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Obama Uses Bilateral, Multilateral Fora To Push China On Currency, IPR

President Obama highlighted growing U.S. impatience with the slow pace of Chinese action to address key U.S. economic priorities such as currency undervaluation and lax intellectual property protection during last weekend's bilateral meeting with Chinese President Hu Jintao, according to senior White House aides and Obama's public comments.

The United States and other countries "understandably feel that enough is enough" when it comes to China delaying the steps its leaders say they want to take to shift their economy away from export dependence toward more reliance on domestic consumption, Obama said on Nov. 13.

"The problem is, is that you've got a bunch of export producers in China who like the system as it is, and making changes are difficult for them politically," Obama said. "I get it. But the United States and other countries, I think understandably, feel that enough is enough."

In his Nov. 12 bilateral meeting with Chinese President Hu Jintao, Obama pressed his counterpart on "both the currency issue and on rebalancing and domestic demand," said Deputy National Security Advisor for International Economic Affairs Mike Froman. The meeting took place on the margins of a leaders' summit of the Asia-Pacific Economic Cooperation (APEC) forum.

Obama "made it very clear that the American people and the American business community were growing increasingly impatient and frustrated

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Industry Groups Urge Improvements To China's Patent Enforcement System

Industry groups including the Pharmaceutical Research and Manufacturers of America (PhRMA) are urging the Obama administration to press China to make specific improvements to its patent enforcement system in order to allow U.S. companies to better defend themselves in cases of patent infringement.

In comments submitted to the U.S. Patent and Trademark Office (USPTO) on Nov. 11, PhRMA called, among other things, for China to make it easier for patent holders to obtain a preliminary injunction from Chinese courts that would prevent the manufacturing, use or sale of the product on which a patent violation is alleged.

PhRMA also said China should make it easier for a patent owner to obtain damages in patent infringement cases, as well as enact a comprehensive "evidence law" that would establish national standards for the collection and weighing of evidence by courts in such cases.

The lack of clear standards and guidelines for court decisions on evidence was also highlighted by the Motor and Equipment Manufacturers Association (MEMA), which represents motor vehicle parts makers. "MEMA encourages the U.S. PTO to request that Chinese courts rely on clear standards and guidelines in making decisions," the group said in comments submitted on Nov. 4.

Both groups detailed the shortcomings of China's patent enforcement system in five problem areas flagged by USPTO in an Oct. 17 *Federal Register* notice requesting public comment on this issue (*Inside US-China Trade*, Oct. 26). USPTO is planning to publicly release these comments today (Nov. 16).

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USCBC: IPR Deliverable, Focus On Investment Likely at Next Week's JCCT

New Chinese moves to bolster the protection of intellectual property rights (IPR) are likely to emerge as a principal deliverable at next week's annual cabinet-level meeting of the Joint Commission on Commerce and Trade (JCCT), a top U.S. business leader predicted yesterday (Nov. 15).

China may reveal details of its decision to set up a nationwide office under the auspices of its ruling State Council — announced in broad terms by Premier Wen Jiabao on Nov. 9 — in the context of the Nov. 20-21 JCCT that will be held in Chengdu, China, according to US-China Business Council President John Frisbie.

The new office announced by Wen "appears on the surface" to respond to demands by the Obama administration and U.S. business representatives made since the last JCCT in December 2010 that China set up a permanent IPR anti-piracy campaign led by a national office established at the State Council level, Frisbie said. But it also seems to respond to their call for tougher penalties, including the use of criminal penalties, he said.

Wen's announcement also appears to indicate that protection of IPR

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Alliance Study Says Major Shift In Manufactures Trade Is Underway

A new study predicts that the continuation of current trade policies will lead China to sell a quarter of all manufactured exports by 2015, with the United States' share falling to 10 percent. This shift, from the 20 percent Chinese share and 13 percent U.S. share in 2010, will lead to a massive loss of U.S. jobs and production, according to the study by economist Ernie Preeg of the Manufacturing Alliance/MAPI.

"A \$1 billion trade deficit, based on value-added per worker, is equated to a loss of 4,000 to 10,000 jobs," Preeg said in a statement accompanying the release of *A Decade Of Transformation In World Trade*. "Thus, the \$80 billion increase in the deficit in 2010 meant a loss of 320,000 to 800,000 jobs, and the projected \$50 billion increase in the deficit in 2011 (from \$425 billion to \$475 billion) means an additional loss of 200,000 to 500,000 jobs."

