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**Questions submitted for the Record from Subcommittee Chairman Marino**

1. Most of the members are probably familiar with a few headline grabbing cases in which foreign antitrust agencies have seemingly acted out of hand. How systemic of a problem is this?

Chairman Marino, Thank you for the question. I believe that in a relatively small number of high profile cases, foreign antitrust agencies apply antitrust law to US companies inappropriately.

I reserve the category for applications that have nothing to do with making markets work better and seem designed simply to appropriate US property, and for purely discriminatory applications of antitrust law.

2. How would you evaluate the progress of international organizations to date to promote the adoption of best procedural and substantive competition law standards? What can U.S. antitrust agencies better do to support such standards?

I give very high marks to international organizations in promoting the adoption of sound and fair procedural and substantive competition standards. The US agencies work very hard to get good results; they are leaders in the process. I do not have advice as to how they can do better. I am often a background part of the process, and when I have ideas I convey them directly.

3. You note in your testimony that you are concerned about the use of trade remedies to cure perceived discriminatory application of antitrust and competition laws against American businesses? Is there a scenario where you can see a situation escalating to the point where trade remedies may be the only option?

No. As I said in my testimony, I think discrimination – in the sense of applying different rules to outsiders than to domestic players – is rare and probably cannot be proved. The bigger problem is lack of due process protections such as we have at home. I doubt that trade sanctions would correct this problem, and I believe that we have made progress by constant conversations and insistence. More progress may be made through the International Competition Network.

4. In your testimony, you identify "hybrid state and private restraints" as especially dangerous to competition and likely to fall into the crack between trade and competition law. Can you give an example of one of these situations?

A good example is the Fuji Film/ Kodak dispute in the 1990s. For years, Kodak was unable to make inroads into the Japanese market because of the combination of Fuji Film's restraints and Japanese state restraints. The trade law could not take on the competition problem, and the competition law could not attack the state-restraint problem. The United States lost its case in the WTO.

Another example is the Chinese vitamin C case, which might be taken up by the U.S. Supreme Court. The Chinese vitamin C manufacturers admittedly fixed prices into the

United States, overcharging the American buyers. The Chinese agency averred, after the fact, that it ordered the Chinese firms to do so. Whether that Chinese government statement should provide a complete shield to the Chinese price-fixers is a matter of US antitrust law, but one might wonder whether a nation should so easily be able to give a free pass to its citizens to violate another nation's law.

5. You agree that the formation of a White House Working Group is a good idea. However, you note in your testimony that there is a significant tension between trade and competition which has led to conflicts between officials working in these areas. Is there a middle ground, where the interest of these two bodies of law can be reconciled?

Yes, I think there is significant space within which the trade and competition officials can work together. This is especially in the area of hybrid restraints, where an unreasonable state restraint combines with an unreasonable private restraint. In some cases the collaboration will help the officials from both specialties see and understand the whole picture; they can fill in for one another missing pieces of a puzzle. In some cases the collaboration may help the officials design useful changes to propose in WTO rules or domestic law. Officials from both disciplines, working together, might construct a better route for America in the many situations in which trade and competition values meet.