

THE
IP COMMISSION

THE COMMISSION ON THE THEFT OF
AMERICAN INTELLECTUAL PROPERTY

TRANSCRIPT

JON HUNTSMAN: Hello, everybody. It's my happy honor to be able to introduce you to the Commission on the Theft of American Intellectual Property. This is an independent and a bipartisan initiative of individuals from the private sector, the public sector, national security, foreign affairs, academe, and politics who have come together to take a look at one of the more important issues facing our economy today.

The Commission members include Denny Blair, former director of National Intelligence and Commander in Chief of the US Pacific Command, US Navy; Craig Barrett, former Chairman and CEO of Intel Corporation; Slade Gorton, former US Senator from the State of Washington, Washington Attorney General, and member of the 9/11 Commission; Bill Lynn, CEO of DRS Technologies and former Deputy Secretary of Defense; Deborah Wince-Smith, president and CEO of the Council on Competitiveness, whose son has just graduating this week from the Naval Academy; we congratulate you on that. And Michael Young, who is not with us today, president of the University of Washington and former Deputy Under Secretary of State.

Now, the purposes of this yearlong effort really are three-fold. One, to document and assess the cause, scale and other major dimensions of international intellectual property theft as they affect the United States. Number two, to document and assess the role of China in international intellectual property theft. And three, propose appropriate US policy responses.

Now, some of us have been around this issue for a very, very long time, and we know how inadequate our responses have been to date. So we all as commissioners have bought off on this report. The content, we all accept. And we are all here together because we believe that one of the most important elements of our economy consists of the ideas that

the people of this nation have, those ideas that result in innovation, commercial expansion and the creation of jobs.

And the scale of international theft of American intellectual property today, we believe, is unprecedented. Just to put it in perspective, if you were to tally what we estimate the annual level of injury to be, it would be roughly equivalent to the level of US exports to the Asia Pacific region, roughly \$300 billion per year. We agree with what General Keith Alexander, who is head of the Cyber Command and director of the National Security Agency has said when he was quoted recently as saying this represents the greatest transfer of wealth in history.

Put another way in terms of jobs, if intellectual property were to receive the same protection overseas that it does here, we would be looking at 2.1 million additional jobs now in our economy.

Now, international IP theft is not just a problem in China; indeed, this report looks at it from a global point of view. Russia, India and other countries constitute important actors in a worldwide challenge, but many of the issues are the same – poor legal environments for IPR, protectionist industrial policies, and a sense that IP theft is justified by a playing field that benefits developed countries.

The role of China, to be specific, we assess to be roughly 50-80% of the problem. Now, why does China stand out? A core component of China's successful growth strategy is acquiring science and technology. It does this in part by legal means – imports, foreign and domestic investment, licensing and joint venture – but also by means that are illegal. National industrial policy goals in China do in fact encourage IP theft, and an extraordinary number of Chinese in business and government entities are engaged in this practice.

Existing remedies, just to end my comments, are not keeping pace, which is one of the reasons that we're here today.

Short product lifecycles: Even in the best judicial systems, the slow pace of legal remedies for IP infringement does not meet the needs of companies whose products have rapid product life and profit cycles.

Inadequate institutional capacity: Particularly in developing countries, there is inadequate institutional capacity to handle IP infringement cases; for example, a shortage of trained judges.

Chinese approach to IPR is evolving too slowly; limitations, for example, in trade agreements. Although there appears to be a great deal of activity on the part of the United States through the World Trade Organization, there are also significant problems in the process that have made it impossible to obtain effective resolutions. Bilateral and regional free trade agreements are not a panacea either.

So the Commission's strategy, in short: With US companies suffering losses and American workers suffering job losses as well, and in our innovative economy and security very much being at stake, more effective means are required. The problem is certainly compounded by newer methods of stealing IP, including cyber methods.

The Commission regards changing the cost/benefit calculus for foreign entities that steal American intellectual property to be its principal policy focus. IP theft needs to have consequences, and with costs sufficiently high that state and corporate behavior and attitudes that support such theft are fundamentally changed.

