Unedited Event Transcript

Toward a US-China Bilateral Investment Treaty


Panel I: Competition and China’s BITs
Chair: Adam Posen, Peterson Institute for International Economics

Panelists: FANG Jin, CDRF, “China’s BITs”
Jeff Schott, PIIE, “China’s BITs, China-Japan-Korea Trilateral Investment Treaty”
Sean Miner, PIIE, “State Owned Enterprises and Competition Policy”
WU Changqi, Peking University, “Competition Policy”

Adam Posen: Good morning everyone, and welcome back to the Peterson Institute for International Economics. To our friends online, my apologies, we’re starting a couple of minutes late. Without wanting to sound smug, we have so many distinguished people here to greet today that it put us behind schedule a little bit and that’s a nice reason for it.

As you’re all aware, today is a joint conference on Toward a US-China Bilateral Investment Treaty between the China Development Research Foundation and the Peterson Institute for International Economics. We are very proud to have done this joint and parallel work with the CDRF. In a moment, I’ll invite their secretary general, the of course leader of thinking in so many areas in Chinese development, Mr. Lu Mai.

But if I can just start off by saying we’ve had informal contact with CDRF for many years. Over the last year in large part thanks to Lu Mai’s leadership, we were able to agree on a parallel set of research proposals that our Chinese colleagues, including some very leading researchers would look at the issue of US-China bilateral investment from their view. My colleagues led by Jeff Schott and Sean Miner have put together I think as well an outstanding set of papers.

I was going to use visual aids. We are releasing today toward a Sino-US investment treaty by the CDRF and is I believe available on the Foundation’s website and is in English. And we have our own as part of our new briefing series Towards the US-China Investment Treaty in our Peterson Institute colors. I would note that this book is available for download from Amazon and other e-book sources even though it’s free. So make our numbers rise. Tell people. Download. Joking aside.
We view this as very important building on not just the work CDRF is doing but speaking for the Institute, the work we’ve been doing. As I think most of you are aware, we issued two major studies this past fall on China and US-China relations. We had Nick Lardy’s Markets over Mao which is a huge reinterpretation of the sources of Chinese economic success that has been widely reviewed, well-reviewed deservedly and feeds the whole idea that it is the Chinese private sector that matters and that is driving growth.

And we also issued the multi-author study led by Fred Bergsten, Gary Hufbauer and the aforementioned Sean Miner on Towards US-China Free Trade which while having its blue sky aspect also had many very practical aspects thinking about the adjustments that would have been needed in both China and the US to achieve that goal, what are the things we can do on the way.

And in light of both of these works, not just for that reason but I think it makes a nice foundation, the prospect of the US-China bilateral investment treaty and what it would take to do that is the logical first fruit of such efforts. It is a place where China has made enormous progress, if I may say so, in recent years and where the US has had to confront some of its old notions on investment barriers in ways that have echoes of the way Japanese investment was treated in the ‘80s and ‘90s.

We shortly will have a policy brief forthcoming about Japanese investment and comparing that to Chinese investment by Ted Moran and Lindsay Oldenski but today, we have an outstanding set of papers from both China and the US about this very logical and I think mutually beneficial potential next step in US-China economic relations.

And again, I want to stress that while we coordinated the editorial content and the objectivity and worth of both the Foundation’s and the Institute’s papers were done internally for each. These are separate parallel publications and we think it’s stronger for that. But I’m very grateful to the China Development Research Foundation for joining us in this endeavor and I’d like to ask the Secretary General Lu Mai to make some opening remarks, please.

Lu Mai: Thanks, Mr. Posen. We started this talk about joint efforts in 2013 and now we have our result. We’re very glad to release this report in Washington DC and in March, we will do this again in Beijing to help Chinese to understand how important this BIT agreement.

China Development Research Foundation is a nonprofit organization affiliated with government but we’re a non-government organization. Our goal is to help government to make a right, good policy. So BIT is
important issue. We decided we need to do some research in this area. Why?

Over the past 30 years, China has increasingly liberalized and opened its economy to the world, contribute to the global economic growth and the development. In this process, I myself witnessed two important decisions in Washington DC about China must favor international standards and China joined the WTO.

Back in 1989, China experienced a political turmoil and whether Congress would retain its most favorite nation status with China was heatedly debated in the US. House insisted to put some condition under President Bush with all that and the final battle is in the senator. So I was in Washington in 1990 and 1991 to support President Bush’s decision. At that time, I also published an article with my colleague in New York Times.

So finally, President Bush won that battle withhold and ultimately Congress retained its annual renew of China MFN status with China, encouraging China to move forward with reform, to open up and to integrate into the global economy. That’s a very important event in 1990.

Another key event is China entering WTO. In 1999, former Premier Zhu Rongji visited United States. At that time, I was MIT visiting scholar and [inaudible 00:08:05] and witnessed the efforts of Premier Zhu Rongji to try to get this agreement. It’s not easy. Also, President Clinton wanted to do this. He mentioned before Zhu Rongji visit, he said that the US does not need an enemy in order to keep it strong. That’s something I still remember.

But he didn’t get that agreement. Zhu Rongji leave here and President Clinton called him in Canada but finally it didn’t get it. After two years, US and China signed that agreement for China entering the WTO. So these two important events involved President Bush, President Clinton, Senate, House, and the whole bring me to the Washington DC is US-China business council. So many people working in this but finally we get that.

Today if I look back for these two critical periods and I really think we’re lucky. If China did not get most favorite nation status, if at that time put any condition on that decision, under Chinese government, we will refuse that. And if China didn’t enter the WTO, what will happen in China? I say we’re lucky. Here she cannot work in that way. Most of the people want to make progress for both sides so we’re a success.
Compared with 1990, with the big progress in China, our income by average is ten times compared with 1990. Life expectancy from early 1990, that’s 65 years old; now, it’s 75. So our contribution to the world economic growth now is 30% so we share prosperity with worldwide. And the US-China economic relationship, the tie is very strong. It’s helped not only China but also helped US in terms of export and in terms of investment in China.

So now, we come to another crucial period. Can we continue this progress or we come back to think about these two giant, that’s the problem, that’s not good for US. US needs sort of an enemy to keep it strong. Do we need to go back to that status? Do we need to continue to argue this? Do we still worry about China’s direction, where it goes? It may be.

During lunch time, I will talk about the direction of China move, but here I want to say we do not need to worry about that. We see the progress and believe China will continue making progress in terms of human right, in terms of democracy, in terms of improved all Chinese life.

So I read the Peterson Institute many important reports. To that regard the balance sheet of China is mentioned correctly about the problem of China facing, like one is the income disparity. Another one is about the corruption. All those are problems in China we’re still facing, but fortunately we made some progress including these two areas, important areas. So I think we can continue this good economic relations between US and China, but meanwhile we will see the more progress made in China domestically.

