
2016 Report to Congress On China's WTO Compliance



**United States Trade Representative
January 2017**

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ABBREVIATIONS

ACFTU	All China Federation of Trade Unions
APEC	Asia-Pacific Economic Cooperation
AQSIQ	State Administration of Quality Supervision, Inspection and Quarantine
BOFT	Bureau of Fair Trade for Imports and Exports
CAC	Cyberspace Administration of China
CFDA	China Food and Drug Administration
CIRC	China Insurance Regulatory Commission
CNCA	National Certification and Accreditation Administration
CNIS	China National Institute for Standards
CUP	China UnionPay
GAPP	General Administration of Press and Publication
IBII	Bureau of Industry Injury Investigation
ISO	International Organization for Standardization
JCCT	U.S.-China Joint Commission on Commerce and Trade
MIIT	Ministry of Industry and Information Technology
MOA	Ministry of Agriculture
MOC	Ministry of Construction
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOFTEC	Ministry of Foreign Trade and Economic Cooperation
MOH	Ministry of Health
MOST	Ministry of Science and Technology
NCA	National Copyright Administration
NDRC	National Development and Reform Commission
NPC	National People's Congress
OIE	World Organization for Animal Health
PBOC	People's Bank of China
SAC	Standardization Administration of China
SAIC	State Administration for Industry and Commerce
SAPPRFT	State Administration of Press, Publication, Radio, Film and Television
SARFT	State Administration of Radio, Film and Television
SASAC	State-owned Assets Supervision and Administration Commission
SAT	State Administration of Taxation
SCLAO	State Council's Legislative Affairs Office
SDPC	State Development and Planning Commission
S&ED	U.S.-China Strategic and Economic Dialogue
SFDA	State Food and Drug Administration
SIPO	State Intellectual Property Office
SPB	State Postal Bureau
SPC	Supreme People's Court
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

FOREWORD

This is the 15th report prepared pursuant to section 421 of the U.S.-China Relations Act of 2000 (P.L. 106-286), 22 U.S.C. § 6951 (the Act), which requires the United States Trade Representative (USTR) to report annually to Congress on compliance by the People's Republic of China (China) with commitments made in connection with its accession to the World Trade Organization (WTO), including both multilateral commitments and any bilateral commitments made to the United States. The report covers calendar year 2016. It also incorporates the findings of the Overseas Compliance Program, as required by section 413(b)(2) of the Act, 22 U.S.C. § 6943(b)(2).

Like the prior reports, this report is structured as an examination of the nine broad categories of WTO commitments undertaken by China. Throughout the report, USTR has attempted to provide as complete a picture of China's WTO compliance as possible, subject to the inherent constraints presented by the sheer volume and complexity of the required changes to China's trade regime and transparency obstacles. The report identifies areas where progress has been achieved and underscores areas of concern, as appropriate, with regard to the commitments that became effective upon China's accession to the WTO as well as those commitments scheduled to be phased in over time.

The focus of the report's analysis continues to be on trade concerns raised by U.S. stakeholders that, in the view of the U.S. Government, merit attention within the WTO context. The report does not attempt to provide an exhaustive analysis of those concerns or the individual commitments made in China's WTO accession agreement that might be implicated by them.

This report also is the one report, from among the various annual reports prepared by USTR, which

provides comprehensive information on the status of the trade and investment commitments that China has made through the U.S.-China Joint Commission on Commerce and Trade and the U.S.-China Strategic and Economic Dialogue.

In preparing this report, USTR drew on its experience in overseeing the U.S. Government's monitoring of China's WTO compliance efforts. USTR chairs the Trade Policy Staff Committee (TPSC) Subcommittee on China, an inter-agency body whose mandate is, *inter alia*, to assess China's efforts to comply with its WTO commitments. This TPSC subcommittee is composed of experts from USTR, the Departments of Commerce, State, Agriculture and Treasury, and the U.S. Patent and Trademark Office, among other agencies. It works closely with State Department economic officers, Foreign Commercial Service officers, Enforcement and Compliance officers and Intellectual Property Attachés from the Commerce Department, Foreign Agricultural Service officers, Customs and Border Protection attachés and Immigration and Customs Enforcement attachés at the U.S. Embassy and Consulates General in China, who are active in gathering and analyzing information, maintaining regular contacts with U.S. industries operating in China and maintaining a regular dialogue with Chinese government officials at key ministries and agencies. The subcommittee meets in order to evaluate and coordinate U.S. engagement of China in the trade context.

To aid in its preparation of this report, USTR also published a notice in the Federal Register on August 16, 2016, asking interested parties to submit written comments and testimony and scheduling a public hearing before the TPSC. The public hearing took place on October 5, 2016. A list of the written submissions received from interested parties is set forth in Appendix 1, and the persons who testified at the hearing before the TPSC are identified in Appendix 2.

EXECUTIVE SUMMARY

OVERVIEW

Fifteen years ago, on December 11, 2001, China acceded to the World Trade Organization. The terms of its accession called for China to implement numerous specific commitments over time, with all key commitments phased in by December 11, 2006. The data confirm a dramatic expansion in trade and investment among China and its many trading partners, including the United States, since China joined the WTO:

- U.S. exports of goods to China totaled \$116 billion in 2015, representing an increase of 505 percent since 2001 and positioning China as the United States' largest goods export market outside of North America.
- U.S. services exports reached \$48 billion in 2015, representing an increase of 802 percent since 2001. Services supplied through majority U.S.-invested companies in China also have been increasing dramatically, totaling an additional \$43 billion in 2013, the latest year for which data is available.

As in past years, despite these positive results, the overall picture currently presented by China's WTO membership remains complex.

Many of the problems that arise in the U.S.-China trade and investment relationship can be traced to the Chinese government's interventionist policies and practices and the large role of state-owned enterprises and other national champions in China's economy, which continue to generate significant trade distortions that inevitably give rise to trade frictions. The United States notes that China's current leadership, in place since 2013, has highlighted the need to pursue further economic reform in China, but to date not much progress is evident. If pursued appropriately, a concerted reform effort offers the potential for addressing the

problems brought on by a state-led economy and for helping to realize the tremendous potential of the U.S.-China trade and investment relationship. Indeed, economic reform in China is a win-win for the United States and China.

In the United States' view, if China is going to deal successfully with its increasing economic challenges at home, it must allow greater scope for market forces to operate, which requires altering the role of the state in planning the economy. China likewise must reform state-owned enterprises, eliminate preferences for domestic national champions and remove market access barriers currently confronting foreign goods and services. Otherwise, China's economic challenges will only increase and become more difficult to solve.

Further economic reform in China also would provide strong benefits to the United States. It would help address the Chinese government's interventionist policies and practices and the large role of state-owned enterprises in China's economy, which are the principal drivers of trade frictions. At the same time, it would lead to more sustainable Chinese economic growth, which in turn would lead to increased U.S. exports to China and a more balanced U.S.-China trade and investment relationship while also helping to drive global economic growth.

In 2016, as in past years, when trade frictions arose, the United States pursued dialogue with China to resolve them. However, when dialogue with China has not led to the resolution of key trade issues, the United States has not hesitated to invoke the WTO's dispute settlement mechanism. Since China's accession to the WTO, the United States has brought 20 WTO cases against China, more than twice as many WTO cases as any other WTO member has brought against China. In doing so, the United States has placed a strong emphasis on the need for China to adhere to WTO rules and has held China fully accountable as a mature participant in, and a major beneficiary of, the WTO's global trading system.

China's first 15 years as a WTO member are described below, followed by a review of key developments in 2016. Then, USTR describes its conclusions regarding China's WTO compliance efforts to date, which are subsequently summarized in Table 1 (beginning on page 24).

CHINA'S FIRST 15 YEARS AS WTO MEMBER

The commitments to which China's leaders agreed when China joined the WTO in 2001 were sweeping in nature and required the Chinese government to make changes to hundreds of laws, regulations and other measures affecting trade and investment. These changes largely coincided with the economic reform goals of China's leaders at the time, which built on the economic reforms that China had begun under Deng Xiaoping in 1978. The Chinese leaders who negotiated the terms of China's WTO accession correctly believed that China's economy needed to rely more on market signals and less on Chinese government economic planners and state-owned enterprises. Indeed, these leaders had initiated a dramatic and rapid reform of state-owned enterprises in the mid-1990s.

Following China's accession to the WTO, the Chinese government took many steps to implement China's numerous commitments. These steps unquestionably deepened China's integration into the WTO's rules-based international trading system, while also strengthening China's ongoing economic reforms.

New leaders took over in China in 2003, two years after China's WTO accession. While the Chinese government continued to take steps to implement China's outstanding WTO commitments, it generally did not pursue economic reforms as aggressively as before. Instead, the Chinese government increasingly emphasized the state's role in the economy, diverging from the path of economic reform that had driven China's accession to the WTO. With the state leading China's economic development, the Chinese government pursued new and more expansive industrial policies, often

designed to limit market access for imported goods, foreign manufacturers and foreign service suppliers, while offering substantial government guidance, resources and regulatory support to Chinese industries, particularly ones dominated by state-owned enterprises. This heavy state role in the economy, reinforced by unchecked discretionary actions of Chinese government regulators, generated serious trade frictions with China's many trade partners, including the United States.

In particular, beginning with the creation of the State-owned Assets Supervision and Administration Commission (SASAC) in 2003, China's new leaders de-emphasized their predecessors' move toward a greater reliance on market forces and a lesser reliance on Chinese government economic planners and state-owned enterprises. Instead, the new leaders set out to bolster the state sector by seeking to improve the operational efficiency of state-owned enterprises and by orchestrating mergers and consolidations in order to make these enterprises stronger. These actions soon led to institutionalized preferences for state-owned enterprises and the creation of national champions in many sectors.

By 2006, when China had taken steps to implement the last of its key WTO commitments, China's policy shift became more evident. It was at this time that USTR began reporting on Chinese government policies and practices that demonstrated a stronger embrace of state capitalism, a trend that continued into 2012, the last full year under the Chinese leaders who had taken over in 2003. USTR also reported that some of these policies and practices suggested that China had not yet fully embraced key WTO principles, such as market access, non-discrimination and transparency. Exacerbating this situation was China's incomplete adoption of the rule of law, including through government officials' abuse of administrative processes.

For example, as we reported in 2012, confidential accounts from foreign enterprises indicate that Chinese government officials, acting without fear of legal challenge, at times require foreign enterprises

to transfer technology as a condition for securing investments approvals, even though Chinese law does not – and cannot under China's WTO commitments – require technology transfer. Similarly, in the trade remedies context, China's regulatory authorities at times seem to pursue antidumping (AD) and countervailing duty (CVD) investigations and impose duties for the purpose of striking back at trading partners that have legitimately exercised their rights under WTO trade remedy rules. As three WTO cases won by the United States confirm, China's regulatory authorities appear to pursue these investigations even when necessary legal and factual support for the duties is absent. In addition, U.S. industry and industries from other WTO Members have asserted that China's competition policy enforcement authorities not only are targeting foreign companies, but also at times use *Anti-monopoly Law* investigations as a tool to protect and promote domestic national champions and domestic industries.

By 2013, when China's next leadership transition was complete, some positive signs of a renewed commitment to economic reform in China began to emerge. The new Chinese leaders' focus on economic reform soon led to a Decision reached in November 2013 at the Third Plenum of the 18th Central Committee of the Chinese Communist Party. The Third Plenum Decision endorsed a number of far-reaching economic reform pronouncements, calling for the market to play a "decisive" role in allocating resources, reducing Chinese government intervention in the economy, accelerating China's opening up to foreign goods and services, reforming China's state-owned enterprises and improving transparency and the rule of law to allow fair competition in China's market. If fully translated into actions, these pronouncements would significantly change China's trade regime and would provide tremendous benefits not only to China but also to its trading partners. Another notable development took place in July 2013. While the United States and China had launched Bilateral Investment Treaty (BIT) negotiations in 2008, it was at this time that China announced that it was

prepared to negotiate a high-standard BIT with the United States, including China's agreement for the first time to cover market access.

To date, the promise of the developments in 2013 has not been realized. The pronouncements of the Third Plenum have faced strong resistance from entrenched interests, and significant economic reform has yet to be realized. In addition, as of December 2016, while the BIT negotiations have proceeded with China's full engagement, China has not yet decided to pursue a sufficient reduction of its investment restrictions to enable the successful conclusion of those negotiations.

In 2016, despite the new Chinese leadership's initial re-focusing on economic reform, a wide range of Chinese policies and practices continued to generate significant concerns among U.S. stakeholders, as did the continuing abuse of administrative processes by Chinese government officials. Major areas of specific concern continued to include: serious problems with intellectual property rights enforcement in China, including in the area of trade secrets; the Chinese government's prolific use of industrial policies favoring state-owned enterprises and domestic national champions, including "secure and controllable" information and communications technology (ICT) policies, export restraints, subsidies, unique national standards and investment restrictions, among other policies; troubling agricultural policies that block U.S. market access; numerous continuing restrictions on services market access; and inadequate transparency. China's slow movement toward accession to the WTO Government Procurement Agreement (GPA) also hinders development of the U.S.-China trade relationship.

Going forward, as reported in prior years, the United States looks to China to reduce market access barriers, uniformly follow the fundamental principles of non-discrimination and transparency, significantly reduce the level of government intervention in the economy, fully institutionalize market mechanisms, require state-owned enterprises to compete with

other enterprises on fair and non-discriminatory terms, and fully embrace the rule of law. Taking these steps is critical to realizing the tremendous potential presented by China's WTO membership, including the breadth and depth of trade and investment – and prosperity – possible in a thriving, balanced global trading system.

2016 DEVELOPMENTS

In 2016, the United States worked hard to increase the benefits that U.S. businesses, workers, farmers, ranchers, service providers and consumers derive from trade and economic ties with China. Throughout the past year, the United States focused on outcome-oriented dialogue at all levels of engagement with China, while also taking concrete steps to enforce U.S. rights at the WTO as appropriate in areas where dialogue had not resolved U.S. concerns.