Preeg cited four "key issues" that he predicted will trigger "basic changes in the current policy course." They are: the adverse trade impact on the U.S. manufacturing industry, "mercantilist" exchange rate policies, the proliferation of discriminatory bilateral trade agreements, and "the transition from the dollarized global economy."

The MAPI analyst said "strong, forward-looking economic leadership" is needed to avoid the "disruption" of international trade and investment.

PIIE: RMB Now Less Undervalued Versus U.S. Dollar, But Not Against Other Currencies

China's currency has appreciated against the dollar by about 7.7 percent in 2011 so far, bringing the undervaluation of the renminbi (RMB) down from 16 percent in April 2011 to 11 percent in late October, according to the latest exchange rate analysis conducted by economists at the Peterson Institute for International Economics (PIIE).

But the bilateral undervaluation of the RMB against the dollar still amounts to 24 percent, according to the Nov. 11 PIIE policy brief *The Current Currency Situation*, because that is the rise in the RMB that would be required to achieve multilat-

eral equilibrium if all currencies were to move to their fundamental equilibrium exchange rates (FEERs).

According to authors William Cline and John Williamson, the U.S. dollar remains overvalued by about 9 percent, the same as it was back in April. Meanwhile, Mexico's currency, the peso, is now even more undervalued than the RMB, they write.

Although China's official exchange rate policy is to float the RMB against a basket of currencies, "[i]n practice, however, the authorities appear to have pursued a crawling peg against the dollar, with little regard to other major currencies," the paper states. Whereas there has been a 5.2 percent nominal crawl against the dollar and a 2.5 percent gain due to differential inflation, "[i]n contrast, it is evident ... that there is no corresponding steady path of the yuan against the other major international currencies," the policy brief concludes.

Bryson, Kirk To Hold Beijing Meetings Prior To Chengdu JCCT

Commerce Secretary John Bryson and U.S. Trade Representative Ron Kirk will meet in Beijing with U.S. firms doing business in China on Nov. 19, and Bryson will discuss with Chinese business representatives the administration's *SelectUSA* initiative that promotes foreign investment in the U.S., prior to departing for the Joint Commission on Commerce and Trade (JCCT) annual session that begins the evening of Nov. 20, according to a Commerce press release.

Bryson and Kirk will hold a Nov. 19 roundtable discussion with a group co-hosted by the American Chamber of Commerce in Beijing and the U.S.-China Business Council. Bryson also will tour "made-in-America airport vehicles" at the Beijing airport prior to heading to the JCCT session with Chinese Vice Premier Wang Qishan (see separate story).

In Chengdu on the evening of Nov. 20, Kirk and Bryson will attend a reception and dinner with Wang and other members of the Chinese delegation, and on Nov. 21 will take part in the JCCT negotiations, upon whose conclusion there will be a U.S. delegation press conference featuring Kirk, Bryson and U.S. Agriculture Secretary Tom Vilsack, according to the Nov. 15 release.

Observers Predict 'Foreign Official' Clarification In 2012 FCPA Guidance

A senior Department of Justice (DOJ) official last week announced that the agency intends to roll out detailed guidance for businesses on complying with the Foreign Corrupt Practices Act (FCPA) sometime next year that will be "as comprehensive as possible."

In a Nov. 8 speech at the 26th National Conference on the FCPA, Assistant Attorney General Lanny Breuer indicated that the decision to issue new guidance on the law came after several meetings with members of the business community over the past year, including a business roundtable discussion conducted in July.

Reacting to the comments from Breuer, who heads up FCPA enforcement in DOJ's Criminal Division, two attorneys who work on FCPA issues speculated that this guidance would clarify the definition of the term "foreign official," to whom bribes are prohibited under the statute. Businesses, led by the U.S. Chamber of Commerce, have long sought clarity on the definition of the term, particularly over whether it should apply to employees of state-owned enterprises (SOEs).

The term's perceived ambiguity is especially troublesome for businesses pursuing contracts in China, where the line between government and commerce is difficult to pinpoint.

Martin Weinstein, an FCPA attorney for the law firm Wilkie Farr & Gallagher and a former DOJ prosecutor, speculated that last week's announcement, which came as a surprise to many FCPA lawyers, could constitute a DOJ effort to make congressional amendments to the FCPA "either unnecessary or superfluous."

Weinstein and DLA Piper FCPA attorney Brian Chilton speculated that the DOJ's forthcoming guidance would address the foreign official issue, and Weinstein suspected it would specifically clarify how the term should apply to SOEs.

The FCPA defines a foreign official as "any officer or employee of a foreign government or any department, agency, or instrumentality thereof," but does not further clarify that term.