So in 1991, in that article I wrote actually, some sentences helped by the editor. I cannot read that, write that perfect English, but it’s my idea. It’s our idea, my colleague and I. So I said, where? A gradual and peaceful transition to democracy is the interest of the 1.2 billion Chinese, at that year is the 1.2 billion Chinese, the US and the rest of the world, only economic prosperity and political openness can make democracy achievable. So let’s keep it, keep it openness, let’s keep this strong tie between US and China and we will see the better world in the future. So that’s for the opening. My colleague will go to the detail. Thank you.

Adam Posen: Thank you very much, Secretary General Lu. We here at the Institute have long believed that openness and economic integration in the not even so long run is good for democracy, is good for people and is good for peace. And it’s good to have you taking us back to the broad perspective and remind us that that’s an underlying motivation for all we do.

I’d now like to invite, as he just said, our colleagues who’ve actually done the detailed work because we can talk about such openness and integration
but there has to be an actual set of acts on investment and an actual set of acts to integrate economies. And so I’d like to call the first panel on competition and Chinese BITs, inviting up Fang Jin, Jeff Schott, Sean Miner and Wu Changqi, forgive my pronunciation, to join us on the podium please. And I’ll introduce each of them as they speak.

In the spirit of competition, I should remind people that our free e-book is not just on Amazon but also on Google Play and Barnes & Noble and if one of our Chinese friends can get it on Alibaba, I would be very grateful as well. But very grateful to have our colleagues and in particular again, a strong thank you to Jeff and to Sean who led the research effort of our many co-authors here on this.

I’d like to first however ask Dr. Fang Jin who is a senior research fellow at the DRC and deputy secretary general of the CDRF to talk about the issue of China’s BITs writ large. His main area of research is China’s foreign economic relations. He’s published two books—one on the US financial crisis, the other one the emerging market economies. He won 2013 Sun Yefang Economic Prize, the highest honor for excellence in economic research in China, has a doctoral degree from Beijing Peking University and we are just delighted that Fang Jin was one of our contributors to this project. So if you could join us please.

Fang Jin: Thank you, Adam. Good morning everyone. I’m only given ten minutes but I need to cover two topics. I’m going to start off by reviewing China’s past BITs. I think it is important to understand where China has come from and to understand China’s position better for US-China BIT. The latest statistics shows that China has signed bilateral investment treaties with 130 countries in the world with 110 being effective. But apart from signing BITs, China also has free trade agreements with some trade partners with investment chapters included. Some are identical as BIT in both format and contents. This table shows the distribution of China’s BITs by time and location.

Some Chinese scholars divided the evolution of Chinese BIT policy into three phases. The first phase can be called the conservative phase starting from early 1980s to late 1990s when China emphasized its administration or administrative power over foreign investment even though China was actively seeking for investment at the time. I think it’s quite understandable given China just opened to the outside world and it was learning from foreign practice and was very cautious at the time.

The second phase can be called the liberal phase starting from late ‘90s until recently when China became a member of the Convention on the Settlement of Investment Disputes between States and Nationals of other States in early 1990s and especially after China joined WTO in 2001
thereby joining the trade related investment measures. China became much more open to foreign investment and its FDI inflow skyrocketed during this period.

And many developed countries renegotiated and resigned BIT with China adding national treatment clause and allowing for disputes between a contracting party and investor of the other contracting party and settlements through international center for settling investment dispute. So came foreign investors much more protection than before.

And this third phase can be called the balance phase. This is following the prevailing trend internationally because many are arguing for a rebalancing between the interest of a foreign investor and host nation. The recently signed China BIT, China-Canadian BIT can be an example of that in terms of a more specific definition of assets as investment and also the broadening of the exceptions clause.

So the past BITs are more like investment protection agreements but the upcoming China-US BIT will be a first ever investment liberalization agreement based on a negative list and pre-establishment national treatment. Therefore, it would be hugely beneficial not only for China but for the US and also for the rest of the world. I think these points are quite self-explanatory so I won’t go into detail.

Now I’m going to talk about the issue of CFIUS. Whenever we talk about the bilateral investment relations between China and the US, this issue always comes up. You probably know this better than I do. CFIUS is an interagency organization tasked to review foreign investors’ merger and acquisition activities in the US. It has a very sophisticated institutional design and self-consistent system and has sufficient and strong empowerment and authority.

But from outsiders’ perspective, we feel that its definition of national security is too broad and ambiguous and its decision making process is non-transparent, much more like a black box. But of course, its operation procedure is quite clear as shown by this figure.

This table shows the covered transactions of all the cases went through CFIUS between 2008 and 2012, 538 of them and this table shows the distribution of those cases by different sectors, the manufacturing sector taking more than 40%, followed by finance, information and services.

And this table shows the cases by different countries. Judging by the total investment volume, I think it’s clear that China or Chinese companies represent a disproportionately high percentage of cases covered by CFIUS during this timeframe. And these are some of the selected notable deals by
Chinese companies that went through the CFIUS process and these cases I think show the uncertainty faced by Chinese investors making investment in the US.

So what is the CFIUS and its implications for negotiation between China and US on the BIT? For starters, we would like to see, I mean, China would like to see a much more transparent decision making process. And secondly, we believe it’s also connected with the negative list approach because both CFIUS and negative list approach could play an important role in protecting national security and to a large extent, the length of the negative list is determined by a country’s ability to safeguard its national security.

So a well-designed and operated organization like CFIUS will help fill the gap and start shorting the length of negative list so we’re proposing in our research that China should strengthen and improve its own national security review system regarding foreign investment in China.

And also it’s related to competition policy and SOE, the issue of SOEs. My colleagues later on will talk about these two issues in detail. Different from other countries, I think yeah, we’re aware that SOEs still play a very important role in China’s economy. And at the moment, the Chinese government is accelerating its reform process of SOEs especially by introducing the so-called mixed ownership structure in SOEs by allowing a more diversified shareholding of SOEs also led by reforming its corporate governance structure.

However, as I mentioned earlier, the definition of SOEs in CFIUS is not clear and so I’m sure there will be more and more mixed ownership companies trying to invest in the US. So without such a clear and practical definition of SOEs, China’s investment in the US will face more uncertainty and constraint. That is my brief presentation on those two issues and looking forward to your comments and questions. Thank you.

Adam Posen: Thank you very much, Dr. Fang. Many people in this room from both sides of the Pacific are well familiar with the frustrations expressed by many people with regard to the CFIUS process, not just Chinese people. I would note that we have a not exactly an agreement but still challenging essay in the PIIE volume by Sean, Gary Hufbauer and Ted Moran on this issue as well. It is not just a one-way concern. Obviously the negative list is a two-way concern as well.

