nations. Yet, others in his Administration profess to continue to support the WTO. The President himself says that the WTO needs reform. He seems to be seeking new ways for the WTO to make the right kind of difference in the world. Why not agree to mediation? After all, he could always denounce the mediator.

So, in my view, we should be proceeding on two fronts within the WTO. We should be engaging in dispute settlement. The United States should be bringing the claims it has against China in WTO dispute settlement. And, in turn, China should be bringing the claims it has against the United States in WTO dispute settlement. And both countries should comply with the rulings.

At the same time, because this trade confrontation promises now to become a trade conflagration, China and United States should seek WTO mediation in hopes of a positive solution in the form of an agreed settlement.

The other day, I got an e-mail from my Chinese student who had quoted the Gettysburg Address to me. He was very excited. He said, "My dream has been to study in the United States of America, and I now have that opportunity. I'm going to be studying at one of the universities in the Midwest." So, once he gets here, I plan to send him his very own copy of David Donald's biography of Lincoln. I know that in studying President Lincoln he can be reminded of what is truly great about America. It must be great again. Thank you all so much.

**Walter Lohman:** Thank you. That was terrific. You raised a lot of issues that we will talk more about in just a moment. One issue that I hope we can get to is: You talked about the illegality—in international law—of the sanctions that were imposed by the U.S. I think there's also a question of domestic legality that maybe we can get into a little bit. There are some things that are not quite in keeping with Section 301 of the 1974 Trade Act as the Administration has carried out this policy, and I do hope we can talk about that.

But first, I want to give an opportunity to our guests to offer their perspectives, both on Jim's remarks, and generally on the problem that we've faced in our trading relationship with China. Jeremie

Waterman is president of the China Center at the U.S. Chamber of Commerce, and has been vice president for greater China at the Chamber for 15 years.

What makes Jeremie so perfect for this is that I know how tough he is on these issues, and I know how extremely well he knows them, how familiar he is with U.S.–China trade issues.

The same goes for Erin Ennis. Erin is senior vice president at the U.S.–China Business Council. I haven't known her as long as I've known Jeremie, but I value her opinion greatly and find myself reaching out to her often for her guidance and counsel. Erin has been with the U.S.–China Business Council for more than 10 years. She also has extensive experience in government, both in the legislative branch and at USTR.

With that, let me turn it over to Jeremie.

**Jeremie Waterman:** Walter, thank you. It's a great pleasure to be back here at Heritage, and certainly this is a terrific group, with Congressman Bacchus and with longtime colleague and collaborator Erin Ennis. This is certainly a very timely event, so congratulations, Walter, to you and Heritage. In fact, next week, USTR will hold its annual hearings on China's WTO compliance. The China Center of the U.S. Chamber of Commerce has submitted testimony, and if any of you are interested you can probably find the submission on the *Federal Register* notice website.

First of all, let me commend the Congressman for a set of terrific remarks. Certainly, there's quite a bit that I agree with personally, and certainly, the China Center agrees with, too. We are certainly at a critical juncture, if not an inflection point, in U.S.–China relations. As the U.S.–China relationship has improved, and as China has become more integrated into the global economy, there have been tremendous benefits, certainly here in the United States, and also in China. And so, I very much agree with that point.

I agree with the Congressman's diagnosis of the problems. Certainly, I also agree in large measure with the diagnosis put forward by the Administration. The Chamber noted its support for the Section 301 investigation and many of the issues, really all of the issues, that are outlined in that Section 301 investigation with regard to technology transfer and intellectual property as well as the various legal regulatory means, and the extra-legal means, that are often employed against our members as well as other foreign companies.

I think it's also fair to say that the WTO has not been an unqualified success, even as the WTO paved

the way for many of the benefits that American companies enjoy in China, and many American exporters have enjoyed and continue to enjoy to China. After all, U.S. exports to China over the past decade have grown by nearly 90 percent, whereas to the rest of the world, they've only grown by about 20 percent. Still, the accession process has not been an unqualified success. We can talk more about that in the Q & A.

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## History did not, in terms of U.S.–China economic and commercial relations, begin anew in November 2016 when President Trump was elected.

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I think it's fair to say that history did not, in terms of U.S.–China economic and commercial relations, begin anew in November 2016 when President Trump was elected. There was mounting frustration across many stakeholders, including in the business community. And Walter, you alluded to this earlier, regarding the lack of progress in a number of areas, and concern about the direction that China was taking. And Congressman, you mentioned a return to an emphasis on state-directed outcomes, discrimination, and industrial policy in your remarks. We see that in the normative guidance of 13th Five-Year Plan policies like Made in China 2025 and others. This is important in the Chinese system because that is the direction that the Party, in particular, sets for ministries, for the government at the national level, but also for provincial and local governments, as well as for enterprises, many of which are either owned by the state, outright, or heavily influenced and directed in some capacity by the State and regulation in China.

I certainly agree with the Congressman about tariffs. The business community is certainly united in opposition to tariffs. The Chamber of Commerce has a great website, it's actually very catchy and very simple—[www.thewrongapproach.com](http://www.thewrongapproach.com)—which highlights the counterproductive effects of the impact of tariffs across our country on a state-by-state basis. As these tariffs are announced, we feed them into the system, and we have supporting anecdotes about the damaging impact on American consumers, workers, and of course businesses, farmers, and ranchers. So I recommend that website to you.

