

## PREPARED STATEMENT OF DAN HARRIS, PARTNER AT HARRIS BRICKEN

My name is Dan Harris. I am an international lawyer who has for the last 20 years been helping American and European companies navigate China's legal landscape. I mention this because what I am going to tell you today is based largely on what I have seen while representing companies that do business in or with China.

I will mostly be talking about how the Chinese Communist Party (CCP) utilizes laws and regulations to maximize its power and control, to the detriment of American companies—a tactic known as lawfare.

I have seen firsthand how China employs lawfare to harm American businesses, and I have seen how China's lawfare against American companies increased when Xi Jinping became the CCP's highest ranking officer in 2013, and again when he became "president for life" earlier this year. The global humiliation China suffered from the spy balloon incident, coupled with our government's efforts to deny China access to leading-edge chip technology, make me confident that China's lawfare against American companies will continue to increase.

### **1. How is the CCP's political influence increasingly shaping legal rulings in domestic Chinese courts? What is the experience of U.S. firms in Chinese courts on issues that are influenced by nationalism or Party objectives? How have these conditions changed under Xi Jinping?**

My first involvement with a China lawsuit was in 2000, a little more than a year before China was admitted to the WTO. I was in Qingdao, China, seeking a court order and the judge treated me as though I were a guest in his home, bending over backwards to make everything fast and easy for me. My local lawyer told me that the judge had previously told him that he wanted me to "feel good" about China to help China get admitted to the WTO. My client got absolutely everything it sought.

From the day I started representing companies in China to today, the role of China's courts has always been to serve the CCP's interests.

In this week's edition of *The Economist*, the magazine's reliably excellent China columnist wrote, how "under Mr. Xi, the party and state have dramatically increased their reach into every corner of society and the economy. . . . Mr. Xi has made 'governing the country according to law' a pillar of his first decade in power. That does not involve allowing the rule of law to act as a check or balance on the party's authority. Mr. Xi has explicitly condemned the idea of an independent judiciary as a dangerous Western notion. Instead, in directives and amendments to administrative laws, officials have sought to increase support for the party by delivering strict but effective government." As per a 2017 [Reuters article](#), Zhou Qiang (who was Chief Justice of China's Supreme Court until March, 2023) made clear that China's "courts at all levels must disregard erroneous Western notions, including constitutional democracy and separation of powers."

My clients often ask me about the fairness of China's courts and my answer has always been the

same. If you are suing a Chinese company for breaching a contract to make rubber duckies, you likely will get a fair trial. If you are suing a Chinese company for stealing cutting-edge semiconductor intellectual property, good luck.

Many China lawyers call this the 90-10 rule. Ninety percent of the time the Chinese courts rule fairly because that allows China's economy to function and that ultimately benefits the CCP. But if a case is critical to CCP power and control, fairness gets tossed out the window. That ten percent is lawfare.

President Xi often makes clear that China's interests are broader and more important than they once were, and that China's economic and investment interests are now narrower and less important. Reading the writing on the wall – writing that has in large part been propagated by state-owned media outlets – the Chinese courts have acted accordingly. This means that the number of cases Chinese judges see as implicating China's national interests have increased. This has been to the detriment of foreign companies.

**2. What key industries has China been seeking to protect and promote through its legal system? How does this impact rulings involving U.S. and other foreign multinational enterprises that work in these industries within China?**

Advanced manufacturing, high tech, mining, farming, energy, rare earths, education, content/media/entertainment. In other words, pretty much anything related to national security, the military, critical industries, critical technologies, and the thoughts of Chinese nationals. As I discuss above, decisions related to these industries that involve a foreign company are likely to be based on China's national interests, rather than on law or equity. Foreign companies in legal disputes involving China's national interests are more likely to lose.

**3. Discuss the design and implementation of China's cybersecurity law. What prompted its introduction and what sectors is it geared towards? Is it equally enforced for domestic and foreign firms? How is it shaping the commercial behavior of foreign firms operating in China or doing business with Chinese companies?**

Under China's cybersecurity law, the CCP has legal access to any data stored in China. This law also gives them legal access to data held by any company or individual in China, *wherever that data may be stored*. This has essentially always been true, but with each iteration in the law, access has become more explicit.

China has enacted these laws and regulations so the CCP can monitor pretty much everything in China. The law permits the CCP to demand any person or company turn over whatever data the CCP wants to see.