On the bilateral front, the United States and China pursued numerous formal and informal meetings and dialogues throughout the past year, culminating in three high-level meetings. In June 2016, the United States and China met in Beijing and held their 8th U.S.-China Strategic and Economic Dialogue (S&ED) meeting. Constructive dialogue also took place in connection with President Obama's visit to Hangzhou in September 2016. In addition, the United States and China met in Washington in November 2016 and held the 27th meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT). The United States used all of these avenues to engage China's leadership on trade and investment matters and to seek resolutions to a number of pressing issues, while also working to ensure that China fully implemented past commitments.

The two sides were able to make significant progress on the following key trade and investment issues through their bilateral engagement in 2016:

- With regard to excess industrial capacity, China committed to take effective steps to address the

challenges of excess capacity so as to enhance market function and encourage adjustment.

- Specifically with regard to excess capacity in the steel industry, where China's State Council had issued guidelines calling for the elimination of 100 to 150 million MT of steel capacity, China committed to undertake further steps to ensure market forces are not constrained, so that its steel industry develops a stronger market orientation to enhance efficiency, and, in doing so, progressively reduces excess capacity.
- China also committed to ensure that no central government plans, policies, directives, guidelines, lending or subsidization targets the net expansion of steel capacity.
- China further committed to adopt measures to strictly contain steel capacity expansion, reduce net steel capacity, eliminate outdated steel capacity and urge the exit of steel production capacity that falls short of environment, energy consumption, quality or safety requirement standards and to actively and appropriately dispose of "zombie enterprises" through bankruptcies and other means.
- More broadly, the United States and China recognized the importance of the establishment and improvement of impartial bankruptcy systems and mechanisms to resolving excess industrial capacity, and China agreed to implement bankruptcy laws by continuing to establish special bankruptcy tribunals, further improving the bankruptcy administrator systems and using modern information tools
- Additionally, China agreed to support the establishment of, and actively participate in, a global forum on excess steel capacity envisioned to serve as a cooperative platform for dialogue and information-sharing on global capacity developments and on policies and support measures taken by governments.

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- With regard to aluminum, the United States and China recognized that excess capacity in this industry had increased and had become a global issue requiring collective response, and accordingly the two sides agreed to work together to address the excess aluminum capacity situation.
- With regard to China's "secure and controllable" ICT policies, China committed that ICT cybersecurity measures should be consistent with WTO agreements, be narrowly tailored, take into account international norms, be nondiscriminatory and not impose nationality-based conditions or restrictions on the purchase, sale or use of ICT products by commercial enterprises unnecessarily.
- China further committed that ICT cybersecurity measures generally applicable to the commercial sector are not to unnecessarily limit or prevent commercial sales opportunities for foreign suppliers of ICT products or services.
- China committed that its innovation policies would be consistent with the principle of non-discrimination and that it would not advance generally applicable policies or practices that require the transfer of intellectual property rights or technology as a condition of doing business in China's market.
- The United States welcomed new action by China's State Council requiring all sub-central regions and agencies to take further action to review their measures and to remove any linkages between indigenous innovation policies and the provision of government procurement preferences.
- Building on past commitments from China that innovation policies should be consistent with the principle of nondiscrimination, China confirmed that its "secure and controllable" ICT policies will not limit sales opportunities for foreign companies or impose nationality-based restrictions, and relevant technical regulations will be notified to the WTO Technical Barriers to Trade Committee.
- China committed to further improve its approval processes for the products of agricultural biotechnology and specifically to revise a key regulatory measure to ensure that it provides for approval processes that are timely, transparent, predictable, science-based and based on international standards.
- China also committed to review outstanding applications for approval of agricultural biotechnology products and act on them in line with the timing and procedures set forth in China's laws and regulations.
- With regard to China's current policy of asynchronous biotechnology approvals, the two sides agreed to intensify their study and dialogue on the sustainability of this policy and its trade and innovation impacts.
- With regard to pharmaceuticals, China affirmed that drug registration review and approval shall not be linked to pricing commitments and shall not require specific pricing information.
- China addressed past commitments relating to medical devices by committing to strengthen oversight of government procurement of medical devices to ensure foreign brands and foreign-manufactured products are treated in a transparent, fair and equitable manner.
- China committed not to link government procurement to policies promoting domestically produced medical devices.
- China committed to ensure that China's industry development plans treat all enterprises equally and operate in a manner consistent with market-based concepts.

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- China affirmed that it is strengthening its trade secrets protections and that it is prioritizing enforcement against online counterfeiting and piracy. China specifically recognized the important role of online platforms and agreed to use them and other means to develop innovative new ways to deliver safe, reliable and legitimate products in convenient and affordable ways.
- With regard to the operation of the integrated circuit investment funds in China, China reaffirmed that they are based on market principles and that the Chinese government does not interfere with the normal operation of those funds and clarified that the Chinese government has never asked the funds to require compulsory technology or the transfer of intellectual property rights (IPR) as a condition for participation in the funds' investment projects.
- China confirmed that MOFCOM has been coordinating with relevant departments and local governments regarding U.S. WTO concerns relating to so-called "International Well-Known Brand" subsidies and farm machinery subsidies and that China is prepared to adjust the measures at issue as necessary.

While progress was made on some meaningful issues as described above, many issues of concern remain. The United States will continue to engage China on important issues in the areas of IPR enforcement, including trade secrets, secure and controllable ICT policies, technology localization, indigenous innovation, investment restrictions, excess capacity, government subsidization, export restraints, strategic emerging industries, state-owned enterprises, administrative licensing, government procurement, taxation, standards development, market access for U.S. beef and poultry, biotechnology product approvals, food safety, pharmaceuticals and medical devices, cosmetics, financial services, Internet-related

services, theatrical films, telecommunications services, express delivery services, legal services, competition policy and transparency, among others.

On the enforcement side, the United States continued to pursue a robust agenda in 2016. The United States brought three new WTO complaints against China, while continuing to prosecute five other WTO cases against China.

In one new case, the United States is challenging export quotas and export duties maintained by China on various forms of 11 raw materials, including antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum and tin. These raw materials are key inputs in important U.S. manufacturing industries, including aerospace, automotive, construction and electronics.

A second new case challenges excessive government support for the production of rice, wheat and corn by farmers in China. Like other WTO members, China made commitments that its support for these agricultural commodities would not exceed certain levels. However, the United States' investigation of the market price support programs maintained by the Chinese government for these agricultural commodities appears to exceed the agreed levels of domestic support.

In the third new case, the United States challenged China's administration of tariff-rate quotas (TRQs) for rice, wheat and corn. Due to China's poorly defined criteria for applicants, unclear procedures for distributing TRQ allocations, and failure to announce quota allocation and reallocation results, traders are unsure of available import opportunities and producers worldwide have reduced market access opportunities.

Over the past year, favorable outcomes were achieved in two of the ongoing WTO cases that the United States previously had brought against China. In a WTO case launched in February 2015, the United States challenged numerous Chinese central

government and sub-central government export subsidies provided to manufacturers and producers across seven industries located in designated clusters of enterprises called “Demonstration Bases.” The subsidies at issue appeared to be inconsistent with China’s obligation under Article 3 of the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) not to provide subsidies contingent upon export performance. Consultations in the new case took place in March 2015. In April 2015, a WTO panel was established to hear the case at the United States’ request, and the two sides subsequently engaged in extensive further discussions exploring steps for China to take to address U.S. concerns. In April 2016, the United States announced that China had terminated the subsidies at issue.

In a case launched in December 2015, the United States challenged discriminatory Chinese government measures exempting sales of certain aircraft produced in China, including general aviation aircraft, agricultural aircraft, business jets and regional jets, from the value-added tax (VAT) while imposing that same tax on sales of imported aircraft. Compounding this problem, it appeared that the Chinese government never published these measures as required by China’s WTO commitments. Consultations took place in January 2016. In October 2016, the United States announced that it had confirmed that China had terminated the discriminatory tax measures at issue.

Other active WTO cases against China involve challenges to antidumping and countervailing duties that China imposed on imports of U.S. chicken broiler products, restrictions that China put in place to create and maintain a domestic national champion as the exclusive supplier of electronic payment services, i.e., the services needed to process most credit and debit card transactions in China, and importation and distribution restrictions applied to theatrical films. The status of each of these cases is detailed below in the Enforcement section (beginning on page 36).

CONCLUSIONS REGARDING CHINA’S WTO COMPLIANCE EFFORTS

A summary of USTR’s conclusions regarding China’s WTO compliance efforts is set forth in Table 1. Each of these conclusions is discussed in more detail in subsequent sections of this report, and at the end of each of those sections, the report describes the next steps that the United States intends to take going forward to address shortcomings in China’s WTO compliance efforts.

PRIORITY ISSUES

At present, China’s trade policies and practices in several specific areas cause particular concern for the United States and U.S. stakeholders, including in relation to China’s approach to the obligations of WTO membership. The key concerns in each of these areas are summarized below. In 2017, the United States will continue to pursue vigorous and expanded bilateral engagement to resolve the serious issues that remain in these areas. The United States also will continue to hold China accountable for adherence to WTO rules when dialogue does not resolve U.S. concerns, including through the use of the dispute settlement mechanism at the WTO.

Intellectual Property Rights

Overview

After its accession to the WTO, China undertook a wide-ranging revision of its framework of laws and regulations aimed at protecting the IPR of domestic and foreign rights holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Currently, China is in the midst of a further round of revisions to these laws and regulations, as it seeks to make them more effective. Nevertheless, inadequacies in China’s IPR protection and enforcement regime continue to present serious barriers to U.S. exports and investment. As a result, China was again placed

on the Priority Watch List in USTR's 2016 Special 301 report. In addition, in December 2016, USTR announced the results of its 2016 Out-of-Cycle Review of Notorious Markets, which identifies online and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting. Several Chinese markets were among those named as notorious markets.

Trade Secrets

The protection and enforcement of trade secrets in China is a serious problem and has been the subject of high-profile attention and engagement in recent years. Thefts of trade secrets for the benefit of Chinese companies have occurred both within China and outside of China. Offenders in many cases continue to operate with impunity. Most troubling are reports that actors affiliated with the Chinese government and the Chinese military have infiltrated the computer systems of U.S. companies, stealing terabytes of data, including the companies' intellectual property (IP), for the purpose of providing commercial advantages to Chinese enterprises. To help address these challenges, the United States previously has won commitments from China not to condone this type of state-sponsored misappropriation of trade secrets and has urged China to make certain key amendments to its trade secrets-related laws and regulations, particularly with regard to a draft revision of the *Anti-unfair Competition Law*. China also has committed to issue judicial guidance to strengthen its trade secrets regime. The United States also has urged China to take actions to address this problem across the range of state-sponsored actors and to promote public awareness of this issue. In 2016, China circulated for public comment a draft of proposed revisions to the *Anti-unfair Competition Law*, but it included only minor changes to the provisions on trade secrets and therefore did not address the full range of U.S. concerns in this area. At the November 2016 JCCT meeting, China confirmed that it is strengthening its trade secrets regime and plans to bolster several areas of importance, including the availability of evidence preservation orders and

damages based on market value as well as the issuance of a judicial interpretation on preliminary injunctions and other matters.

Bad Faith Trademark Registration

Of particular and growing concern is the continuing registration of trademarks in bad faith. Although China has taken some steps to address this problem, U.S. companies across industry sectors continue to face Chinese applicants registering their marks and "holding them for ransom" or seeking to establish a business building off of U.S. companies' global reputations. At the November 2016 JCCT meeting, China publicly noted the harm that may be caused by bad faith trademarks and confirmed that it is taking further steps to combat bad faith trademark filings.

Pharmaceuticals

The United States continues to engage China on a range of patent and technology transfer concerns relating to pharmaceuticals. At the December 2013 JCCT meeting, China committed to permit supplemental data supporting pharmaceutical patent applications. However, to date, it appears that China has only implemented that commitment in part. In October 2016, China circulated for public comment proposed revisions to its *Patent Examination Guidelines*, which included a proposed revision that would clarify that examiners must consider in their examination process certain post-filing supplemental data. If implemented, this proposed revision would represent an important step toward the supplemental data practice in the United States and other jurisdictions.

Meanwhile, many other concerns remain, including the need to provide effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to provide effective enforcement against infringement of pharmaceutical patents. Additionally, a backlogged drug regulatory approval system presents market access and patient

access concerns. At the December 2014 JCCT meeting, China committed to significantly reduce time-to-market for innovative pharmaceutical products through streamlined processes and additional funding and personnel.

A serious concern that first arose in 2015 stems from China's proposals in the pharmaceuticals sector that seek to promote government-directed indigenous innovation and technology transfer through the provision of regulatory preferences. For example, a State Council measure issued in final form without having been made available for public comment calls for expedited regulatory approval to be granted to innovative new drugs where the applicant's manufacturing capacity has been shifted to China. The United States is pressing China to reconsider this approach.

In April 2016, the China Food and Drug Administration (CFDA) issued a draft measure that effectively would require drug manufacturers to commit to price concessions as a pre-condition for marketing approval of new drugs. Given its inconsistency with international science-based regulatory practices, which are based on safety, efficacy and quality, the draft measure elicited serious concerns from the United States and U.S. industry. Subsequently, at the November 2016 JCCT meeting, China agreed not to link a pricing commitment to drug registration evaluation and approval. In addition, China agreed not to require any specific pricing information when implementing the final measure.

Online Piracy

Online piracy continues on a large scale in China, affecting a wide range of industries, including those involved in distributing legitimate music, motion pictures, books and journals, software and video games. While increased enforcement activities have helped stem the flow of online sales of some pirated offerings, much more sustained action and attention is needed to make a more meaningful difference for content creators and rights holders, particularly

small and medium-sized enterprises. At the same time, the United States has urged China to consider ways to create a broader policy environment that helps foster the growth of healthy markets for licensed and legitimate content. The United States also has urged China to revise existing rules that have proven to be counterproductive. For example, new rules on the review of foreign television content present a serious concern for the continued viability of licensed streaming of foreign television content via online platforms, as these rules are disrupting legitimate commerce while inadvertently creating conditions that allow for pirated content to displace legitimate content online. At the November 2016 JCCT meeting, China agreed to actively promote e-commerce-related legislation, strengthen supervision over online infringement and counterfeiting, and to work with the United States to explore the use of new approaches to enhance online enforcement capacity.

