

**PREPARED STATEMENT
OF
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**BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW**

HEARING ON

“RECENT TRENDS IN INTERNATIONAL ANTITRUST ENFORCEMENT”

**WASHINGTON, D.C.
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Chairman Marino, Vice-Chairman Farenthold, Ranking Member Cicilline, and Members of the Subcommittee, thank you for inviting me to appear before you today. I have had the pleasure of appearing before this Subcommittee in the past to testify on recommendations of the Antitrust Modernization Commission and in support of the SMARTER Act. It is always an honor to be invited to address the Subcommittee and to witness the thoughtful work of its members and staff.

I am here today in my capacity as the antitrust chair of the International Competition Policy Expert Group, or “ICPEG.” ICPEG is a bi-partisan, volunteer group of 13 competition and international trade policy experts convened by the U.S. Chamber of Commerce in August 2016 for this purpose: To consider how the U.S. can most effectively address the perceived misuse of competition law by some foreign jurisdictions to distort international trade and harm U.S.-based companies.¹

ICPEG’s members include distinguished academics and thinkers like Prof. Eleanor Fox, who have studied and participated in the development of international competition and trade policy for decades, and former enforcers and policy-makers from every prior Republican and Democratic Administration in the past 36 years. The Chamber asked this diverse group to

¹ ICPEG’s members included in addition to myself Andrew W. Shoyer (Co-Chair), Terry Calvani, Dennis W. Carlton, Eleanor Fox, David J. Kappos, Charles S. Levy, Abbott (“Tad”) B. Lipsky, Jr., A. Douglas Melamed, Alan H. Price, James F. Rill, Susan C. Schwab, and Christine A. Varney. The group is extremely grateful to Alden Abbott, who served as the Rapporteur.

leverage our collective experience to develop “practical and actionable steps forward that will serve to advance sound trade and competition policy,” and that is what we did, with a remarkable degree of consensus. A copy of ICPEG’s resulting Report and Recommendations and our transmittal letter to the President and 115th Congress is attached to my statement.²

My testimony today is limited to ICPEG’s report and recommendations. I am not speaking today on behalf of any specific client interest and I am not prepared to talk about any particular investigation or enforcement matter. My testimony will be brief, because the ICPEG Report and Recommendations speak for themselves and are consistent with my personal views.

What Problem Are We Seeking to Solve?

Simply put, there is concern that certain major trading partners have in some cases denied foreign companies fundamental due process and in other cases applied their competition laws to protect their home markets from foreign competition, promote national champions and/or force the transfer of technology at royalty rates that favor local technology implementers. Such conduct has a significant unfair adverse impact on the ability of U.S. firms to compete at home and in global markets. Koren Wong-Ervin and Alden Abbott have provided examples in their testimony.

Prior Administrations have devoted substantial resources at the highest political levels to address the problem with some success, but it has been a difficult nut to crack and requires persistent efforts and a multi-faceted approach that engages at both the competition and trade

² See U.S. Chamber of Commerce, International Competition Policy Expert Group: Report and Recommendations (March 2017), available at https://www.uschamber.com/sites/default/files/icpeg_recommendations_and_report.pdf. Importantly, after encouraging its formation, the U.S. Chamber set ICPEG free to come to whatever conclusions it might, without the Chamber’s influence.

law levels. Even those who are wary of the use of trade tools recognize the need for a careful, integrated competition and trade law approach. As Professor Fox put it in her testimony, “[i]t is time that officials from trade and competition sat down at the same table and discussed strategies for the good of the country.”³ We need to “work toward a coherent trade-and-competition policy” that, among other things “tackles unjustified state restraints and the distorting competition of privileged and cronyistic SOEs.”⁴ Hear, hear.

What Solutions Has ICPEG Recommended?

ICPEG made 12 recommendations. The first six recommendations focused on coordination of competition and international trade policy within the U.S. government through a White House working group. Among other things, the working group would determine which international agreements should include competition chapters – including through the amendment of existing agreements – what provisions should be included, and how those provisions should be enforced. (See Rec. 3.) The working group would also focus on how to most effectively ensure that other countries apply their competition laws in a manner that is consistent with accepted standards of process, to ensure transparent, accurate and impartial enforcement decisions. For example, the Administration should continue – and strengthen – bilateral and multilateral efforts to establish standards and ensure that other countries abide by them, including through the enforcement of existing trade agreements. (See Rec. 5.)

The second six recommendations focused on how the U.S. can most effectively promote international competition and trade policy through its participation in international organizations focused on competition and trade policy and its existing and future trade

³ See Prepared Statement of Eleanor M. Fox at 8.

⁴ *Id.* at 10.

agreements. For example ICPEG recommended consideration of the feasibility and value of expanding World Trade Organization regular assessments of each member of the Trade Policy Review Body to include national competition policy and encouraging the Organization for Economic Cooperation and Development (“OECD”) to undertake specific peer reviews of national procedural and substantive policies. (See Rec. 8 and 9.) In addition, the OECD and/or other multinational organizations could be encouraged to adopt codes enumerating fair, transparent and nondiscriminatory processes. (See Rec. 10.)

Finally, I would like to directly address a concern I have heard raised that ICPEG has recommended the creation of an antitrust “czar” in the White House. That is not the case. The working group ICPEG recommended is intended to be the “table” at which a sound and coherent trade-and-competition policy would be forged. It would not be the working group’s province to direct U.S. antitrust enforcement decisions, nor would the working group displace the U.S. Justice Department or Federal Trade Commission in their continued efforts to drive international consensus on sound substantive and procedural standards. Rather, the working group is intended to enable the systematic (not ad hoc) development and implementation of a more effective, coordinated U.S. Government approach to situations where a foreign government may be misusing its competition law to impede international trade or investment by imposing an unreasonable, unjustifiable or discriminatory burden on U.S. commerce.

I thank the Subcommittee for giving serious consideration to ICPEG’s Report and Recommendations.