STATEMENT

of the U.S. Chamber of Commerce

ON: **Testimony - Hearing on China's AML and its impact on U.S. firms**

TO: **U.S. House Judiciary Subcommittee on Competition and the Courts**

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The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

China and Competition Policy

My name is Shanker Singham, and I am the Chairman of the International Roundtable on Trade and Competition Policy, and a partner at global law firm, Squire Sanders & Dempsey, L.L.P. I am making this testimony on behalf of the U.S. Chamber of Commerce, its Global Regulatory Cooperation (GRC) Project, and its Asia Program. The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber's GRC Project seeks to align trade, regulatory and competition policy in support of open and competitive markets, and its Asia Program gives voice to policies that help American companies compete and succeed in Asia's dynamic marketplace.

In addition to drawing upon the U.S. Chamber's numerous submissions to People's Republic of China (PRC) and U.S. government authorities on antitrust, foreign investment, intellectual property rights protection, standards setting, and public sector restraints on trade, many of these comments are drawn from my book, A General Theory of Trade and Competition; Trade Liberalization and Competitive Markets (CMP Publishing, 2007). The purpose of my remarks is to put China's developments towards the implementation of competition policy into context, and to help Members of Congress better understand how to best manage the economic and trade relationship with China to the benefit of both countries. First, it is important to understand the genesis of China's Anti-Monopoly Law (AML).

I. Towards a Competition Policy in China: Genesis of China's AML

The development of China's competition law has been a long journey that predates China's WTO accession in 2001. Initially as China's economy opened up, the virtues and benefits of an open economy were recognized by significant elements of the Chinese government. It was also recognized, at least by some in China, that it would be important to have competitive markets inside the border to supplement this trade openness, and ensure that the Chinese economy was able to grow in ways that benefited all its consumers. These developments in China are to be applauded.

However, it is important to note that China's efforts to establish an antitrust regime accelerated significantly following the failed bid of CNOOC for Unocal, which was blocked after a review by the Committee on Foreign Investment in the United States (CFIUS). Certain members of the Chinese administration saw the AML as an opportunity to invoke similar regulatory procedures to block foreign acquisitions of Chinese companies and to allow Chinese regulators to secure jurisdiction over global M&A activity. This was an unfortunate start to the road to implementation of the AML, as it mixed two very different concepts, the idea of a competition review based on sound economic analysis of how markets are affected by a merger (based on impact on consumers), and a national security review based on very different considerations. The latter review is particularly vulnerable to mercantilist thinking.

II. Competition Policy in a Country Governed by Non-Competition Concerns

Competition law implementation generally works best in countries that have already accepted competition as a normative organizing principle for the economy, i.e., countries that advocate regulatory frameworks that tend to maximize and facilitate business competition on the merits. There are some questions as to the direction of China's economic development – in particular whether state-led economic development and industrial policy are the driving forces behind regulatory promulgation. There are some serious challenges associated with placing a competition agency in an environment where industrial policy is the operating governing principle, and there is a real danger that such an agency could become another tool of industrial policy in the hands of those who would favor certain State-Owned Enterprises (SOEs) or other national champions over other competitors. This concern is a real one in the case of China, and one that the U.S. government must be mindful of, particularly given the fact that the three agencies responsible for enforcing the AML each has pre-existing missions tied to implementation of industrial policy, including state planning and the regulation of foreign investment and trade.

III. Concerns Emanating out of China AML

In light of the above, the U.S. government should pay particularly close attention to certain aspects of the AML and how it is being enforced.

1) Approach to SOEs and Firms Benefiting from Anti-Competitive Market Distortions

The China AML has provisions addressing SOEs. However, at best these provisions are ambiguous, and at worst they appear to exempt the strict application of competition policy to SOEs.

The AML's treatment of China's SOEs and state-influenced companies will serve as a critical barometer of China's commitment going forward to market-based economic reforms as well as the ability of foreign and domestic private companies to compete in critical sectors of the Chinese economy. The roles of the PRC government and Communist Party in the Chinese economy remain pervasive and have arguably increased in the wake of the global financial crisis. They are unlikely to shrink given the direction of the government's policies and the Party's objectives for economic development, as evidenced by the State-Owned Assets Supervision and Administration Commission (SASAC) December 2008 announcement that it would protect what the government considered to be "economic lifeline" sectors.