Of particular interest to businesses is whether employees of state-owned enterprises (SOEs) are considered "foreign officials" under the FCPA. This issue has come up in several court cases this year, and in response judges in those cases have issued lists of "non-exclusive" characteristics of SOEs whose employees would be considered "foreign officials."

Weinstein said DOJ could use these court findings in order to more definitively address this issue in its guidance.

Businesses have also sought clarity on other aspects of the 1977 law. They believe that DOJ interprets the law too broadly, and also argue that the lack of clarity on how the law will be interpreted by DOJ hampers business decisions. The U.S. Chamber of Commerce has even pushed for legislative reform to make the FCPA work better for businesses.

DOJ has long resisted congressional efforts to alter the FCPA. In his Nov. 8 speech, Breuer reiterated that DOJ has "no intention whatsoever" of supporting reform proposals that it believes would weaken the FCPA, as such proposals would send "exactly the wrong message" to the rest of the world.

When explaining why DOJ is moving forward with such guidance now, Breuer also noted that a working group under the Organization for Economic Cooperation recommended in October 2010 that the United States should pursue "additional opportunities" to raise awareness within the business community on bribery prevention.

Breuer declined to expand on what would be included in the DOJ's new guidance, saying that he hoped it would be a "useful and transparent aid" for businesses.

Weinstein flagged two other "frequent points of debate" regarding interpretation of the FCPA that could potentially be addressed within the guidance. The first is greater clarity on the "due diligence" companies and individuals need to take to prevent bribery. The second is an explanation of what falls under appropriate gifts, travel and entertainment when courting potential business partners.

Regarding the "due diligence" issue, the Chamber has pressed for the addition of a full compliance defense to the FCPA law, which would enable companies to fight the imposition of criminal liability for FCPA violations if individual employees circumvent compliance measures.

Weinstein said that a full compliance defense, which exists in the U.K. Bribery Act that took effect earlier this year, would require Congress to amend the FCPA statute. But Chilton said DOJ could clarify the extent to which a compliance program would factor into DOJ enforcement decisions under the FCPA.

Under the DOJ's Principles of Prosecution of Business Organizations, federal prosecutors will take into account the strength of a business's compliance program during its investigation. However, in its guidance DOJ could clarify the specific extent to which an anti-bribery compliance program will be taken into account when looking at FCPA matters, Chilton explained.

Businesses hope that the forthcoming DOJ guidance will be more useful than what DOJ has issued thus far. The 1988 amendments to the law required DOJ to provide guidance on its FCPA enforcement policy, which it did through publication of the "lay person's guide" to the FCPA in the late 1990s.

But this guide is of limited usefulness for businesses, as it only outlines general explanations of compliance responsibilities and compiles various DOJ "opinion releases" that were issued in response to specific questions from companies

on whether their activities may run afoul of the FCPA.

The DOJ's opinion release procedure involves the agency fielding specific questions from businesses on compliance with the law based on real-world business examples. One FCPA lawyer indicated that DOJ typically issues 3-4 opinion releases per year, and that they are only binding to the business that requests them.

While helpful for businesses, neither the guide nor the opinion releases themselves offer answers to key questions of businesses on how DOJ interprets the FCPA, sources said.

The U.S. Chamber of Commerce's Institute for Legal Reform last week praised Breuer's announcement, but also reiterated their call for legislative action.

Lisa Rickard, President of the Institute for Legal Reform, said in a statement that Breuer's comments were "a welcome acknowledgment of what we in the business community have long said — DOJ's current FCPA enforcement practices need clarification and modernization."

Rickard added that the Chamber believes that strong guidance from DOJ "could be the foundation for lasting legislative improvements to the bill. Rep. Jim Sensenbrenner (R-WI) in June said he would introduce FCPA reform legislation sometime this fall, but has failed to do so yet.

Another private-sector source indicated that Sens. Amy Klobuchar (D-MN) and Mike Crapo (R-ID) are also crafting a bill to amend FCPA.

The call for FCPA reform in the business community has grown louder over the past several years as DOJ's enforcement of the law has grown more stringent. During his speech, Breuer said DOJ has been "vigorously enforcing" the law, and cited the fact that there have been four FCPA trials in 2011 so far, more than any previous year.

He also touted the 15-year prison sentence handed out to former Terra Telecommunications Corp. President Joel Esquenazi for illegal bribes to a telecommunications firm in Haiti. That is the longest sentence ever levied in an FCPA investigation.