Let me say as well, and obviously this is a key topic of our discussion today, the Chamber certainly

vigorously supports and defends the WTO. And I, again, agree with the Congressman's vigorous defense of the WTO, as well as with the point that he made that the WTO very much needs to be a key component of the U.S. government's strategy for addressing challenges with China.

But let me offer a few cautionary notes about the challenges we face with China today and, I guess, perhaps a somewhat more sober assessment of the current WTO's ability to deal with those issues. As a student of China, and as someone who reads Chinese and reads the laws, the regulations, the policies, and studies the implementation thereof, I think it's fair to say that the drivers today of Chinese industrial policy and broader policy are not the kinds of issues that the WTO is well equipped to deal with.

I think we have to remember that there have been only a few updates to the WTO since 1994, and the core of the WTO really came into existence in 1994. There have been a few additional agreements, be it the Information Technology Agreement (ITA) or agreements on government procurement, or telecommunications, but those are voluntary agreements. China is a part of some of them, but, of course, most notably is not part of the government procurement agreement, which it had pledged to join as soon as possible back in 2001.

The issues, in particular, that are the drivers of Chinese industrial policy today, for example, competition, the anti-trust, and standards-setting policies—in fact, China has just created a new super-regulator that integrates the anti-trust authorities with the standards—and the IP authorities. The WTO doesn't really deal effectively with these issues.

When it comes to standards, the WTO has an agreement on technical barriers to trade, and there are certainly some disciplines on standards, but they are not terribly robust. And there is not much, if any, case law in that space. In part, because the disciplines, again, are probably not nearly as robust as they need to be.

When it comes to security, and in particular co-mingling of commercial and security policies, there is an exemption in the WTO for national security. Every country in the world has national security considerations. The question is, how a country defines the scope of national security. How broad is the definition? Some in China talk about absolute security, or comprehensive security. And if you're defining security to be absolute, or comprehensive,

of course that's going to have a significant impact on the scope of what's covered in the commercial space.

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### **Every country in the world has national security considerations. The question is, how a country defines the scope of national security.**

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I think most governments around the world, certainly we here in the United States, have traditionally had a narrower definition. And even so, as we just went through a process of updating Committee on Foreign Investment in the United States (CFIUS) legislation. We have the Foreign Investment Risk Review Modernization Act (FIRRMA), the U.S. still struck a very careful balance between national security and economic security—even as, of course, this Administration is now exhibiting some very worrying, indications in terms of how it is co-mingling national and economic security.

But the point I would make is that China, for a very long time, has had this very broad definition of national security. And the trend—the Chamber wrote a report about this in 2016—has been for China to leverage a very broad definition of national security to push forward a commercial agenda.

Administrative licensing is another area where the WTO, I think, struggles. Again, every country has a licensing process. The issue is whether the licensing process is fair. There have been lots of challenges in that space. Of course, state-owned enterprises and subsidies. The WTO and its predecessor, the General Agreement on Tariffs and Trade (GATT), contemplated behavior like state trading, but it never contemplated a \$12 trillion or \$13 trillion economy with the kinds of state-owned enterprises and state-influenced enterprises that China has. There is also a real and serious issue with regard to China's lack of transparency, and that issue has become more of a challenge, not less of a challenge recently, as information in China has become harder to get, not easier to get. And China, of course, has never had a great record in terms of notifying its subsidies to the WTO.

And then, perhaps most importantly, data flows. And of course, we are in a 21st-century economy.



Every company is a data company. It's not just information and communication technology (ICT) companies. And so, I think that, in part, explains why there is this ongoing effort, an effort that we very much support at the U.S. Chamber, and I think that the broader business community supports, to work with allies and update the international trading system. It's critical that the U.S. work with its allies. It's essential that we're working with allies. And this must be an ongoing effort. There was a meeting yesterday in New York of the three trade ministers from Japan, from the EU and, of course, from the U.S., Ambassador Robert Lighthizer. They're certainly making, I think, a very important attempt, both in a plurilateral effort but also what could turn into a multilateral effort, to try to update the WTO and to address some of these issues.

There are challenges.... I think we should be very sober, though, about the challenges of updating the WTO from within. China is a member of the WTO. The WTO is a consensus-based organization. Others are going to have to be a party to this as well. The Indians, the Brazilians, and many others are going to have to be brought along, assuming there is an agreement among the three economies that are participating in this process. I think there's also the question of the leverage needed to push forward reform of the WTO. The Europeans, to their credit, have taken the lead in putting forward some proposals to update the WTO, but what they have not put forward to date is a negotiating approach that is likely to produce results.

In fact, in some of the conversations, the Europeans have suggested that it is this Administration's tariffs that could be the leverage for reform. That's not an approach that we agree with in the business community. In fact, the view of the American business community has been that we need a plurilateral approach. The Trans-Pacific Partnership (TPP), for example, and the Transatlantic Trade and Investment Partnership (TTIP), are examples of such an approach. It's a great shame, of course, that we are not moving forward with those efforts to update disciplines on data and state-owned enterprises and other 21st-century trade issues that were core to the TPP effort.

