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Chinese SEP Litigation and US SEP Strategies

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IP and Strategic Competition with China:
Part IV – Patents, Standards, and Lawfare

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Chairman Issa, Ranking Committee Member Johnson, distinguished members of this Subcommittee, it is a pleasure to appear before you again today on the important issues confronting the US government in addressing intellectual property protection arising from China. I am particularly honored to have been invited back since I appeared at the first hearing on these important topics in March of 2023.

I testified last year on "Optimizing USG engagement on China IP and Tech Issues". Most of my recommendations from that testimony on organization of the US government and bilateral priorities remain relevant today. I will refer to my most relevant suggestions for today's topics in this testimony. I am speaking to you on my personal behalf and not on behalf of any third party.

I have been asked by staff to address litigation over standards essential patents ("SEPs") in China and the global "lawfare" that has been taking place in setting royalty rates for SEPs. My

focus here is on how the United States might improve its litigation environment and commercial diplomacy to address China's more challenging practices which may undermine US companies' legitimate expectations, the value of American intellectual property, judicial comity, and other principles. I have also focused on suggestions for the in-coming Trump administration.

Introduction

Chinese courts have become an increasingly important venue for adjudication of FRAND royalty disputes for standardized technology. FRAND is an acronym which requires licensing by patent holders on "Fair, Reasonable And Non-Discriminatory" terms for technology that has been accepted into a standard managed by a standards development organization (SDO) or standards setting organization (SSO) (hereinafter, together "SDO"). FRAND licensing has helped create a global, open ecosystem for cell phones, telecommunications infrastructure, smart cars, the Internet, and a range of other technologies and devices. The patents which read on a technical specification accepted by an SDO for inclusion into a standard are called "Standards Essential Patents" or "SEPs." Under the open terms of the SDO, anyone who wishes to manufacture a product (often called an "implementor") in accordance with the standard may need to secure a license from the SEP holder ("patentee"). The patentee has a parallel commitment in exchange for the incorporation of its technology into the standard to "be prepared to grant" a license to its SEPs to the implementor on FRAND terms.[1] When negotiations between a patentee and an implementor fail to achieve their goal of a global

[1] European Telecommunications Standards Institute, Intellectual Property Rights Policy, Rule 6.1, https://www.etsi.org/images/files/IPR/etsi-ipr-policy.pdf.

license agreement, litigation and counter-litigation tactics over SEPs may occur in China, or with China in the United States or other countries.

Policy Complexity of SEP Litigation

For countries such as China which have a socialist legal tradition, SEP litigation poses may internal contradictions.

One of these contradictions is shared with developed market economies. It involves the conflict between the territoriality of IP rights and globalized standard setting, including the desire of patentees to obtain a global license for their technologies. While the telecommunications industry is global in nature and SDOs set global standards for new products that will interoperate internationally, patents themselves remain territorial and are subject to local laws regarding their validity, interpretation, infringement and licensing. Thus, SEP policies involve an inherent conflict between a territorially based patent system and a global standardization system with global licensing practices.

A second contradiction is between the private rights orientation of the global IP system and the management of IP rights as part of state industrial plans or national policies. This issue was addressed in part by the TRIPS Agreement with its focus on private civil remedies. The preamble to TRIPS, in language introduced by the Hong Kong delegation, also recognizes that "intellectual property rights are private rights". Nonetheless, IP rights have historically been used by different economies, including autocratic and communist economies, to advance state power and industrial policy interests. For example, IP has been used with varying success to advance the industrial policy interests of the Soviet Union and China. North Korea, like the

United States, has a patent clause in its constitution. Nazi Germany also experimented with IP policies. Countries, such as China, with strong interests in state intervention in their economies, not only wish to enhance their national interests through an appropriately managed IP system, but they may also today have related interests in driving international standardization processes and supporting tech champions (such as Huawei). SEP litigation in China or with Chinese litigants can therefore often appear as a kind of "lawfare".