Now, with that short overview, and a thanks to my fellow commissioners and to the National Bureau of Asian Research, which really acted as a secretariat for this undertaking, privately funded and privately staffed. What I'd now like to do is turn this

microphone over to Admiral Denny Blair to give you a sense of what some of our priority recommendations are, and maybe a timeline for the mechanics associated with each.

Denny.

DENNIS BLAIR: Thanks very much, Mr. Ambassador. The recommendations, as you will see in the short summary towards the beginning of the report and then in the longer explanation of the report, cover a very wide range. This is a complex problem and we need to do a lot of stuff. But let me try to cluster them into some functional areas so you can grasp the concepts behind what we are doing.

We're looking at short-, medium- and long-term steps. And the first set of steps is really to get ourselves organized within the US government to deal with this problem. We think that the National Security Advisor needs to be designated as the policy coordination official. It's that important an issue. It involves serious bilateral relationships around the country.

We think that the Secretary of Commerce should be designated the principal official who has the responsibility for making the complex interagency technical liaison relationships work in order to have the real data and information to feed in to the various legal processes that we'll tell you about in a minute.

We think that the locus of action needs to be an interagency group with representatives from all of the concerned agencies and departments. That would be Commerce, FBI, Justice, Office of the Director of National Intelligence, State, US Customs and Border Patrol, US Patent and Trade Office, and the US Trade representative. And we think they should form an interagency group that's sort of like, in its meeting timelines and in its technical competence, like the CFIUS, the Committee for the Foreign Investment in United States. And really, even more, it ought to have some of the technical/tactical fine-grained skills of the National Counterterrorism Center, in which we really have a group of experts who know what's going on to a very fine detail.

With that kind of a basis of organization, we can then apply a series of measures to punish those companies who steal our intellectual property. We think the existing 337 process of the Tariff Act should be revised to make it much quicker, a much lower initial standard of proof to sequester goods that are suspected of counterfeit content or manufactured by IP-stolen processes. And then a quick process to determine if that material should continue to be sequestered because it was obtained illegally, or whether it should be released and move on to the US market.

We believe that repeat offenders should be subjected to financial sanctions; in effect denied access to the US financial system so that they cannot deal in dollar-denominated transactions in this country and elsewhere. That would be through the expanded authorities of the Secretary of the Treasury.

We think that IP compliance should be an explicit criteria for the SEC to consider when a foreign company wants to list on a US stock exchange.

We think that IP compliance should be included in the CFIUS criteria, in addition to the more narrow national security criteria which are now used.'

And we think that the authorities that the US Federal Trade Commission has under its section five should be more robustly applied on the basis of IP violations, which we think this process will provide the data for.

So basically here, we are trying to force foreign companies to choose between access to the US market and stealing American intellectual property. Can't have them both. And we believe that what we know of the emerging companies in China and India, and places, these are companies that want to go international, that want to compete in the US market, that want to use US dollars for currency, and we think that they can be incentivized to act in a correct IP manner.

A couple more measures I would draw your attention to, among the many:

Number one, we think that US contracts should include the provision that there be a tight supply chain intellectual property component. We think that the Economic Espionage Act should be amended so that private parties can bring suits under it. Right now, only the government can bring suit on the behalf of private individuals.

So for the first time, I think, we would give a series of punitive measures so that when we negotiate with foreign countries, foreign governments, we have some set of sanctions which would back up the sorts of agreements that we're trying to reach.

Let me turn to a couple more positive measures. The main positive measures are long-term helping countries build capacity for intellectual property protection regimes of their own. If you look at the laws on the books in China and India, they're pretty good laws about intellectual property position. They're just not well enforced. And training of judges, training of lawyers, training of corporate counsels, and so on, needs to be undertaken. The United States does some of that. The European Union does some of that. There needs to be more.

We believe that those foreign graduate students with science and technology, engineering and mathematical degrees in this country should be given many more green cards than are made available now in order to encourage them to stay and work with US companies and contribute the intellectual property which they've inevitably gained during the course of their studies to American companies, not take it back home and build competitors.

Let me turn finally to the area of cyber. Cyber plays an important role in the theft of American intellectual property, but not the exclusive role. If you look at the published accounts of successful prosecutions brought by the FBI, in many cases it's the old-fashioned way – you go out and you buy somebody, or you insert somebody into a

company, bring them back; they come out with the CD-ROM, they come out with the stuff between their ears, and that's how you do it.