In its announcement, SASAC divided state industries it wanted to protect through continued government ownership between "key" industries that would remain "state dominated," meaning majority owned and controlled by the government, and "underpinning" industries that would remain "largely in state hands."

The key industries named by SASAC are: armaments, power generation and distribution, oil and petrochemicals, telecommunications, coal, aviation and air freight industries. The exact meaning of "state dominated" was not clearly spelled out. It is likely to mean different things for these seven industries and their subsectors. It was made clear that for arms, oil, natural gas and telecommunications infrastructure that the government will have sole ownership or absolute control of all the central enterprises and all the "major" subsidiaries associated with these industries. SASAC's circular also includes an "etcetera" at the end of the list of sectors, thereby leaving room for expansion in the future.

For aviation and air freight, the circular said that the state retains sole ownership and absolute control of the central enterprises but not the subsidiaries. For the "downstream products of petrochemicals" and the "telecommunications value-added service industry" the government would continue to encourage foreign investment and promote "diversity in property rights," according to the circular.

The circular said that the state would play a large supervisory role in the "underpinning" industries of equipment manufacturing, automobiles, electronic communications, architecture, steel, nonferrous metals, chemicals, surveying and design, and science and technology. This term also means different things depending on the industry. For equipment manufacturing, automobiles, electronic communication, architecture, steel and nonferrous metals, the state will retain absolute control or conditional corporate control of the central enterprises associated with these industries, according to the circular. For science and technology and surveys and design, the state will have a "majority stake" in directing central enterprises to undertake these tasks.

SASAC also announced a plan to make the SOEs more competitive through mergers and acquisitions to create some 20 or 30 powerhouse companies that would become "internationally competitive."

Given the dominant role of SOEs in China's economy (many of which enjoy monopoly- or oligopoly-status in the market and benefit from significant state subsidies and an artificially low cost of capital), America's leading firms are already in competition with them and, in the future, will increasingly compete with China's SOEs for markets and investment opportunities in China, in third-country markets, and at home in the United States.

How China enforces its AML vis-à-vis its SOEs is therefore highly relevant to not only the future trajectory of market-based reforms in its economy, but also the future commercial opportunities and competitive position of foreign companies in the China market.

The real problem associated with China SOEs is not the SOEs per se, but rather the government activities that distort the market in ways that damage welfare. These can include low-cost (or no cost) loans from state-controlled banks, tax laws that artificially lower the cost base of certain preferred firms, or regulatory exemptions that put certain preferred firms on a different footing than their competitors. While it is clearly important that China implement its competition law in ways that create a level playing field as

between SOEs and private firms, it is equally important that internal anti-competitive market distortions that give certain preferred firms advantages are minimized.

In this respect it is very important that China's new competition agencies exercise their competition advocacy responsibilities properly and completely. Competition advocacy is one of the most important tasks of competition agencies, particularly in countries where they are new and notions of competition are also new. It will be very important to see real evidence that the Chinese agencies are able to engage other branches of the Chinese government in the promotion and promulgation of pro-competitive regulations, laws and principles. This will also include, as specifically stated in the AML, that the anti-monopoly agencies will intervene with SOEs themselves to ensure pro-competitive behavior.

It is important to note that in any discussion of the disciplining of anti-competitive SOE behavior, while the outcome should be a level playing field between SOEs and their private competitors, this does not mean that precisely the same test must be used as between SOEs and private firms. SOEs, and government-preferred entities in general, are able to sustain below cost pricing for indefinite periods, for example, and are at best revenue maximizers rather than profit maximizers. The tests that one would rely on to discipline predatory pricing by private firms (requiring market power, below cost pricing and requiring the ability of the predator to recoup lost profits in the future as a monopolist)[1] may have to modified in the case of SOEs to require only below cost pricing as a required element.

Finally, in the analysis, it should also be noted that there is a spectrum of what constitutes a state-owned or state-influenced enterprise. At one extreme is the fully government owned company. At the other end of the spectrum, there is a private firm that benefits from government tax and other privileges and advantages. Both, unchecked, can distort the market in ways that damage welfare and their rival firms. An important approach which is shared by the Chinese competition agencies and the U.S. government is to therefore try to lower anti-competitive distortions that can lead to welfare diminishing outcomes.