I look forward to the Q & A.

**Walter Lohman:** That was great, Jeremie. Thank you.

**Erin Ennis:** It's a rare opportunity to critique the work of a former Member of Congress and chairman

of the WTO appellate body. So I will tread lightly and try to stick to my lane.

**James Bacchus:** I have a thick skin.

**Erin Ennis:** I probably won't prick too hard on it because I agree with much of what you said, and it's always a pleasure to be on a panel with Jeremie.

I'd like to focus on three points just to contextualize some of the things that both Jim and Jeremie said. Some things that I believe we should be thinking about as we try to determine what the right response is from the United States, as well as from the global trading community, to the shortcomings that we've identified and where the rules in the WTO and elsewhere fall short. So I want to focus on three things.

First, what it really looks like on the ground for companies that are dealing with some of these challenges in China. Second, I want to touch a little bit just on the concept of fairness, which I think is something that is an interesting one that this Administration has used in a variety of ways, but it's one that I think is an interesting context to consider where we go with WTO rules. Third, the U.S. response in particular.

So in terms of what this looks like on the ground, Jim mentioned in passing that the WTO potentially should be looking at the requirements of things like joint ventures (JV) and what that means for markets. In China, most sectors at this point do allow 100 percent ownership. There are a few that have JV requirements. They tend to be pretty notable, such as in the auto industry. Even those are being phased out. In financial services and services in general, there tend to be many JV requirements. Why that matters in a business context and why it matters in the context of things like the Administration's Section 301 case are for this reason. It is the point that Jim made, that China's WTO accession agreement in particular bars the government from requiring a company to transfer its technology. It specifically says that such requirements for tech transfer are things that need to be worked out between business parties.

So in that scenario, let's say that you are a company that is in a sector that requires a joint venture. We'll just use a random sector of widgets. My widget sector requires me to have a 50-50 joint venture in China. I identify a Chinese company that I'd be willing to do business with. In that arrangement, I might be willing to share some of my technology but not all. I might want to hold it all back and simply have this just be a licensing agreement of some sort. But

in the course of that negotiation, I and my potential joint venture partner are going to have extensive discussions about what that joint venture looks like, who pays for the factory to be built, where is the IP going to be registered and who owns it, how will we be dividing up the fees that we get from the sales of those, who's dealing with the labor issues.

In that context, you have two private parties, or even a private party and a state-owned enterprise, where one of them is in the market already but, simply by the nature of its nationality and the other's entrance into the market, is dependent on that domestic company. There is an inherently uneven negotiating environment for the two companies because in this context, my Chinese counterpart could say, "Well, I'm really only interested in this deal if you transfer all of the intellectual property and the technology in how to make it, and I get to own 100 percent of it." Now, in this context, I have to determine: Is this just a negotiating ploy? I mean, can I say no to this and we'll go back and the guy will say, "Oh, I didn't think I was going to get that anyway"? Or is this legitimately what the other party wants?

This is the kind of evaluation that every company that is in a sector that requires a joint venture has to go through because I can guarantee you that, whether you're in China or in another market, your potential partner is going to seek to get the best deal that he possibly can. You have to evaluate: Is this a request that's simply trying to get a better negotiated deal out of me, or is this a requirement that if I don't do this, I'm not getting market access? In that circumstance, it does make a difference whether you can, as a company, own 100 percent of what you're doing in the market. There are companies in sectors that are open to 100 percent in China who still continue to have joint ventures because they found that they can negotiate business transactions in ways that make sense to them. But in the instances where you can't, it is essentially an existential choice. I have to make an evaluation based on what I think the best offer is going to be and whether I can comply with that and whether that meets my business bottom line.

Now, at the U.S.-China Business Council we ask our companies about these kinds of situations every year. The majority of our companies tell us that they don't get these kinds of asks. That they, in general, are able to operate in the market under the structure that they want. A minority, maybe 10 percent, each year report that at some point during their business

operations in China they've gotten this kind of a request. Then as you start to dig down into that, who would own the intellectual property, were you compensated for it properly, did you feel like you had to go through it, you start getting to a smaller and smaller number of companies that are genuinely in a circumstance of a joint venture where they are forced to transfer their technology and not compensated properly. But for those companies, it is a matter of entry into the market or not.

Now, this is among the reasons why eliminating ownership restrictions in every sector is among the things that the U.S.-China Business Council, the U.S. Chamber of Commerce, and others have called for, for years. By eliminating that, you are at least eliminating one of the inadequacies of how foreign and domestic companies are treated in China.

In addition to that, it's very important that the government also consider the fact that it can now, 20 years after accession, still maintain a designation of all foreign companies in China as being foreign-invested enterprises. That, in itself, denotes that you are somehow different from all of the other companies that are operating in the market. Why does that matter? Again, it gets back to some of these issues about how the market treats foreign companies. If I know that I am going for an insurance license, even if I can own 100 percent, but my license application goes to an office that only deals with foreign companies, rather than dealing with all companies on the same basis, the regulator inherently has bias against my company because it is not even looking at all the applications from domestic companies. There's no way to evaluate what equivalence is in that circumstance. It is by design a supposedly separate but equal system. But we've seen plenty of examples in history where that simply doesn't work.