Breuer welcomed China's enactment of its own law to curb bribery to foreign government officials earlier this year. In July, several administration officials traveled to Beijing to gain greater clarity on how stringently the Chinese will enforce the measure and how they will define its key provisions (*Inside US-China Trade*, Aug. 10).

While Breuer indicated that this process has a long way to go, he said that DOJ is "very excited that the Chinese are taking the issue of foreign bribery and bribery in general so seriously" and that they look forward to "partnering with them and addressing this globally."

Business Urges China Patent Reforms . . . begins on page one

USPTO intends to use the comments as a basis for a report detailing the challenges faced by U.S. innovators and recommendations for improving the Chinese patent enforcement system, according to the FR notice. Once these problems are identified, the U.S. government would then seek to address them with Chinese authorities.

One industry source said the comment request is a positive step because such an effort has never before been undertaken by the U.S. government. The current initiative is being spearheaded by the White House Intellectual Property Enforcement Coordinator Victoria Espinel. While the U.S. has already had contacts with Chinese government officials on patent enforcement issues, it has not yet made specific recommendations to China, this source said.

This source speculated that Chinese government officials will likely be willing to listen to U.S. suggestions and evaluate them seriously, but added that it is less clear whether China would actually be open to modifying its system. Another challenge for the U.S. and industry groups is adequately understanding how the Chinese system works in order to be able to translate their recommendations into practical changes that China can make, this source said.

The five problem areas identified by USPTO in conjunction with U.S. industry input are: the collection and preservation of evidence in Chinese courts; obtaining injunctions and damages; the acquisition and enforcement of utility model and design patents; the enforceability of court orders; and administrative patent enforcement.

On the issue of collection and preservation of evidence, PhRMA argued that a new evidence law is needed because China has not yet implemented a comprehensive set of evidentiary rules. "The absence of official evidentiary standards leads to considerable variation in approach from court to court, particularly with respect to determining the relevance, sufficiency, and weight of evidence," PhRMA said.

It also cited the lack of adequate discovery procedures as an underlying problem with the evidence collection process. For instance, in the U.S. system, there are discovery procedures that establish very clear rules regarding exchange of information between the plaintiff and the defendant, and also set out penalties if one side does not provide adequate information, according to the industry source.

PhRMA said a new national evidence law could also help resolve two additional hurdles that patent owners face in the evidence collection process, which relate to expert testimony and testing of potentially infringing products. For instance, courts do not always permit expert testimony and if they do, the courts themselves ordinarily designate these witnesses, who are often from state-owned institutions. Chinese courts generally do not accept the results of testing of

infringing products performed by foreign companies, according to PhRMA.

In addition, both PhRMA and MEMA complained about onerous technical requirements relating to presentation of evidence, including that evidence obtained in foreign countries must be notarized in that country and legalized by a Chinese embassy and consulate, which can be difficult to arrange, they said. In addition, PhRMA pointed out that documentary evidence in a foreign language must be translated by a court-authorized translation company in China and introduced by a live witness, constituting an additional barrier.

On the issue of injunctive relief, which one source said is the most important issue for the pharmaceutical industry, PhRMA recommended that China revise its system to give courts more time to rule on preliminary injunctions in cases involving “complex technologies.” Current Chinese patent law requires courts to rule within 48 hours (or 96 hours if an extension is granted), and “this time frame is typically insufficient for a complex pharmaceutical patent infringement case,” PhRMA said.

PhRMA also recommended that China modify its standards for the issuance of a preliminary injunction. Currently Chinese courts require that patent holders prove both an infringement and irreparable harm in order to win such an injunction. PhRMA argues in its comments that the threshold should be lowered from infringement to “likelihood of success on the merits,” which is the standard used in the U.S., in part because the difficulties surrounding the evidence collection process make it hard to show infringement.

PhRMA also argued that China should clarify what constitutes irreparable harm, given that China to date has no published or precedential guidelines governing the requirements for proving irreparable harm.

All of these factors have made it difficult for pharmaceutical companies to successfully win preliminary injunctions in China’s courts. “Although preliminary injunctions are theoretically available in China, our members’ experience has been that they are rarely granted,” PhRMA said in the comments.

MEMA also noted that while preliminary injunctions are available, Chinese courts often refuse to issue such orders, instead opting for a full court review of all evidence. “This lengthy and academic process is typical of Chinese courts and inhibits aggressive patent protection which often relies on quick court orders,” MEMA said.

On damages, PhRMA argues that they are often difficult to obtain and, when obtained, do not sufficiently compensate patent owners for their financial losses or provide adequate deterrence. While Chinese patent law in theory permits four methods of damages calculation, the courts in virtually every case revert to the fourth method, which caps damages at 1 million RMB, or roughly \$156,000, according to PhRMA.