But cyber is becoming an increasingly important way to not only deal trade secrets like "what's my competitor going to bid next month for this big international contract," but also "what's the formula for this medicine," "what are the blueprints for this device."

In cyber, our first recommendation is that all companies that are dealing with foreign competitors have got to clean up their internal protections and bring their cyber-protecting of their own networks up to world-class standards. You don't just order a firewall, plug it in and go home on the weekend. This has got to be a 24/7 active patrolling of your own networks, immediately-taking-action sort of event in order to deal with the opportunistic hackers who come in with fairly standard techniques.

But beyond that, there are the targeted hackers, the very professional organizations, as we've seen from things like the Mandiant Report, and so on, which will work a way for particular breaches and particular information.

To deal with them, with some of the more novel sorts of counterdefensive strategies that are being developed now within the private sector, in terms of going back and identifying or doing counterdamage to a hacker, we're getting into slippery legal ground here under existing laws. And although the Commission doesn't come out with a specific report, with a specific recommendation on exactly what should become legal and what should not, we tend towards pushing the legal system to catch up with where practice is. And if the legal system does not, for example, begin to distinguish between those who use the Internet to steal property and those who use the Internet to protect it, which is what is now the case, we are going to have a basic private cyber war going on well outside the control of governments, leading to consequences which no country wants and which will hurt all of us.

So we point to the problem. We make some tentative recommendations on the kinds of things that could be authorized as active defensive measures, but we mainly call for more work on that.

So that's basically, I would say, a summary of what we're doing. We've got to get organized. We have to provide effective tools, both within the private sector and within the government. We have to build capacity, and then we have to elevate this issue to the effort we expend on this issue and the results commensurate with the threat imposed to our security.

Let me ask each of our Commission members to add their thoughts. Probably better to speak from the seats. Starting with Craig Barrett.

CRAIG BARRETT: First, I support the Governor and Admiral's summary of the report and support all the elements of the report. Second, I'm going to leave this room in about three minutes to go to the Industrial Research Institute's 75th anniversary meeting where I'm participating in a panel session on American competitiveness. And that panel is going to say not only should the private sector be investing more in research and development for the 21st century, the century of innovation and entrepreneurship, but also suggest that the federal government should be investing more in basic research in the National Science Foundation, Department of Energy and Department of Defense.

Making those investments in R&D only makes sense if there's protection for the intellectual property that comes out of that investment so that you get some return on your investment. That's basically what this report is all about, is ensuring that there is a protection for a return on investment of monies made by American businesses or the United States of America in total.

I'm in full support of all the proposals in the report, especially in support of those which are more immediate. And that is the ability to stop violating product at the borders; the

ability to deny IP violators of access to the US banking system; and also, as both the previous speakers have mentioned, the opportunity to get the US government organized at a central point to focus on these topics.

So I give this report my full blessing for the short, intermediate and longer term actions. You ought to spend a little bit of time and look at Chapter 14 as well. That says if the short, intermediate and long-term actions don't work, the nuclear option is on the table.
[laughter]

JON HUNTSMAN: Thank you. Slade?

SLADE GORTON: When we set out on this voyage, we found ourselves in largely uncharted seas. We did not have a bundle of previous reports and sets of recommendations on intellectual property theft on which to base our work. And so, much of the importance of what we've done is simply to collect in one place an analysis of each of the several types of intellectual property theft and the cost it imposes on our society and on our economy. And each of the recommendations is based on the findings of fact that we have made.

We have spent the morning in our first set of introductions to various members of both Houses of Congress and both parties on the subject. I can say from considerable experience here, our reception has been very warm and very welcoming in that case. We hope that members of Congress will introduce bills on the subjects that we have recommended. We hope and we expect that there will be hearings on the subject, that we can begin to bring under control perhaps the greatest single illegitimate economic losses to the United States to which it had been subjected over the last two or three decades, and will continue to be subjected until we take the kind of action that makes it unprofitable for companies and for countries to engage in systematic theft of intellectual property.

JON HUNTSMAN: Bill?