These are among the very tangible things that China has, and other markets as well, that can be addressed. Let me emphasize that that is, I think, the most important aspect of it. Some of these things are failings where the WTO falls short because the rules allow China to interpret its obligations in ways that probably most of us never anticipated 20 years ago when these negotiations were coming to a close. Others are things that simply need to be improved in China's system to bring that fairness to the table. We at the U.S.-China Business Council believe that those things are worthwhile to explore. Like the Chamber and like most other trade associations and

companies, we don't think tariffs are the way to get there. I will say that tariffs have focused the attention of the Chinese government, and we think that that is why it's important to use the leverage that is there to have a discussion about what those changes look like.

Now, let me turn to my second point, on fairness. This is one that we don't talk a whole lot about in the context of WTO rules because, How do you define what fairness is in global trading rules? I mean, essentially what the Uruguay Round looks like is what fairness looked like in the 1990s. We defined the world in terms of how companies should be treated and how government should treat those companies based on the context of how we knew the global economy worked. We are now, many years later, in a place where we need to re-evaluate some of those things. While I think that the Administration's focus on fairness as the standard is one that's very hard to define, I do think that it's one that the trilateral effort that the European Union and Japan and the United States are undertaking are trying to put some perimeters around.

Now, in terms of some of the specific sectors where the Administration has noted that there is a lack of fairness, some of them are things that we, in the past, didn't think were that big of a deal. Telecommunications, for instance. The United States, in general, has some liberal areas, where we don't restrict who can do cloud computing in the United States. In all honesty, when the Uruguay Round was written, nobody had any idea that cloud computing was ever going to come about. While the U.S. negotiators weren't prescient, at the same time, there are areas where each country has looked at it somewhat differently. China's approach to it has been one that has sought to protect domestic companies. That is, in the view of the Administration, inherently unfair because a Chinese company can come here and set up cloud computing, but an American company or any other nationality can't do the same in China.

I don't think that that's the right standard by which we should be enforcing our trading rights, because we agreed to the rules just as China did. But it is a good indication of an area where, if the rules are no longer bringing around the kinds of behaviors that we want from other governments, we should be re-examining them and finding the right ways to define them in a way that moves us away from a simple reciprocity standard of "you don't do that for my

companies and therefore I'm not going to do it for yours." This is in the best interest not just of the United States but also of all our trading partners. It is a race to the bottom if we are going to start going to the path of commonality between our systems. Openness has benefited us as an economy. It hasn't hurt us. Pushing others to live up to our standards rather than bringing ourselves down to a lower standard is the right way to approach those things.

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**We've heard frequently over the past year and a half that the reason why tariffs are being used is that nothing else has worked. I would push back on that argument and say that assumes that we tried everything in the past, and I don't think we have.**

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My last point, simply in terms of what the U.S. response should be to this: We've heard frequently over the past year and a half that the reason why tariffs are being used is that nothing else has worked. I would push back on that argument and say that assumes that we tried everything in the past, and I don't think we have. We certainly have had very gifted negotiators over the course of the last 17 years, since China has been in the WTO, who have done their best to try to address issues. But dealing with things piecemeal can be very difficult. So working with our trading partners is a logical next step that we have not exhausted, and that we should continue to be looking to because it's not just American companies that have these problems in China. Every foreign company has these problems, and we have seen success in areas where we've worked with our trading partners.

The U.S.–China Business Council and the Chamber worked well with trading partners on pushing back on some of China's indigenous innovation requirements that had linked transfers of IP to China as well as tying it to procurement. China recognizes that not only was it in violation of its WTO rules, but it also wasn't in its interest to create an innovative economy. We saw similar progress when we pushed back on some tech localization requirements in banking and insurance. These are obviously discrete areas and none of them transformed how

China does its economy. But at the same time they are indications that we have allies, and when working with them on areas where we are pushing towards a higher standard, we can seek some success.

I think it cannot go without saying, though, that the other things that we need to be looking at are what we should be doing here domestically. There is no denying that China's economy is large. It is a competitor and in many ways we have to decide whether that is something that we want to engage in by trying to restrain China, or if it's something that we want to engage in by raising the bar on where China has to go to compete with us. That has got to take some domestic looking at what we are doing in terms of workers who have been left behind by globalization, what we need to do to promote innovation in our country, where we want our economy to be in five years or 10 years and, what it looks like for us to get there. I'm not suggesting that we engage in five-year planning. We're not that good at planning even year to year. But at the same time I think we need to be looking internally to determine what we can be doing to strengthen our own economy in the midst of this, rather than assuming that all of the changes have to come from outside of the United States. Because that's what's made our economy strong, and that's what's going to keep it strong going forward.

**Walter Lohman:** Thank you very much, Erin. It was just dawning on me how much expertise and knowledge we have on this stage right now. We can hardly do it justice in the time we have left. So, I very much want to get to Q & A, but there's one question I have to ask Jim Bacchus: I wanted to give you an opportunity to respond to Jeremie's point about where the WTO is not well equipped, because that's very much the heart of the issue. You addressed half of that issue in your remarks. But Jeremie's criticism is the other part of that. Could you respond to him?