PhRMA argued that improvements in the courts’ evidence-gathering standards would help it access the other three methods, which do not have damages caps, and also recommended that the fourth method have the cap removed. In addition, China should consider other additional theories for calculating damages, such as enhanced damages for willful infringement and inclusion of attorney fees, both of which are used in the U.S. system.

One issue that is not a priority for the pharmaceutical industry but was highlighted by MEMA is the ease of obtaining utility and design patents in China. In its comments, MEMA argues that potential violators can easily obtain these patents, which may infringe on other companies’ intellectual property, given that no substantive examination is required prior to the patents being granted. Such patents can be obtained in 12 to 18 months, compared to the time frame of about five years that it takes to receive a standard patent, according to MEMA’s comments.

While foreign IP owners can challenge those registrations with China’s patent office, “the time frame to reach resolution of such cases takes six to 12 months, which provides the registrant a tactical advantage,” MEMA argued.

— Matthew Schewel

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APEC Leaders Announce Broad Agreement To Cut Tariffs On Green Goods

Asia-Pacific leaders this week announced a broad agreement to slash tariffs on environmental goods to 5 percent or less by 2015, a move that analysts said represented a positive step given China's opposition to trade liberalization in this sector. But observers also acknowledged that the deal puts off until next year the historically difficult task of hammering out a list of goods on which to cut duties.

The so-called "Honolulu Declaration" by leaders of the Asia-Pacific Economic Cooperation (APEC) forum following their Nov. 12-13 summit in Hawaii commits them to "work to develop an APEC list of environmental goods that directly and positively contribute to green growth and sustainable development objectives."

On these goods, leaders said they are "resolved to reduce by the end of 2015 our applied tariff rates to 5 percent or less, taking into account economies' economic circumstances, without prejudice to economies' positions in the [World Trade Organization]," according to the declaration.

This commitment appears to roughly reflect the U.S. proposal on green goods within APEC, which was outlined by U.S. Trade Representative Ron Kirk prior to the Honolulu summit. But it was not clear whether the U.S. had initially sought a more aggressive timeline or put forth a specific list of goods.

USTR did not respond to a request for comment by press time.

Joshua Meltzer, a fellow at the Brookings Institution who focuses on international trade, said that while the language appeared to be relatively strong for APEC — which does not generate binding agreements — it likely represented a compromise given China's public resistance to lowering duties on environmental goods in the context of APEC.

Meltzer also noted that agreeing on a list of green products has been difficult in the WTO Doha round negotiations, which are badly deadlocked. "Compiling a list of goods has bedeviled more or less everyone," he said in an interview with *Inside US-China Trade*.

Reducing tariffs may also have less of an impact on the U.S. than it would for countries like China. According to Meltzer, U.S. duties on many green goods already sit at 5 percent or below, while China's are significantly higher.

Chinese Assistant Commerce Minister Yu Jianhua said in a Nov. 7 briefing with journalists on APEC that liberalization of environmental goods and services should be "realistic, move forward steadily, and be linked with WTO negotiations," according to an official summary of his remarks. Another official criticized the U.S. proposal for APEC outright as too ambitious for developing economies, according to press reports.

Michael Levi, senior fellow for energy and the environment at the Council on Foreign Relations, said that even if the APEC countries can agree on products on which to cut tariffs, U.S. green energy companies looking to ship to China would still face significant non-tariff barriers (NTBs), such as discriminatory procurement policies.

"It doesn't matter if the tariffs are 5 percent or 50 percent if the Chinese governments tells [state-owned enterprises] only to buy from domestic suppliers," Levi said. China will likely continue to resist tariff cuts because it may fear that agreeing on duties would set a precedent for the U.S. and other countries to pressure it on NTBs, Levi said.

He interpreted China's argument that the U.S. proposal is too ambitious for developing countries as tactical, and said its position on the issue should be viewed in the context of broader Chinese industrial policy.

"There is a long-standing debate on the wisdom of protective barriers for infant industries," Levi said in an interview. "The reality is that developing countries benefit enormously from open markets in developed countries."

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would be made part of local officials' personal evaluations, which Frisbie said is a proposal that has been pushed by the U.S. government and private sector for several years.

Chinese state news service Xinhua reported on Nov. 9 that the State Council executive council meeting that set up the new office "highlighted demand for stricter supervision over manufacturers and inspection over the market of food, medicine, cosmetics, agricultural materials, construction materials, machinery and electronics, and auto parts."