When the litigation takes place in China, these national interests can manifest themselves by a court's desire to exert greater "judicial sovereignty" by seeking to settle global disputes in favor of local litigants. Among the tools that may be used by a court to achieve this goal are: global rate setting, extraterritorial jurisdiction, choice of local law to govern a dispute, issuing of antisuit injunctions (ASIs), differential treatment for local companies, aggressive and intrusive use of antitrust law to further extend jurisdiction over conduct and regulate negotiating behavior, and extension of jurisdiction over both patentees and patent pools. Many of these practices are not unique to China and have been borrowed from the West. Often, however, China differs from Western economies in the extent and/or manner of their implementation.

Although I support efforts to reduce transaction costs for patentees and implementors, I do not believe that the answer to this type of lawfare lies in the United States seeking aggressive cross border jurisdiction for global rate setting determinations, or intervention in private markets. I do not think that the answer to the China challenge in SEPs is for the United States to become more like China, or to follow European proposals to intrude further into the SEP markets. As a country we need to remain steadfast to certain core concepts such as protecting IP, market-based principles for calculation of royalties, and providing adequate incentives for innovation.

Prof. Justus Baron at Northwestern University, in his report to the European Commission on its proposals for more efficient and transparent European FRAND rate setting through essentiality checks, establishing aggregate royalties, and development of a European competence center at the European trademark office, has similarly noted that the EU should "adopt a more incremental approach" to FRAND royalty rate setting.[2] The United States-based Information Technology and Innovation Foundation ("ITIF") has also noted with respect to 5G technologies that United States policies should "double down on what has been shown to work: strong support for our research universities and institutions; a strong intellectual property (IP) protection system and support of the business models needed for the entities bringing research breakthroughs to market; and encouragement of fair voting and healthy institutional practices at standards-setting bodies."[3] With respect to the important role of AI in standardized technology, Prof. Jeffrey Ding at George Washington University has also noted in testimony last year before the U.S. Senate that the United States should "keep calm and avoid overhyping China's AI capabilities … the U.S.'s lead in AI capabilities over China should endure. In emerging technologies such as AI, a continued focus on incremental improvements in our approaches may make the most sense."[4]

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[2] Justus Baron, "The Commission's Draft SEP Regulation – Focus on Proposed Mechanisms for the Determination of 'Reasonable Aggregate Royalties'" (August 10, 2023). Available at SSRN: https://ssrn.com/abstract=4537591 , see also Justus Baron et al, "Contribution to the Debate on SEPs, Report of the Expert Group of the European Commission on Licensing and Valuation of Standard Essential Patents (SEPS)" (March 15, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3778166.

[3] Doug Brake, "A U.S. National Strategy for 5G and Future Wireless Innovation", ITIF (April 27, 2020), https://itif.org/publications/2020/04/27/us-national-strategy-5g-and-future-wireless-innovation/. See also Alexandra Bruer and Doug Brake, "Mapping the International 5g Standards Landscape and How It Impacts U.S. Strategy and Policy", ITIF (Nov. 8, 2021), https://itif.org/publications/2021/11/08/mapping-international-5g-standards-landscape-and-how-it-impacts-us-strategy/.

[4] Jeffrey Ding, "National Security and Economic Implications of AI", TESTIMONY BEFORE THE SENATE COMMITTEE ON INTELLIGENCE, HEARING ON ADVANCING INTELLIGENCE IN THE ERA OF ARTIFICIAL INTELLIGENCE: ADDRESSING THE NATIONAL SECURITY

Of course, I do not believe that these suggestions require complacency on the part of the United States. Even if these incremental approaches were adopted, the United States should remain vigilant in apprehending the legal challenges inherent in China's capacity for technological catchup with appropriate institutions and resources to monitor China's accomplishments and challenges.

Transparency, Countering Unfair Judicial and Antitrust Practices, Translations and the Role of Commercial Diplomacy and the WTO

I will focus now on four areas that I believe deserve this Committee's attention: transparency, countering unfair judicial and antitrust practices, China's approach to translating FRAND, and the potential role of the WTO.