Counterfeit Goods

Although rights holders report increased enforcement efforts by Chinese government authorities, counterfeiting in China, affecting a wide range of goods, remains widespread. One area of particular U.S. concern involves medications. Despite sustained engagement by the United States, China still needs to improve its regulation of the manufacture of active pharmaceutical ingredients to prevent their use in counterfeit and substandard medications. At the July 2014 S&ED meeting, China agreed to develop and seriously consider amendments to the *Drug Administration Law* that will require regulatory control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients. At the June 2015 S&ED meeting, China further agreed to publish revisions to the *Drug Administration Law* in draft form for public comment and to take into account the opinions of the United States and other relevant stakeholders. As of December 2016, China had not amended this law, reportedly due to the prioritization of reforming the drug regulatory system to reduce the drug approval lag.

Industrial Policies

Overview

China continued to pursue a wide array of industrial policies in 2016 that seek to limit market access for imported goods, foreign manufacturers and foreign service suppliers, while offering substantial government guidance, resources and regulatory support to Chinese industries. The principal beneficiaries of these constantly evolving policies are state-owned enterprises, as well as other favored domestic companies attempting to move up the economic value chain.

Secure and Controllable ICT Policies

In 2015 and 2016, global concerns heightened over a series of Chinese measures that would impose severe restrictions on a wide range of U.S. and other foreign ICT products and services with an apparent long-term goal of replacing foreign ICT products and services. Concerns centered on requirements that ICT equipment and other ICT products and services in critical sectors be “secure and controllable.”

Some of these policies would apply to wide segments of the Chinese market. For example, in July 2015, China passed a *National Security Law* whose stated purpose is to safeguard China's security, but it also includes sweeping provisions addressing economic and industrial policy. Additionally, in September 2015, the State Council published a big data development plan, which for the first time set a time table for adopting “secure and controllable” products and services in critical departments by 2020. China also enacted a *Counterterrorism Law* in December 2015 and then a *Cybersecurity Law* in November 2016, which imposed far-reaching and onerous trade restrictions on imported ICT products and services in China.

Other policies would apply to specific sectors of China's economy. A high profile example from December 2014 is a measure drafted by the China Banking Regulatory Commission (CBRC) that called

for 75 percent of ICT products used in the banking system to be “secure and controllable” by 2019 and that imposed a series of criteria that would shut out foreign ICT providers from China's banking sector. Other specific sectors currently pursuing “secure and controllable” policies include the insurance sector and the e-commerce sector.

In 2015, the United States, in concert with other governments and stakeholders around the world, raised serious concerns at the highest levels of government within China. President Obama and President Xi discussed this issue during the state visit of President Xi in September and agreed on a set of principles for trade in information technologies. The issue was also raised in connection with the June 2015 S&ED meeting and the November 2015 JCCT meeting, with China making a series of additional important commitments with regard to technology policy.

China reiterated many of these commitments at the November 2016 JCCT meeting, where it affirmed that its “secure and controllable” policies are not to unnecessarily limit or prevent commercial sales opportunities for foreign ICT suppliers or unnecessarily impose nationality based conditions and restrictions on commercial ICT purchases, sales or uses. China also agreed that it would notify relevant technical regulations to the WTO Committee on Technical Barriers to Trade (TBT Committee).

Indigenous Innovation

In 2016, policies aimed at promoting “indigenous innovation” continued to represent an important component of China's industrialization efforts. Through intensive, high-level bilateral engagement, the United States previously secured a series of critical commitments from China that generated major progress in de-linking indigenous innovation policies at all levels of the Chinese government from government procurement preferences, culminating in the issuance of a State Council measure mandating that provincial and local governments

eliminate any remaining linkages by December 2011. At the November 2016 JCCT meeting, in response to U.S. concerns regarding the continued issuance of inconsistent measures, China announced that its State Council had issued a document requiring all local regions and all agencies to “further clean up related measures linking indigenous innovation policy to the provision of government procurement preference.”

Addressing related concerns, the United States, using the U.S.-China Innovation Dialogue, persuaded China to take an important step at the May 2012 S&ED meeting, where China committed to treat IPR owned or developed in other countries the same as IPR owned or developed in China. The United States also used the 2012 JCCT process to press China to revise or eliminate specific measures that appeared to be inconsistent with this commitment. Throughout 2013 and 2014, China reviewed specific U.S. concerns, and the United States and China intensified their discussions. At the December 2014 JCCT meeting, China clarified and underscored that it will treat IPR owned or developed in other countries the same as domestically owned or developed IPR, and it further agreed that enterprises are free to base technology transfer decisions on business and market considerations, and are free to independently negotiate and decide whether and under what circumstances to assign or license intellectual property rights to affiliated or unaffiliated enterprises.

In 2016, China's measures on “secure and controllable” ICT policy included provisions that would create discriminatory indigenous innovation preferences. In addition, China's recent steps to reform its drug review and approval system raised new concerns related to indigenous innovation and technology transfer. For example, in 2015, China's State Council issued a measure that calls for expedited review and approval to be granted to “innovative new drugs with manufacturing capacity shifted to China.” As discussed above, at the November 2016 JCCT meeting, China issued a helpful clarification on the intent of its “secure and

controllable” policies, a subject on which the United States will continue to engage with China closely in 2017.

Technology Transfer

While some longstanding concerns regarding technology transfer remain unaddressed, and new ones have emerged, such as tying government preferences to the localization of technology in China and granting regulatory review and approval preferences to innovative drug manufacturers that shift their production to China, some progress has been made in select areas. For example, China committed at the December 2013 JCCT meeting not to finalize or implement a selection catalogue and rules governing official use vehicles. The catalogue and rules would have interfered with independent decision making on technology transfer and would have effectively excluded vehicles produced by foreign and foreign-invested enterprises from important government procurement opportunities.

Export Restraints

China continues to deploy a combination of export restraints, including export quotas, export licensing, minimum export prices, export duties and other restrictions, on a number of raw material inputs where it holds the leverage of being among the world's leading producers. Through these export restraints, it appears that China is able to provide substantial economic advantages to a wide range of downstream producers in China at the expense of foreign downstream producers, while creating pressure on foreign downstream producers to move their operations, technologies and jobs to China. In 2013, China removed its export quotas and duties on several raw material inputs of key interest to the U.S. steel, aluminum and chemicals industries after the United States won a dispute settlement case against China at the WTO. In 2014, the United States won a second WTO case, where the claims focused on China's export restraints on rare earths, tungsten and molybdenum, which are key inputs for a multitude of U.S.-made products, including hybrid

automobile batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum, and chemicals. China removed those export restraints in May 2015. In July 2016, as discussed above, the United States launched a third WTO case challenging export restraints maintained by China. The challenged export restraints include export quotas and export duties maintained by China on various forms of 11 raw materials, including antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum and tin. These raw materials are key inputs in important U.S. manufacturing industries, including aerospace, automotive, construction and electronics.

Subsidies

China has continued to provide substantial subsidies to its domestic industries, causing injury to U.S. industries. Some of these subsidies also appear to be prohibited under WTO rules. The United States has addressed these subsidies through countervailing duty proceedings conducted by the Commerce Department, invocation of a trade policy compliance mechanism established by China's State Council, and dispute settlement cases at the WTO. The United States and other WTO members also have continued to press China to notify all of its subsidies to the WTO in accordance with its WTO obligations. Since joining the WTO 15 years ago, China has not yet submitted to the WTO a complete notification of subsidies maintained by the central government, and it did not notify a single sub-central government subsidy until July 2016, when it provided information only on sub-central government subsidies that the United States had challenged as prohibited subsidies in a WTO case.

Excess Capacity

Chinese government actions and financial support in manufacturing industries like steel and aluminum have contributed to massive excess capacity in China, with the resulting over-production distorting global markets and hurting U.S. producers and workers in both the United States and third country

markets such as Canada and Mexico, where U.S. exports compete with Chinese exports. While China recognizes the severe excess capacity problem in these industries, among others, and has taken steps to try to address this problem, there have been mixed results.

From 2000 to 2014, China accounted for more than 75 percent of global steelmaking capacity growth. While China's capacity growth appears to have slowed since 2014, according to Organization for Economic Cooperation and Development (OECD) figures, China's efforts to address excess capacity to date have not resulted in reduced total steelmaking capacity in China. Currently, China's capacity alone exceeds the combined steelmaking capacity of the European Union (EU), Japan, the United States, and Russia. China has no comparative advantage with regard to the energy and raw material inputs that make up the majority of costs for steelmaking, yet China's capacity has continued to grow and is estimated to have exceeded 1.16 billion metric tons (MT) in 2016, despite weakening demand domestically and abroad. Steel demand in China decreased 5 percent in 2015 as compared to 2014, and demand in China is projected to decrease by another 1 percent in 2016 and then by 2 percent in 2017, according to the World Steel Association. As a result, China's steel exports grew to be the largest in the world, at 93 million MT in 2014, a 50-percent increase over 2013 levels, despite sluggish steel demand abroad. In 2015, Chinese exports reached a historic high of 110 million MT, and China's steel exports are expected to grow even further in 2016, causing increased concerns about the detrimental effects that these exports may have on the already saturated world market for steel.

Similarly, monthly production of primary aluminum in China doubled between January 2011 and July 2015 and continues to grow, despite a severe drop in global aluminum prices during the same period. Large new facilities are being built with government support, including through energy subsidies, as China's primary aluminum production accounted for 54 percent of global production from January

through October 2016. As a consequence, China's aluminum excess capacity is contributing to a severe decline in global aluminum prices, harming U.S. plants and workers.

Not unlike the situations in the steel and aluminum industries, China's production of soda ash has increased as domestic demand has stagnated. As a result, China's soda ash exports increased 23 percent in 2015 as compared to the previous year, and this trend has continued in 2016. Further, China's soda ash production, which totaled 26 million MT in 2015, is projected to grow at nearly 3 percent annually through 2020, which is more than double China's projected 1.2 percent annual increase in domestic demand over that same time period. It also is estimated that China's excess soda ash capacity will continue to grow in the coming years, reaching over 10.5 million MT by 2019.

Excess capacity in China – whether in the steel industry or other industries like aluminum or soda ash – hurts U.S. industries and workers not only because of direct exports from China to the United States, but because lower global prices and a glut of supply make it difficult for even the most competitive producers to remain viable. Domestic industries in many of China's trading partners have continued to respond to the effects of the trade-distortive effects of China's excess capacity by petitioning their governments to impose trade remedies such as antidumping and countervailing duties.

Value-added Tax Rebates and Related Policies

As in prior years, in 2016, the Chinese government attempted to manage the export of many primary, intermediate and downstream products by raising or lowering the VAT rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty and unfairness in the global markets for some products, particularly downstream products

where China is a leading world producer or exporter, such as products made by the steel, aluminum and soda ash industries. These practices, together with other policies, such as excessive government subsidization, also have contributed to severe excess capacity in these same industries. A positive development took place at the July 2014 S&ED meeting, when China agreed to improve its VAT rebate system, including by actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade. To date, however, China has not made any movement toward the adoption of international best practices.

Strategic Emerging Industries

In 2010, China's State Council issued a decision on accelerating the cultivation and development of "strategic emerging industries" (SEIs) that called upon China to develop and implement policies designed to promote rapid growth in government-selected industry sectors viewed as economically and strategically important for transforming China's industrial base into one that is more internationally competitive in cutting-edge technologies. China subsequently identified seven sectors for focus under the SEI initiative, including energy-saving and environmental protection, new generation information technology, biotechnology, high-end equipment manufacturing, new energy, new materials and new-energy vehicles. The list of sectors was expanded with the issuance of China's 13th Five-year Plan in March 2016.

To date, import substitution policies have been included in some SEI development plans at the sub-central government level. For example, a development plan for the light-emitting diode (LED) industry issued by the Shenzhen municipal government included a call to support research and development in products and technologies that have the ability to substitute for imports. Shenzhen rescinded the plan in 2013 following U.S. Government intervention with China's central government authorities.

Similarly, some central and sub-central government measures use local content requirements as a condition for enterprises in SEI sectors to receive financial support or other preferences. For example, in the high-end equipment manufacturing sector, China has maintained an annual program that conditioned the receipt of a subsidy on an enterprise's use of at least 60 percent Chinese-made components when manufacturing intelligent manufacturing equipment. Citing WTO concerns, the United States began pressing China in 2014 to repeal or modify these measures. In 2015, China reported that it had decided not to renew this subsidy program.

In addition, an array of Chinese policies designed to assist Chinese automobile enterprises in developing electric vehicle technologies and in building domestic brands that can succeed in global markets continued to pose challenges in 2016. As previously reported, these policies have generated serious concerns about discrimination based on the country of origin of IP, forced technology transfer, research and development requirements, investment restrictions and discriminatory treatment of foreign brands and imported vehicles. Although significant progress has been made in addressing some of these policies, more work remains to be done.

In May 2015, China's State Council released "Made in China 2025," a long-term plan spearheaded by the Ministry of Industry and Information Technology (MIIT) intended to raise industrial productivity through more advanced and flexible manufacturing techniques. Specifically, through Made in China 2025, the Chinese government hopes to make advanced manufacturing technologies and sectors a key driver of economic growth. The implicated technologies and sectors include advanced information technology, automated machine tools and robotics, aviation and spaceflight equipment, maritime engineering equipment and high-tech vessels, advanced rail transit equipment, new energy vehicles, power equipment, farm machinery, new materials, biopharmaceuticals and advanced medical products. According to industry experts, Made in

China 2025 represents a modest improvement over SEI development plans and indigenous innovation initiatives rolled out since 2010. However, Made in China 2025 includes many holdovers from these prior state-driven plans and initiatives, as it, for example, sets targets for indigenous production or control of up to 40 percent of certain critical components in the aerospace, power and construction sectors, among other sectors, by 2020, while aiming to achieve substantial productivity gains in these sectors. Industry experts are skeptical that China will be able to reach its Made in China 2025 goals due to other policies that hold back competition, limit market access and over-regulate new technologies and cross-border data flows.

Import Ban on Remanufactured Products

China prohibits the importation of remanufactured products, which it typically classifies as used goods. China also maintains restrictions that prevent remanufacturing process inputs (known as cores) from being imported into China's customs territory, except special economic zones. These import prohibitions and restrictions undermine the development of industries in many sectors in China, including mining, agriculture, healthcare, transportation and communications, among others, because companies in these industries are unable to purchase high-quality, lower-cost remanufactured products produced outside of China.