It also said that Chinese police had been "urged" to set up a "cross-region law enforcement cooperative system to facilitate the investigation into cases of IPR infringement and fake products."

He said USCBC's Beijing office has been trying to ferret out the details of the State Council's new "leading group" being set up on IPR enforcement. It has learned that the group has already held its first meeting and that it will maintain its permanent office in the Commerce Ministry (MOFCOM).

USCBC is being told the State Council decision document creating the group will be released soon, but Frisbie said he suspects the IPR announcement is a "lead-in" to the JCCT and a "pre-signal on a JCCT deliverable." USCBC is made up of about 240 U.S. companies with operations in China.

He also said he anticipates that China may outline positive actions at the JCCT related to ensuring that pirated software is not used in government institutions.

Frisbie said another major JCCT focus from the U.S. delegation, which is led by U.S. Trade Representative Ron Kirk and Commerce Secretary John Bryson, is likely to be Chinese curbs on foreign investment. The U.S. is particularly

focused on continued foreign ownership caps in specific sectors and product areas in the draft foreign investment guide that is pending approval at the National Development and Research Commission (NDRC), he said.

Separately, Commerce Undersecretary for International Trade Francisco Sanchez on Nov. 14 told reporters the U.S. side would “continue to focus” during next week’s JCCT on “innovation, IPR protection, [and] access to key markets, both on the trade and investment side.”

Frisbie said Chinese attempts to equate the difficulties its firms have investing in the U.S. with the problems faced by U.S. firms trying to invest in China are out of proportion.

“Every [foreign] investment in China requires a government approval,” he stressed. “That’s not the case in the U.S.”

Also to be expected, Frisbie said, is continued U.S. follow-up on China’s implementation of President Hu’s January pledge to delink China’s innovation policies from its government procurement preferences by eliminating the use of so-called indigenous innovation accreditation lists by central and sub-central government agencies.

Chinese priorities are likely continue to center around the need for speedier and deeper U.S. export control reforms to facilitate more high-tech sales to China, and improving the U.S. investment climate for Chinese investments.

Frisbie also highlighted three “miscellaneous” issues that he said should be ripe for resolution at the JCCT.

One would be for China to lift its cap on the importation of foreign films, which currently allows in no more than 20 movies per year. The import ban is both a market access and an intellectual property issue, Frisbie said, because “if you can’t get legitimate product to the market you cede the market to the pirated versions.”

The U.S. and Chinese commercial leaders in the JCCT should resolve the “visa issue” that causes delay and difficulties for U.S. businesses operating in China when they seek to bring employees and potential partners to the United States.

This could be done if both sides would agree at the JCCT to grant “reciprocal 5-year multiple-entry visas going both ways,” which he said is “an idea whose time has come.” These types of visas could be granted in a way that takes into account and does not compromise U.S. “security concerns,” he said.

Frisbie also called for JCCT action to “restore” full participation by the White House Office of Science and Technology Policy (OSTP) in the bilateral Innovation Dialogue the two sides have been holding. OSTP participation in bilateral activities with China was forbidden in an appropriations bill approved by Congress and signed into law by President Obama last April, but OSTP has continued to take part in those meetings, citing a Justice Department opinion that says a congressional prohibition on executive branch foreign diplomacy of this sort is unconstitutional (*Inside US-China Trade*, Nov. 9).

In a Nov. 3 letter, Rep. Rick Larsen (D-WA), a co-chair of the U.S.-China Working Group, urged the chairman and the ranking member of the House Appropriations Committee to oppose the insertion of similar language in any upcoming fiscal 2012 appropriations bill.

“Cutting off funding for these types of discussions, such as the U.S.-China Innovation Dialogue, severely curtails the ability of the U.S. government and the private sector to steer China toward innovation policies that maintain open markets and protect intellectual property rights (IPR) in China, regardless of their origin,” Larsen wrote to Reps. Hal Rogers (R-KY) and Norm Dicks (D-WA). “This hurts American interests in China, and makes it harder for U.S. companies to enter the Chinese market and sell their products.”

The Chinese leadership’s long-predicted but yet-to-be-implemented efforts to redirect the economy toward greater domestic demand and consumption, as outlined in the 12th Five-Year Plan, are likely to be spelled out in more detail in early December at the annual Central Economic Work Conference, Frisbie predicted.

Just as last December’s conference signaled this year’s macroeconomic priority of taming inflation without unduly curbing growth, the coming conference should make more concrete how China seeks to rebalance its economy away from an overreliance on exports, he said.