The CCP does not regularly *ask* foreign companies for data because it *already has ready access to all data in China*. The CCP controls China's internet, communication systems, and server farms. The CCP has pushed nearly everything from utility bills to daily communication into WeChat so

it can monitor what everyone does in China. It has done much the same thing with company data.

My law firm used to have a thriving movie and entertainment business in China, representing U.S. and Australian movie studios. When we discussed China's limitations regarding moviemaking in China, these companies would often say that "the Chinese government sure does hate foreign movie companies." To which, I would usually say, "the CCP hates all movie companies." Back then, I would have said the CCP hated foreign and domestic movie companies equally. Today, because the CCP has subjugated its domestic companies it now views foreign companies as a bigger threat.

**4. How are multinationals being constrained in their data practices in China by laws such as the Data Security Law and Personal Information Protection Law and related regulations? Discuss how this is impacting how firms in China compile and secure their data and interact with Chinese firms. Does China's application of these rules set up the country to have a strategic advantage in access to data resources?**

My clients' China data security concerns usually involve data they gather from Chinese customers. The issues and constraints they face with this data are not too different from those they face in the U.S. or the EU.

I have a friend who works for an international risk consultancy. He summarizes U.S., EU, and China data privacy rules by saying that the impacts of their rules on companies tend to be similar in all three places. However, the goals of these three places differ. The U.S. seeks to protect big companies, the EU seeks to protect its people, and China seeks to protect the CCP.

One of the biggest data issues my clients face in China is the requirement that they store data in China and not transfer it across the border. By forcing foreign companies to store data in China the CCP is better able to acquire and use that data to its own advantage and to the benefit of Chinese companies.

**5. What legal recourse do multinationals have when they feel that their proprietary technology or cybersecurity has been compromised? Discuss the experience of firms seeking to protect sensitive technologies in Chinese courts, with a focus on firms creating technology useful to the CCP.**

Multinationals sometimes file IP theft cases in Chinese courts. If that lawsuit involves rubber ducky technology, they can prevail. But if their case involves cutting-edge semiconductor technology, they rarely can prevail. The more cutting-edge and important the technology, the less likely the foreign company will prevail in an IP case in a Chinese court.

Multinationals often can sue a Chinese company *outside* China. But if a multinational secures a judgment or award *outside* China that needs to be enforced *in* China, that enforcement will occur only if it is in the CCP's interest.

**6. What are other major laws, such as the anti-monopoly law, or enforcement patterns, such as China's tendency toward regulatory crackdowns, that China uses to tilt the playing field in favor of its own firms or advance policy goals? How do these laws and their implementation impact U.S. interests, and what can the United States do to mitigate or prevent this impact?**

China's new counter-espionage law expands the definition of espionage to include any "documents, data, materials or items related to national security and interests," without providing parameters for how these terms are defined. The CCP will use this law against foreigners and Chinese citizens that are seen as too close to foreigners.

This will make it difficult and expensive for foreign companies to hire and retain employees in China. In turn, this will reduce foreign company competitiveness in China.

China excludes foreign companies from many industries. While we debate banning TikTok, *all* major U.S. social media platforms are essentially banned from operating in China.

Even LinkedIn, a business-focused "social media" platform, decided it could not operate in China given CCP constraints. U.S. trade policy mostly leaves market access lobbying to individual companies and trade associations. But China uses state power to support their national industries. The Chinese state is very powerful and it has spent decades bolstering support among client states in multilateral forums, including the W.T.O., W.I.P.O., Interpol, the WHO, and the UN.

If the CCP or the Chinese people are angry with a particular country, you can expect the CCP to crack down on companies from that country. The CCP does not randomly choose the companies on which it cracks down. It chooses companies based on the message the crackdown will send. The recent raids against The Mintz Group and Bain & Company were to send a message that the CCP controls information about China and it will punish those who seek to reveal information the CCP does not want revealed.

**7. The Commission is mandated to make policy recommendations to Congress based on its hearings and other research. What are your recommendations for Congressional action related to the topic of your testimony?**

China will harass and discriminate against American companies until there are no more American companies in China.

The best way for the U.S. government to reduce CCP strong-arming against U.S. companies is to help those companies leave China. The U.S. government should provide loans and grants to American companies that move their operations or manufacturing from China to the U.S. or to an allied country. Australia and Japan have done this and we should too—maybe somewhat along the lines of what we are doing with the semiconductor industry. The U.S. government should also enact legislation that encourages imports from countries that share our values.