Transparency

In my view, the single greatest challenge facing our understanding of how China handles IP litigation has been the decline in transparency of judicial decision making in China over the last several years. Since WTO accession, China's judicial system, including its corps of IP judges and courts, has become highly specialized and well-trained. Many aspects of China's system, such as China's specialized IP courts and its integrated patent and trademark office, are loosely modeled on the US system. Nonetheless, one area where the Chinese judiciary has retreated has been in transparency, particularly regarding case publication. In recent years, China has

IMPLICATIONS OF AI (Sept. 19, 2023), at p. 7, https://www.intelligence.senate.gov/sites/default/files/documents/os-jding-091923.pdf.

rolled back the numbers of cases it has published, withdrawn previously published cases, and anonymized or curated the cases that it has made available.

Regrettably, the Phase One Agreement did not address judicial transparency in any of its IP chapters. In the absence of full transparency, it is impossible to determine how China is protecting SEPs, as well as how much China is implementing many other international commitments.

China's lack of judicial transparency in intellectual property cases is not new. It has long been a concern to the US government. It affects the commercial rule of law and IP as well as SEP adjudication. The United States attempted during the Bush administration to institute a WTO case to require China to publish its cases.[5] However, we ultimately declined to pursue that request to a final resolution when we filed a parallel WTO dispute (DS/362).[6]

Issues involving judicial transparency reappeared in the SEP context on February 22, 2022, when the European Union filed a request for consultations with China regarding China's refusals to publish certain SEP cases and China's granting of ASIs which prohibit parties in Chinese lawsuits from filing suit in other countries. Nineteen countries, including the United States and many of our allies, have reserved their rights to as third parties to the case. A decision on this case, DS/611 – China – Enforcement of Intellectual Property Rights, is now pending.[7]

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[5] Letter of Amb. Peter F. Allgeier to Amb. Sun Zhenyu (Jan. 20, 2006), https://www.ip-watch.org/files/US%20ltr%20on%20China.pdf?b9ea70.
[6] USTR, Measures Affecting the Protection and Enforcement of Intellectual Property Rights, https://ustr.gov/issue-areas/enforcement/dispute-settlement-proceedings/wto-dispute-settlement/measures-affecting-pr.
[7] DS 611: China - Enforcement of Intellectual Property Rights, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds611_e.htm.

The EU had requested publication of Chinese ASI policies and case decisions. The EU has argued that these case decisions also unduly interfered in EU court proceedings involving enforcement of EU rights by EU companies under EU law. In its only public filing to date, the United States has opposed the EU position at the WTO regarding China being required to publish its underlying policies and cases involving ASIs, by citing China's position that the EU position is "completely fictitious". USTR declined to acknowledge China's declining transparency, past U.S. efforts at encouraging transparency, the lack of legal support for issuing antisuit injunctions under China's Civil Procedure Law, [8] or other changes in Chinese SEP litigation policy, which suggest that China has developed polices to expand its global reach though ASIs and other mechanisms.

These suggestions on addressing perceived unfair acts should be considered in conjunction with the suggestions made in my prior testimony before this Committee. As was true of the Biden Administration, the incoming Trump administration should rapidly fill IP-related positions including the PTO Director, the Chief Intellectual Property and Innovation Negotiator at USTR, and the White House IP Enforcement Coordinator. It is especially important that the candidates for the USPTO Director and other related IP positions should not only have "a professional background and experience in patent or trademark law", but also are committed to that system, and have experience in the competitive environment that the United States faces. [9] I also believe that, considering the involvement of the USPTO in overseas IP issues and

[8] Mark A. Cohen, Australia, US and EU Submissions at the WTO on China and Anti-Suit Injunctions (Jan. 4, 2024), https://chinaipr.com/2024/01/04/australia-us-and-eu-submissions-at-the-wto-on-china-and-anti-suit-injunctions/, USTR, China-Enforcement of Intellectual Property Rights (DS611), Third Party Submission of the United States (Aug. 31, 2023), https://ustr.gov/sites/default/files/enforcement/DS/DS611/US.3dPty.Sub.fin.pdf .
[9] 35 U.S.C. Sec. 3.

the expansion of its global IP Attaché positions, the Director's office should also be expanded to include a Deputy Director for International Affairs who can represent the USPTO at an appropriate diplomatic level in international organizations. In addition to filling these positions, the U.S. government should rapidly improve its understanding of China's capacity for technological catch-up, such as by reinstituting institutions as the Office of Technology Assessment in Congress. These positions should be staffed with people with the STEM competence to better evaluate emerging technological challenges.