Standards

In the standards area, two principal types of problems harm U.S. companies. First, Chinese government officials in some instances have reportedly pressured foreign companies seeking to participate in the standards-setting process to license their technology or intellectual property on unfavorable terms. Second, China has continued to pursue unique national standards in a number of high technology areas where international standards already exist, such as 3G and 4G telecommunications standards, Wi-Fi standards and information security standards. The United States continues to press

China to address these specific concerns, but to date this bilateral engagement has yielded minimal progress.

Currently, China is undergoing a large-scale reform of its standards system. As part of this reform, China is seeking to incorporate a “bottom up” strategy in standards development in addition to the existing “top down” system. At the same time, the existing technical committees continue to develop standards. For example, the technical committee for cybersecurity standards has begun allowing foreign companies to participate in standards development and setting, with several U.S. and other foreign companies being allowed to vote and to participate at the working group level in standards development.

Government Procurement

The United States continues to press China to take concrete steps toward fulfilling its commitment to accede to the GPA and to open up its vast government procurement market to the United States and other GPA parties. To date, however, the United States, the EU, and other GPA parties have viewed China's offers of coverage as highly disappointing in scope and coverage. China submitted its fifth revised offer in December 2014. This offer showed progress in a number of areas, including thresholds, entity coverage and services coverage. Nonetheless, it fell short of U.S. expectations and remains far from acceptable to the United States and other GPA parties as significant deficiencies remain in a number of critical areas, including thresholds, entity coverage, services coverage and exclusions.

China's current government procurement regime is governed by two important laws. The Government Procurement Law, which is administered by the Ministry of Finance, governs purchasing activities conducted with fiscal funds by state organs and other organizations at all levels of government in China. The Tendering and Bidding Law falls under the jurisdiction of the National Development and

Reform Commission and imposes uniform tendering and bidding procedures for certain classes of procurement projects in China, notably construction and works projects, without regard for the type of entity that conducts the procurement. Both laws cover important procurements that GPA parties would consider to be government procurement eligible for coverage under the GPA. The United States will continue to work with the Chinese government to ensure that China's future GPA offers include coverage of government procurement regardless of which law it falls under, including procurement conducted by both government entities and other entities, such as state-owned enterprises.

Investment Restrictions

China seeks to protect many domestic industries through a restrictive investment regime, which adversely affects foreign investors in services sectors, agriculture, extractive industries and manufacturing sectors. In line with its own plans for domestic reform, including as expressed through the Third Plenum Decision, China continues to consider improvements to its foreign investment regime, including through the use of a “negative list” as a mechanism to govern access for foreign investors. However, many aspects of China's current investment regime, including lack of substantial liberalization, maintenance of a case-by-case administrative approval system and the potential for a new and overly broad national security review, continue to cause foreign investors great concern. In addition, foreign enterprises report that Chinese government officials may condition investment approval on a requirement that a foreign enterprise transfer technology, conduct research and development in China, satisfy performance requirements relating to exportation or the use of local content or make valuable, deal-specific commercial concessions. The United States has repeatedly raised concerns with China about its restrictive investment regime. To date, this sustained bilateral engagement has not led to a significant relaxation of China's investment

restrictions, nor has it appeared to curtail ad hoc actions by Chinese government officials.

The United States and China have continued to seek to conclude a high-standard BIT. Building on China's commitment at the July 2013 S&ED meeting to negotiate a BIT that will provide national treatment at all phases of investment, including market access (i.e., the "pre-establishment" phase of investment), and will employ a negative list approach in identifying exceptions (meaning that all investments are permitted except for those explicitly excluded), the United States and China have engaged in extensive negotiations, which were ongoing as of December 2016.

Trade Remedies

China's regulatory authorities in some instances seem to be pursuing antidumping and countervailing duty investigations and imposing duties for the purpose of striking back at trading partners that have exercised their WTO rights against China, even when necessary legal and factual support for the duties is absent. The U.S. response has been the filing and prosecution of three WTO disputes. The decisions reached by the WTO in those three disputes confirm that China failed to abide by WTO disciplines when imposing the duties at issue.

Services

Overview

The prospects for U.S. service suppliers in China are promising, given the size of China's market and the Chinese leadership's stated intention to promote the growth of China's services sectors. The United States continues to enjoy a substantial surplus in trade in services with China, as the United States' cross-border supply of services into China totaled \$48 billion in 2015. In addition, services supplied through majority U.S.-invested companies in China totaled \$43 billion in 2013, the latest year for which data are available. This success has been largely attributable to the market openings phased in by

China pursuant to its WTO commitments, as well as the U.S. Government's comprehensive engagement with China's various regulatory authorities, including in the pursuit of sector openings that go beyond China's WTO commitments.

Nevertheless, in 2016, numerous challenges persisted in a range of services sectors. As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services, including banking services, insurance services, telecommunications services, Internet-related services (including cloud services), audiovisual services, express delivery services, legal services and other services to achieve their full market potential in China. Some sectors, including electronic payment services and theatrical film distribution, have been the subject of WTO dispute settlement. While China declared an intent to further liberalize a number of services sectors in its Third Plenum Decision, no meaningful concrete steps have been taken.

Electronic Payment Services

China continued to place unwarranted restrictions on foreign companies, including the major U.S. credit card and processing companies, which supply electronic payment services to banks and other businesses that issue or accept credit and debit cards. The United States prevailed in a WTO case challenging those restrictions, and China agreed to comply with the WTO's rulings by July 2013, but China has not yet taken needed steps to authorize access by foreign suppliers to this market. The United States is actively pressing China to comply with the WTO's rulings and also is considering appropriate next steps at the WTO.

Theatrical Films

In February 2012, the United States and China reached an alternative solution with regard to

certain rulings relating to the importation and distribution of theatrical films in a WTO case that the United States had won. The two sides signed a memorandum of understanding (MOU) providing for substantial increases in the number of foreign films imported and distributed in China each year, along with substantial additional revenue for foreign film producers. Significantly more U.S. films have been imported and distributed in China since the signing of the MOU, and the revenue received by U.S. film producers has increased significantly. However, China has not yet fully implemented its MOU commitments, including with regard to critical commitments to open up film distribution opportunities for imported films. As a result, the United States has been pressing China for full implementation of the MOU, particularly with regard to films that are distributed in China on a flat-fee basis rather than a revenue-sharing basis. At the June 2015 S&ED meeting, China committed to ensure that any Chinese enterprise licensed to distribute films in China can distribute imported flat-fee films on their own and without having to contract with or otherwise partner with China Film Group or any other state-owned enterprise. China further committed that the State Administration of Press, Publication, Radio, Film and Television (SAPPRFT), China Film Group or any other state-owned enterprise would not directly or indirectly influence the negotiation, terms, amount of compensation or execution of any distribution contract between a licensed Chinese distributor and a U.S. flat-fee film producer. In 2017, under the terms of the MOU, the two sides are scheduled to hold discussions regarding the provision of further meaningful compensation to the United States.

Banking Services

China has exercised significant caution in opening up the banking sector to foreign competition. In particular, China has imposed working capital requirements and other requirements that have made it more difficult for foreign banks to establish and expand their market presence in China. Many of

these requirements, moreover, have not applied equally to foreign and domestic banks. For example, China has limited the sale of equity stakes in existing state-owned banks to a single foreign investor to 20 percent, while the total equity share of all foreign investors is limited to 25 percent. Another problematic area involves the ability of U.S. and other foreign banks to participate in the domestic currency business in China. This is a market segment that foreign banks are most eager to pursue in China, particularly with regard to Chinese individuals. Under existing governing regulations, only foreign-funded banks that have had a representative office in China for two years and that have total assets exceeding \$10 billion can apply to incorporate in China. After incorporating, moreover, these banks only become eligible to offer full domestic currency services to Chinese individuals if they can demonstrate that they have operated in China for three years and have had two consecutive years of profits. The regulations also restrict the scope of activities that can be conducted by foreign banks seeking to operate in China through branches instead of through subsidiaries.

Insurance Services

China's regulation of the insurance sector has resulted in market access barriers for foreign insurers, whose share of China's market remains very low. In the life insurance sector, China only permits foreign companies to participate in Chinese-foreign joint ventures, with foreign equity capped at 50 percent. The market share of these joint ventures is about 5 percent. For the health and pension insurance sectors, China also caps foreign equity at 50 percent. While China allows wholly foreign-owned subsidiaries in the non-life insurance (i.e., property and casualty) sector, the market share of foreign-invested companies in this sector is only about 2 percent. China's market for political risk insurance is closed to foreign participation, and China restricts the scope of foreign participation in insurance brokerage services. Meanwhile, some U.S. insurance companies established in China

sometimes encounter difficulties in getting the Chinese regulatory authorities to issue timely approvals of their requests to open up new internal branches to expand their operations.

Telecommunications Services

Restrictions maintained by China on value-added telecommunications services have created serious barriers to market entry for foreign suppliers seeking to provide value-added services. In addition, China's restrictions on basic telecommunications services, such as informal bans on new entry, a requirement that foreign suppliers can only enter into joint ventures with state-owned enterprises, and exceedingly high capital requirements, have blocked foreign suppliers from accessing China's basic services market. In May 2013, in a positive but very modest move toward liberalization, China introduced rules establishing a pilot program for the resale of mobile services, which can increase competitive opportunities in China's heavily concentrated market. However, the United States is very concerned that China continues to exclude foreign firms from the pilot program, and there are indications that China may be backing off from this initiative altogether.

Internet-related Services

China's Internet regulatory regime is restrictive and non-transparent, affecting a broad range of commercial services activities conducted via the Internet. In addition, China's treatment of foreign companies seeking to participate in the development of cloud computing services, including computer data and storage services provided over the Internet, raises concerns. For example, China has imposed value-added telecommunications licensing requirements on this sector, including a 50 percent equity cap on investments by foreign companies, even though the services at issue are not telecommunications services. Furthermore, certain provisions of China's new *Cybersecurity Law*, issued in November 2016, as well as draft MIIT regulations

on cloud computing services circulated in November 2016, suggest that China may seek to further restrict market access for cloud computing and related services. These developments have generated serious concerns in the United States and among U.S. and other foreign companies.

Audio-visual Services

China's restrictions in the area of theater services have entirely discouraged investment by foreign suppliers, and China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers. In addition, the United States has become very concerned about the impact of new online publishing rules issued by SAPPRFT and MIIT in February 2016, and related measures, on the ability of foreign companies to engage in the online distribution of videos and entertainment software.

Express Delivery Services

The United States continues to raise concerns with China regarding implementation of the 2009 Postal Law and related regulations. China has blocked foreign companies' access to the document segment of China's domestic express delivery market, and it does not have a strong track record of providing non-discriminatory treatment in awarding foreign companies business permits for access to the package segment of China's domestic express delivery market, where it also applies overly burdensome regulatory approaches.

Legal Services

China has issued measures intended to implement the legal services commitments that it made upon joining the WTO. However, these measures restrict the types of legal services that can be provided by foreign law firms, including through a prohibition on foreign law firms hiring lawyers qualified to practice Chinese law, and impose lengthy delays for the establishment of new offices.

Agriculture

Overview

China is the second largest agricultural export market for the United States, with more than \$20 billion in U.S. agricultural exports in 2015, down from \$24 billion in 2014. Much of this success resulted from intensive engagement by the United States with China's regulatory authorities. Notwithstanding this success, China remains among the least transparent and predictable of the world's major markets for agricultural products, largely because of uneven enforcement of regulations and selective intervention in the market by China's regulatory authorities. Seemingly capricious practices by Chinese customs and quarantine agencies delay or halt shipments of agricultural products into China. Sanitary and phytosanitary (SPS) measures with questionable scientific bases or a generally opaque regulatory regime frequently have created difficulties and uncertainty for traders in agricultural commodities, who require as much certainty and transparency as possible. With China moving forward with implementation of its 2015 *Food Safety Law*, new regulations – and new concerns – are on the increase. In addition, market access promised through the TRQ system set up pursuant to China's WTO accession agreement still has yet to be fully realized. At the same time, China has been steadily increasing domestic support for key commodities, and reports commissioned by certain U.S. farm groups have concluded that China may be exceeding its WTO limits. In September 2016, the United States launched a WTO case challenging China's government support for the production of rice, wheat and corn as being in excess of China's commitments. Subsequently, in December 2016, the United States also launched a WTO case challenging China's administration of TRQs for rice, wheat and corn.

Beef, Poultry and Pork

In 2016, beef, poultry and pork products were affected by questionable SPS measures implemented

by China's regulatory authorities. For example, China continued to block the importation of U.S. beef and beef products, more than nine years after these products had been declared safe to trade under international scientific guidelines established by the World Organization for Animal Health (known by its historical acronym OIE), and despite the further fact that in 2013 the United States received the lowest risk status from the OIE, i.e., negligible risk. China also continued to impose an unwarranted and unscientific Avian Influenza-related import suspension on U.S. poultry due to an outbreak of high-pathogenic Avian Influenza (AI), which has now been eliminated in the United States. Specifically, China has been unwilling to follow OIE guidelines and accept poultry from regions in the United States unaffected by this disease. Additionally, China continued to maintain overly restrictive pathogen and residue requirements for raw meat and poultry. Consequently, anticipated growth in U.S. exports of these products was again not realized.

Biotechnology Approvals

Overall delays in China's approval process for agricultural products derived from biotechnology worsened in 2016, creating increased uncertainty among traders and resulting in adverse trade impact, particularly for U.S. exports of corn. In addition, the asynchrony between China's product approvals and the product approvals made by other countries widened.

In February 2016, China issued safety certificates for three of the 11 products of agricultural biotechnology under review. However, China continued to delay approvals for eight other products, with applications dating as far back as 2011, even though more than a dozen other countries have deemed them to be safe. At the JCCT meeting in November 2016, China indicated that it would have the opportunity to review the status of its safety evaluation for these products in December 2016, but it gave no indication as to whether it would issue safety certificates for them.

At the June 2016 S&ED meeting, the United States agreed to provide China's regulators with a study addressing the impact of asynchronous approvals on sustainability, innovation and trade. The United States subsequently commissioned a study, which has been provided to China's regulators.

