House Committee on Small Business
Subcommittee on Agriculture, Energy, and Trade
"Unfair Trade Practices: Addressing Barriers Facing Small Business Exporters"

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Chairman Tipton, Ranking Member Murphy, and Members of the Subcommittee. I am Tim Brightbill, a partner at Wiley Rein LLP and adjunct professor at Georgetown University Law Center. Thank you for the opportunity to testify before you today on the issue of unfair trade practices and barriers facing small business exporters. (These views are my own, not those of my firm or my clients.)

I have practiced international trade law for almost 20 years, and my practice has always focused on helping American companies, American industries, and American workers. I have worked with a variety of industries – including manufacturers of everything from steel to solar panels to school notebooks to heavy forged hand tools. I also work with many companies that provide services both here and abroad. My job is to help these companies grow, to prevent unfair trade practices from harming these companies, and to help eliminate trade barriers overseas.

Small businesses face enormous challenges in the area of international trade. While all U.S. companies face trade barriers and unfair trade practices, these problems can be even greater for small- and medium-sized businesses. Trade laws and regulations are complicated, trade remedy cases are expensive, and trade barriers are becoming more pervasive and more challenging all the time.

As a result, it is probably not surprising how few small businesses are able to become substantial exporters of goods or services. Let me list several of the challenges facing U.S. small business exporters, as well as all U.S. companies:

1) **dumping and subsidies –** are two of the most pervasive unfair trade practices. Foreign manufacturers often sell below cost to enter the U.S. market and to take market share away from domestic competitors. Subsidies and government ownership of foreign companies facilitate this type of unfair pricing. Small businesses are forced to choose between cutting prices to match foreign competition, or giving up sales and market share. Notably, the antidumping (AD) and countervailing duty (CVD) laws that address these unfair practices are complex and the requirements for filing trade remedy cases are difficult for even large, sophisticated companies. There are many steps that Congress and the Commerce Department could take to make the trade laws simpler and easier to use for small businesses. I would be happy to discuss these specific ideas with the subcommittee later this morning.

2) **currency manipulation –** is a serious problem that harms all U.S. exporting businesses, large and small. The Petersen Institute for International Economics, one of the most respected think tanks in Washington, has called currency manipulation "the biggest subsidy of them all," and estimates that currency actions by China and more than 20 countries have increased the U.S. trade deficit by $200 billion to $500 billion per year, and that the United States has lost 1 million to 5 million jobs as a result of foreign currency manipulation. If Congress wanted to take one trade-related action that would create the most new American jobs, it would be to pass legislation directing the Commerce Department to investigate currency undervaluation as an illegal subsidy.

3) **intellectual property theft** – is a pervasive problem that demands a serious response from U.S. government and law enforcement. The United States took an important step this week by filing criminal charges against five members of the Chinese military for cyber hacking. The U.S. companies named as victims in this week's indictments are at the heart of American manufacturing of steel, aluminum, solar, and others. I applaud the Administration for taking this step. But the reality is that the Chinese Government sees no difference between military espionage and corporate IP and trade secret theft. And there are thousands of U.S. companies that are victims of these activities. As one expert has stated, there are two kinds of U.S. companies – those that know they've been hacked, and those that just haven't figured it out yet.

4) the rise of **state-owned and state-controlled enterprises** is another factor that is harmful to small business exporters. U.S. companies are forced to compete not with private companies, but with foreign governments. And while China is also a notable example of this problem, SOEs play substantial roles in the economies of many countries – Russia, Brazil, Indonesia, India, Malaysia, and many others.

We need to include strong, enforceable disciplines on state-owned enterprises in all new free trade agreements, starting with the Trans-Pacific Partnership and the T-TIP agreement with the European Union. I would be happy to discuss what specific terms and conditions we need to include in these trade agreements in order to help U.S. small businesses compete. And, if we are serious about addressing SOEs, we should include such provisions in any bilateral investment treaty with China as well.

5) Finally, we need to address the growing use of **non-tariff barriers** to shut down trade. This can involve obvious measures like export taxes, but also more subtle barriers like Customs regulations, import licenses, burdensome standards and certification requirements that

can become technical barriers to trade. The United States has been very successful in reducing tariffs worldwide, but those that want to protect their markets are continually looking for new ways to shut out foreign competition.

Thank you for addressing this important issue today, and I would be happy to answer any questions.

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