**James Bacchus:** Yes, it won't take long because I agree with everything Jeremie said. Much of what he talks about is in my new book. I advocate addressing all of the issues he mentioned and a whole lot more. We need to re-imagine the WTO. We need to address a lot of the issues that did not exist 20 years ago or 25 years ago when we were concluding the Uruguay Round. Foremost is digital trade. Certainly on the list is competition policy. The Europeans suggested in Singapore about 15 years ago that we negotiate a competition agreement. The United States opposed that. We were wrong. We certainly need such an

agreement now. I am pleased that a number of WTO members are beginning to address the issue of trade reform. I'm going to be talking about this issue specifically in Bali at the joint annual meeting of the International Monetary Fund (IMF) and the World Bank the week after next, and I'll be talking about it in Geneva next week at some length while there.

In my view, we need to re-imagine WTO rules in ways that are consistent with achieving global sustainable development. Everything that Jeremie mentioned should be on the list. But beyond that, we need to be doing much more across many of these agreements.

**Walter Lohman:** Great. Thank you very much. Let me open it to questions.

## Q & A

**Pat Malloy:** I'm Pat Malloy. I'm a trade lawyer here in Washington. I was on a China commission for a number of years. So thank you, Congressman Bacchus.

Erin, I agree with you absolutely. So much of what we have to do is domestic in changing some things that are going on here. Congressman, you mentioned that there were all these cases filed with USTR to go after IPR. We never pursued them. One, I'd like to know why you think we didn't. Two, I remember at one point there was a petition filed with USTR when Zoellick was the USTR to go after exchange rates. I think there's an Article 15.4 in the WTO agreement that would cover that, and they would have to go to the IMF. Why did we never pursue (1) the IPR, or (2) the exchange rate issue in the WTO?

**James Bacchus:** The decision not to pursue a systemic case challenging the overall Chinese regime for protecting intellectual property rights was a decision made by the Bush Administration in 2005 or 2006. At that time, I'd left the WTO and I was representing as a lawyer the U.S. entertainment industry, motion picture industry, music industry, book publishing industry. We ended up bringing and winning two cases against China on copyright, piracy violations, and audio/visual obligations. The Chinese complied with these rulings. These were two successful cases. However, these were narrow cases addressing very specific violations. What we had sought from the Administration was a decision to bring a much broader case, a case I suggested earlier under the enforcement chapter of the TRIPS Agreement. But the Bush Administration chose not to do

that. To my knowledge, the Obama Administration never considered it.

As to the exchange rate issues, currency issues, you are right. There are provisions in the GATT that have been there since 1947 against a manipulation of currency. They had never been tested. We don't know what they mean because there is no jurisprudence. They could be employed. There is a potential GATT case. At this point, I think there's no evidence of significant currency violation by China. A decade ago, there may have been. I know it's still in the talking points of people in Washington, but I don't think the facts reflect the reality there. I've also been of the view that it would be a mistake to take such a case to the WTO. I think it better to deal with those issues on a multilateral basis through the financial ministries of the world. I think there can be more of a settlement there.

I know the current Administration is bent on including currency provisions in trade agreements, but I'm not sure how successful any of those are going to be in part because there are real problems in terms of implementation and of demonstrating that there has been no implementation. If you have a legal case, you have to prove it with facts, and that's going to be very hard. Another issue is definitions. With lawyers, for like definitions, defining terms. What exactly is currency manipulation? We don't have any international agreement on what that phrase means.

**Questioner 2:** My question is whether the WTO is just pursuing one strategy, pursuing legal remedies. Should we not be stepping up and pursuing a world court in terms of addressing our legal concerns? Then the other one: Isn't Chinese President Xi Jinping doing us a favor by forcing us to have a renaissance of American manufacturing?

**James Bacchus:** Well, we have the International Court of Justice, which is part of the United Nations. It's never really considered commercial cases. There are other international disputes, marine disputes, for example, that can be brought before the International Tribunal for the Law of the Sea, which is in Hamburg, Germany. Under the WTO treaty, all disputes related to matters covered by the treaty among the 164 members of the WTO must be taken to the WTO for dispute settlement. It is violation of the treaty not to do so. This is why the United States has violated its WTO obligations over and over and over again in the past two years. Article 27.1 under dispute-settlement understanding says that WTO members must first go

to the WTO for dispute settlement before taking any unilateral action in the form of a trade restriction. We have not done that. In retaliation, other countries have, in my view, also violated this same provision in the WTO agreement. There are some creative reasons suggesting why they have not done so. We'll see what my successors on the appellate body think about those creative reasons.

But we have a situation in which, because of the reckless actions of the Trump Administration, we are now seeing the spreading of WTO violations throughout the trading system. As important as the economic aspects of the U.S.-China trade confrontation are, far more important to the world economy as a whole is the fact that these actions by the United States are leading to an unraveling of the trading system. They are undermining the trading system that we have worked together in the world to create over the past 70 years. This would be a tragedy if it happens. But there's been too little attention to this issue.