BILL LYNN: Thanks very much. Let me just add a couple of comments to put the recommendations in a national security context. I think the value of this report of this Commission's work is to expand the focus of the cyber threat. There's been much attention paid to the potential threats that cyber capabilities pose in a military context. There's been probably even more attention paid to cyber threats to potential attacks on critical infrastructure.

But over the longer term, the threat that cyber poses in enabling the theft of intellectual property may indeed be the greatest national security threat that we face for two reasons:

One, it erodes our economic vitality and our technological strength in a very insidious way that has real impacts. And Governor Huntsman cited some of the statistics. And second, it's present here today. This isn't speculative, this is happening now. This type of theft is happening. It's happening in volume. And it's having a real impact on our economy.

And so, the thrust of this report is: The threat is here today. Action needs to be taken today. And Admiral Blair went through many of the recommendations. I think the theme of those recommendations is: We need to change the paradigm from one in which there are no consequences right now for this type of intellectual property theft to one in which there are significant costs imposed on those nations and those companies that choose to engage in this type of activity.

JON HUNTSMAN: Deborah?

DEBORAH WINCE-SMITH: I will speak to both the competitiveness and national security issues of this report. It's very powerful at bringing the two together. The entire productivity, future standard of living and prosperity of our nation depends on our innovation capacity. And ideas are the coin of the realm. Our country is, as you know,

spending about 2.5% of GDP on research and development. We are embarking now on incredible initiatives in nanotechnology and next-generation energy. All of these things will create the future for Americans and contribute to the world.

The intellectual property challenges are at the heart of this. And I will say that, as an archeologist, if somehow we saw all the museums in our country, the treasures of the Metropolitan Museum, empty or taken and appear on people's walls, what would we do? Well, we have laws and regulations. People would be in jail because we have strict laws and customs around that.

And that's a simple way of capturing what's at stake here, because as the report says, 70% of the value of assets now are intangible. And so, the recommendations, short-term, medium- and long-term, together over time, in partnership with the government and our private sector, are going to really be very, very critical for the future of our country.

And I think I want to commend our Commission leaders, Governor Huntsman and Admiral Blair, because with this report we're going to see a real movement in the country to address the intellectual property, the cyber issues as they impact our standard of living and security.

JON HUNTSMAN: Good. Why don't we just turn it over to all of you?

PETER SUMMER: Peter Summer with *Capitol Intelligence*. My question is, it seems you have two very powerful tools in the tool box that you mentioned – CFIUS and Securities and Exchange Commission. My question is, how do you avoid using those instruments in a unilateral way, which would then get all the other global players saying that we are overstepping our boundaries, using the Securities and Exchange Commission or CFIUS. And more specifically, CFIUS is not a very transparent organization. It's good for us news reporters, but for foreign investors, it's very difficult to fathom how they

make a decision, who makes the decision. It's all in secret and it's very arbitrary as they work.

DRS Technologies is owned by Finmeccanica, the Italians. They got CFIUS approval[?]. They were able to buy out a sensitive US IT company. But other Chinese buyers have tried to buy Hawker Beechcraft, or in Dubai, Dubai Ports, and they were refused, for whatever reasons.

Securities and Exchange Commission has done a wonderful job in enforcing FCPA; they could do a wonderful job on this. So we could have just two of these organizations.

How do you see these working in a new framework? And how do you make this kind of intellectual protection global in nature, just not one— just America with China and vice versa? Because the Securities and Exchange Commission and CFIUS are probably two good tools, just on themselves can do all this.

Just a question.

JON HUNTSMAN: I'll just make a couple of comments and then let Denny pick up. I would say that the first order of business as you're looking at this issue is you've got to have leverage in the game. Now, the leverage here specifically for us is market access. So if you look at what a lot of Chinese companies aspire to do over the next five, 10, 20 years, it's to invest, it's to participate in our marketplace. It's ultimately to move toward an IPO, in which case the SEC becomes a critical player in all of that.

So you assess and analyze these as elements of leverage that certainly are not international organization; they're ours. And it's really hard in a sense to internationalize this issue. I tried in Beijing while I was there, and you get very little receptiveness on the part of Europe, even on the part of Japan, players who you would think would stand up naturally and want to fight some of these battles.

