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INTERNATIONAL CONSULTANTS

June 21, 2017

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Conyers
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Tom Marino
Chairman
Subcommittee on Regulatory Reform,
Consumer and Antitrust Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable David Cicilline
Ranking Member
Subcommittee on Regulatory Reform,
Consumer and Antitrust Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodlatte, Chairman Marino, Ranking Member Conyers and Ranking Member Cicilline:

Thank you for your ongoing work to ensure that international competition enforcement efforts do not unfairly harm U.S. companies and citizens. Ryan Dattilo, Counsel to the Judiciary Committee's Subcommittee on Regulatory Reform, Commercial and Antitrust Law advised me that you will hold a hearing entitled "Recent Trends in International Antitrust Enforcement" on June 29 and requested that I submit a written statement, which I am pleased to do.

As a former U.S. Trade Representative (1989-1993), I am concerned that foreign governments increasingly use competition law to erect trade barriers and place U.S. companies at a competitive disadvantage abroad. This problematic issue will require a multi-faceted, coordinated U.S. government response. U.S. trade tools can and should play a critical role in addressing this growing challenge.

In the United States, promoting competition is an important policy goal—a "win-win" for economic growth and consumers. Unfortunately, however, some foreign governments use their competition laws to *stifle* rather than *promote* competition in order to give national champions an unfair advantage over foreign competitors. Moreover, competition law enforcement has at times become a convenient pretext for theft of U.S. intellectual property (IP)—such as through the compelled licensing of valuable U.S. technologies for pennies on the dollar. The United States should exert its leadership to prevent such discriminatory foreign competition policies and enforcement.

There are several ways that U.S. trade tools can be brought to bear to address these challenges:

- First, we should use bilateral and plurilateral trade negotiations—whether for new agreements or through the updating of existing agreements—to ensure our trading partners provide robust due process protections to U.S. companies in their competition enforcement proceedings. These protections should build upon the most modern trade obligations

negotiated to date, reflect global due process norms, and be enforceable. For example, NAFTA was a ground-breaking trade agreement when negotiated but much has changed since it was signed in 1992. Its competition chapter needs to be updated. The same holds true if the Administration renegotiates the U.S.-Korea Free Trade Agreement (KORUS) or negotiates new bilateral trade agreements. The competition provisions negotiated in the Trans-Pacific Partnership trade agreement provide a framework for what might be achieved.

- In addition, the United States should use ongoing trade dialogues to address trade-related competition concerns. For example, as part of its discussions with China on a “100-Day Action Plan,” the Administration should prioritize concerns over China’s perceived misuse of competition enforcement proceedings to deprive U.S. IP right holders of the fair value of their property. Competition-related due process protections could also be included in Trade and Investment Framework Agreements (TIFAs). TIFAs not only provide an important forum in which to address bilateral trade irritants but can also serve as a foundation for future trade agreement negotiations.
- The U.S. government also should secure compliance with existing bilateral trade and competition commitments. Enforcement and compliance are essential to demonstrate to our trading partners and our own citizens that we take these obligations seriously. I am concerned, for example, about numerous reports suggesting that Korea’s Fair Trade Commission fails to accord U.S. companies essential due process protections in competition proceedings, despite Korea’s obligation under KORUS to provide such basic protections.
- The United States should use existing trade tools to address foreign competition enforcement practices that suppress fair competition by U.S. companies. For example, the Administration could use Section 301 of the Trade Act of 1974 to investigate unfair trade and competition practices in foreign markets.
- Finally, in light of efforts to target U.S. IP, USTR could expand coverage of its Special 301 Report—which highlights inadequate and ineffective IP protection around the globe—to identify and create heightened awareness of foreign competition actions and policies that devalue U.S. IP rights. Gathering this information in a more systematic fashion could lead to the development of actions plans and the use of other trade mechanisms to address the erosion of U.S. IP rights through unfair competition enforcement practices.

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Thank you for shining a spotlight on this important issue. I appreciate the opportunity to provide my views on the trade-related aspects of this important matter.

Sincerely,



Ambassador Carla A. Hills