**Jeremie Waterman:** Just one issue that I neglected to mention in my comments, which I think relates to the incentives, or lack thereof, for using dispute settlement, and I'm speaking specifically in a China context. As wonderful as the system is, as important as it is, and I agree, again, with everything Congressman Bacchus said, there is a challenge when it comes to the enforcement side. It assumes you're willing to go through the process, right? Because for many governments, but also more specifically for companies that have to provide the information to the governments, of course there's a real risk of retaliation. So that is a deterrent. Then assuming you win the case, there is this question of the pot of gold that exists at the end of the rainbow, assuming it is a pot of gold. When you talk about subsidies, in particular, the remedy after going through, perhaps, a three-year litigation process in the WTO to include the appeal, the remedy is really that the offending country, assuming the plaintiff prevails, has to basically remove the subsidy. That's a real challenge, in particular because of China's size and the amount of subsidy that we're talking about.

So, for example, if we look at the auto parts case, where it was pretty well understood that China was going to go through litigation, was going to almost admit that it was violating the rules... but had a goal at its end of a three- or four-year horizon of bolstering its domestic auto parts industry. That three-year window where a country is allowed to subsidize, in

the same way that we are now allowed to apply WTO-inconsistent tariffs, which again, are highly counter-productive, is a challenge. I think this is an issue that is being discussed in the trilateral context, and needs to be addressed.

It is something that like-minded governments will have to figure out a solution to, because as we look back at the history of some of the subsidies that we've seen in China, whether it is steel or solar or wind turbines or other areas, there's been significant market dislocation, market distortion. Not just within China, but globally. And obviously, now, the concern with Made in China 2025 is that China is looking to replicate that same kind of market distortion in these higher value-added sectors. And so, it's something that does need a solution.

Now, overcapacity is something the Chinese have been talking about addressing, going back to their Working Party Report. I looked at the Working Party Report, actually, last night, just because it's something that I like to do for fun. And certainly, China's representatives to the WTO back then, or the lead negotiator, underscored time and again that China was moving to separate regulator from regulated. China was moving to provide a decisive role for the market in the economy. That's something that was highlighted again in the Third Plenum decision in 2013. But this goes back to 2001, and I think, again, it underscores the concern about what we heard of the 19th Party Congress, where the theme seemed to be that China is moving back, toward state leadership and control of its economy.

The hope of the American business community and more broadly is that China actually follows through on the reforms and openings it has long said it would undertake; that it has prioritized for its own economy, for its own economic efficiency, to enhance the allocation of capital in its economy, to curb overcapacity, to curb debt. That China moves forward with greater opening and promoting fair competition in its economy, including for all foreign-invested companies for exports.

And China can do those things certainly, irrespective of what the Trump Administration is doing. China can and should move forward with its own market-based reforms and openings. And those would be good, I think, for China and those would be good also for U.S.-China relations. And it would be good, quite frankly, for China's relations with its other trading partners.

**Walter Lohman:** Thank you. I did want to ask Erin something, which is the point she made that everything hasn't been tried. That it's wrong to say that we have to go this unilateral route because nothing else works.

Erin, you singled out partnerships with our other trading partners working together to address these issues. What about the bilateral dialogue with China? If you narrowed it down to that, is it fair to say that it just doesn't work? And that's what the Administration has been saying for the last two years? That it's not worth it anymore. What do you think about that specifically? Has it worked? Is there any value in bilateral dialogue?

**Erin Ennis:** I'll actually harken back to a point that Jim made about the bilateral investment treaty. We can have a conversation about whether the Joint Commission on Commerce and Trade (JCCT) was successful as a whole...the Strategic and Economic Dialogue, the Comprehensive Economic Dialogue, I really don't care what you call it. There were parts of some of those things that definitely worked.

Under the JCCT in particular, the medical devices and pharmaceuticals working group had the right combination of issues, industry, and regulators talking and making progress. And if you talk to the folks in medical devices, in pharmaceuticals, they will tell you that that dialogue resulted in changes, that now their products are able to be treated not only on a fair basis, but that things are moving smoothly. Building on whatever worked there, it might not be replicable in every sector, but certainly we can build on that.

And then, for the other areas, for those broad, structural issues that the Administration has made clear that it wants to see addressed, and that we in the business community want to see addressed as well, you have to come up with a new framework. And that's what the bilateral investment treaty (BIT) negotiations were seeking to do. They never concluded. They got really far. Now, it could be that the final issues that were outstanding were the ones that would have made it difficult for us to be able to sign in the end.

National security, as Jeremie pointed out, is one of those issues where previous Administrations have been reluctant. And the United States' reluctance to have further definition of what national security is, out of fear that it would constrain how the U.S. wants to define it. But it clearly is a problem with China of how it was defining everything as national security.

That might not be an issue any longer given that the U.S. Administration might have a little bit of a different perspective.

But through those negotiations, the U.S. government was making progress at not only putting in place a framework that would lead to greater fairness, that would lead to structural changes, eliminate some of the remaining caps on foreign investment in sectors. It would also provide a dispute-settlement system that would enable companies if they were discriminated against because they were being told that they needed to localize their technology, they would have had an enforceable right to say, “No, that was covered in the BIT. And as a consequence, you cannot force me to transfer my technology or to localize it in order to be able to invest.”

