

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

March 27, 2013

The Honorable Demetrios Marantis
Acting United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

Dear Ambassador Marantis,

As the deadline for publishing the results of the 2013 Special 301 Review approaches, and as evidence mounts that the Government of China actively engages in the cyber theft of the trade secrets of American businesses, we write to request that you consider designating China as a Priority Foreign Country under Section 182 of the Trade Act of 1974.

While the theft of trade secrets is not new, cyber theft is on the rise, and it allows trade secrets to be stolen on an unprecedented scale. In February of this year, Mandiant, an information security firm, published a report that linked cyber theft of trade secrets to the Government of China. Mandiant identifies a cyber theft organization staffed by hundreds, if not thousands, of people. Since 2006, the organization – which has adopted a variety of personas, including “Ugly Gorilla” – has compromised 141 companies in 20 major industries. It steals technology blueprints, proprietary manufacturing processes, test results, business plans, pricing documents, and partnership agreements. Once it infiltrates a victim’s network, it is able to maintain access for nearly a year, sometimes more. Mandiant estimates that the organization has stolen 6.5 terabytes of data from a single organization over a ten-month period.

Mandiant has linked this organization to the Chinese government. The report states that Mandiant’s “research and observations indicate that the Communist Party of China is tasking the Chinese People’s Liberation Army to commit systematic cyber espionage and data theft against organizations around the world.” Mandiant has also established a link to at least one Chinese state-owned enterprise (SOE): China Telecom. It looks very much as though the Chinese government is stealing our companies’ trade secrets and passing them along to their SOEs, and possibly other Chinese companies. It is difficult enough for our companies to compete with the endless massive subsidies and other industrial policies of the Chinese government but add trade secret theft into the mix and it is miraculous that our companies are able to compete at all.

The Administration has taken some commendable steps to address cyber theft. USTR's inclusion of a discussion of trade secret theft in the 2012 Special 301 Report was an important step forward. The Administration's launch of the Strategy on Mitigating the Theft of U.S. Trade Secrets earlier this year is also welcome. Both of these initiatives lay the groundwork for designating offending governments as priority foreign countries under Section 182 of the Trade Act of 1974.

Section 182 requires the U.S. Trade Representative to identify as "priority foreign countries" those countries that have the most onerous or egregious acts, policies, or practices that deny adequate and effective intellectual property rights. Typically, a country denies adequate and effective intellectual property rights by failing to stop private actors from engaging in the theft of intellectual property. China has already failed to take adequate steps to protect against theft of trade secrets. But recent reports take this much further: in the case of China, the government itself appears to be actively stealing the intellectual property of American businesses. And that theft – as well as China's failure to protect against such theft by others in China – appear to be a straightforward violation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, which requires WTO Members to protect trade secrets.

We have known for some time that the Government of China does not do enough to enforce the intellectual property of U.S. innovators in China. But government-sponsored theft of trade secrets would put China in an entirely different category. Given the evidence of this egregious conduct, the corresponding damage to our businesses, and the fact that China is in breach of its WTO obligations, we urge you to consider designating China a Priority Foreign Country for Special 301 purposes.

Sincerely,

Rep. Sander M. Levin
Ranking Member
Committee on Ways and Means

Rep. Charles B. Rangel
Ranking Member
Subcommittee on Trade
Committee on Ways and Means