2) Competition and Intellectual Property: Real or Imagined Tension

Conventional wisdom suggests that competition and intellectual property are in tension. In reality, competition and intellectual property policy share the same welfare enhancing goals. Intellectual property as a type of property right is precisely what firms compete with, and it is welfare increasing to facilitate and encourage this type of competition. However, if the guiding light of competition enforcement is not an economic, welfare-oriented concern, but rather an industrial policy-born concern protecting competitors as opposed to consumers, then intellectual property and competition policy may well find themselves in tension.

In the case of China, there are some troubling developments indicating that an industrial policy drive to erode foreign intellectual property rights and to encourage technology transfer and compulsory licensing will find their way into the implementation of antitrust law. For example, despite heavy pressure by other governments and foreign industry, China's patent law is still not consistent with the significant restrictions on compulsory

[1] See for example Brooke Group Limited v. Brown and Williamson Tobacco Corp, 509 U.S. 209 (1993)

licensing established by Article 31 of the WTO Trade Related Intellectual Property Rights Agreement (TRIPS). Contrary to TRIPS, the 2008 amendments to China's patent law fail to limit the ability of PRC authorities to issue compulsory licenses to access only the patent(s) involved in any conduct found to be anti-competitive. The word "competition" is often used to ground compulsory license grants in many emerging markets. However, the analysis used to justify the grant of a compulsory license is often based on non-economic, competitor and not consumer welfare concerns. Where this is the case, the resulting erosion of IPRs will lead to a less competitive marketplace, not a more competitive one.

The panoply of policies under the heading of Indigenous Innovation strongly suggests that the Chinese government is tilting the market in favor of certain technologies and certain preferred companies at the expense of foreign intellectual property rights holders. The recent guidelines of China's Supreme People's Court regarding the implementation of China's national IP strategy contain several troublesome paragraphs indicating the judiciary's propensity to advance China's national innovation agenda. For instance, they note:

> *We should intensify the protection of core technologies which may become a breakthrough in boosting the economic growth and which have independent intellectual property rights so as to promote the development of the high and new technology industries and newly rising industries, improve the independent innovation capabilities of our country and enhance the national core competitiveness.*[2]

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[2] Guidelines of the Supreme People's Court on Several Issues Regarding the Implementation of the National Intellectual Property Strategy, Par. 9 (No. 16 [2009] of the Supreme People's Court March 29, 2009). The Guidelines also note that judges should:

- "fully apprehend that the implementation of the intellectual property strategy is an urgent need to build an innovative country, . . . and a crucial move to enhance the national core competitiveness by taking into account such aspects as helping to enhance the independent innovative capabilities of our country, improve the system of social market economy of our country, enhance the market competitiveness of the enterprises of our country, enhance the national core competitiveness and open wider to the outside world." (Par.1).

- "ensure the correct political direction . . . also improve the enterprises' independent innovation capabilities." (Par. 8).

- "protect the know-how in integrated circuit designs *and timely grant judicial remedies so as to promote the development of the integrated circuit industry*." (Par. 14, emphasis added).

- "properly deal with the relationship between the competition policies and industrial policies. . . ." (Par. 16).

- ". . . create intellectual property out of the independent innovation fruits, and to have them commercialized, industrialized and marketized." (Par. 17).

Already successful U.S. companies which have brought IP infringement claims against local companies have been faced with meritless counterclaims of IP abuse. Enforcement of IP rights is unpredictable, and the PRC court system is often unreliable and influenced by Chinese policy makers who have openly expressed a desire to force the transfer of foreign IP to better enable local companies to innovate and compete in key industries.

In light of the indigenous innovation policy of replacing foreign technology in critical infrastructure and the high level government mandate to reduce the use of foreign technology to less than 30 percent in the entire Chinese economy, multinationals with dominant market shares globally and in China may find the Chinese Anti-Monopoly Law knocking at their door.

In fact, some PRC officials have tried to use the AML to force technology transfers. The State Administration for Industry and Commerce (SAIC), which enforces the AML, has drafted a regulation that would allow compulsory licensing of intellectual property owned by a dominant company that unilaterally refuses to license its IP if access to such IP is "essential" for others to effectively compete and innovate.[3] The refusal to license in such cases would be considered by SAIC to be an "abuse of IP." A similar provision was included in a 2005 draft of the AML itself, but extensive foreign criticism persuaded China to remove it.[4] The concept has quietly resurfaced in SAIC's draft regulation, which could be used to force compulsory licensing of MNC technology to a budding Chinese competitor that alleges foreign IP is impeding its innovation capabilities. This policy approach once again draws on antiquated concepts of competition policy and law that have long since been discarded by more advanced competition agencies around the world. The danger is that this approach will make the China market less competitive rather than more competitive and will lead to significant restraints on innovation.