So I do think that it can work. I think it’s important, though, that it works in the context of not just talking for the sake of talking. You have to be going somewhere. It has to be measurable and commercially meaningful, and you need to be constantly checking against that standard of: Are we making progress? Are there other things that are being passed that are undermining it that we need to address? But is certainly possible to move forward.

**Walter Lohman:** Okay. I’ll take three questions at once.

**Anshu Siripurapu:** Thank you. My name is Anshu, I’m with Inside U.S. Trade. My question is: If you accept the premise that the U.S. and China are sort of engaged in a battle for strategic dominance in these industries, great power competition, if you will, do we have time to go through the WTO procedures? Because a lot of these cases, like Boeing-Airbus, for example, took more than a decade. And so, can the U.S. go through the WTO process or is there risk, that 10, 15, 20 years from now, we’ll say, “Oh, we’re still in litigation and they have out-competed us in these sectors”? Thanks.

**Walter Lohman:** That’s a really good question. I was just looking this morning at a list of all the cases that we’ve had with the Chinese since 2004, and they are all resolved in about three or four years. So even three or four years, it’s a good question whether that’s sustainable, whether that’s a good way to go when it takes so long to resolve. And, can we remedy that? Can we fix that through some reform?

**Questioner 4:** Thank you, Walter, for doing this. A couple of questions. Leah, from Voice of America. With the escalation of the trade disputes between the

U.S. and China, I think many people are concerned that we could be in a long-standing trade war. So I’m wondering, where do you see this leading to? What are the potential scenarios? The other related question is beyond trade, we see reports that said that the Trump Administration is planning an Administration-wide broad side against China. I wonder, if this happens, what could be the potential impact for U.S.–China relations?

**William Thompson:** Hello, my name is William Thompson and I’m an intern here at The Heritage Foundation. So my question is for Congressman Bacchus: You talked about how we need more rules on subsidies. And I’d like to relate that to dumping. Given that dumping is just China subsidizing a certain industry and then selling it in the United States at below market price, what is the problem from an economic standpoint of dumping, given that you said we need more subsidies rules? What is the problem from an economic standpoint, as far as the U.S. advantage of getting cheap steel and various other goods?

**Erin Ennis:** I will attempt to answer the dumping questions, and Jim can correct me. The reason for it is, number one, it gets back to that fairness standard. Yes, governments around the world can subsidize. That’s actually countervailing duties rather than anti-dumping.

But regardless, you can subsidize your companies, but we get to seek compensation for them because that creates unfairness in a market—if your companies have to compete against a product that has been so driven down in price that they just can’t bring their product to a fair price.

Yes, I guess you could say that you get a competitive advantage of a government willing to spend all of its money to produce product, but that actually damages the other country’s economy as well. If you look at solar panels, China flooded the market with solar panels globally. And yes, it brought down the cost and a lot of homes in the United States and industries were able to get solar panels installed. But now, China has too many solar panel companies and they’re putting a lot of people out of work because they need to consolidate the industry. The demand isn’t there.

You know, these are the reasons why we have global trading rules. Yes, any government can push the levers one way or the other. But the reason for the rules is to try to build fairness, so that one government isn’t doing it at the expense of another and distorting the markets for prolonged periods, because

that's what we've determined is in the global interest.

The only other thing that I would note, kind of as my "clean-up" remarks on this, is that I think it's very important in any of these discussions that we keep the focus where it needs to be. And that is, China needs to implement its reforms. It needs to open more fully to foreign companies. It knows that. It's having its own debate about how fast to do that and in what ways to do that. But we should not lose sight of the fact that the challenges that we are dealing with are solvable challenges if we do the work of identifying what the specific problems are, and what the specific solutions are, and come up with ways to implement those things.

We believe that that is possible, if you keep the focus on China's policies that are unfair that are distorting the markets, or that fall short of where WTO commitments are. And if the WTO is falling short of those things, or if we cannot get those things achieved through a bilateral discussion, then we need to work with our trading partners. And we need to have China at the table to address where those problems are. We should not suffer from a lack of creativity in doing these things because this is in our own economic interest.

**Walter Lohman:** Thank you. Jeremie?

**Jeremie Waterman:** So working backwards, just to touch briefly on the economic issue from an economist perspective, the ends oftentimes can justify the means. Obviously, this is where trade and anti-trust, trade and competition, are at odds, right? But in the trade space, actually, the means matters. And as Erin correctly pointed out, if you subsidize, it's not always the case, at least in the trade space, that lower prices for consumers are a good thing, because if you decimate an entire industry in the process, that can have an adverse impact on the economy. So this is something that obviously the USTR side of the House and the Department of Justice side of the House don't always agree on. But I think there's plenty of evidence that raises questions as to whether just having lower prices as an end is, in fact, a good thing across the board.

On the issue of a broad side, I think over the last week we've seen on the weekend talk shows that Secretary of State Mike Pompeo had some pretty strong remarks. National Security Advisor Bolton had strong remarks. Secretary Pompeo gave a speech on human rights in which he talked about a variety of China concerns. Obviously, the President's remarks

yesterday at the U.N. General Assembly were strong. We've seen some other actions taken by the Administration recently with regard to Chinese news organizations.