I’d now like to turn to my colleague, Jeffrey Schott, who was one of the leaders of this project for us. As you all know, Jeffrey is a senior fellow here at the Institute for quite some time, is our expert on trade negotiations and particularly regional bilateral agreements. And is going to be
presenting to us today, as few people could, on taking a look at how the current China-Japan-Korea trilateral investment treaty has some effect on the prospects and the model and modalities for the US-China potential treaty. Jeff.

Jeffrey Schott: Well, thank you very much and I want to give a special thanks to my co-author, Cathleen Cimino who did a lot of the hard work in going through the China-Japan-Korea investment pact and contributing to the analysis and the policy recommendations. I also want to thank colleagues from the China Development Research Foundation who participated in seminars with us and made very useful comments on earlier drafts and many of the colleagues are here today and we are very grateful for their contribution and comments on our work.

US-China foreign direct investment is surprisingly small. The US accounts for about 1.2% of total FDI in China and China’s share of US FDI is even smaller. I think this reflects continuing uncertainty about the investment climate and requirements applied to foreign investors in each country. And a bilateral investment treaty was seen as one way to mitigate some of these issues and so both countries started negotiation on a BIT more than six years ago. There was a big hiatus in the talks as the US revised its model, bilateral investment treaty, but talks have accelerated since 2013.

Now, the problem is that both countries have numerous bilateral investment treaties, many investment agreements, but they differ substantially in terms of their quality, in terms of the type of investments covered, the disciplines on investment policies and the enforcement provisions. And the question is can this wide gap be bridged in US-China BIT talks that are currently underway?

The good news, as we just heard in the previous talk, is that the quality of Chinese investment pacts has been upgraded bit by bit over the past decade. And the bad news is that there still are important differences with the US model BIT that was revised and augmented in 2012. And that BIT defines what the US negotiators expect their partners to undertake and enforce with regard to investment policies and protection of investor rights.

Now, the US model BIT targets about six major objectives. This is a summary. There’s a lot more detail in our paper. But importantly, national and most favored nation treatment across the full life cycle of investments. Much of that has improved in China with regard to post-establishment investments but there are still a lot that needs to be done on pre-establishment issues.
Two, constraints on direct and indirect expropriation and provisions for prompt adequate and effective compensation when expropriation occurs. Three, free transfers of capital, very important for any investor. Four, restrictions on performance requirements, especially requirements that require the transfer of technology. That has been a sensitive issue for many years. Five, rights to employ senior management without regard to nationality. And six, international arbitration of investment disputes including investor state dispute settlement.

In addition to the revised model BIT requires new commitments to effectively enforce labor and environmental laws and international labor commitments and to provide new disciplines on state-owned enterprises. I set this out because this is the mandate that Congress has established that Congress expects US officials to bring to them when any treaty is concluded and subject for ratification. And it shows a bit of the gap that the negotiators have to bridge in order to produce an agreement.

China’s new generation BITs address at least partially some of these issues and indeed the progress is moving forward in the right direction. And indeed the talks that are likely to continue, the US-China BIT talks in the next few weeks are likely to make substantial progress on many of these important areas.

In our briefing, we examined the China-Japan-Korea investment pact that entered into force in May 2014 to see to what extent the gap between the two positions had narrowed. And indeed there had been substantial improvements, as previously said, but there are still a few key sticking points. One with regard to pre-establishment, though China has committed to including pre-establishment rights. That commitment was made at the strategic and economic dialogue meetings in July of 2013 and indeed gave a big boost to prospects for moving forward in the BIT negotiations. I think if there was any catalyst for moving forward in this negotiation and a signal that there is a real possibility of success, it was that breakthrough in July of 2013.

Two, there are sticking points with regard to performance requirements, as anyone who has negotiated in international investment agreement knows very well. The CJK pact goes a bit further than the WTO agreement on TRIMs, trade-related investment measures, but US officials still have concerns, especially with regard to requirements that cover indigenous innovation.

And third, there are sticking points with regard to market discipline and subsidies applied to state-owned enterprises. This is a topic that Sean Miner will discuss in more detail in the next presentation.
And finally, investor state dispute settlement. This may be a bigger problem for US negotiators with regard to Europe than it is with China. That’s one of the surprising things that one could say today. But while investor state dispute settlement provisions are included in some of China’s agreements, they do have exclusions for certain types of activities or areas, including intellectual property. And so that is something that needs to be looked at a little more closely.

Lastly, let me turn to the alternatives to BITs. While there are useful signals that the BIT negotiations are going forward, the prospects of completion of a BIT still are uncertain and that is because in part US BITs have very high requirements and two, that there is great difficulty in securing congressional approval. Basically a bilateral investment treaty requires two-thirds vote of the Senate. It’s not like a free trade agreement under fast track procedures that requires just a majority vote.

Getting two-thirds of the Senate to agree on anything is difficult in this day and age and so there are alternative means of taking the progress that has been made on investment issues if this proves to be a stumbling block and moving forward in other channels. An alternative is free trade agreements. Indeed for most countries, US partners prefer free trade agreements with comprehensive investment chapters to a bilateral investment treaty. The US has only concluded two BITs in the past decade with Rwanda and Uruguay, but many, many free trade agreements with very comprehensive investment provisions that are comparable to the requirements in the model BIT.

Can that happen with China? The prospects for a bilateral investment agreement with China was discussed in bridging the Pacific, the major study on US-China economic relations that Adam mentioned before, that’s a possibility. Also a possibility are the substantial investment provisions that are included in the Transpacific partnership that could also be a model for the future free trade area of the Asia Pacific, an initiative that China advanced and supported in its year as hosting APEC talks last year.

These are both important initiatives. The point being here that the emphasis is on the quality of the investment provisions, their obligations and enforcement procedures. And getting that right can be done in a BIT or possibly other channels, but the key is to ensure that the investment climate improves so that US and China relations in investment can advance in the coming years. Thank you very much.

Adam Posen: Thank you, Jeff. I’d now like to turn to my colleague, Sean Miner who along with Jeff led our work on this. Sean is, as mentioned, co-author with Gary Hufbauer and Fred Bergsten of Bridging the Pacific, our recent book toward free trade and investment between China and US. Sean is also our
Sean Miner: China program manager, meaning he works directly with me in relating to
great institutions in China like the China Development Research Forum.

All of you out there who are interested in learning more about our
activities in China, our Chinese language website, our annual group trips
to China and so on, please feel free to reach out to Sean. But today, he’s
here with his research hat on and I would appreciate your remarks. Thank
you, Sean.