I hope that the Trump Administration seriously considers supporting multilateral or WTO efforts at improved transparency in the future, and/or negotiating a "Phase 2" type agreement with China which would include transparency commitments. Otherwise, U.S. government officials, rightsholders, and academics will remain seriously handicapped in their understanding of China's implementation and enforcement of its IP laws.[10]

Countering Unfair Judicial and Antitrust Practices

The United States can address other unfair practices in two ways: by strengthening our own system and by putting reciprocal pressure on foreign countries that may utilize unfair practices without otherwise jeopardizing the overall fairness of our system. In my previous testimony, I have also suggested other reforms to the US system that can help rebalance the United States as a critical forum for resolution of SEP disputes. These include expedited "rocket -docket" type approaches to SEP litigation that could help in closing the gaps with fast-tracked Chinese court

[10] Mark A. Cohen, www.chinaipr.com, "Patent Litigation – Local Protectionism and Empiricism, Data Sources and Data Critiques (March 10, 2016), https://chinaipr.com/2016/03/10/patent-litigation-local-protectionism-and-empiricism-data-sources-and-data-critiques/

cases; Congress directing the USPTO to require any applicants for patents to disclose if they are receiving foreign government subsidies or grants for the underlying R&D for the patent or the application itself; disclosing litigation finance from foreign states in sensitive technological sectors that could affect national security;[11] and that the USDOJ Solicitor General exercise a more active role in US domestic litigation that involves Chinese patent assertions, particularly in issues that implicate the jurisdiction of our courts (such as ASIs)[12] or the fairness of a foreign legal system when issues involving deference to a foreign proceeding arise.[13] Due to difficulties in securing evidence from China, US courts should be able to make adverse inferences if there are unnecessary delays in collecting evidence overseas through judicial channels.[14]

A second separate set of issues has also arisen with respect to SEPs and antitrust law. Recently released guidelines from the State Administration for Market Regulation ("SAMR") seek to further extend China's influence through a variety of mechanisms. One of these is to focus on using patent counts, rather than qualitative indicia, to determine royalty rates. This is an approach that will naturally favor Chinese applicants who benefit from subsidies and incentives to obtain patents and declare patents as SEPs. Another requirement is that a patentee must license its SEPs at the lowest rate previously granted to another implementor regardless of the

[11] States Attorney Generals have also been raising concerns over these threats, including litigation financing involving Chinese entities. See Bob Goodlatte, *State Attorneys General Raise Concerns About Threats Raised by Litigation Funding,* Patent Progress (Jan. 18, 2023), https://www.patentprogress.org/2023/01/state-attorneys-general-raise-concerns-about-threats-posed-by-litigation-funding/; ILR Briefly, *A New Threat: the National Security Risk of Third Party Litigation Funding*, U.S. Chamber of Commerce Institute for Legal Reform (Nov. 2022), https://instituteforlegalreform.com/wp-content/uploads/2022/11/TPLF-Briefly-Oct-2022-RBG-FINAL-1.pdf/.

[12] Mark A. Cohen, "China's Practice of Anti-Suit Injunctions in SEP Litigation: Transplant or False Friend?", in Jonathan Barnett, ed, INTELLECTUAL PROPERTY AND INNOVATION POLICY FOR 5G AND IOT (2023).

[13] See Mark Jia, "Illiberal Law in American Courts", 168 U. PA. L. REV. 1685 (2020).

[14] See Minning Yu, "Benefit of the Doubt: Obstacles to Discovery in Claims Against Chinese Counterfeiters", 81 FORDHAM L. REV. 2987 (2013).

nature of the circumstances (such as licensing in advance of litigation). This is consistent with China's undue focus on "equal" treatment of licensees in FRAND civil litigation. In addition, China also seeks to prohibit restricting a licensee's choice of dispute resolution as a potential antitrust violation of the patentee, thereby mandating continued use of Chinese courts or SAMR to resolve disputes.[15] I believe that these issues should initially be clarified and/or addressed through increased diplomatic engagement by our antitrust, IP, and trade agencies. There has been very little such engagement by the Biden administration.