So clearly, what does a broad side on China look like? I mean, we're kind of watching in real time as the Administration is taking these actions and elevating the rhetoric. I think the impact is that it becomes harder for the Administration to achieve a negotiated outcome on trade, to find solutions, right? On the trade and economic side, it becomes more difficult. I think it feeds into a very misplaced narrative that we see setting in on the Chinese side, where the Chinese side increasingly sees an effort to contain China, which is something that I would say is, in fact, not accurate.

I think the business community doesn't have a problem with China rising. It doesn't have a problem with fair competition with China. And I think that's true probably for most Americans. I think the issue is on the "how." How is China rising? What are the laws, policies, regulations, and implementation therefore that China is using to compete? And in that space, the business community, whether it's the U.S.–China Business Council, the U.S. Chamber, the National Association of Manufacturers, the Business Roundtable—we all have our documents, they're on our website about the kinds of reforms we'd like to see in China. I think the Administration has a similar list, quite frankly, that would ensure that competition is truly open, and that the playing field is level and fair.

And so, I think that's the hope. Obviously, the two presidents are likely to see one another at the G20. We hope that the two sides will re-engage as soon as possible in an outcomes-focused negotiation, and that there can be real progress by the time the two presidents meet. That needs to happen because the stakes are enormous.

On your question about the WTO, I commented on it already. But I think it really comes down to: What is the space that China is willing to allow for exercise of comparative advantage, right? And I think that's the concern right now as we look at the top-level, top-line direction of the Communist Party's guidance throughout the economy. The direction seems to be helping domestic companies: Made in China 2025, the 13th Five-Year Plan, data as a national strategic resource.

These kinds of approaches are "China First." What we want, both here in the United States and China, is



a level playing field. We want a chance for everyone to be able to compete fairly and pursue competitive advantage. We've been very forceful with this Administration and forward-leaning towards the Chinese side.

**Walter Lohman:** Thank you, Jeremie. Jim—you're "cleanup" here.

**James Bacchus:** On the questions that were asked, I agree with all that has just been said about subsidies and dumping. The reason why the members of the WTO have chosen to discipline subsidies and dumping is because the premise of the WTO is that the world will prosper the most if market forces are permitted to work in the world. And I believe in that premise. I'm not in favor of state control. I don't support five-year plans. I want the market to be free.

As to the length of WTO proceedings, WTO dispute settlement provides the fastest international legal remedy in the history of the world. Yet it also takes too long. It needs to take less time. The Boeing–Airbus dispute is an outlier. It's actually a series of disputes. The average time for the resolution of a WTO dispute is usually about three years from beginning to end. It's been a little longer for some disputes. But this is too long. There are some easy ways, even under the current rules, that this time could be shortened.

First of all, too much time is spent at the beginning in the process of selecting the panelists for the ad hoc tribunals of three jurors to serve as the court of first instance, so to speak, in WTO dispute settlement. There ought to be ways to accelerate that process, perhaps with a more visible role for the Director General of the WTO or others. When parties cannot decide on panelists, months are often lost.

Also at the end of this dispute, these periods of time of three to four years include the time of implementation after there is a ruling. The current rules say that as a rule, WTO dispute-settlement rulings should be enforced immediately. But the actual practice of the WTO is to allow a period of 15 to 18 months to implement a ruling. Sometimes this lengthy period is necessary. Most often it's not, but there's a lot of mutual give and take among the members in allowing longer periods for implementation because a member may be on one side of a dispute one day and on another side the next.

Sometimes, this is arbitrated; I've been an arbitrator on these matters. And I think that the length of the periods given in arbitration is too long. It should be a much shorter period. If you did these two things

alone, you could cut a year off both processes. And there's more, too, that could be done in modernizing the dispute-settlement system.

On the last point, it's my view that most of the serious, even urgent, concerns in the world cannot be resolved unless China and the United States are working together to help resolve them. Climate change is one of those issues. The fight against global terrorism is another. The damage we're doing to our biodiversity and our ecosystems in the world is still another. United States and China can certainly compete economically. That's the way market forces work, and we need to find the best, fair, terms on which that can proceed.

But this must remain merely competition in commerce. More broadly, United States and China need to work side by side and cooperate in addressing global concerns, as well as their own bilateral concerns. We need much more international cooperation in a world in which virtually everything is international. And it has to begin with cooperation between the United States and China.

**Walter Lohman:** Great, thank you. If I can just make a quick point on that last observation: The one reservation I have about that is that it's often used by Beijing to leverage the trade issues into the broader issues where the U.S. has very legitimate concerns, some multilateral concerns. The South China Sea, Taiwan, any number of things. So the more we can keep those issues separate, the better.

I don't think it's good for us to wrap them together because we basically play into a Chinese strategy to leverage one against the other. Leverage where we need cooperation, like on some of the issues Jim mentioned around trade, into pressuring us to back off some of the political-security issues, where we need to continue to be strong.

With that, let me end our program. Thank you very much for being here today, all three of you. It's been terrific discussion.

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