In the end, it's left to us. I think in large part because innovation and the creation of ideas is so centrally key to everything we do in America. Our economy's been built on it. I mean, all you have to do is go back and look at the creation of the Patent and Trademark Office under Benjamin Franklin and how it's connected to the history of this nation to begin to get a sense as to how central it is to everything we do.

So the SEC and CFIUS— and CFIUS really is part of the report because it's an established body, while perhaps needing a little more transparency is up running, it has functioned for many years as an established body that has interagency respect and recognition, and it yields a result at the end of the day. I mean, how many interagency processes can you say actually do that? CFIUS certainly is one of them. And the SEC certainly is there because of the longer-term aspirations for IPOs that we deem to be a point of leverage, where they ought to be in this discussion as well.

DENNIS BLAIR: I would just add that ultimately any process of bringing judgment to bear to make a call is going to go into the back room and make a call. I think if the criteria are set out in a clear way, then those who are applying for investment in the United States or for IPOs know what they are. And if the line is here and you want to get it done very quickly, you leave a lot of space for that line. You prove that you have a very strong IP protection process, you go in and ask— and you don't have any problem.

So I think that those companies who really want to do it will know how to be IP-compliant, and the SEC and CFIUS approvals will come pretty quickly.

GEOFF DYER: Geoff Dyer from the *Financial Times*. Just one quick follow-on first on CFIUS. CFIUS, as I understand it, just deals with M&A transactions. Are you suggesting that there should be an IP component just on M&A transactions? Or are you suggesting that CFIUS should broaden its remit into other types of business transactions?

And secondly, particularly Ambassador Huntsman, as you know, American companies have huge numbers of issues about getting access to the Chinese market. Given that the Chinese government denies pretty much everything that's in Europe, how can you do these types of things without encouraging or stimulating retaliation against American companies in the Chinese market?

DENNIS BLAIR: On CFIUS, no, we are not advocating that CFIUS expand the applications that it has to review to a new area. We're thinking this primarily would be M&A expenditures; just add the new criteria. Similarly, the SEC would be the one that not only authorizes IPOs but also continued conduct by governments. And when there are accusations of IP abuse, then it would apply the criteria to those companies that are registered on our exchanges. So the idea here is basically to enhance existing tools but add the IP dimension.

As far as dealing with China, the Ambassador has quite a bit of experience to do that.

JON HUNTSMAN: Again, just on the CFIUS front, we're going to leave some of this open for refinement as we go. It'll be sort of an interactive affair. And we learned that as we made the rounds on Capitol Hill this morning, meeting with senior members of the Senate and some in the House of Representatives. We're just beginning a dialogue, a process here. We're putting some ideas on the table, some of which are refined into a finished product, some are sort of getting there.

And I would say the analogy to CFIUS is to recognize that it is an established process. Maybe this is new criteria that you could add to the traditional merger and acquisition criteria that are used. Maybe it's another body that you look at that is CFIUS-like.

But CFIUS is certainly there as a stand-out because of its success in the interagency process. I think that can't be denied.

On the retaliation side, and it's an insightful question, although I'd have to say that if we're not smart enough to appeal to the future interests of China by putting out this report, then we're wasting a lot of time. I know there are voices in China within government and certainly within their private sector and their nascent entrepreneurial and innovative class who want to up their aspirations on the protection of intellectual property. They know in order to reach out to the world, as many of their SOEs want to do, the state-owned enterprises, they're going to have to look and feel more like companies with global standards, including the protection of intellectual property rights.

So I'm guessing that what we're putting forward will kind of receive a natural rebuff, maybe even a denial. But I think down deep, there are a lot of pockets within China who say, "We know ultimately we have to move toward greater standards." And this is yet another reminder of the importance of maybe working toward that end.

So for us, you've got to have strength and leverage in dealing with China on issues like this. If you don't, you'll jawbone the issue, which is what we've done now for way too many years. And I think the question we have to ask on the US side is, are we willing to pay the price that we clearly will pay for another ten years, maybe 20 years, of jawboning without any muscle built in to the system.

So this is about muscle, but it's also about messages that will encourage and hopefully inspire the innovators of tomorrow in China to maybe even put pressure on their own government, as we have seen done in places like Taiwan and South Korea over the last 25 or 30 years, that would result in better practices and behavior.