WTO Issues – Retaining Our Focus on Core Principles

China's managed approach to IP is inimical to fundamental concepts that the United States advanced in the TRIPS agreement, thereby posing a pressing ideological challenge to the global IP system itself. The WTO remains a viable option for airing our concerns and bringing multilateral attention to areas where China has departed from international practice. I have already discussed transparency in China's ASI decisions as an on-going WTO concern. Three other significant issues involve differential royalty rates, per se approaches to antitrust cases, and China's translation of FRAND by its courts.

Chinese courts determine differential royalty rates based on the country or economy "where the royalty base originates."[16] The rates they establish for China are typically lower than those awarded to companies for other developed countries or the United States. Equality of

[15] See Mark A. Cohen, www.chinaipr.com, "Some Observations on SAMR's New Antimonpoly Guidelines for SEPs" (Nov. 20, 2024), https://chinaipr.com/2024/11/20/some-observations-on-samrs-new-antimonopoly-guidelines-for-seps/

[16] This concern of mine was criticized in an editorial by Prof. John Gong, "Ruling in Oppo v Nokia Addresses Patent Royalties Row" published by the Chinese government's English language Newspaper, CHINA DAILY (Jan. 8, 2024), https://www.chinadaily.com.cn/a/202401/08/WS659b4f4aa3105f21a507b035.html

treatment in commercialization of IP is a TRIPS obligation. [17] Whether nationality-based royalties for SEPs are consistent with requirements of national treatment and most favored national treatment under the WTO agreements has not yet been litigated at the WTO. Nonetheless, considering China's robust manufacturing capacity and its leadership in standards setting and patenting in SEPs, it is difficult for me to believe that China qualifies for any exception for a SEP royalty rate based on it being a developing country.

Another concern of mine is consistency with the TRIPS Agreement, Article 40(2), which permits members to specify in their legislation licensing practices or conditions that may "in particular cases" constitute "an abuse of intellectual property rights having an adverse effect on competition in the relevant market." This is the only provision in the WTO agreements that addresses the relationship between intellectual property and competition law. It also mandates that unfair practices specified in competition law involving IP must have an anticompetitive effect. Any Chinese practice of regulating FRAND licensing practices, domestically and extraterritorially, based on per se violations, such as requiring that licensing terms be the same for all parties or that agreeing to an arbitration clause in advance with a licensor is a competition law violation, may extend beyond the limits of what TRIPS authorizes, absent a finding that the practice is necessarily anticompetitive. This provision is also yet untested by WTO jurisprudence.

Another concern of mine has been how Chinese courts apply and translate the admittedly vague concept of "FRAND" licensing for SEPs. I have calculated over 100 potential variants in

[17] TRIPS Agreement, fn. 3.

translations of FRAND based on combinations of current terms that are being inconsistently used to translate FRAND and their recombination in various forms.

Many of the translations significantly change the meaning of FRAND. For example, non-discrimination has been translated as "mutual benefit" (互利), or "equal benevolence" （一视同仁）(an expression originating with the essayist and philosopher Han Yu 韓愈, 768 – 825 A.D.), while at the same time Chinese courts have avoided translating non-discrimination with less incendiary and more practical terms such as "differential treatment" (wu chabie 无差别). Perhaps the most significant mistranslation is that Chinese courts have also retranslated FRAND by leaving out the specification of an "and' , thereby creating a concept that might better be abbreviated as FRND (公平、合理、无歧视). This disaggregates FRAND into potentially meaning "fair and/or reasonable and/or non-discriminatory".[18] The result has been that Chinese courts apply what UK courts have characterized as "hard-edged non-discrimination", which also inconsistently disaggregates FRAND into various combinations of mistranslated component terms, such as "fair and reasonable", "fair" only, "reasonable and non-discriminatory," etc. [19]

These translations are also different from the translations into Chinese characters adopted by the WTO, ITU, relevant legal organs in Japan, Korea and Taiwan, and by the judicial authorities of many WTO members. I believe that such inconsistent translations, as well as their