Sean Miner: Thank you, Adam. I just want to echo Jeff’s comments that we really
appreciate cooperating with CDRF on this project. Today I’m going to
speak about state-owned enterprises and competition policy, some of the
most difficult issues in the US-China BIT.

We believe in order to facilitate an increased investment by US firms in
China, the US-China BIT must have comprehensive binding rules on
competition policy as well as state-owned enterprises. There are over
100,000 state-owned and state-supported enterprises in China with assets
totaling over 10 trillion dollars. Not to mention, China’s most powerful
SOEs, the more than 100 entities controlled by the State-owned Assets
 Supervision Administration Commission, SASAC.

With declarations at the Third Plenum that state-owned and state-
supported enterprises are a pillar of China’s foundation, we must attempt
to facilitate an environment where private firms have a fair chance to
operate in the same space according to market-based principles.
Observations show us that SOEs sometimes have some unfair support
from cheap land loans and inputs to protected sectors and favorable
policies.

China’s anti-monopoly law largely on par with its Western partners
appears to carve out an exemption for SOEs and indeed anti-monopoly
decisions against SOEs have been rare. So SOEs are sometimes delegated
certain powers or control over part of the economy. Control over ports,
energy and electricity and other sectors could allow SOEs to favor
domestic over foreign firms and foster a less competitive environment, for
example, by giving them cheaper electricity, smoother passage through
customs, easier licenses.

The US would like to see those SOEs with delegated powers covered by
the investment treaty obligations. The US would also like recognition and
development of international standards in a non-discriminatory way and to
navigate away from conditioning market access on the terms of using
technical standard just to facilitate growth in domestic firms. Clarification
that when SOEs commit to acting in accordance with commercial
considerations means they’ll act in a manner free from government
influence and consistent with normal business practices of privately held enterprises in the relevant business or industry.

We would also like more transparency for SOEs including disclosure of preferential treatment, subsidies and offsetting costs. US would like to see reporting of financial accounts in a timely manner and consistent with international finance reporting standards. And lastly, we would like these goals to be bound by dispute settlement provisions.

The strategy to achieve convergence in global anti-trust enforcement should include Chinese competition authority’s development of the institutional tools needed for merger control, pricing regulation and abuse of power in terms of focusing on what’s best for the market and the consumer. As I mentioned before, China’s anti-monopoly law is on par with its Western partners. However, implementation and enforcement has caused concerns.

The regulation of mergers and acquisitions has raised questions as the Ministry of Commerce has been slow to clear some foreign mergers and has placed unusual condition on those mergers. One example being the merger of two major mining firms. MOFCOM approved the merger with the condition that the merge firm continue to supply copper to Chinese customers under long-term contracts at a price agreed to by MOFCOM.

The uses of these behavioral remedies as opposed to structural remedies as a condition to approve mergers are less efficient means of regulating mergers. And the uses of these behavioral remedies appear to be asymmetrically targeting foreign firms. Moreover, foreign firms face the majority of approvals from MOFCOM. Only 15% of the decisions dealt with by MOFCOM concern domestic deals compared with almost half in the EU.

In addition, MOFCOM decisions sometimes look to protect domestic firms from increased competition that a merged firm might bring to the industry. This is evidenced by the case of the Wal-Mart acquisition of Niu Hai which involved e-commerce in China. MOFCOM approved the acquisition under the condition that Wal-Mart limits its e-commerce business in China.

Another Chinese regulator, the National Development and Reform Commission, NDRC, has used its laws to enforce price competition, but they have targeted foreign firms in pricing probes even when there was no evidence of cartel behavior. The use of the AML to limit royalty fees also causes concerns as with the news today of the near 1 billion dollar fine of Qualcomm along with the condition that Qualcomm lower its royalty fees
that it charges its China-based customers for certain mobile phone patents that it owns.

Article 4 of the AML allows competition authorities to factor in non-competitive factors including market share, influence on customers, on consumers and influence on national economic development. In some investigations, competition authorities exempted firms who cooperated with authorities and punished those who didn’t.

This incentive to cooperate could lead to falsified evidence that we believe is an unfortunate method of conducting investigations. In a recent survey of US firms doing business in China, 86% of the respondents said they were concerned about China’s competition enforcement activities. The US goals in an investment treaty here would be to ensure fair treatment for foreign firms under investigation and more transparency for investigations including the scope of factors considered in making a decision.

This enables the business community to understand exactly the nature of the regulatory environment and fosters a more open investment environment. In addition, MOFCOM should focus on improving the efficiency of merger evaluations and on evaluating mergers of their true effect on market-based economy. The NDRC should focus on finding true price cartels, ones that hurt consumers. We also believe that there should be more bilateral consultations between government authorities.

A US-China BIT can be a step forward on the path to building a relationship of mutual trust. Increased investment in each other’s countries can raise the expectations of people of both nations for one another and lead to further cooperation and agreements down the line. An investment treaty is in China’s interest as well as Chinese firms step up investment in the United States and abroad. It could also help facilitate domestic reforms in China.

The Third Plenum decisions document stated the intention to widen market access and it also stated that China will unify domestic laws and keep investment policy stable, transparent and predictable. A US-China BIT can assist in this process.

And finally, by covering these two issues comprehensively, a US-China BIT could help provide a template for a wider agreement, possibly a plurilateral or multilateral agreement on investment thus thrusting China and the US into the global rule making arena in this area. Thank you.

Adam Posen: Thank you very much, Sean. As some of you noted, despite the relatively calm delivery, there were some pretty hard-hitting things said there. I will just note that while inherently speaking about competition policy involves
examples of specific firms, the Institute does not do briefs or intervene in cases of specific firms or lobby for specific firms and all our funders are disclosed on our website if anybody cares to check.

As one of the great advantages of this parallel project and today’s event is to have Chinese and American perspective as Lu Mai said, independent academics but still from their place. And in that regard, I’m particularly honored to ask Professor Changqi Wu and again, I apologize for my pronunciation, for his discussion of competition policy.

Professor Wu is the director of the Research Institute of the National Hi-tech Zone Development Strategy. He’s the executive director of the Institute of International Business and Management and the director of the Guanghua leadership institute at Peking University. He had spent ten years on the faculty of Hong Kong University of Science and Technology. He’s been a visiting professor at major Western universities including Northwestern and Catholic University of Leuven.

Presently, he’s the principal investigator of the major project China’s outward foreign direct investment and cross-border mergers and acquisitions funded by China’s National Science Foundation. And in addition to many other honors he’s chairman of the China Chapter, the Academy of International Business. We’re very grateful that he participated in this project and I look forward to his remarks on competition policy.