Agricultural Support

For several years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector. China has established a direct payment program, instituted minimum support prices for basic commodities and sharply increased input subsidies. China has implemented a cotton reserve system, based on minimum purchase prices, and cotton target price programs. It also has begun several new support schemes for hogs and pork, along with a purchasing reserve system for pork. China submitted its most recent notification concerning domestic support measures to the WTO in May 2015, but it only provided information up to 2010. The United States has remained concerned that the methodologies used by China to calculate support levels, particularly with regard to its price support policies and direct payments, result in underestimates. Certain U.S. farm groups have commissioned reports to calculate support levels for certain commodities, including corn, wheat and soybeans, and these reports have concluded that China may be substantially exceeding its WTO-agreed domestic support spending limits. As discussed above, in September 2016, the United States launched a WTO case challenging China's government support for the production of rice, wheat and corn as being in excess of China's commitments. In December 2016, the United States challenged China's administration of TRQs for rice, wheat and corn.

Transparency

Overview

One of the core principles reflected throughout China's WTO accession agreement is transparency.

China's WTO transparency commitments in many ways required a profound historical shift in Chinese policies. Although China has made strides to improve transparency following its accession to the WTO, there remains a lot more for China to do in this area.

Publication of Trade-related Laws, Regulations and Other Measures

In its WTO accession agreement, China committed to adopt a single official journal for the publication of all trade-related laws, regulations and other measures, and China adopted a single official journal, to be administered by MOFCOM, in 2006. To date, it appears that some but not all central-government entities publish trade-related measures in this journal, and these government entities tend to take a narrow view of the types of trade-related measures that need to be published in the official journal. As a result, while trade-related administrative regulations and departmental rules are more commonly (but still not regularly) published in the journal, it is less common for other measures such as opinions, circulars, orders, directives and notices to be published, even though they are in fact all binding legal measures. In addition, China does not normally publish in the journal certain types of trade-related measures, such as subsidy measures, nor does it normally publish sub-central government trade-related measures in the journal.

Notice-and-comment Procedures

In its WTO accession agreement, China committed to provide a reasonable period for public comment before implementing new trade-related laws, regulations and other measures. China has taken several steps related to this commitment. In 2008, the National People's Congress (NPC) instituted notice-and-comment procedures for draft laws, and shortly thereafter China indicated that it would also publish proposed trade and economic related administrative regulations and departmental rules for public comment. Subsequently, the NPC began

regularly publishing draft laws for public comment, and China's State Council often (but not regularly) published draft administrative regulations for public comment. In addition, many of China's ministries were not consistent in publishing draft departmental rules for public comment. At the May 2011 S&ED meeting, China committed to issue a measure implementing the requirement to publish all proposed trade and economic related administrative regulations and departmental rules on the website of the State Council's Legislative Affairs Office (SCLAO) for a public comment period of not less than 30 days. In April 2012, the SCLAO issued two measures that appear to address this requirement. Since then, despite continuing U.S. engagement, little noticeable improvement in the publication of departmental rules for public comment appears to have taken place, even though China confirmed that those two SCLAO measures are binding on central government ministries.

Translations

In its WTO accession agreement, China committed to make available translations of all of its trade-related laws, regulations and other measures at all levels of government in one or more of the WTO languages, i.e., English, French and Spanish. Prior to 2014, China had only compiled translations of trade-related laws and administrative regulations (into English), but not other types of measures, and China was years behind in publishing these translations. At the July 2014 S&ED meeting, China committed that it would extend its translation efforts to include not only trade-related laws and administrative regulations but also trade-related departmental rules. Subsequently, in March 2015, China issued a measure requiring trade-related departmental rules to be translated into English. This measure also provides that the translation of a departmental rule normally must be published before implementation. The United States is pressing China to ensure that it similarly publishes translations of trade-related laws and administrative regulations before implementation, as required by China's WTO accession agreement.

Legal Framework

Overview

In addition to the area of transparency, several other areas of China's legal framework can adversely affect the ability of the United States and U.S. exporters and investors to access or invest in China's market. Key areas include administrative licensing, competition policy, the treatment of non-governmental organizations (NGOs), commercial dispute resolution, labor laws and laws governing land use. Corruption among Chinese government officials, enabled in part by China's incomplete adoption of the rule of law, is also a key concern.

Administrative Licensing

Despite numerous changes made by the Chinese government since the issuance of the Third Plenum Decision in November 2013, U.S. companies continue to encounter significant problems with a variety of administrative licensing processes in China, including processes to secure product approvals, investment approvals, business expansion approvals, business license renewals and even approvals for routine business activities. While U.S. companies are encouraged by the overall reduction in license approval requirements and the focus on decentralizing licensing approval processes, U.S. companies report that these efforts have only had a marginal impact on their licensing experiences so far.

Competition Policy

Chinese regulatory authorities' implementation of China's *Anti-monopoly Law* poses multiple challenges. One key concern relates to how the *Anti-monopoly Law* will be applied to state-owned enterprises, given that a provision in the *Anti-monopoly Law* protects the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. To date, China has enforced the *Anti-monopoly Law* against state-owned enterprises, and

it has stated that this law applies to state-owned enterprises, but some U.S. companies have expressed concern that enforcement against state-owned enterprises is more limited.

Another concern relates to the procedural fairness of *Anti-monopoly Law* investigations. U.S. industry has expressed concern about insufficient predictability, fairness and transparency in the investigative processes of the National Development and Reform Commission (NDRC), including NDRC pressure to “cooperate” in the face of unspecified allegations or face steep fines and limitations imposed by NDRC on the ability of foreign companies to bring counsel to meetings. Through the S&ED and JCCT processes in 2014, the United States was able to secure commitments from China designed to help address most of these matters, although some concerns remain. The United States continues to work closely with affected U.S. parties as it seeks to ensure that China's anti-monopoly enforcement agencies fully implemented these commitments.

In 2015, the United States secured additional commitments from China relating to *Anti-monopoly Law* enforcement proceedings. These commitments addressed the protection of confidential business information, the independence of *Anti-monopoly Law* decision making, the jurisdiction of courts reviewing administrative *Anti-monopoly Law* decisions and anti-monopoly enforcement agencies' processes for reconsidering decisions. China also recognized the importance of maintaining coherent rules relating to intellectual property rights in the *Anti-monopoly Law* context, including by taking into account the pro-competitive effects of intellectual property licensing.

In 2016, the United States used all platforms available to encourage China to pursue *Anti-monopoly Law* measures and enforcement policies that are consistent with its 2015 commitments. In addition, in June 2016, China's State Council

established a “Fair Competition Review System” designed to prevent unjustified restrictions on competition through government regulations and activities, an initiative for which the United States has expressed support.

NEXT STEPS

In 2017, as in prior years, it will be in the interests of the United States to continue to vigorously pursue increased benefits for U.S. businesses, workers, farmers, ranchers and service providers from our trade and economic ties with China. The United States can and should use all available tools to achieve these objectives, including the pursuit of productive, outcome-oriented dialogue in both bilateral and multilateral settings, as well as the vigorous use of enforcement mechanisms, where appropriate.

On the bilateral front, it will be in the interests of the United States to continue to pursue robust engagement with China at all levels of government focused on producing practical and meaningful outcomes. The United States also needs to take full advantage of multilateral venues such as the WTO to engage China. Key goals of this engagement should include ensuring that the benefits of China's WTO commitments are fully realized by the United States and other WTO members, and that trade frictions that may arise in the U.S.-China trade relationship are effectively resolved.

At the same time, as the United States has repeatedly demonstrated, when dialogue is not successful in resolving concerns, the United States should not hesitate to invoke the dispute settlement mechanism at the WTO where appropriate. Similarly, the United States should continue to rigorously enforce U.S. trade remedy laws, in accordance with WTO rules, when U.S. interests are being harmed by unfairly traded or surging imports from China.

Table 1

Summary Conclusions regarding China's WTO Compliance Efforts

TRADING RIGHTS
<p>China appears to be in compliance with its trading rights commitments in most areas. One significant exception involves China's restrictions on the right to import theatrical films, which China reserves for state trading. In 2012, following a successful WTO case brought by the United States challenging these restrictions, the United States and China entered into an MOU providing for substantial increases in the number of U.S. films imported and distributed in China each year and substantial additional revenue for foreign film producers, although China has not yet fully implemented its MOU commitments.</p>
IMPORT REGULATION
<p>Tariffs China has timely implemented its tariff commitments for industrial goods each year.</p>
<p>Customs and Trade Administration</p> <p><u>Customs Valuation</u> China has issued measures that bring its legal regime for making customs valuation determinations into compliance with WTO rules, but implementation of these measures has been inconsistent from port to port, both in terms of customs clearance procedures and valuation determinations.</p> <p><u>Rules of Origin</u> China has issued measures that bring its legal regime for making rules of origin determinations into compliance with WTO rules.</p> <p><u>Import Licensing</u> China has issued measures that bring its legal regime for import licensing into compliance with WTO rules, although a variety of specific compliance issues continue to arise.</p>
<p>Non-Tariff Measures China has adhered to the agreed schedule for eliminating non-tariff measures, but new prohibitions on the import of remanufactured products have generated concerns.</p>
<p>Tariff-rate Quotas on Industrial Products Concerns about transparency and administrative guidance have plagued China's tariff-rate quota system for industrial products, particularly fertilizer, since China's accession to the WTO.</p>
<p>Other Import Regulation</p> <p><u>Antidumping</u> China has issued laws and regulations bringing its legal regime in the AD area largely into compliance with WTO rules, although China still needs to issue additional procedural guidance such as rules governing expiry reviews. More significantly, China needs to improve its commitment to the transparency and procedural fairness requirements embodied in WTO rules, as the WTO found in three disputes brought by the United States. In addition, China needs to eliminate its apparent use of trade remedy investigations as a retaliatory tool.</p> <p><u>Countervailing Duties</u> China has issued laws and regulations bringing its legal regime in the CVD area largely into compliance with WTO rules, although China still needs to issue additional procedural guidance such as rules governing expiry reviews. More significantly, China needs to improve its commitment to the transparency and procedural fairness requirements embodied in WTO rules, as the WTO found in three disputes brought by the United States. In addition, China needs to eliminate its apparent use of trade remedy investigations as a retaliatory tool.</p> <p><u>Safeguards</u> China has issued measures bringing its legal regime in the safeguards area largely into compliance with WTO rules, although concerns about potential inconsistencies with WTO rules continue to exist.</p>

2016 USTR Report to Congress on China's WTO Compliance

Table 1 (cont'd)

Summary Conclusions regarding China's WTO Compliance Efforts

EXPORT REGULATION

China maintains numerous export restraints that raise serious concerns under WTO rules, including specific commitments that China made in its WTO accession agreement. In the two WTO cases decided to date in this area, the WTO found that exports restraints maintained by China on raw material inputs breached China's WTO obligations.

INTERNAL POLICIES AFFECTING TRADE

Non-discrimination

While China has revised many laws, regulations and other measures to make them consistent with WTO rules relating to most-favored nation treatment and national treatment, concerns about compliance with these rules still arise in some areas.

Taxation

China has used its taxation system to discriminate against imports in certain sectors. This tax treatment raises concerns under WTO rules relating to national treatment.

Subsidies

China continues to provide injurious subsidies to its domestic industries, and some of these subsidies appear to be prohibited under WTO rules. Although China submitted a long-overdue WTO subsidies notification in 2015 covering subsidies provided during the period from 2009 to 2014, this notification was far from complete. In addition, China continued to have a poor record of responding to other WTO members' questions about its subsidies before the WTO's Subsidies Committee.

Price Controls

China has progressed slowly in reducing the number of products and services subject to price control or government guidance pricing.

Standards, Technical Regulations and Conformity Assessment Procedures

China continues to take actions that generate WTO compliance concerns in the areas of standards, technical regulations and conformity assessment procedures, particularly with regard to transparency, national treatment, the pursuit of unique Chinese national standards, and duplicative testing and certification requirements.

Restructuring of Regulators

China has restructured its regulators for standards, technical regulations and conformity assessment procedures in order to eliminate discriminatory treatment of imports, although in practice China's regulators sometimes do not appear to enforce regulatory requirements as strictly against domestic products as imports.

Standards and Technical Regulations

China continues to pursue the development of unique Chinese national standards, despite the existence of well-established international standards, apparently as a means for protecting domestic companies from competing foreign technologies and standards.

Conformity Assessment Procedures

China appears to be turning more and more to in-country testing for a broader range of products, which does not conform with international practices that generally accept foreign test results and certifications.

Transparency

China has made progress but still does not appear to notify all new or revised standards, technical regulations and conformity assessment procedures as required by WTO rules.

Other Industrial Policies

State-owned and State-invested Enterprises

The Chinese government has heavily intervened in investment and other strategic decisions made by state-owned and state-invested enterprises in certain sectors.

State Trading Enterprises

It is difficult to assess the activities of China's state trading enterprises, given inadequate transparency and China's failure to meet the WTO's detailed reporting requirements for state trading enterprises.

Table 1 (cont'd)

Summary Conclusions regarding China's WTO Compliance Efforts

Other Industrial Policies (cont'd)

Government Procurement

While China is moving slowly toward fulfilling its commitment to accede to the GPA, it is maintaining and adopting government procurement measures that give domestic preferences.

INVESTMENT

China has revised many laws, regulations and other measures on foreign investment to eliminate WTO-inconsistent requirements relating to export performance, local content, foreign exchange balancing and technology transfer. However, some of the revised measures continue to "encourage" these requirements. Although China continues to consider reforms to its investment regime, including the use of a "negative list," many aspects of China's investment regime, including lack of a substantially liberalized market, maintenance of administrative approvals and the potential for a new and overly broad national security review system, continue to cause foreign investors great concern. China also has issued industrial plans covering the auto and steel sectors that include guidelines that appear to conflict with its WTO obligations. In addition, China has added a variety of restrictions on investment that appear designed to shield inefficient or monopolistic Chinese enterprises from foreign competition.

AGRICULTURE

While China has timely implemented its tariff commitments for agricultural goods, a variety of non-tariff barriers continue to impede market access, particularly in the areas of SPS measures and inspection-related requirements. In addition, China's TRQ system for bulk agricultural commodities does not seem to function consistent with China's WTO accession agreement. It also appears that China is exceeding its domestic support commitments for certain agricultural commodities.

Tariffs

China has timely implemented its tariff commitments for agricultural goods each year.