3) <u>How Will China AML Apply to Single Firm Conduct</u>

The U.S. government should also be concerned about how the AML will apply to single firm conduct. Currently, the AML suggests an "abuse of dominant position" test where the decision as to what constitutes an abuse of dominance consists of a bifurcated analysis where dominance is first defined primarily by reference to market share, and then there is a separate analysis of whether there has been an abuse.[5] Market shares are a legitimate

[3] *See* Article 18, Guidelines for Anti-Monopoly Law Enforcement in the Area of Intellectual Property Rights (Fourth Draft Revision).

[4] The AML as enacted condemns "abuse of IP" by a dominant company but does not define the concept or the remedy for the conduct. *See* Article 55, Anti-Monopoly Law of the People's Republic of China (Adopted at the 29th Meeting of the Standing Committee of the National People's Congress on August 30, 2007) . Article 55 states that an entity can be charged with abusing its IP under the AML only if its exercise of IP is not in accordance with China's IP laws and regulations.

[5] See AML Article 19 Undertakings that have any of the following conditions can be presumed to hold a dominant market position:

（一）一个经营者在相关市场的市场份额达到二分之一的；

(i) the market share of one undertaking in relevant market reaches 1/2;

starting point for a single one-step analysis of whether a particular single firm activity has led to damage to competition, but they are only a starting point. Indeed, the International Competition Network (ICN) has noted in its Recommended Practices for Dominance/Substantial Market Power Analysis (2008) that

> "All jurisdictions agree that unilateral conduct laws address specific conduct and its anticompetitive effects, rather than the mere possession of dominance/substantial market power or its creation through competition on the merits. All jurisdictions also agree that the goal of enforcement is to identify and act against conduct that is anticompetitive, although it can be difficult to distinguish between pro- and anticompetitive unilateral conduct. Determining whether a firm possesses dominance/substantial market power generally is the first step in the evaluation of potentially anti-competitive unilateral conduct. Laws differ in the way dominance/substantial market power is defined. Most jurisdictions find that a rigorous assessment of whether a firm possesses dominance/substantial market power, going well beyond market shares, is highly desirable. In jurisdictions with a more formalistic definition of dominance based on market shares, it is recommended that agencies be particularly rigorous in their analysis of the conduct at issue."

Moreover, last month, SAIC issued draft provisions on prohibiting abuse of dominance that would establish a presumption of illegality for routine transactions by dominant businesses. Basically, the draft would force dominant companies to justify any reduction of trade or refusal to enter into specified business transactions with competitors and other entities without first requiring the agency to prove anti-competitive effects existed. The draft provisions would thus vest far too much discretion in SAIC to "manage" competition. For example, under its draft broad refusal to deal provisions, the agency could force dominant MNCs to grant competing Chinese entities access to their prized assets (e.g., supply or distribution chains).

The U.S. government should be concerned about whether China's AML will be implemented in this area in such a way as to deliberately target large U.S. firms in order to favor their Chinese rivals. An approach that is inordinately based on market share or which presumes dominance based on a particular market share, and which suggests the use of

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（二）两个经营者在相关市场的市场份额合计达到三分之二的；

(ii) the joint market share of two undertakings as a whole in relevant market reaches 2/3; or

（三）三个经营者在相关市场的市场份额合计达到四分之三的。

(iii) the joint market share of three undertakings as a whole in relevant market reaches 3/4.

有前款第二项、第三项规定的情形，其中有的经营者市场份额不足十分之一的，不应当推定该经营者具有市场支配地位。

In situations stipulated in the preceding items (ii) and (iii), if an undertaking has market share less than 1/10, it shall not be presumed to hold a dominant market position.

non-economic concerns (such as having a fragmented market for its own sake) could harm U.S. firms operating in China, could damage the Chinese economy and critically take away incentives for innovation.