Changqi Wu: Thank you, Dr. Posen and thank you for Sean to introduce, bring up the topic of this competition policy. Ladies and gentlemen, good morning. I think I would like to talk also about some issues related to China-US bilateral investment treaty and implications for competition policy.

Actually I think in this regard, there are three issues I think that are very important. One issue, as we know, that an investment treaty would lead to broader entry, easier entry for multinational companies to China and also easier for the Chinese company to go abroad, invest in other countries. Of course, that will be also introduced as structure change of China and the US industries.

A second related issue regarding the BIT is how to develop a level playing field. And in that regard, I would like to make a distinction when we talk about competition policy in China and in other countries’ cases it’s sometimes bundled with industrial policy. A third issue I think Sean also brought up is about state-owned enterprises in China, for China, its economy in transition. I will talk about these three issues in sequence.
And first of all, let’s talk about national treatment before establishment. As mentioned earlier on, China has signed about 130 bilateral investment treaty in the last—among all those treaties, China up to now has not accepted that a national treatment before establishment, just like BIT negotiation [inaudible 00:51:15] with Canada. China does not accept this treaty. But now I think by and large, China is ready to accept that national treatment before establishment.

Of course we know that introduction of such national treatment before establishment will facilitate market entry, hence leading to intensification of domestic competition in both countries. Particularly in China at this stage. China new leadership already designated that to develop a market institution is one of the major goals. So I think this kind of treaty after working on both parties, they are working the same direction.

Competition is expected to strengthen further by the subsidiary of firms headquartered in other countries rather than in US and in China. As you see, this treaty would open the door, serve as a tunnel among outside world and China because this is the first one China will bring in this national treatment before establishment. And both China and the US view this national treatment before establishment as a way to move forward to enhancing their economic relationship.

Of course, in addition to that, there’s the issue of the called special management measure that is sometimes called the negative list that identifies the sectors that are subject to special approval. Otherwise, those sectors not on the negative list will open for all companies to enter. Okay, China experimented, actually China itself currently experimenting a negative list management against the Shanghai pilot of free trade zones. And actually China is ready to extend this experiment to three more free trade zones including Guangdong, Tianjin and Fujian. Okay, that is in addition, actually besides that bilateral investment treaty negotiations.

Of course my colleague Han Bing will talk more in this regard. I’ll leave these issues to Han Bing. But of course, the differences here and there are differences in a scope of the special management negative list and speed of its implementations between two negotiating panels. I would extend a little bit about competition policy as I’m an industrial organization economist so that my [inaudible 00:54:01].

First of all talk about institutions. Okay, China only enacted its anti-monopoly law in 2008. Up to now, this is 60 years of experience, okay? This law will be enforced by three government agencies called the NDRC, National Development and Reform Commission and Ministry of Commerce and the General Administration of Industry and Commerce. Of
course, previous speaker Sean just mentioned about that. There are sometimes slow responses to some of the cases.

There are some data to tell us that a country of 1.3 billion people, those stuff combined in the three law enforcement agencies total [inaudible 00:54:53] hundred. The professionals who are dealing with this only in the number amount to 50. So it’s 50 of this technical staff to dealing with the overwhelmingly number of cases I think sometimes indeed, it must be—it’s sometimes maybe slow, sometimes may have to be to a certain extent selective to a certain extent, subject to—they have to make some choices, okay.

There’s one point I want to make clear. Actually China’s legal system is somewhat different compared to that of the US. Typically the law enforcement agencies is not like US. They go through the court system. Typically there’s some complaint to the government. Then government agencies listen to the complaint, start investigation. They may organize hearings, maybe ask the expert opinions and they may ask companies to provide evidences. And then the government agencies would give a verdict. That’s it.

But of course, there are court cases. The court cases, they’re only hearing the cases when private companies sue each other based on some other practice of anti-competition. For instance, [inaudible 00:56:10] is a listed company in the US. [Inaudible 00:56:13] 10 cents of abusing its monopoly power. In that case, court, the case went to heard in court and the verdict delivered by the judges.

Of course, there is one important issue I think that—in the China’s competition policy that may or may not be existing in other countries, in China’s competition law, anti-monopoly law [inaudible 00:56:38] monopoly. There’s a whole chapter devoted to [inaudible 00:56:43] monopolies. In that case, the local government trying to create barriers for the product from other regions to enter their particular constituencies. And in that case and there are cases that the central government, anti-monopoly agencies force local attrition to stop that kind of practice. These are the institutions. Of course, regarding the practices, I also have—there are three law enforcement agencies. They only became active recently. It’s only a matter of years, only six years before the law was enacted and implemented. They’re also learning the ropes with the limited resources, as Sean mentioned, okay.

Currently, there are no substantial evidence that the practice for law is systemically biased against or favor any type of firms. I will provide statistics. Regarding to the territory of Ministry of Commerce in charge of merger acquisitions, essentially regarding to the changing of the market
structure, up to the end of last year, 2014, the Ministry of Commerce is dealing with 945 cases. Among that, 875 has passed through without any questions.

The only two cases that are rejected, merger cases. One is the Coca-Cola trying to acquire local Huiyuan Juice company and that case was rejected. And the cases is that Coca-Cola may extend its monopoly in carbonated beverages into juice-based drinks. Actually, that rejection did not hurt Coca-Cola as much, but actually it had a [inaudible 00:58:46] negative impact on the local firm Huiyuan Juice because otherwise they would sell, right, and that firm to Coca-Cola.

There are two prohibited cases. There are four cases that approval with some reservations. One of them which I’m quite familiar about is Interbrew a merger with Anheuser-Busch that created the largest brewery company in the world. In that case, the Ministry of Commerce said they approve it under condition that merger firm must divest his holding in the Tsingtao Brewery because Tsingtao Brewery is one of the largest breweries in China. I think in revenue terms, it is the largest one. So they say because Anheuser-Busch plus Interbrew plus Tsingtao Brewery, they’ll be too dominant in the China brewery market. So that is they have approval with certain reservations.

In December last year, Ministry of Commerce delineated clearly the specifications about the conditions that this approval may attach. We can see that from Ministry of Commerce website just two months ago, less than two months ago.

Another issue that much is focused is [inaudible 01:00:21] Qualcomm to pay the fine. That is the newspaper headline in the Boston Journal. Actually, that is one of the cases falling in the territory of NDRC, National Development and Reform Commission. Actually, NDRC up to now has dealt with 335 cases regarding abusing monopoly power, regarding pricing. Among these 335, there are 33 cases involving the foreign companies. Qualcomm is one of them, okay?

