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Ways and Means Subpanel Holds Digital Trade Hearing

The January 13 House Ways and Means Trade Subcommittee hearing on “Maintaining American Innovation and Technology Leadership” was wide-ranging and touched on the absence of protections abroad for United States intellectual property (IP), and issues related to the United States-Mexico-Canada Agreement (USMCA), artificial intelligence (AI), and digital service taxes (DSTs).

Chairman Adrian Smith (R-NE) opened the hearing by saying that compared to US policies, “Many of our trading partners lack similar innovation-friendly rules and often impose measures aimed at undermining American companies in order to advantage their own firms. The absence of adequate and effective protection for American intellectual property rights holders in export markets also significantly hinders the ability of US innovators to export and operate overseas, harming the economic interests of the United States. Similarly, discriminatory digital trade and tax measures seek to erode America’s competitive advantage.”

Ranking Member Linda Sánchez (D-CA) questioned the timing of the hearing when, she said, the focus should be on economic effects of the Administration’s tariffs. On the topic of the hearing, she said, “We have long supported strong copyright and intellectual property protections in our trade agreements, which have fueled American innovation. We have also fought to level the playing field for American companies competing abroad, including by opposing digital services taxes and other discriminatory measures.” At various points during the hearing, Democrats including Rep. Brendan Boyle (D-PA) focused on tariffs and asserted they have increased costs for consumer goods.

Witnesses:

- Andrei Iancu, Partner, Sullivan & Cromwell
- Anissa Brennan, Senior Vice President of Global Policy and Federal Affairs, Motion Picture Association
- Nigel Cory, Director, Crowell Global Advisors
- Dan Mauer, Government Affairs Director, Communications Workers of America

Iancu said reduced cooperation on IP policy has allowed other nations to adopt policies that disadvantage IP innovators. He said the USMCA joint review is an opportunity for the US to advance a model IP chapter for trade agreements that reflects today’s technological realities. Iancu further said three transformative areas of technology that are good examples of the need for US leadership on IP are: standards (like 5G and 6G), AI, and biotechnology. More generally, “By rebalancing our domestic intellectual property system through targeted legislative reforms, pressing foreign governments to raise their standards, supporting a robust ITC, and resisting efforts to weaken effective enforcement tools, Congress can help secure America’s economic future and global leadership,” Iancu said.



Brennan said the “US film, television, and streaming industry faces daunting barriers in many markets as key allies and trading partners seek to shift legacy media regulations onto the online marketplace, often in ways that blatantly discriminate against US content and the distribution platforms that local viewers crave.”

Cory testified that, “An AI-driven trade agenda requires protecting cross-border data flows; preserving non-discriminatory market access for cloud and AI services; resisting forced disclosure and de facto performance requirements; and promoting workable, innovation-supporting approaches to AI training data and IP that avoid turning AI development into a jurisdiction-by-jurisdiction licensing and localization exercise.”

In his testimony, Mauer lamented that, “Call center customer service representatives have repeatedly seen their jobs offshored, generally to countries where workers are denied their fundamental human rights and are paid too little to make ends meet.”

Q&A

During Q&A, Chairman Smith said the actions of the prior administration undermined the IP protections of the US. Iancu said the policies the US enacts must ensure there are robust IP rights which, at home and abroad, foster more innovation and investment, protect investment and innovation from attack, and enable trade.

Rep. Sánchez asked how developments in the digital economy have affected workers, including social media content managers, and how Congress could think through a just transition to AI that elevates workers. Mauer said the US doesn’t have any meaningful national policy on AI, which is a critical failure, and workers impacted by technology should guide solutions.

Full Committee Chairman Jason Smith (R-MO) asked about the most impactful commitments for protecting US IP that the Administration has secured and where there are gaps. Iancu said the decision by prior administration to waive IP rights during the pandemic was misguided. Anytime that someone thinks they should be waived, the impact on the economy should be understood, and that was not the case, he said.

Rep. Jimmy Panetta (D-CA) said the USMCA review is very significant and asked about the effects from an IP standpoint of the Administration’s suggestions about splitting the pact or walking away from it entirely. Iancu said the USMCA includes a robust IP chapter that is up for renegotiation and one of the key things that was negotiated, but not ratified, was the increase in regulatory data protection provided in Mexico and Canada to levels that approximate what we have in the US, including for biologics.

Under questioning from Don Beyer (D-VA) about tariffs, Mauer said the Administration’s trade and tariff policy is too chaotic to have a positive effect on US investment, saying companies will be hesitant to build factories given such unpredictability.

Film and streaming issues



Additionally, Rep. Sánchez said she was concerned to hear that President Trump wants to impose film tariffs and that, “While it’s true that some film and TV production jobs are being lost to overseas markets... I don’t happen to think slapping tariffs on is going to be the right approach.” She asked whether a tax incentive would be better to address these concerns.

Brennan said a federal film incentive would make a difference in locating production back in the US. Other nations have moved forward with such incentives, but the US does not have a federal incentive, she said, adding, “That would make a meaningful difference in leveling the playing field and making the US more competitive.” In an exchange with Rep. Lloyd Smucker (R-PA), Brennan welcomed the US to initiate investigations under Section 301 of the Trade Act of 1974 concerning local content investment requirements by Australia and Canada.

Rep. Beth Van Duyne (R-TX) said she shares concerns about Canada’s Online Streaming Act and asked how that would stifle innovation. Brennan said the government is injecting itself into the business of US streaming companies. In addition to intervention of government into streaming decisions, it has an impact on money coming back to the United States, forcing companies to invest in local content to operate in those markets rather than making decisions about where to produce, she said.

DSTs

Chairman Jason Smith additionally said the Trump administration achieved major victories last year when Canada and India moved to remove DSTs. Cory said there have been some impressive wins and the key is building on such wins and locking them in, given there are already signs some trading partners are walking back on commitments they made.

Rep. Ron Estes (R-KS) said the proliferation of DSTs started in 2019 and the purpose of these taxes was to provide a benefit for other nations’ firms over US innovators. While progress has been made, there is still work to be done, and concerns include France proposing to increase their DST and other nations proposing to enact DSTs or similar taxes, he said. With the recent OECD announcement of the Pillar Two side-by-side agreement, it is a hope that we can use this momentum of goodwill to resolve the DST issue permanently, Estes said – with Congress, the USTR, and Treasury using all the tools at their disposal to protect US businesses. He asked what steps can be taken by Congress to make sure progress on DSTs continues.

Cory said DSTs are a phenomenon whereby countries can target American firms as another source of revenue. The issue is clearly on the Administration’s radar, there is a strong reaction with any new announcement, and it is time to send a clear signal to every country with a DST that there will be repercussions if they continue to pursue DSTs or similar taxes, he said.

Testimony is at

<https://waysandmeans.house.gov/event/trade-subcommittee-hearing-on-maintaining-american-innovation-and-technology-leadership/>