SLADE GORTON: In this case, all we're asking is the inclusion of a business practice in acquisitions, which they already claim exist. But we're saying prove it and do it.

PAUL ECKERT: Thank you. Paul Eckert of the Reuters News Agency. Again, chiefly for former Ambassador Governor Huntsman: Given that we're about two weeks ago from

an informal summit out in California with the new Chinese leader, how would you broach the issue if you were President Obama? As part of your report, and people who follow this issue know that a considerable amount of IPR theft, cyber theft is almost built in to their current political economic model. So in a sense you're rejecting the way they've chosen to develop their country. So how does one— you're both a diplomat and someone who aspired to the Presidency, how would you sweeten that pill and get your point across?

JON HUNTSMAN: [laughter] I'd say that last reference is history, by and large. We don't take any political shots here. We're a bipartisan group, let me just make that very, very clear. In fact, I think we compliment the Administration for doing more than others have on this particular issue. But we're certainly not keeping pace with the development of technology and the new means by which people are extracting IP.

This clearly has to be moved in to the forefront of our economic agenda. And it has to be built around a dialogue that would be specific to the heads of state. So if this is lodged as an issue for continued discussion within the strategic and economic dialogue, I think it remains a jawboning exercise. If the President chooses to take this up directly with Xi Jinping in his bilateral in two weeks, and then to further refine it in September when he'll see him for a second time, I think it begins to get traction. Why? Because the President sets the priorities for the US/China relationship. And this clearly would have to be at the top of our economic agenda.

CHRIS STROM: Hi, Chris Strom with Bloomberg. I'm wondering if, when you talk about sanctions, I wonder if you have any ideas for what would work in terms of sanctions. It seems like that in the report there's denying access to the banking system as one possible option, but I'm wondering what else you see as possible sanctions.

And then I'm wondering if you've had any conversations with anybody in the Administration or the Pentagon about these recommendations and what kind of feedback you've received.

DENNIS BLAIR: Well, the primary administrative sanctions are a quicker 337 process. As you know, that exists if an American company suspects a foreign competitor of importing a counterfeit item or an item of stolen intellectual property. It can initiate a 337 action. The trouble is it takes a year, and by that time probably the profits of that knockoff device have already been taken by the foreign company; technology has moved on.

So we are advocating making that process much faster so that when there is a probable cause of intellectual property theft, the item is stopped immediately, held in a warehouse, a relatively rapid process to adjudicate whether it was in fact counterfeit or not, and then it's either released or you can buy it at a GSA auction.

So this would be much faster and more effective under existing material. On the banking system, if a company wants to deal with the United States or in a dollar-denominated market, it eventually has to come to a US bank to get dollars or to change it for its own currency. And the banking system has a very well-developed system of denying that ability to change money for companies and other organizations that either support terrorism or are involved in drug activities. So this is another set of names you add to the list. And that's a very punitive sanction; and it's a killer sanction for a company that's attempting to go international on a large scale basis.

Finally, you'll see in the recommendations that we recommend that the government contracting procedures include verification of the integrity of IP and its supply chain. And this is a difficult thing for companies to do with their extended global supply chains. We've seen criteria of the environmental effects and the labor practices applied to companies' supply chains. This is of that type.

But you in fact will see in the report a couple of nonprofit organizations which have worked out very practical ways that companies can do this. And this is best practices for some companies that have adopted it. And I think it will become a part of standard practice for big international companies. And we recommend that we use the lever of government contracting to enforce that.

Those are three of the primary automatic sanctions to force foreign companies to make this choice between the US market or stealing US property.

CHRIS STROM: As far as talking to anybody in the Administration, have you had discussion?

DENNIS BLAIR: Oh, yeah. We've had preliminary discussions with members of the Administration. And all the meetings ran their full length and were very friendly. And we'll continue.

JAMIE STRAWBRIDGE: Hi, I'm Jamie Strawbridge from *Inside US Trade*. I have two questions also about the sanctions and the international trade kind of component of it. One is a recommendation that isn't in the report. The report doesn't recommend blocking imports of goods from companies that are proven to be stealing intellectual property from US firms. Did the Commission look at that all? And did that just seem infeasible in light of World Trade Organization rules? I know it's saying that Congress has talked about it, but just curious.