That is to a certain extent, foreign firms in this case roughly represent 10% of those monopoly pricing related cases. But you see here, as the economists often say, the multinational firms why they become multinational? Typically they would have power, either technology or branding or other things so it could overcome those local barriers called the [inaudible 01:01:31] otherwise.

So in that case, it’s relatively sometimes—it’s easier for them to be picked up. In this regard, China’s largest state-owned enterprises cannot escape from scrutiny of NDRC. China Telecom was fined because they’re
charging interconnectivity reached exclusive behavior with another one of the largest China telecom companies, China Unicom. So they were fined by NDRC.

Then one of the best brand names of China is Moutai, the liquor. When Nixon met Zhou En-lai, they drank Moutai liquor. Moutai was fined because of abusing its monopoly [inaudible 01:02:22] in this regard by NDRC. So that way of course the third agencies enforce competition law, anti-monopoly law is State Administration of Commerce and Industry.

In total, it deals with 39 cases. Only two cases involved foreign firms. One is Microsoft [inaudible 01:02:47] I think not only in China but European Union also dealing with some of these things. The second one is a Swedish company called Tetra Pak. It’s a machine, producing machine packaging for the milk, other things. I think a case is granted for this company to be investigated is that not only selling machines but to use that machine, you must buy papers, packaging papers as typically for the milk, you package the milk, the milk cost two dollars, the 30 cents are actually the cost for this packaging.

So I think that’s why these two cases among the—so why present the statistics and cases? To show from my perspective I haven’t seen a systematic bias against state-owned or private firm or multinationals. But of course you see big companies, typically they’re big, they are sometimes—they are relatively easier to be identified. It’s not only multinational but also domestic large companies.

There’s one more issue I would like to talk about is that when talking about competition policy, competition policy sometimes bundled together with industrial policy because Chinese government deliberates and implements certain industrial policies as many other countries do. For instance, example, China recently has launched a program to develop its ICT-related industry, for instance semi-conductor, ICT industry, okay?

Some say okay, look, like Qualcomm was in that case, fined because China wanted to develop its domestic sector, right? But actually the key here is that industry policy means that the government intentionally created and leveled playing field across industries, across industries to favor some industry in that term. But the key point is regarding competition in the given industry whether the playing field is leveled and whether the entry and the access is facilitated.

In this regard, I will say no. For instance, China wanted to develop mobile chips, similar like Qualcomm, right? I think there’s a university affiliated with Tsinghua University was pushing hard but Intel entered and that formed alliances with the Tsinghua University based company. Intel
invested and acquired 20% of this company actually to take advantage of industry policy of developing a hi-tech industry.

That case, they say, “Look, actually this industry is not blocked. Not to say US firms are not allowed in. You’re welcome, right, as long as you can contribute,” because that is what we talked about, okay. So that clear distinction between competition policy and industry policy is important. Obviously government sometimes also implement regional policy, other things. That is the issue.

Of course last but not the least, I would [inaudible 01:06:26] about state-owned enterprises. State-owned enterprises, just like the first speaker talked about, is they play significantly important but lesser rules. Two points. One is that most SOEs have been restructured as mixed ownership firms and the number pure and state-controlled firms is in decline, but of course it’s the transitional process. We’d not say it’a a decline. But you see some of them, for instance Sean mentioned about 113 SASAC-owned companies. At the parent level, into the parent level, it’a 100%, but actually many of the subsidiaries are already called mixed. That’s the private investors. They’re in that, right? And private [inaudible 01:07:21] are listed. Most of the companies are listed in stock exchange.

So it’a difficult to subject to say the government pay the money to get—for instance, Warren Buffett once owned 11% of PetroChina. That’a a listed company in Hong Kong, right? So that’s sometimes very difficult to say that companies that come into the—chip the money, but of course, in this transition, we would not say that is a—let’s continue to improve this kind of market institutions.

Second is the private sector expands gradually, particularly in terms of the number of firms and the employment. And in addition to the new firm, new industries.

Adam Posen: Professor Wu, we’re going to need time.

Changqi Wu: Okay, that’a last minute thing. Further reform so we [inaudible 01:08:24] the way and then that will be for instance already SOEs need to be separated, different business lines and some of the business need to be privatized or reformed. Okay, that is my general comments. Thank you for your attention and thank you for tolerating my extending the time. Thank you.

Adam Posen: Thank you very much, Professor Wu and my apologies for interrupting but we have such a high quality audience. I want to give them the opportunity to interact with our speakers and researchers. So as usual, we’re going to open it up. This is on the record. If you wish to ask a question, please
identify yourself. Jessica is in front here with a roving mic. There’s also a standing mic at back. Please identify where you’re from or it might be best to go to the standing mic if you would and I’ll call on you and at least try to pretend you’re asking a question would be nice. That wasn’t directed at you, but please.

Question 1: Thanks, Adam, for the encouragement.

Adam Posen: And you are?

Question 1: Sorry, Uri [inaudible 01:09:34] with Carnegie Endowment for International Peace.

Adam Posen: Thank you.

Question 1: So my question is for Jeff. You said one percent of foreign investment going into China from the US or rather you know. Is this a real figure? This doesn’t square with what I see and I presume you’re excluding here a lot of investment that’s going through third channels. And if so, can you say a word about why as a multinational company I would go through a third channel rather than directly? What is it about going through Hong Kong or Singapore that gives me greater security? So that’s one question.

The second is for the panel, we heard a lot about restrictions through foreign investment, how to make it easier for companies. There’s been no mention whatsoever about the fact that a lot of companies get incentives to invest in China or Chinese companies to invest in the US. This is particularly for green field sites. Of course this is distortionary, it’s a form of subsidy. Why is there no discussion of this? Why is this not part of the possible public good improvement that we’re going to get out of the bilateral investment treaty negotiations?

Adam Posen: Excellent.

Jeffrey Schott: Well, very briefly, Uri, you’re correct about the data. There are a lot of reasons why companies invest through different channels and most of it involves do you have a good partner and the opportunities and where do you have the insights and information on the market and often you have to partner with another company. Obviously Hong Kong provides a good deal of expertise for many companies.

The issue was not to get bottled down on the actual direct investment from US into China but to emphasize the point that there is an opportunity for improving the investment climate writ large and that would allow greater opportunities for US firms and for multinationals from various regions that
are US-based or not to invest more broadly in the Chinese market. And that’s the basic point.

Adam Posen: Any of our other colleagues like to comment on the other issues raised? Please.

Wu Changqi: Just an addition, mentioned about actually statistics sometimes may not reflect the complete picture of those US-China investments. Example, the case and the point is that [inaudible 01:12:47], a Chinese meat maker actually acquired [inaudible 01:12:51] in US. Actually that case does not appear in China’s [inaudible 01:12:57] statistics and also does not appear in China’s flow to the US because they devised an offshore center because sometimes—but of course I think still there are a lot of room to go. I mean, the negative list is still low, but in addition, just the statistics need to be [inaudible 01:13:17].