Tariff-rate Quotas on Bulk Agricultural Commodities

China's TRQ system for bulk agricultural commodities does not seem to be consistent with China's WTO accession agreement and is characterized by opaque management practices. In December 2016, the United State launched a WTO case challenging China's administration of TRQs for rice, wheat and corn.

China's Biotechnology Regulations

China's dysfunctional biotechnology approval process continues to affect trade.

Sanitary and Phytosanitary Issues

China's regulatory authorities continue to impose SPS measures in a non-transparent manner and without clear scientific bases, including BSE-related import bans on U.S. beef and beef products, pathogen standards and residue standards for raw meat and poultry products, and an Avian Influenza-related import suspension on all U.S. poultry products. Meanwhile, China has made some progress but still does not appear to notify all proposed SPS measures as required by WTO rules.

Inspection-related Requirements

China's regulatory authorities continue to administer onerous inspection-related requirements, and a new food safety certificate requirement has the potential to create significant market access challenges.

Domestic Support

In recent years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector, including a number of products competing with imports from the United States. In September 2016, the United States launched a WTO case challenging China's government support for the production of rice, wheat and corn as being in excess of China's commitments.

Export Subsidies

It is difficult to determine whether China maintains export subsidies in the agricultural sector, in part because China has not notified all of its subsidies to the WTO.

Table 1 (cont'd)

Summary Conclusions regarding China's WTO Compliance Efforts

INTELLECTUAL PROPERTY RIGHTS

Despite ongoing revisions of laws and regulations relating to intellectual property rights, and greater emphasis on rule of law and enforcement campaigns in China, key weaknesses remain in China's protection and enforcement of intellectual property rights, particularly in the area of trade secret misappropriation. Intellectual property rights holders face not only a complex and uncertain enforcement environment, but also pressure to transfer intellectual property rights to enterprises in China through a number of government policies and practices.

SERVICES

While China has implemented most of its services commitments, concerns remain in some service sectors. In addition, challenges still remain in ensuring the benefits of many of the commitments that China has nominally implemented are available in practice, as China has continued to maintain or erect restrictive or cumbersome terms of entry or internal expansion in some sectors. These barriers, often imposed through non-transparent and lengthy licensing processes, prevent or discourage foreign suppliers from gaining market access through informal bans on entry, high capital requirements, branching restrictions or restrictions taking away previously acquired market access rights.

Distribution Services

China has made substantial progress in implementing its distribution services commitments, although significant concerns remain in some areas.

Wholesaling Services

China has issued regulations generally implementing its commitments in the area of wholesaling and commission agents' services. One significant exception involves China's restrictions on the distribution of imported theatrical films. In 2012, following a successful WTO case brought by the United States challenging these restrictions, the United States and China entered into an MOU providing for substantial increases in the number of U.S. films imported and distributed in China each year and substantial additional revenue for foreign film producers, although China has not yet fully implemented its MOU commitments. Meanwhile, U.S. companies continue to have concerns about restrictions on the distribution of other products, such as pharmaceuticals, crude oil and processed oil.

Retailing Services

China has issued regulations generally implementing its commitments in the area of retailing services, although some concerns remain with regard to licensing discrimination. China continues to maintain restrictions on the retailing of processed oil.

Franchising Services

China has issued regulations generally implementing its commitments in the area of franchising services.

Direct Selling Services

China has issued regulations generally implementing its commitments in the area of direct selling services, although significant regulatory restrictions, including service center requirements imposed on the operations of direct sellers, continue to generate concerns.

Financial Services

Banking

China has taken a number of steps to implement its banking services commitments, although some of these efforts have generated concerns, and there are some instances in which China still does not seem to have fully implemented particular commitments, such as with regard to Chinese-foreign joint banks and bank branches.

Motor Vehicle Financing

China has implemented its commitments with regard to motor vehicle financing.

Insurance

China has issued measures implementing most of its insurance commitments, but these measures have also created market access problems and foreign insurers' share of China's market remains very low.

Financial Information

In response to a WTO case brought by the United States, China has established an independent regulator for the financial information sector and has removed restrictions that had placed foreign suppliers at a serious competitive disadvantage.

Table 1 (cont'd)

Summary Conclusions regarding China's WTO Compliance Efforts

SERVICES (cont'd)
<p>Financial Services (cont'd)</p> <p><u>Electronic Payment Services</u></p> <p>China has not yet implemented electronic payment services commitments that were scheduled to have been phased in no later than December 11, 2006. China agreed to implement these commitments by July 2013 in order to comply with the rulings in a WTO case brought by the United States, but it has not yet done so.</p>
<p>Legal Services</p> <p>China has issued measures intended to implement its legal services commitments, although these measures give rise to WTO compliance concerns because they impose an economic needs test, restrictions on the types of legal services that can be provided and lengthy delays for the establishment of new offices.</p>
<p>Telecommunications</p> <p>It appears that China has nominally kept to the agreed schedule for phasing in its WTO commitments in the telecommunications sector. However, restrictions maintained by China on value-added services have created serious barriers to market entry for foreign suppliers seeking to provide value-added services. In addition, China's restrictions on basic services, such as informal bans on new entry, a requirement that foreign suppliers can only enter into joint ventures with state-owned enterprises and exceedingly high capital requirements, have totally blocked foreign suppliers from accessing China's basic services market.</p>
<p>Audio-visual and Related Services</p> <p>China has taken steps to comply with the rulings in a WTO case brought by the United States with regard to the distribution of DVDs and sound recordings, although more steps are needed. Meanwhile, China's restrictions in the area of theatre services have wholly discouraged investment by foreign suppliers, and China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers. Many Chinese government agencies are now seeking to regulate audio-visual and other media services, and this situation has created a lack of clarity about which laws and regulations apply to these services.</p>
<p>Internet-related Services</p> <p>China's Internet regulatory regime is restrictive and non-transparent and impacts a broad range of commercial services activities conducted via the Internet. In addition, China's treatment of foreign companies seeking to participate in the development of cloud computing services, including computer data and storage services provided over the Internet, raises concerns in light of China's GATS commitments.</p>
<p>Construction and Related Engineering Services</p> <p>China has issued measures intended to implement its construction and related engineering services commitments, although these measures are problematic because they also impose high capital requirements and other constraints that limit market access.</p>
<p>Educational Services</p> <p>China made only limited GATS commitments in the educational services sector, and it has not sought to go beyond those commitments.</p>
<p>Express Delivery Services</p> <p>China has allowed foreign express delivery companies to operate in the express delivery sector and has implemented its commitment to allow wholly foreign-owned subsidiaries by December 11, 2004. However, China has blocked foreign companies' access to the document segment of China's domestic express delivery market.</p>
<p>Logistics Services</p> <p>China has generally allowed foreign companies to supply logistics services, but foreign companies can face restrictions that are not applied to domestic companies.</p>

2016 USTR Report to Congress on China's WTO Compliance

Table 1 (cont'd)

Summary Conclusions regarding China's WTO Compliance Efforts

SERVICES (cont'd)
<p>Aviation Services China has provided additional market access to U.S. providers of air transport services through progressive liberalization of a bilateral agreement with the United States, although China has not yet fully implemented its commitments under that agreement.</p>
<p>Maritime Services Even though China made only limited WTO commitments relating to its maritime services sector, it has increased market access for U.S. service providers through a bilateral agreement.</p>
<p>Tourism and Travel-related Services China treats foreign travel agencies less favorably than domestic travel agencies in some respects, while China's regulation of foreign suppliers of global distribution system services has generated concerns in light of China's GATS commitments.</p>
LEGAL FRAMEWORK
<p>Transparency</p> <p><u>Official Journal</u> China has re-confirmed its commitment to use a single official journal for the publication of all trade-related laws, regulations and other measures. To date, it appears that some but not all central government entities publish their trade-related measures in this journal, although they take a narrow view of the types of trade-related measures that need to be published.</p> <p><u>Translations</u> China has not yet established an appropriate infrastructure to undertake the agreed upon translations of its trade-related measures into one or more of the WTO languages in a timely manner.</p> <p><u>Public Comment</u> China has adopted notice-and-comment procedures for proposed laws and committed to use notice-and-comment procedures for proposed trade- and economic-related regulations and departmental rules, subject to specified exceptions. However, in practice, many of these measures are not made public prior to implementation.</p> <p><u>Enquiry Points</u> China has complied with its obligation to establish enquiry points.</p>
<p>Uniform Application of Laws Some problems with the uniform application of China's laws and regulations persist.</p>
<p>Judicial Review China has established courts to review administrative actions involving trade-related matters, but few U.S. or other foreign companies have had experience with these courts.</p>
<p>Other Legal Framework Issues Various other areas of China's legal framework can adversely impact the ability of the United States and U.S. exporters and investors to enjoy fully the rights to which they are entitled under the WTO agreements.</p>

INTRODUCTION

CHINA'S WTO ACCESSION NEGOTIATIONS

In July of 1986, China applied for admission to the WTO's predecessor, the General Agreement on Tariffs and Trade (GATT). The GATT formed a Working Party in March of 1987, composed of all interested GATT contracting parties, to examine China's application and negotiate terms for China's accession. For the next eight years, negotiations were conducted under the auspices of the GATT Working Party. Following the formation of the WTO on January 1, 1995, pursuant to the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), a successor WTO Working Party, composed of all interested WTO members, took over the negotiations.

Like all WTO accession negotiations, the negotiations with China had three basic aspects. First, China provided information to the Working Party regarding its trade regime. China also updated this information periodically during the 15 years of negotiations to reflect changes in its trade regime. Second, each interested WTO member negotiated bilaterally with China regarding market access concessions and commitments in the goods and services areas, including, for example, the tariffs that would apply on industrial and agricultural goods and the commitments that China would make to open up its market to foreign services suppliers. The most trade liberalizing of the concessions and commitments obtained through these bilateral negotiations were consolidated into China's Goods and Services Schedules and apply to all WTO members. Third, overlapping in time with these bilateral negotiations, China engaged in multilateral negotiations with Working Party members on the rules that would govern trade with China. Throughout these multilateral negotiations, U.S. leadership in working with China was critical to removing obstacles to China's WTO accession and achieving a consensus on appropriate rules commitments. These commitments are set forth in

China's Protocol of Accession and an accompanying Report of the Working Party.

WTO members formally approved an agreement on the terms of accession for China on November 10, 2001, at the WTO's Fourth Ministerial Conference, held in Doha, Qatar. One day later, China signed the agreement and deposited its instrument of ratification with the Director-General of the WTO. China became the 143rd member of the WTO on December 11, 2001.

China's Protocol of Accession, accompanying Working Party Report and Goods and Services Schedules are available on the WTO's website (www.wto.org).

CHINA'S WTO COMMITMENTS

In order to accede to the WTO, China had to agree to take concrete steps to remove trade barriers and open its markets to foreign companies and their exports from the first day of accession in virtually every product sector and for a wide range of services. Supporting these steps, China also agreed to undertake important changes to its legal framework, designed to add transparency and predictability to business dealings.

Like all acceding WTO members, China also agreed to assume the obligations of more than 20 existing multilateral WTO agreements, covering all areas of trade. Areas of principal concern to the United States and China's other trading partners, as evidenced by the accession negotiations, included the core principles of the WTO, including most-favored nation treatment, national treatment, transparency and the availability of independent review of administrative decisions. Other key concerns arose in the areas of agriculture, SPS measures, technical barriers to trade, trade-related investment measures, customs valuation, rules of origin, import licensing, antidumping, subsidies and countervailing measures, trade-related aspects of

intellectual property rights and services. For some of its obligations in these areas, China was allowed minimal transition periods, where it was considered necessary.

Even though the terms of China's accession agreement are directed at the opening of China's market to WTO members, China's accession agreement also includes provisions establishing several mechanisms or other authority, independent of provisions applicable to all WTO members under the WTO Agreement, designed to prevent or remedy injury that U.S. or other WTO members' industries and workers might experience based on import surges or unfair trade practices. These mechanisms include (1) a special textile safeguard mechanism (which expired on December 11, 2008, 7 years after China's WTO accession), (2) a unique, China-specific safeguard mechanism allowing a WTO member to restrain increasing Chinese imports that disrupt its market (which expired on December 11, 2013, 12 years after China's WTO accession), (3) the authority

for WTO members whose national laws contain market economy criteria as of the date of China's WTO accession to utilize a special non-market economy methodology for measuring dumping in anti-dumping cases against Chinese companies and (4) the authority to use methodologies for identifying and measuring subsidy benefits to Chinese enterprises that are not based on terms and conditions prevailing in China. The Administration is committed to maintaining the effectiveness of these mechanisms, to the extent that they remain available, for the benefit of affected U.S. businesses, workers and farmers.

With China's consent, the WTO also created a special multilateral mechanism for reviewing China's compliance on an annual basis. Known as the Transitional Review Mechanism, this mechanism operated annually for 8 years after China's accession. A final review, looking back over the first 10 years of China's WTO membership, took place in year 10, i.e., 2011.

OVERVIEW OF U.S. ENGAGEMENT

DIALOGUE

Bilateral Engagement

In 2016, the United States continued to pursue intensified, focused bilateral dialogue with China. Throughout the year, the United States and China engaged in a range of formal and informal bilateral meetings, including the U.S.-China Strategic and Economic Dialogue (see Box 1), a Presidential summit and the U.S.-China Joint Commission on Commerce and Trade (see Box 2).

The 8th meeting of the S&ED, which included a Strategic Track and an Economic Track, took place in Beijing in June 2016 (see Appendix 3). The Economic Track of the S&ED allows U.S. and Chinese officials at the highest levels to work together to address cross-cutting and long-term economic issues through candid and constructive engagement. The S&ED also produces near-term results in the areas of trade and investment.

At this year's S&ED meeting, in the areas of trade and investment, China made a number of commitments. These commitments addressed high priority issues, such as excess industrial capacity, China's "secure and controllable" ICT policies, agricultural biotechnology and transparency, as well as other important issues.