China made the most explicit multilateral commitment it has made to date toward rebalancing at the G-20 summit that concluded earlier this month in Cannes, France (*Inside US-China Trade*, Nov. 9). — *Scott Otteman*

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with the state of change in the China economic policy and the evolution of the U.S.-China economic relationship, and pointed out the critical importance of working together to try and resolve outstanding issues and to make progress on these longstanding concerns in the economic relationship,” according to Froman.

Obama also raised “the broader economic issue around intellectual property rights protection, indigenous innovation, the role of state-owned enterprises, the role of subsidies, and very much underscored the importance we put on creating a level playing field for our American firms and business, workers, and farmers to compete with China in the global marketplace,” Froman said in a Nov. 12 briefing for reporters covering the APEC meeting in Hawaii.

In the session with Hu, which focused in large part on economic issues, Obama “made it very clear that the American people and the American business community were growing increasingly impatient and frustrated with the state of change in the China economic policy and the evolution of the U.S.-China economic relationship,” Froman said.

Obama further “pointed out the critical importance of working together to try and resolve outstanding issues and to make progress on these longstanding concerns in the economic relationship,” he said.

Froman said Obama also pointed out that “over the last couple of years there has been more and more concern and frustration on the part of the American business community about their treatment in China and their desire for China to take further action.”

Business complaints, “plus increasing frustration in the American public more generally ... has created a context for conveying to the Chinese leadership the importance of getting these issues addressed sooner [rather] than later,” Froman indicated. He said that was Obama’s message to Hu.

Deputy National Security Council Senior Director Daniel Russel added that Obama “made very clear” to Hu his “high expectations” that the Chinese should deliver “concrete and visible results from the constructive partnership that the two leaders have worked hard to develop.”

At the same time, however, Obama on Nov. 12 told a group of business leaders gathered for the APEC summit that “[w]e should be rooting for China to grow, because not only does that then present an enormous marketplace for American businesses and American exports, but to see so many millions of people, hundreds of millions of people, lifted out of poverty is a remarkable achievement.”

Although Obama said he is “sympathetic” to the challenges of poverty and rapid urbanization facing China’s leaders, the “bottom line” is that the U.S. “can’t be expected to stand by if there’s not the kind reciprocity in our trade relations and our economic relationships that we need,” he told the business leaders.

White House aides underscored that the administration is using not only bilateral pressure, but also multilateral fora including APEC, the G-20 and the Trans-Pacific Partnership regional trade negotiations, as part of a multi-faceted strategy that takes aim at China’s policies that have taken advantage of insufficiently robust World Trade Organization rules to discriminate in favor of its own firms.

Even as President Obama is raising issues such as currency undervaluation and IPR piracy with China bilaterally, Froman said, “it’s precisely these types of issues that we’re addressing through the APEC agenda and through the TPP, where we’re able to work with countries that embrace standards on innovation policy, on IPR, to have high-quality trade relationships going forward.”

He said the administration is also “working with other nations who are with us on these issues to forge a trade agreement to the TPP that will be a win-win outcome for the United States and the other nations involved — and through the APEC agenda and the G-20 as well, so that we’re raising the standards of the ways that countries interact on these issues.”

That includes China’s innovation policy and the imposition of appropriate disciplines on the behavior of state-owned enterprises (SOEs), he noted, as well as with respect to “regulatory coherence and good regulatory practices and how that could eliminate barriers to trade,” including with respect to environmental goods and services exports.

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value-added help from ExportNow, such as the placement of banner ads and search engine optimization. But other firms that more cautiously take a “toe in the water” attitude toward testing the China market may simply seek to send an initial product to China and have it put up on the Taobao web site.

Lavin said Export Now has a close working relationship with Taobao’s leadership, he said, which he views as critical to making the enterprise succeed.

He also said Export Now will eventually be able to help secure Chinese regulatory approvals for four categories of products that require separate licensing and approval in China: food, pet food, wine and cosmetics. Currently, Export Now is not in a position to help with several of those categories of goods, he acknowledged.

ExportNow is set up as a U.S. company with a wholly owned Chinese subsidiary and currently employs about five employees in China and another five in the United States, Lavin said in an interview.

All customer feedback data it receives in China will be shared with the U.S. producer of a given product, Lavin said. This may not include the location of the purchaser, but it will include comments that are made about the products by customers online.

Chinese wholesalers and distributors can also purchase products in bulk from Taobao, he noted.

Chinese consumers are “more digitally oriented than we’d see equivalent activity in the United States,” Lavin said. “The United States has a better developed mall infrastructure [and] a higher car ownership density, but for many middle class Chinese consumers, e-commerce is the preferred channel.”