Adam Posen: Does anyone off the panel want to discuss anything about the other important issue Uri raised about various incentives and subsidies? I mean, we’re all familiar, leave aside the specifics of US-China, we’re all familiar with the history of set asides, of having to make investment in various places to get access to markets in the US and other partner countries, we’re familiar with bidding wars among countries or regions to try to land particular investments. Does anybody have any thoughts on this, what I think is important issue to care to share beyond the obvious that we don’t really like this?

Fang Jin: In the past, foreign firms in China actually enjoyed super national treatment in terms—especially incentives and subsidies in taxation, in land use, in financing, but I think ten years ago, China has sort of leveled the playing field, especially by raising the corporate income tax rate for foreign firms with that of domestic firms because China has now a lot of foreign reserves and over investment has been a problem. So China does not provide on a national level incentives for foreign firms simply because they are foreign firms but there are still incentives for certain sectors or for on a case-by-case basis. The Ministry of Commerce still publishes a catalog for foreign investment where they classify four different types of investment according to different sectors.

The first group is called the encouraged list, the sectors that are encouraged investment by foreign firms. And then there’s neutral and there’s discouraged and there’s forbidden category. So it’s not a national or generalized investment incentive structure anymore. It’s more like sector-based and company-based. Yeah.

Sean Miner: Adam, I’d just like to add. So on these incentives for investment, most of the time, these incentives are done by local governments. And I guess the
best way, you’re right, they’re not talked about in the US-China investment treaty negotiations, but I guess the best way you could go forward in dealing with these would be to make them as transparent as possible just like with state-owned enterprises, the subsidies they get, any other subsidies that foreign firms get to invest in a local economy make them transparent and known. Thanks.

Adam Posen: Another question from the audience, please.

Question 2: [Inaudible 01:16:17]. I’m wondering if the panel could elaborate more about the impact of TPP negotiations on the BIT negotiations with China. The TPP also covers investment provision, in other words, SOEs. I think it’s very likely that TPP will be concluded earlier than BIT with China. I believe that if Congress approve the TPP first, it might become more difficult for US to approve a lower standard BIT with China. Thanks.

Adam Posen: It’s a terrific question. I’m going to exert the host privilege and ask Jeff Schott who along with Cathleen Cimino is leading a lot of our TPP work to comment first and then we’ll open it up.

Jeffrey Schott: Well, thank you for that question. I think your conclusion is exactly right. I think there is a good chance that the TPP negotiations will conclude by the middle of this year. I’ve said that on this platform before and that it has an extensive investment chapter that will set a precedent and standard for the BIT negotiations. That said, I think that there is a great opportunity and indeed Ambassador Froman has welcomed Chinese participation in TPP in the future so that would be one channel for advancing US-China investment relations as I mentioned in my talk.

Of course, the BIT negotiations will proceed this year and we’ll go into much more detail on a bilateral basis and I think both sides are trying to provide the most extensive transparency and extension of a non-discriminatory treatment throughout the economy for foreign investors from each side. And if that can advance, then the successful BIT is still possible and the advance of the BIT negotiations will also make it easier for China to meet the qualifications for future TPP membership.

Adam Posen: We have another question at the back, thank you.

Shaun Donnelly: Thank you. Very interesting discussion and I look forward to reading the presentations. My name is Shaun Donnelly at the US Council for International Business. I wanted to talk about CFIUS. I look forward to reading what was written. Many of us I’m sure have opinions about CFIUS and the details of it, but my understanding is that the US has never put CFIUS on the table in negotiating BITs or investment chapters in FTAs and I just wonder how one sees it. Do our Chinese friends really
think that CFIUS will be negotiated in a BIT and if not, how does that look to both the Chinese and US sides going forward in the negotiations? Thanks.

Adam Posen: Maybe Dr. Fang and then Sean?

Fang Jin: My understanding is that CFIUS is always the most talked about issue when it comes to bilateral investment relations. I’m not sure whether CFIUS will be even discussed in the negotiations. Even if it’s not, I think we will still raise our concerns and hopefully can get something in return.

Sean Miner: My expectations are that CFIUS is unlikely to be discussed in the negotiations for US-China BIT. Nonetheless, we do make some small suggestions for reform of the CFIUS process, such as increased transparency for the scope of factors that go into each decision. This will help foreign investors understand what are criteria they need to invest in the US. But also our data shows and there should be a new release of the CFIUS 2013 data in the next couple of weeks that foreign firms have an easier time now going through CFIUS in the last few years, at least in 2012 and 2011, and that the CFIUS block is exaggerated. Thanks.

Jeffrey Schott: Let me just make one clarification on this. The existence of CFIUS is not a problem. It’s not the issue in the BIT negotiations. All countries recognize the importance of maintaining national security requirements in investments. But what a BIT can do is increase the transparency of the CFIUS procedures to ensure that it is a narrow focus. And indeed, as Sean was saying, that the data show that for the most part the concerns about CFIUS have been exaggerated, but it’s better to have that spotlight on it to allow everyone to make that independent judgment.

Adam Posen: As just speaking on my own behalf, not on behalf of the Institute but as someone who is not really a trade person but whose first job at New York Fed included having to write little notes to the CFIUS, I’m afraid I would go a little further than my colleagues Sean and Jeff, which is to say that if pushing either as mentioned, the various standards as mentioned in the TPP or in a China-US bilateral investment treaty, it is in the US’s interest to really massively restrain the CFIUS process. There are people who get into the weeds of this. Our colleague Ted Moran has written extensively on this as well.

But the bottom line is that a huge amount of uncertainty and pandering and cover for various Congress people in their districts goes through the CFIUS process to no good to the US. And it is a shame that we feel we have to be so cautious in calling for CFIUS reform although unfortunately that is the reality and my wiser colleagues are right to keep it measured.
But I think we shouldn’t talk phrasing about transparency as a small thing because inherently the problem with CFIUS, even if it has diminished, is the arbitrariness of it that there are not clear visible tests. And if it was a more transparent process with more clear visible tests, however Congress sees fit to define them, then whether it’s Chinese or other partners have less reason to complain. It’s less a source of uncertainty whatever the US decides. And so I think it is entirely appropriate, just as we always talk in this house about using trade deals to create reform in countries, this is an area where a bilateral treaty could induce some reform, I would like to think, in the US.

We have time for one more question before lunch I believe. Yes, please. I’m sorry, we’ll get in two if you both could go to the back mic and we’ll just take both questions, please. You two.