4) Merger Control

The merger control regimen raises similar concerns as those set out for single firm conduct. If China's competition agencies adopt an approach to merger enforcement that does not evaluate mergers based on their alleged harm to competition and their welfare diminishing consequences, but rather relies on non-economic factors such as a fragmented market for its own sake, or an undue reliance on competitor welfare, then this will allow the China authorities to block mergers and acquisitions that do not cause consumer welfare losses, but may fall foul of a particular China government industrial policy. We have arguably already seen this in the case of Coca-Cola's attempted acquisition of the Huiyuan Juice Group Limited. The concern in that case was that the decision to block the acquisition was responsive to complaints from some quarters in China about potential loss of a major Chinese brand to a U.S. company. In the case, Coca-Cola was attempting to acquire an entity that had 32.6% market share of what was a very unconcentrated pure juice business.

5) Cartel Enforcement

Of particular concern, China's AML can be interpreted to provide an implicit exemption for export cartels, which litter the Chinese landscape. Therefore, U.S. firms may be competing in third countries against Chinese firms which have been authorized to collude.[6] Further, U.S. consumers can be victims of such anticompetitive behavior as those export cartels distort markets by colluding to set price in foreign markets. It will be important for the U.S. Department of Justice to remain vigilant and prepared to aggressively prosecute such practices and not accept any claim by China that such export cartels are operating under the control of the state as an excuse as appeared to be the case in the Chinese Vitamin C case.[7] Such claims by China stand in direct contrast to its repeated claims, including at the May 2010 meeting of the Strategic and Economic Dialogue and in advance of its updated offer in July 2010 to accede to the WTO Agreement on Government Procurement, that its SOEs operate solely as commercial actors, independent of state influence and benefit.[8]

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[6] See AML Article 15: Any agreement among undertakings with one of the following objectives as proved by the undertakings shall be exempted from application of Article 13 and 14: ... (vi) to safeguard the legitimate interests in foreign trade and economic cooperation...

[7] China Defends Price Fixing by Vitamin Makers, John Wilke, November 25, 2008, Wall Street Journal.

[8] China made very substantial commitments as part of its accession to the WTO. Many of these obligations are recorded in the WTO's Working Party Report on China's Accession. Among the most important of the commitments is the statement by the representative of the Government of China that China would ensure that all state-owned and state-invested enterprises would make purchases and sales based solely on commercial considerations, e.g. price, quality, marketability and availability, and that the enterprises of other WTO Members would have an adequate opportunity to compete for sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, the Government of China would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, including on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement.

IV. Recommendations for Action

The Chamber's recommendations for action coincide with a number of books and articles I have written which are referred to below and which should be added into the record.[9] These recommendations note that decisions by China's antitrust agencies to act or not act which are non-economic in nature are a subset of other market distorting practices by governments. Simply because a competition agency takes action does not mean that the result of that action will automatically lead to more competitive markets. Indeed, for reasons we have highlighted above, if the competition agency is being used as a tool to effect industrial policy this will be an anti-competitive market distortion in and of itself. The Chamber recommends that the U.S. government re-orient its policy responses based on this reality, but notes that these recommendations are not intended to be a substitute for existing international policy in this area but rather additive to it.

A. Reform Inter-Agency Process to Deal Squarely With Anti-Competitive Market Distortions from a Competition Policy Perspective

The Chamber recommends developing a new inter-agency group around anti-competitive market distortions which would include distortive decisions by competition agencies. This group should comprise representatives of all U.S. government actors with a stake in ensuring that the Chinese (and indeed other) markets are competitive, including not only the Department of Justice (DOJ) and the Federal Trade Commission (FTC), but also, and equally important, the Department of Commerce (DOC), and the Office of the United States Trade Representative (USTR), which lead the annual U.S.-China Joint Commission on Commerce and Trade (JCCT), and the Department of the Treasury and Department of State, which lead the annual U.S.-China Strategic and Economic Dialogue.

B. Congressional Reports on Foreign Country Market Distortions

Along the lines of USTR's National Trade Estimate, the above group should be required to report to Congress the state of the competitive landscape in China and on any damage caused by an anti-competitive market distortion in the market. Such information would be useful in promoting a dialogue on the impact of market distortions and should help lead to their ultimate minimization.