And then the second thing, the report actually mentions in the financial sanctions section that this may run into WTO problems, but it's worth the risk, basically, is what it says. What is the WTO problem in the financial sanction? It seems like there was some discussion on that. Can you just elaborate on that a little bit and what may come up?

JON HUNTSMAN: Who wants to cover WTO-specific issues? I would say that the report generally was scrubbed for WTO consistency and trade obligation consistency. You may find this a little out of tune in some of the areas, but by and large that was the scrub that we provided.

And I do believe that with that more draconian approach that you just mentioned – it may be part of Craig Barrett's future chapter, if he were to write one – about blocking imports would run afoul of some of our trade commitments and result in certain retaliation.

So you have to take a lot into account here. We've made obligations. We do belong to bodies of international trade rules. And beyond that, sometimes we are left with our own unilateral devices, which ought to be strong and focused. And that's where I think we've been able to achieve a balance of remedies here.

DENNIS BLAIR: We actually did discuss sort of the sequence of dealing with a company that seemed to be stealing intellectual property. And in fact, we thought that the concentration on the product, on the first step, would be more effective. And most of the people we talked to who have spent time in this business thought that the process of having one of its products blocked would be a pretty good deterrent for a company's future progress. And that then the next step of denying it financial access to the US market would in fact be more powerful than trying to block a series of individual exports.

Under the 337 process, of course, you can block one import after another from a company that's suspected of intellectual property theft, but rather than playing Whac-A-Mole, if the first one or two didn't succeed, then this financial sanction, the people we talked to thought it would be more effective.

PAT MALLOY: My name is Pat Malloy. I was on the US/China Commission for a number of years, and I salute Senator Gorton who brought this to our commission. Before we joined the WTO, we had Section 301 of our trade laws, which permitted us to say IPO

theft is an unfair trade practice and we could put sanctions on it. We gave that unilateral authority away when we joined the WTO. And we put the trips that China has an obligation under international law to protect intellectual property rights. And in return, we give China permanent MFN, meaning they get an average tariff of 2.5% rather than 47% on their goods coming into our country.

So there's been an enormous theft going on here of what we bargained for and what we got in that WTO agreement. And so, I wanted to salute you guys for taking this on and pointing out that I think that— would you agree that the WTO has proved an inadequate tool and therefore you guys have had to think of other tools to help us deal with this problem that we have with this country that's taking advantage of our intellectual property rights?

SLADE GORTON: I think I can say as I look back on an 18-year career in the United States Senate the single vote I most regret was permanent MFN for China rather than keeping the leverage we had before we agreed to that. Because WTO requirements at this point seem to be pretty much a one-way street.

DEBORAH WINCE-SMITH: And I will just add that giving China an exemption to the government procurement code disciplines I think also has exacerbated the Indigenous Innovation Strategy. And so, that is very much linked to this.

SHAUN TANDON: Shaun Tandon, journalist with the AFP News Agency. Obviously you mentioned that China was between 50-80% of the problem. But I wonder if you could just briefly address some of the other countries that are of concern, whether there are their particular challenges there. After China, what would you say are the main priority countries in terms of addressing this issue?

SLADE GORTON: I think we have India, Russia and Venezuela, seem to be among the highest. But the numbers are dwarfed by China.

GEOFF DYER: Geoff Dyer from the *Financial Times* again. First, on the companies themselves. In the past, if you had talked to government officials about this issue, they'd say, Well, we do have some potential remedies already. But one of the problems is that companies are very reluctant to come forward because it might look weak if they admit they're being ripped off, or they might be afraid of upsetting the Chinese government. How do you envisage encouraging companies to be more forthcoming in pursuing these types of legal remedies that you hope to make available?

And secondly, the question before about the WTO, the US is now about to start free trade talks with Europe, has a separate negotiation in Asia Pacific. Do you envisage either of those negotiations could become a platform for introducing rules into the international trading system that would allow you then to pursue IP violators in the way you're talking about in this report?