Wayne Morrison: Wayne Morrison with the Congressional Research Service. When China got into the WTO in 2001, its agreement stated that China would not have export performance requirements, technology transfer requirements and yet the USTR’s annual report in China’s WTO compliance indicated this is still going on. So I was wondering from a practical perspective how a BIT would actually be able to enforce these kind of measures. The US business community has been really [inaudible 01:24:48] this is how we can really get at that. So from a practical matter, how would a US company be able under a BIT be able to address this kind of issues?

Adam Posen: Thank you, very interesting. And the lady there will be the last question.

Question 4: Thank you. My name is [Inaudible 01:25:05]. I’m a visiting fellow in the [inaudible 01:25:09]. I used to work in the Shanghai Institute for International Studies. My question is related to the state-owned enterprise. I noticed that our Chinese colleagues and US colleagues when we talk about SOEs actually we talk different issues. My Chinese colleagues more focus on our mixed ownership of the SOEs but our American colleagues much concern about management side. I mean, the transparency and the subsidiary and other I think the competition environment issues.

So I wonder maybe the SOEs policy is a key obstacle for the US and China’s negotiation is right. My second question is about maybe future China will be a member of the TPP. So my question is what’s the difference between the TPP negotiation on the SOE policy and the China-US BIT negotiations on the SOE policy? Thank you.

Adam Posen: So three very rich, practical questions. So if I can ask the indulgence of the panelists. I’m just going to go down the line and ask each of you to comment on whichever part you want. Dr. Fang, you first.
Fang Jin: Yes, it’s true. When China joined WTO, it removed all export performance technology transfer and local content requirements. I think China has been quite a model student in terms of its performance as reviewed by WTO. If there are selected cases of such violations, I’m sure foreign firms can make the large complaint and China has won or lost quite a number of cases in WTO dispute settlement mechanism.

So I think the WTO dispute settlement or enforcement procedures are quite effective regarding China’s performance so far. I’m not sure how US-China BIT will have this enforcement mechanism but judging by China’s performance in WTO, I’m sure it’s going to be very effective and both sides will work out the details of such a mechanism.

For SOEs, I think we need to take into consideration China’s reform agenda, the principles laid out in the Third Plenum has made it very clear how China wants a reform in many areas including SOEs which is making market forces play a fundamental role in Chinese economy. So I think in a BIT, in China-US BIT, we do not like the previous comments on CFIUS. We do not want to do away with CFIUS. We do not want to do away with SOEs in China.

We need fair and equitable treatment of all different types of companies whether it’s foreign, it’s domestic, SOEs or private Chinese companies. We want to make all decision making process affecting these companies to be transparent and clearly defined. I think that’s the most important issue.

Jeffrey Schott: I’ll limit my comment to the SOE question and TPP. The provisions on SOEs in the TPP are still being finalized. It’s one of the last parts of the agreement that is open. But throughout the course of the negotiation, certainly in the last year or two, US officials have briefed Chinese officials quite regularly on progress in the TPP including in this area. And the purpose of this was so there’s a better understanding of what the TPP is but also a number of areas of TPP can help inform the ongoing discussions in the bilateral investment treaty talks and that’s certainly the case with regard to SOEs.

So I think the progress that has been made as negotiators that learned by doing in developing effective disciplines on the activities of SOEs, not necessarily their existence or not but their activities so that they will operate as normal commercial entities. I think that is being used and that knowledge is being applied to the development of provisions for the bilateral investment treaty.

Wu Changqi: I would like to provide answers, explanation to two issues. One is regarding the technology transfer, in that case the environment. Actually
indeed the main vehicle for technology transfer is regarding international joint ventures. Actually, as a multinational company continued investing in China in those market environment, well, actually today more than 80% of the foreign investment firms are wholly-owned subsidiaries. So in that case, there has not been again the foothold.

Moreover, by the way, the Ministry of Commerce has published a draft law of foreign investment law. Actually that law will make it, the three previous laws, the international joint venture law and foreign wholly-owned subsidiary law invalid. Actually, this is the public consultancy period until February 19. Any multinational companies that have any complaint, something, can voice your concern to Ministry—can address your concern to Ministry of Commerce. Actually they are in the processing of public consultancy. That I think you can see that of course there maybe still some pressure to introducing better technology in China market because the competition is very intense but the pressure from local institutions has been significantly reduced.

Second point is regarding SOEs. Indeed I think academic say in policy circles to put Chinese firm into state-owned, private-owned and multinational, they’re too simplistic. That’s just like using the verb of the white cat or black cat. Actually the cat that catches the mouse is a good cat but actually in China market, many of cats are grey cats. They’re not state-owned, not private-owned, actually they’re mixed. So that is a—of course, that regards the definition, right? I think indeed the question that was raised regarding—one is regarding who owns it. Most importantly is the behavior and what kind of firm behave. Actually, there’s an issue called competition neutrality. Any firm regarding the state-owned, mixed or private-owned sure to behave according to the market discipline.

In this regard, indeed among the bilateral and multilateral investment treaties, actually there are some scholastic studies, some scholars documented 860 such kind of investment treaties. Only two mentioned specially SOEs. I think of course this is policy investment treaties of 2012 model published by US actually give much more specific detailed definition or conditions imposed on SOEs. To a certain extent, that’s a much higher bar regarding the SOEs. I would say more important than behavior, not the investment, right. That’s my comment. Thank you.

Adam Posen: Thank you, and Sean will get the last word on whatever piece.

Sean Miner: Yeah. So I’m going to speak on the SOE part too. What we think is an investment treaty should make a fair investment environment. And when we have these SOEs, these investors are taking huge risks with large sums of money, going in there and then state-owned enterprises are taking over a certain area and they lose their investment. And you say now that SOEs
are more mixed ownership. Well, what we really look at is the control, who has the power in state-owned enterprises, who manages the firm, who fires the CEO, is there a board of directors and who controls them? That’s where the real issue lies.

And so when US firms are doing business in China, they fear the worst when they’re an industry or with a state-owned or state-supported enterprise with reason because of the opacity in which these state-owned enterprises operate. So that’s why we’re looking for more transparency in the ownership of the state-owned enterprises. Thanks.

Adam Posen: Well, thank you all very much. I think this was a really rich discussion and gets us into the true meaning of the potential China-US BIT in the context of a world of state-owned enterprises and competition policy, CFIUS and where, as many of our guests raised, TPP is going on in the background.

We’re going to adjourn briefly for our guests who are present with us here and our colleagues to have lunch. We will reconvene at 12:30, for those of you watching online and those of you who are coming, for remarks by Lu Mai, Secretary General of the China Development Research Foundation and then discussion with him. Thank you to all my colleagues here on the panel. Thank you all for your attention.