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[9] Shanker Singham, A General Theory of Trade and Competition; Trade Liberalization and Competitive Markets (CMP Publishing, 2007); Shanker Singham and Daniel Sokol, Public Sector Restraints: Behind-the-Border Trade Barriers, 39 Tex. Int'l L.J. 625 (2004); Shanker Singham, Is it Time for an International Agreement on Uncompetitive Public Sector Practice?, 27 Brook. J. Int'l L. 35 (2001-2002); Shanker Singham, Trading Up, The National Interest, July/August, 2007; Shanker Singham and Donna Hrinak, Poverty and Globalization, The National Interest, Winter 2005/6

C. Stricter Enforcement (and Increasing Scope) of U.S. Antitrust Laws under the Foreign Trade Antitrust Improvements Act

Current U.S .law enables the U.S. antitrust agencies to look at anti-competitive behavior which takes place abroad but which has effects in the U.S. market. More rigorous enforcement of these laws when dealing with private anti-competitive practices is required, but the law should also be applicable to public sector restraints on trade that are anti-competitive.

D. Stricter Enforcement (and Increasing Scope) of Section 337 of the Trade Act where Anti-Competitive Practices are Alleged/Competition Safeguard

Section 337 of the Trade Act enables the U.S. to block imports of products that have been produced as a result of intellectual property violations and anti-competitive practices. While 337 cases are regularly brought to block IP infringing products, few are brought under the head of anti-competitive practices, and even fewer are brought where those anti-competitive practices emanate from the public sector.

In the alternative, a competition safeguard could be fashioned which would be applied in cases of proven allegations of anti-competitive market distortions giving rise to trade advantages. The safeguard could be linked to the level of distortion (as measured by welfare effect), and would be reduced as the level of distortion was itself reduced.

E. Evaluation of International Agreements on Anti-Competitive Market Distortions

Ultimately, international disciplines are needed to address anti-competitive market distortions. The outlines of such an agreement are already in place with certain provisions of existing WTO agreements (e.g., Article IX, GATS, Article XVII, GATT, Reference Paper on Competition Safeguards annexed to the Basic Telecommunications Agreement). There is also useful material in the European Union's State Aids laws, and jurisprudence as well as some of U.S. Free Trade Agreements. The current competition chapter being negotiated as part of the Trans-Pacific Partnership Agreement represents an excellent opportunity to advance competition policy disciplines that promote consumer welfare, rein in industrial policies, and discipline anticompetitive behavior of SOEs.

F. Technical Assistance

None of the above limits the importance and role of technical assistance. The U.S. government already provides extensive technical assistance to China with respect to the AML, including via a landmark training program initiated by the U.S. Trade and Development Agency (USTDA), with strong support from the U.S. private sector. The initiative has brought together an interagency steering committee comprised of the DOJ, the FTC, the DOC, and USTR to develop a series of training modules for China's AML authority on the U.S. experience in implementing antitrust law in a manner that promotes competition, as opposed to protecting competitors, and advances consumer welfare. The

U.S. Chamber of Commerce has been honored to serve as the private sector liaison to the interagency steering committee. To date, the interagency, in collaboration with the private sector, has conducted seven training programs in China under the initiative, with an eighth scheduled for this fall.

However such technical assistance is provided in the same way that the U.S. provides technical assistance to any country with a new competition agency. While the technical assistance program is to be commended, the U.S. government should be more pro-active in the selection of key topics for technical assistance. It should be recognized that technical assistance is currently being provided by a number of countries whose competition policy is not necessarily guided by economic welfare concerns. Technical assistance should be focused on (i) competition advocacy; (ii) economic principles of competition implementation and enforcement; (iii) unilateral conduct; (iv) interface with IPR and standards; (v) merger control. However, in each of these areas, a significant part of the training should be devoted to the fundamental economics that underpins the legislative framework.

V. Conclusion

The U.S. Chamber of Commerce recognizes that promulgation of the AML is only the first step in China's effort to establish a comprehensive, nationwide competitive market place, where business competition on the merits determines winners and losers. We look forward to continued engagement with Chinese authorities and are committed to sharing the U.S private sector's experience in the area of antitrust.

We also look forward to further clarification concerning the AML's application in certain key areas, such as substantive rules against anticompetitive conduct, substantive standards for administrative monopolies, procedures for reviewing transactions on both competition and national security grounds, enforcement mechanisms, defining abuses of intellectual property rights, and penalties.

The U.S. Chamber sincerely hopes that China's competition authorities will focus on modern economic principles and prevailing international practices when applying the new law. We will be observing with interest how the law is put into practice and look forward to continuing to support the government's moves to develop its competition-law system.