With regard to excess industrial capacity, China made several commitments. Specifically, China committed to take effective steps to address the challenges of excess capacity so as to enhance market function and encourage adjustment. With regard to excess capacity in the steel industry, where China's State Council had issued guidelines calling for the elimination of 100 to 150 million MT of steel capacity, China committed to undertake further steps to ensure market forces are not constrained, so that its steel industry develops a stronger market orientation to enhance efficiency, and, in doing so,

progressively reduces excess capacity. China also committed to ensure that no central government plans, policies, directives, guidelines, lending or subsidization targets the net expansion of steel capacity. China further committed to adopt measures to strictly contain steel capacity expansion, reduce net steel capacity, eliminate outdated steel capacity and urge the exit of steel production capacity that falls short of environment, energy consumption, quality or safety requirement standards and to actively and appropriately dispose of "zombie enterprises" through bankruptcies and other means. Additionally, China agreed to participate in the global community's actions to address global excess capacity, including by considering the feasibility of forming a global steel forum envisioned to serve as a cooperative platform for dialogue and information-sharing on global capacity developments and on policies and support measures taken by governments.

With regard to China's "secure and controllable" ICT policies, China committed that ICT cybersecurity measures should be consistent with WTO agreements, be narrowly tailored, take into account international norms, be nondiscriminatory and not impose nationality-based conditions or restrictions on the purchase, sale or use of ICT products by commercial enterprises unnecessarily. China further committed that ICT cybersecurity measures generally applicable to the commercial sector are not to unnecessarily limit or prevent commercial sales opportunities for foreign suppliers of ICT products or services.

In addition, China committed to further improve its approval processes for the products of agricultural biotechnology and specifically to revise a key regulatory measure to ensure that it provides for approval processes that are timely, transparent, predictable, science-based and based on international standards. China also committed to review outstanding applications for approval of agricultural biotechnology products and act on them in line with the timing and procedures set forth in China's laws and regulations. In addition, with

regard to China's current policy of asynchronous approvals, the two sides agreed to intensify their study and dialogue on the sustainability of this policy and its trade and innovation impacts.

China also made important commitments to provide increased transparency relating to industries and enterprises in China. These commitments included: (1) a commitment to publish for public comment proposed measures implementing the China Manufacturing 2025 Plan and other industry development plans, including measures governing proposed government-funded industrial development funds; (2) a further commitment to ensure that China's industry development plans treat all enterprises equally and operate in a manner consistent with market-based concepts; and (3) a commitment to develop publicly accessible provincial government databases providing corporate information on all registered enterprises in all provinces in China.

The United States and China also addressed their BIT negotiations, which have been a top priority in bilateral economic relations. The two sides agreed to push their BIT negotiations forward expeditiously with a view toward reaching a mutually beneficial and high-standard treaty that effectively facilitates and enables market access and market operation. The two sides also agreed to exchange revised and improved negative list offers shortly after the S&ED meeting and to ensure that those offers reflected the two sides' shared commitment to the objectives of non-discrimination, transparency, and open and liberalized investment regimes.

In addition, the United States and China addressed the progress that has been made in negotiating new international guidelines for official export credit support and agreed on steps to help move the negotiations forward. They also reaffirmed that the new international guidelines should, taking into account and respecting varying national interests and development conditions, and consistent with international best practices, help ensure government support that complements commercial export

financing, so as to contribute to global trade and broad-based economic growth.

Box 1: S&ED

The U.S.-China Strategic and Economic Dialogue was established by Presidents Obama and Hu in April 2009 and represents the highest-level bilateral forum between the United States and China. The S&ED is an essential mechanism for advancing a positive, constructive and comprehensive relationship between the two countries. Treasury Secretary Lew and Secretary of State Kerry, as special representatives of President Obama, and Vice Premier Wang and State Councilor Yang, as special representatives of President Xi, co-chair the S&ED, which includes Strategic and Economic tracks and takes place annually in alternating capitals. In the Economic Track, the two sides have focused on four pillars that have formed the basis of our economic engagement over the course of the Administration: (1) promoting a strong recovery and achieving more sustainable and balanced growth; (2) promoting more resilient, open and market-oriented financial systems; (3) strengthening trade and investment; and (4) strengthening the international financial architecture.

Constructive discussions also took place in September 2016 when President Obama met with President Xi immediately before the G20 Leaders Meeting, hosted by China, as the holder of the 2016 G20 Presidency, in Hangzhou. This summit produced important results in the economic sphere (see Appendix 4), where the two sides focused on advancing progress in two areas of high priority – excess industrial capacity and innovation policy.

With regard to excess industrial capacity, building on the extensive commitments that China made at the June 2016 S&ED meeting to help address excess steel capacity, the United States secured China's agreement to support the establishment of a Global Forum on Steel Excess Capacity, with active participation of G-20 members and interested members of the OECD, as a cooperative platform for dialogue and information-sharing on global capacity developments and on policies and support measures taken by governments, to be facilitated by the OECD Secretariat. With regard to aluminum, the United States and China recognized that excess capacity in

this industry had increased and had become a global issue requiring collective response, and accordingly the two sides agreed to work together to address the excess aluminum capacity situation. More broadly, the two sides also recognized the importance of the establishment and improvement of impartial bankruptcy systems and mechanisms to resolving excess industrial capacity, and China agreed to implement bankruptcy laws by continuing to establish special bankruptcy tribunals, further improving the bankruptcy administrator systems and using modern information tools.

With regard to innovation policy, the United States and China recognized the importance of building and supporting the proper legal, regulatory, and policy frameworks necessary for fostering a healthy innovation ecosystem featuring robust investment in basic science and research and development, strong involvement by enterprises, and transparent policy design and implementation as well as the importance of developing and protecting intellectual property, including trade secrets. Among other things, China committed that its innovation policies would be consistent with the principle of non-discrimination. China also committed not to advance generally applicable policies or practices that require the transfer of intellectual property rights or technology as a condition of doing business in China's market.

In their meeting, the two Presidents also assessed the progress being made in the ongoing Bilateral Investment Treaty (BIT) negotiation toward a high-standard treaty reflecting the shared objectives of non-discrimination, transparency, and open and liberalized investment regimes. They agreed that significant progress had been made and committed to further intensify the negotiation with a view to concluding a mutually beneficial and high-standard treaty.

In November 2016, following many months of preparatory meetings, the United States and China met in Washington and held the 27th JCCT meeting (see Appendix 5). Chaired by U.S. Trade

Representative Froman and Commerce Secretary Pritzker on the U.S. side and Vice Premier Wang on the Chinese side, the JCCT is a year-long process involving numerous working groups and dialogues that culminates in an annual plenary meeting. The JCCT process focuses on seeking resolutions to pressing trade and investment issues while also encouraging China to accelerate its movement away from reliance on government intervention and toward full institutionalization of market mechanisms.

Box 2: JCCT

The United States and China founded the U.S.-China Joint Commission on Commerce and Trade in 1983 as a government-to-government consultative mechanism between the U.S. Department of Commerce and MOFCOM's predecessor, the Ministry of Foreign Economic Relations and Trade, designed to provide a forum for resolving trade concerns and pursuing bilateral commercial opportunities. In 2003, President Bush and Premier Wen agreed to elevate the JCCT, with the Commerce Secretary and the U.S. Trade Representative chairing the U.S. side and a Vice Premier chairing the Chinese side. The JCCT holds plenary meetings on an annual basis, while a number of JCCT working groups and dialogues meet throughout the year in areas such as industrial policies, competitiveness, intellectual property rights, structural issues, steel, agriculture, pharmaceuticals and medical devices, information technology, insurance, tourism, environment, commercial law, trade remedies and statistics.

This year's JCCT engagement produced meaningful progress in several areas. Key outcomes were achieved with regard to China's ongoing implementation of commitments secured by the United States during past JCCT and other high-level bilateral meeting in the areas of innovation policies and pharmaceuticals and medical devices. In addition, the United States secured new key outcomes in key areas, including intellectual property rights protection and enforcement, excess capacity, pharmaceuticals and medical devices, and information security policies.

With regard to indigenous innovation policies, China's central government previously had ordered sub-central governments to abolish government

procurement preferences for innovative products developed indigenously. However, compliance with that directive by sub-central governments proved to be incomplete, and new inconsistent measures continued to be issued. At this year's JCCT meeting, the United States welcomed new action by the State Council requiring all sub-central regions and agencies to take further action to review their measures and to remove any linkages between indigenous innovation policies and the provision of government procurement preferences. In addition, the United States was able to build on past commitments from China that its innovation policies should be consistent with the principle of nondiscrimination, as China confirmed that its "secure and controllable" policies will not limit sales opportunities for foreign companies or impose nationality-based restrictions, and will be notified to the WTO Technical Barriers to Trade Committee.

With regard to pharmaceuticals and medical devices, China affirmed that drug registration review and approval shall not be linked to pricing commitments and shall not require specific pricing information. China also addressed past commitments by committing to strengthen oversight of government procurement of medical devices to ensure foreign brands and foreign-manufactured products are treated in a transparent, fair and equitable manner, and not to link government procurement to policies promoting domestically produced medical devices.

Building on prior commitments, including ones made in the September 2016 G20 Leaders Communiqué and in the statement for the September 2016 summit between President Obama and China's President Xi in Hangzhou, the United States secured China's support for the expeditious establishment of the Global Forum on Steel Excess Capacity. Bilaterally, the United States and China also agreed to intensify their dialogue relating to excess capacity in the steel, aluminum and soda ash industries.

At the United States' request, China also made a number of IPR-related commitments that will

facilitate much needed improvements for a wide range of industries that rely on the ability to protect and enforce their IPR in China. For example, China affirmed that it is strengthening its trade secrets protections and prioritizing enforcement against online IPR counterfeiting and piracy. The two sides also recognized the important role of online platforms and agreed to use them and other means to develop innovative new ways to deliver safe, reliable and legitimate products in convenient and affordable ways.

In addition, the United States and China discussed the operation of the integrated circuit investment funds in China, with China reaffirming that they are based on market principles and that the Chinese government does not interfere with the normal operation of those funds. China also clarified that the Chinese government has never asked the funds to require compulsory technology or the transfer of IPR as a condition for participation in the funds' investment projects.

The United States also secured other important, new commitments from China during this year's JCCT meeting. China made new commitments with regard to government subsidies, market access for theatrical films, competition policy and avian influenza as well as WTO notifications relating to technical barriers to trade and sanitary and phytosanitary measures. In addition, the United States and China agreed to new or enhanced dialogues or collaboration in the areas of administrative law, cosmetics regulation, environmental protection, food safety, intellectual property rights and statistics, among other areas.

Despite the progress made through this year's extensive bilateral engagement with China, it is clear that much more work remains to be done to open China's market to trade and investment. In 2017, it will be critical for the United States to continue to use bilateral processes and engagement with China's leaders to remove trade and investment barriers, open China's market further to foreign companies

and their exports and accelerate China's movement away from reliance on government intervention and toward full institutionalization of market mechanisms.

Multilateral Meetings

In 2016, as in prior years, the United States supplemented its bilateral engagement of China with active participation in meetings at the WTO addressing China and its adherence to its WTO obligations. Throughout the year, the United States raised China-related issues at regular meetings of WTO committees and councils. In 2016, the United States will continue to raise China-related issues at WTO meetings. The United States also played an active role in the WTO's fifth Trade Policy Review of China (see Box 3), held in July 2016, presenting a critical evaluation of China's conduct as a WTO member and submitting more than 275 written

questions about various aspects of China's trade and investment regimes.

ENFORCEMENT

While engaging in intense dialogue with China throughout the year, the United States also continued to hold China accountable for adherence to WTO rules when dialogue did not resolve U.S. concerns. As set out in Table 2 below, the United States brought three new WTO complaints against China in 2016, while continuing to prosecute five other WTO cases against China, with support from the Interagency Trade Enforcement Center, created by Presidential Executive Order in 2012 in order to provide additional resources for ensuring that all of the United States' trading partners adhere to their obligations under international trade agreements.

In a new case launched in July 2016, the United States, joined by the EU, initiated a WTO case challenging export quotas and export duties maintained by China on various forms of 11 raw materials, including antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum and tin. These raw materials are key inputs in important U.S. manufacturing industries, including aerospace, automotive, construction and electronics. China's export restraints can skew the playing field against the United States and other countries by creating substantial competitive benefits for downstream Chinese producers that use these materials as inputs in the production and export of further processed and finished products. The export restraints also can create substantial pressure on U.S. and other non-Chinese downstream producers to move their operations, jobs and technologies to China. The export restraints appear to be inconsistent with China's obligations under various provisions of the GATT 1994 and China's accession agreement. Joint consultations took place in September 2016. A WTO panel was established to hear the case at the complaining parties' request in November 2016, and 14 other WTO members joined as third parties.

Box 3: Trade Policy Review Mechanism

The Trade Policy Review Mechanism (TPRM) was created by the WTO Agreement to facilitate the smooth functioning of the multilateral trading system by enhancing the transparency of WTO members' trade policies. All WTO members are subject to review under the TPRM. The four WTO members with the largest shares of world trade (currently, the European Union, the United States, Japan and China) are reviewed every two years, the next 16 largest are reviewed every four years, and all others are reviewed every six years (except that a longer period may be fixed for least-developed country members of the WTO). The reviews are conducted by the Trade Policy Review Body (TPRB) on the basis of a policy statement by the WTO member under review and a report prepared by economists in the Secretariat's Trade Policy Review Division. In preparing its report, the Secretariat seeks the cooperation of the Member, but has the sole responsibility for the facts presented and views expressed about the member's trade policies. During a meeting that takes place over two days, the TPRB's debate is stimulated by a discussant, selected beforehand for this purpose. Members also make their own observations, while the member under review is required to respond orally and in writing to written questions that have been submitted by other members. The Secretariat's report and the member's policy statement are published after the review meeting, along with the minutes of the meeting.

In September 2016, the United States initiated another case against China, challenging excessive government support for the production of rice, wheat and corn by farmers in China. Like other WTO members, China had made commitments that its support for these agricultural commodities would not exceed certain levels, but the United States' investigation of the market price support programs maintained by the Chinese government for these agricultural commodities appears to show that China's support far exceeds the agreed levels. This excessive support creates price distortions and creates an un-level playing field for U.S. farmers. In October 2016, consultations took place. In December 2016, the United States requested that a WTO panel be established to hear the case.

In December 2016, the United States launched a WTO case challenging China's administration of tariff-rate quotas for rice, wheat and corn. Due to China's poorly defined criteria for applicants, unclear procedures for distributing TRQ allocations, and failure to announce quota allocation and reallocation results, traders are unsure of available import opportunities and producers worldwide have reduced market access opportunities. Consultations are expected to take place in 2017.