[18] See Mark A. Cohen, "China's Diverse Frand Translations Severely Impacting Court Decisions at Home and Abroad, INTELLECTUAL ASSET MAGAZINE (Jan. 31, 2024).
[19] U.K. Supreme Court, Unwired Planet International Ltd and another (Respondents) v Huawei Technologies (UK) Co Ltd and another (Appellants), UKSC/2018/0214, p. 113, https://www.supremecourt.uk/watch/uksc-2019-0041/judgment.html

inconsistent application, may create a non-tariff barrier to the licensing of IP by patentees under the Agreement on Technical Barriers to Trade (TBT). The use of IP as a TBT violation has been proposed in the past by the Chinese delegation to the WTO.[20] These issues should initially be addressed through high level diplomatic engagement.

China's translation of FRAND has also facilitated its transplantation into other sectors of Chinse law and politics. ETSI mandates that interpretations of FRAND are governed by French law. However, FRAND decisions in China are often based on China's civil law, including its newly enacted Civil Code (2020). These civil law concepts could therefor logically be easily extended to other types of Chinese civil transactions, not merely those in which there has been a SEP declaration. FRAND has accordingly been extended to such areas as collective management organization copyright licensing,[21] antitrust behavioral remedies,[22] compulsory licensing by the

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[20] Committee on Technical Barriers to Trade, Intellectual Property Rights Issues in Standardization, Communication from the People's Republic of China, WTO Doc. G/TBT/W/251 (May 25, 2005), Document 05-2126; see also addendum Background Paper for Chinese Submission to WTO on Intellectual Property Right Issues in Standardization (WTO Doc. G/TBT/W/251/Add.1 (Nov. 9, 2006), Document 06-5389).

[21] See the following cases, all decided on March 28, 2022 by the SPC, Civil IPR Division: 江门市新会区欢唱餐饮娱乐有限公司 v 中国音像著作权集体管理协会 (Jiangmen Xinhui District Huanchang Catering and Entertainment Co., Ltd. v. China Audio-Video Copyright Collective Management Association)（2021）最高法知民终 7 号 (SPC, Civil IP Division, No. 7), 广州市乐麦迪娱乐有限公司 v. 中国音像著作权集体管理协会(Guangzhou Lemaidi Entertainment Co., Ltd. v. China Audio-Video Copyright Collective Management Association)（2020）最高法知民终 1448 号(SPC Civil IP Division, Final No. 1448); 广州市南沙区南沙加洲红酒吧 v. 中国音像著作权集体管理协会 (Guangzhou Nansha District Nansha Jiazhou Wine Bar v. China Audio-Video Copyright Collective Management Association)（2020）最高法知民终 1452 号(SPC Civil IP Division, No. 1452) ; 梅州市梅县区华侨城家乐迪酒店有限公司 v. 中国音像著作权集体管理协会 (Meizhou Meixian District OCT Jialedi Hotel Co., Ltd. v. China Audio-Video Copyright Collective Management Association)（2020）最高法知民终 1458 号(SPC Civil IP Division Final No. 1458; 梅州市家乐迪酒店有限公司 v. 中国音像著作权集体管理协会, (Meizhou Jialedi Hotel Co., Ltd. v. China Audio-Video Copyright Collective Management Association)（2020）最高法知民终 1459 号(SPC IP Division Final No. 1459) ; 广州市金碧大世界饮食娱乐有限公司 v. 中国音像著作权集体管理协会 (Guangzhou Jinbi World Catering and Entertainment Co., Ltd. v. China Audio-Video Copyright Collective Management Association) (2020）最高法知民终 1519 (SPC Civil IP Division Final No. 1519).