Ex-Commerce Official Unveils China Online Platform To Boost U.S. Exports

A former top Commerce official this week launched a company that aims to help small and medium sized U.S. businesses break into the Chinese market by providing them with comprehensive logistical support and online customer access so that it becomes as easy and as profitable to sell online in China as it is in the United States.

Export Now, which is headed by ex-Commerce undersecretary for international trade Frank Lavin, provides U.S. companies with a platform for getting their products into China and having them posted for sale in Chinese on the largest e-commerce site in the world, China's Taobao, which serves 370 million registered Chinese customers.

Under the business model, U.S. manufacturers, sellers and re-sellers ship their goods to an Export Now depot in Long Beach, CA. Export Now then consolidates shipments into containers that are shipped by sea to Shanghai, where they are stored in a bonded warehouse. Export Now takes care of proper labeling, payment of tariffs and customs duties, translation of product information for posting on the T-mall website, and other logistical requirements.

To gain access to this sales outlet, U.S. companies must pay a \$3,000 annual sign-up fee to have their product posted for one year on Taobao's T-Mall.com. They also pay an additional transaction fee when they use the service to send a shipment to China, which Lavin estimated would average about 15 to 20 percent of the purchase price.

That transaction fee covers customs duties, translation, shipping, Taobao's posting fees, and other logistics-related pass-through costs, he said. But because there will be no payments to wholesalers, retailers or distributors, the U.S. firm can still sell its product at a price point that will be equivalent to sales made in the United States, according to Lavin. There is an ongoing "replenishment cost" that will be charged in a "pay-go" manner as a product's inventory drops and must be replaced, he said, "but again that's no different conceptually than anything you would be doing domestically."

Export Now also offers a range of value-added services, including advertising and marketing support and search engine optimization services, he said in an interview after the firm's Nov. 14 Washington, DC launch.

Commerce Undersecretary for International Trade Francisco Sanchez, who participated in the launch, said Export Now "makes selling to these kinds of markets easier and more cost effective, which are two clear ingredients for success."

He highlighted it as the type of project that can help the administration achieve its National Export Initiative goal of doubling U.S. exports by the end of 2014.

Two reasons that consumers have been reluctant in the past to purchase online from other countries' e-commerce platforms have been inordinate shipping costs and depressed consumer confidence that they can return foreign merchandise or service persons will be available if there is a problem, Lavin said.

Export Now has "fixed both of those problems," he said.

Ninety-eight percent of traditional, single-product-shipment logistics costs are eliminated by shipping wholesale rather than retail, shipping by sea rather than by air, and by consolidating shipments into full-container loads rather than shipping less-than-full container loads. "Instead of a \$30 shipping fee, it becomes a \$1 shipping fee, so you have more or less the same price point as you have in the U.S.," Lavin said.

Consumer confidence is boosted by having timely sales and shipping from within China using a local-language platform already used by millions of Chinese consumers, he noted. It also helps that products purchased through Taobao can be returned in China.

"Most Americans don't fully register that there are 370 million registered customers on [Taobao's] T-Mall and that it generates \$60 billion in sales," said Lavin, who also served as U.S. ambassador to Singapore during the Reagan administration. "So it's not just the largest e-commerce platform in China, but it's the largest in the world, and you could say it's the largest phone book in the world or the largest billboard in the world."

Although Export Now is in business to encourage any and all U.S. exports, Lavin nonetheless said he recommends that companies using his service "try not to compete on price" in China.

"It's gotta be a brand or a product or an attribute where we think there would be market traction," he said. "Whether it's Apple, or i-Pad or Levi's jeans or Procter & Gamble products, these are products that are very well respected by Chinese consumers, and no doubt there are many other products we know of in our home market here but they just haven't reached China yet."

Regarding intellectual property protection, "the best defense is a good offense," he said. "The single most effective step you can take to combat that is to get into the market as aggressively as you can.... Chinese consumers are increasingly sophisticated and they want the authentic product, and I can tell you this: if your wife's birthday is next week and you told her you're getting her a phone, don't get her a knock-off — get her the i-Phone."

The translation of products' descriptive information for posting and customs purposes is done "by hand" by Export Now rather than being automatized, he said, because how products are presented is "vital to make it as easy as possible for the consumer to find [and] to make sure that a specific attribute is described in the right way"

U.S. companies' interest in using Export Now's value-added services will depend in large part on the particular firm's "philosophy," Lavin said.

Some firms that want to throw themselves into the Chinese market "with both feet in the water" are already seeking

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