JON HUNTSMAN: I think, to your first point, the business community increasingly is coming out in terms of their willingness to talk about this issue. We've got to remember that China's been a very profitable market for American companies, particularly since 2008, where balance sheets have been upside down. It used to be a primary source for many companies of revenue. And therefore, you've got a lot of folks who are very reticent to come out and talk about this issue. I can't tell you how many we confronted who would tell us the stories of woe and say, "Well, just don't mention me." Or, "I want to share with you my own stories, but I don't want to be part of your Commission." That's, I think, reflective of where we are.

But I have noticed an uptick in companies today versus before that are willing to rally around this issue. I think in large part because the marketplace in China, whether it's through indigenous innovation or intellectual property challenges or fundamental market access problems, has become more and more difficult and increasingly frustrating for American businesses.

And I've noticed a distinct shift in the US business community, if I could lump them together in one term, as being less willing to champion China and commerce with China today than before. They've always been sort of the holdout in supporting China on these issues, and today you don't find them there. They're much more direct in their criticism.

SLADE GORTON: The fundamental challenge is not the absence of rules, it's the fact that a set of very good rules are in effect and are totally ignored or flouted.

JON HUNTSMAN: On the negotiations with Europe, which I think is a good, intuitive point, you can't name me a round of trade negotiations either bilateral or multilateral since the end of GATT in '95 or '96, and maybe the creation of the WTO thereafter, where there hasn't been a change in the priorities that were inserted into a trade agreement. So whether labor, whether environmental issues, whether financial services, whether investment, it all seems to sort of evolve over time and I would be very, very surprised if in this round of trade talks with Europe, or even with the TPP, the Trans-Pacific Partnership, which is sort of in a fairly nascent form still, that— and I've seen some of the content of the negotiations around the TPP and I've got to say it's well beyond anything that I've seen negotiated in years past, having been a participant in some of these bilateral and multilateral negotiations.

And my guess is that you're going to see higher standards and much greater expectations around things like intellectual property protection this go-around.

DAVID RENNIE: From *The Economist*, David Rennie. I came a little late so I apologize if you've already addressed this. But in Chapter 14, when you talk about the future threats that could be imposed if the loss of IP continues, what sort of time scale do you mean by in the future? I mean, how long do they have to clean up their act, the sort of flagrant abuses?

And secondly, you don't really address the question of retaliation if you start getting into even some of the interim measures of self-destruction or less than full-on sort of cyber war between entities. What's the downside in terms of Chinese reactions, nationalistic reaction, how the Chinese Internet is very alive[?] to the idea of foreign bullying. And that doesn't seem to appear in your report as a downside.

DENNIS BLAIR: I can give an answer. I think what we need to watch more than some absolute numerical deadline or trends, and I think the trends are going in the wrong direction now, and if in the next, I would say, year or two, that kind of time, the trends don't change, if our recommendations are implemented, then I think it's time to step up to higher measures, some of which we outlined in that final chapter.

So I think what most drives us is that, as the Ambassador mentioned, in the case of some other countries which have gone through eras of rapid economic development based on expert models and pretty aggressive intellectual property measures, we've seen them mature into more mature intellectual property regimes in which we can do business with. We need to see that in the case of the countries posing the current threats, the Chinas, Indias and Russias. So I'd say trends are more important.

And the other question was on retaliation. One man's enforcement standard is another man's retaliation. And the way you present it is a matter— and I find in my dealings with the Chinese, if you simply say this is what the realities are and this is what will happen if this behavior continues, and this is what will happen if this other behavior continues, you're not talking about retaliation, you're talking about standards and realities. So I don't think we need to get into a retaliatory cycle.

BILL LYNN: I'll just add to that. Part of the perspective we're bringing here is that in the current structure right now there are no consequences for the actions that are being taken, the Chinese theft of intellectual property. We need to establish those costs, those consequences. You're absolutely right, there's dangers in doing that and you have to be

cognizant of not doing overly provocative things, not seeking a regime where you get gratuitous retaliation. But I think what we are saying is we have to move the needle into a more balanced arena, and we need to balance the danger of retaliation against the current danger we have, which is no consequences for this unprecedented theft of intellectual property.

JON HUNTSMAN: Well, thank you very much.

[applause]

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