[22] See, e.g., SAMR, 市场监管总局关于附加限制性条件批准上海机场（集团）有限公司与东方航空物流股份有限公司新设合营企业案反垄断审查决定的公告 (SAMR Announcement on the Antimonopoly Review Decision on Approving the Establishment of a Joint Venture between Shanghai Airport (Group) Co., Ltd. and China Eastern Airlines Logistics Co., Ltd. with Additional Restrictive Conditions). (Sept. 14, 2022). The relevant remedy is found at

Chinese patent office of pharmaceuticals,[23] access to medicines during pandemics,[24] and in Chinese export control policies.[25] These expansions of FRAND concepts leave one wondering whether FRAND is no longer only behaving as a legal concept but also as a political slogan that is typically applied when Chinese policy favors more public access to private property rights. [26]

Thank you for your invitation to speak here today, and I look forward to your questions.

Art. 5: "(V) The Airport Group, China Eastern Airlines Logistics and the joint venture shall provide airport cargo terminal services at Pudong Airport in accordance with principle of fair、 reasonable、non-discrimination[FRND]. They shall not discriminate against downstream customers under the same conditions, in terms of price, quantity and other transaction conditions, shall not impose unreasonably high prices, and shall not unreasonably limit the total amount of Pudong Airport cargo terminal services provided." (（五）机场集团、东航物流与合营企业应按照公平、合理、无歧视的原则，提供在浦东机场的机场货站服务。在同等条件下，不得就价格、数量等交易条件对下游客户实施差别待遇，不得实施不合理高价，不得不合理地限制浦东机场货站服务提供总量。) https://www.samr.gov.cn/fldes/tzgg/ftj/art/2023/art_b22512c79afb44a8b6e5674d6d89983b.html . A copy of these and other SAMR non-SEP behavioral remedy conditions for merger approval are available from the author.

[23]See the National Standards for Management of Patents (Provision) (2013), Art. 15. "Patents involved in mandatory standards can also refer to the principle of "fairness, reasonableness and non-discrimination" 《国家标准涉及专利的管理规定（暂行）》第十五条规定，强制性标准涉及的专利，也可以参照适用"公平、合理、无歧视"原则. Text and machine translation available at https://www.wipo.int/wipolex/en/text/337261.

[24] H.E. Xi Jinping, Adhere to Sustainable Development and Build an Asia-Pacific Community with a Shared Future, Keynote Address Before the APEC Summit (Full Text) Nov. 11, 2021), 习近平在亚太经合组织工商领导人峰会上的主旨演讲（全文）, "坚持可持续发展 共建亚太命运共同体", https://www.gov.cn/xinwen/2021-11/11/content_5650227.htm, translation is available here: Full Text: Remarks by Xi at 28th APEC Economic Leaders' Meeting, https://www.chinadaily.com.cn/a/202111/12/WS618e6f7ba310cdd39bc75167.html. Xi Jinping's views that access to medicines should be made on a FRAND basis were also held by others, see Kaat Van Delm, *FRAND Terms for Pandemic-essential Intellectual Property Rights*, Dec. 7, 2021), https://blog.petrieflom.law.harvard.edu/2021/12/07/frand-terms-for-pandemic-essential-intellectual-property-rights/.

[25] See, e.g., The State Council Information Office PRC, China Issues First White Paper on Export Controls (Dec. 29, 2021) ("Fair, reasonable, and non-discriminatory export control measures are increasingly important…"), http://english.scio.gov.cn/whitepapers/2021-12/29/content_77959040.htm; State Council White Paper on China's Export Controls (First ed. 2021), Art. I, http://english.scio.gov.cn/whitepapers/2021-12/29/content_77959040.htm, China "actively promotes the implementation of fair, reasonable and non-discriminatory international export controls." See the White Paper at https://www.gov.cn/zhengce/2021-12/29/content_5665104.htm.

[26] Falk Hartig, *Political Slogans as Instruments of International Government Communication – The Case of China*, 24 J. OF INT'L COMMC'N (March 3, 2018) 115 (Chinese leaders put forward vague foreign policy concepts which should be viewed as slogans rather than concrete strategies to mobilize domestic and international actors); Jianlin Song and James Paul Gee, *Slogans with Chinese Characteristics: The Political Functions of a Discourse Form*, 31 DISCOURSE & SOC'Y, 487 (2020) (slogans in China are an important way to teach people to see themselves as 'co-citizens' in the state. At the same, this function also and always links to important ideological goals and intersects with the state as a source of coercive power).