Previously, in February 2015, the United States launched a WTO case challenges numerous Chinese central government and sub-central government export subsidies provided to manufacturers and producers across seven industries located in designated clusters of enterprises called "Demonstration Bases." This case followed a case, launched in 2012, challenging similar subsidies provided by the central government and various sub-central governments in China to automobile and automobile-parts enterprises located in regions in China known as "export bases." The subsidies at issue appeared to be inconsistent with China's obligation under Article 3 of the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) not to provide subsidies contingent upon export performance. Consultations in the new case took place in March 2015. In April 2015, a WTO

panel was established to hear the case at the United States' request, and the two sides subsequently engaged in extensive further discussions exploring steps for China to take to address U.S. concerns. In April 2016, the United States announced that China had terminated the subsidies at issue pursuant to a memorandum of understanding.

In a case launched in December 2015, the United States challenged discriminatory Chinese government measures exempting sales of certain aircraft produced in China, including general aviation aircraft, agricultural aircraft, business jets and regional jets, from the VAT while imposing that same tax on sales of imported aircraft. Compounding this problem, it appeared that the Chinese government never published these measures as required by China's WTO commitments. Consultations took place in January 2016. In October 2016, the United States announced that it had confirmed that China had terminated the discriminatory tax measures at issue.

In a WTO case initiated in September 2011, the United States successfully challenged China's imposition of antidumping and countervailing duties on imports of certain U.S. chicken products known as "broiler products." In the course of its AD and CVD investigations, China's regulatory authorities imposed the duties at issue without necessary legal and factual support and without observing certain transparency and procedural fairness requirements, in violation of various WTO obligations under the AD Agreement and the Subsidies Agreement. Consultations were held in October 2011. A WTO panel was established to hear this case at the United States' request in January 2012, and seven other WTO members joined the case as third parties. Hearings before the panel took place in September and December 2012, and the panel issued its decision in August 2013, finding in favor of the United States on all significant claims. China decided not to appeal the panel's decision and subsequently agreed to come into compliance with the WTO's rulings by July 2014. China issued a redetermination in July 2014 that left the duties in place, but it

appeared to be inconsistent with the WTO's rulings. In May 2016, the United States launched a challenge to China's redetermination in a proceeding under Article 21.5 of the DSU. In 2017, a hearing before the panel is expected to take place, and the panel is expected to issue its decision.

In a WTO case initiated in September 2010, the United States challenged China's restrictions on foreign suppliers of electronic payment services. Suppliers like the major U.S. credit card companies provide these services in connection with the operation of electronic networks that process payment transactions involving credit, debit, prepaid and other payment cards. They also enable, facilitate and manage the flow of information and the transfer of funds from cardholders' banks to merchants' banks. China's regulatory regime places severe restrictions on foreign suppliers of electronic payment services. Among other things, China prohibits foreign suppliers from handling the typical payment card transaction in China, in which a Chinese consumer is billed in and makes a payment in China's domestic currency, known as the renminbi, or RMB. Instead, China has created a national champion, allowing only one domestic entity, China Union Pay (CUP), to provide these services. Consultations were held in October 2010. A WTO panel was established to hear this case at the United States' request in March 2011, and six other WTO members joined the case as third parties. Hearings before the panel took place in October and December 2011, and the panel issued its decision in July 2012. The panel ruled that China's commitments under the General Agreement on Trade in Services (GATS) required China to allow foreign suppliers to provide electronic payment services for payment card transactions denominated in RMB through commercial presence in China on non-discriminatory terms. China decided not to appeal the panel's decision and subsequently agreed to come into compliance with the WTO's rulings by July 2013.

China took some steps toward complying with the WTO's rulings by that deadline. China repealed

certain challenged measures, and it issued new measures that imposed a new licensing requirement for foreign suppliers to be able to provide these services, without also taking the critical step of establishing a process for foreign suppliers actually to obtain the needed licenses. In October 2014, China's State Council announced that China would be opening its market to foreign suppliers of electronic payment services, but delayed the issuance of a formal decision. In April 2015, the State Council finally issued the formal decision setting forth the terms on which China would be opening its market to foreign suppliers of electronic payment services. In August 2015, the regulator, the People's Bank of China (PBOC), issued draft licensing regulations, but it did not issue those regulations in final form until June 2016, during the S&ED meeting. Since then, PBOC appears to have issued technical guidance for potential applicants, and it reportedly is developing substantive guidance for potential applicants. As of December 2016, U.S. suppliers remained blocked from entering China's market. Accordingly, the United States continues to actively press China and is considering additional next steps to ensure that China complies fully with the WTO's rulings.

The final WTO case active in 2014 involved U.S. challenges to market access restrictions maintained by China that restricted the importation and distribution of copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs and music. In this case, hearings before a WTO panel took place in 2008, and the panel issued its decision in August 2009, ruling in favor of the United States on every significant claim in the case. China appealed the panel's decision in September 2009. The WTO's Appellate Body rejected China's appeal on all counts in December 2009. China agreed to come into compliance with the WTO's rulings by March 2011. China subsequently issued several revised measures, and repealed other measures, relating to the market access restrictions on books, newspapers, journals, DVDs and music. As China acknowledged, however, it did not issue any measures addressing theatrical films. Instead, China

proposed bilateral discussions with the United States in order to seek an alternative solution.

After months of negotiations, which included discussions between the two sides' Vice Presidents, the United States and China reached agreement in February 2012 on an MOU providing for substantial increases in the number of foreign films imported and distributed in China each year, substantial additional revenue for foreign film producers and the opening up of film distribution opportunities for imported films. To date, while significantly more U.S. films have been imported and distributed in China on a revenue-sharing basis since the signing of the MOU and the revenue received by U.S. film producers has increased significantly, China has not yet fully implemented its MOU commitments, including with regard to critical commitments to open up film distribution opportunities for imported revenue-sharing films and imported flat-fee films. In addition, U.S. industry reports that China has been imposing an informal quota on the total number of U.S. revenue-sharing films and flat-fee films that can be imported each year, which, if true, would undermine the terms of the MOU. As a result, the United States has been pressing China for full implementation of the MOU. At the June 2015 S&ED meeting, China committed to ensure that any Chinese enterprise licensed to distribute films in China can distribute imported flat-fee films on their

own and without having to contract with or otherwise partner with China Film Group or any other state-owned enterprise. China further committed that SAPPRFT, China Film Group or any other state-owned enterprise would not directly or indirectly influence the negotiation, terms, amount of compensation or execution of any distribution contract between a licensed Chinese distributor and a U.S. flat-fee film producer. To date, China has not taken steps to implement its distribution commitments as they apply to imported revenue-sharing films.

The films MOU provides that it will be reviewed in calendar year 2017 in order for the two sides to discuss issues of concern, including additional compensation for the U.S. side. At the November 2016 JCCT meeting, China agreed to begin discussions promptly in 2017. China further agreed that those discussions will seek to increase the number of revenue-sharing films to be imported each year and the share of gross box office receipts received by U.S. enterprises as well as seek to address outstanding U.S. concerns relating to other policies and practices that may impede the U.S. film industry's access to China's market, such as importation rights, the number of distributors of imported films and the independence of distributors, among other issues.

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Table 2

Active U.S. WTO Disputes against China in 2016

China – Tariff-rate Quotas for Rice, Wheat and Corn	
<u>Initiation:</u>	December 2016
<u>Dispute:</u>	The United States is challenging China's administration of tariff-rate quotas for rice, wheat and corn.
<u>Third Parties:</u>	To be determined.
<u>Status:</u>	Consultations are expected to take place in 2017.
China – Domestic Support for Agricultural Producers	
<u>Initiation:</u>	September 2016
<u>Dispute:</u>	The United States is challenging government support for the production of rice, wheat and corn as being in excess of China's commitments.
<u>Third Parties:</u>	To be determined.
<u>Status:</u>	Consultations took place in October 2016. In December 2016, the United States requested that the WTO establish a panel to hear the case.
China – Export Duties and Other Restrictions on the Export of Certain Raw Materials	
<u>Initiation:</u>	July 2016
<u>Dispute:</u>	The United States is challenging export quotas and export duties maintained by China on various forms of 11 raw materials, including antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum and tin.
<u>Third Parties:</u>	Brazil, Canada, European Union, India, Indonesia, Japan, Kazakhstan, Korea, Mexico, Norway, Russian Federation, Singapore, Chinese Taipei and Vietnam
<u>Status:</u>	Consultations took place in September 2016. A WTO panel was established to hear the case at the United States' request in November 2016.
China – Tax Advantages for Certain Domestically Produced Aircraft	
<u>Initiation:</u>	December 2015
<u>Dispute:</u>	The United States challenged discriminatory tax measures, pursuant to which China exempted sales of certain domestically manufactured aircraft from the VAT while imposing that same tax on sales of imported aircraft.
<u>Third Parties:</u>	There was no opportunity for other WTO members to join in as third parties because this dispute was resolved without resort to a WTO panel.
<u>Status:</u>	Consultations took place in January 2016. In October 2016, the United States announced that it had confirmed that China had terminated the discriminatory tax measures at issue.
China – Subsidies for Demonstration Bases and Common Service Platform Programs	
<u>Initiation:</u>	February 2015
<u>Dispute:</u>	The United States is challenging China's provision of what appear to be export subsidies to enterprises located in so-called "demonstration bases" in China.
<u>Third Parties:</u>	Australia, Brazil, Canada, Colombia, Dominican Republic, the European Union, India, Japan, Korea, the Russian Federation, Saudi Arabia, Singapore and Chinese Taipei
<u>Status:</u>	Consultations took place in March 2015. In April 2015, a WTO panel was established to hear the case at the United States' request. In April 2016, the United States announced that China had terminated the subsidies at issue pursuant to a memorandum of understanding.

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Table 2 (cont'd)

Active U.S. WTO Disputes against China in 2016

China – Antidumping and Countervailing Duties on Chicken Broiler Products	
<u>Initiation:</u>	September 2011
<u>Dispute:</u>	The United States is challenging China's imposition of antidumping and countervailing duties on imports of chicken broiler products from the United States.
<u>Third Parties:</u>	Chile, the EU, Japan, Mexico, Norway, Saudi Arabia and Thailand
<u>Status:</u>	Hearings before a WTO panel took place in September and December 2012. The panel issued its decision in August 2013, finding in favor of the United States on all significant claims. China decided not to appeal the panel's decision and subsequently agreed to come into compliance with the WTO's rulings by July 2014. China issued a redetermination in July 2014 that left the duties in place. In May 2016, the United States launched a challenge to China's redetermination in a proceeding under Article 21.5 of the DSU. A hearing before the panel is expected to take place in 2017.
China – Electronic Payment Services	
<u>Initiation:</u>	September 2010
<u>Dispute:</u>	The United States challenged China's restrictions on foreign suppliers of electronic payment services like the major U.S. credit card companies.
<u>Third Parties:</u>	Australia, Ecuador, the EU, India, Japan and Korea
<u>Status:</u>	Hearings before a WTO panel took place in October and December 2011. The panel issued its decision in July 2012, ruling that China made GATS commitments to allow foreign suppliers to provide electronic payment services for payment card transactions denominated in RMB through commercial presence in China on non-discriminatory terms, and finding specific measures challenged by the United States to be inconsistent with those commitments. China decided not to appeal the panel's decision and agreed to come into compliance with the WTO's rulings by July 2013. China took some compliance steps by July 2013. Much later, in June 2016, PBOC issued licensing regulations. However, PBOC reportedly still needs to develop and issue further guidance for those regulations, and no foreign suppliers have been licensed. As of December 2016, the United States continues to actively press China and is considering additional next steps to ensure that China complies fully with the WTO's rulings.
China – Market Access for Books, Movies and Music	
<u>Initiation:</u>	April 2007
<u>Dispute:</u>	The United States challenged China's barriers to importing and distributing books, newspapers, journals, theatrical films, DVDs and music in China.
<u>Third Parties:</u>	Australia, the EU, Japan, Korea and Chinese Taipei
<u>Status:</u>	A WTO panel issued its decision in August 2009, ruling in favor of the United States on all significant claims. China appealed the panel's decision in September 2009. The WTO's Appellate Body rejected China's appeal in December 2009. China agreed to come into compliance with the WTO's rulings by March 2011. Since then, China has taken compliance steps with regard to the market access barriers on books, newspapers, journals, DVDs and music. With regard to theatrical films, the United States and China concluded an MOU providing for substantial increases in the number of foreign films imported and distributed in China each year and substantial additional revenue for foreign film producers. To date, while significantly more U.S. films have been imported and distributed in China on a revenue-sharing basis since the signing of the MOU and the revenue received by U.S. film producers has increased significantly, China has not yet implemented critical commitments to open up film distribution opportunities for imported films.

CHINA'S WTO COMPLIANCE

Set forth below is a detailed analysis of the commitments that China made upon acceding to the WTO on December 11, 2001, the progress that China has made in complying with those commitments and the United States' efforts to address compliance concerns that have arisen as of December 2016. As noted above, a summary of China's WTO compliance efforts is reproduced in Table 1.

TRADING RIGHTS

China appears to be in compliance with its trading rights commitments in most areas. One significant exception involves China's restrictions on the right to import theatrical films, which China reserves for state trading. In 2012, following a successful WTO case brought by the United States challenging these restrictions, the United States and China entered into an MOU providing for substantial increases in the number of U.S. films imported and distributed in China each year and substantial additional revenue for foreign film producers, although China has not yet fully implemented its MOU commitments.

Within the context of China's WTO commitments, the concept of "trading rights" includes two elements, i.e., the right to import goods (into China) and the right to export goods (from China). It does not include the right to sell goods within China, as that right is governed by separate commitments principally relating to "distribution services" set forth in China's Services Schedule (see the Distribution Services section below). Nevertheless, together with China's distribution services commitments, China's trading rights commitments call for the elimination of significant barriers to a wide range of U.S. and other foreign industries doing business, or seeking to do business, in China.

Until shortly before its WTO accession, China severely restricted the number and types of enterprises that could import or export goods, and it also restricted the goods that a particular enterprise could import or export. For the most part, China

confined trading rights to certain state-owned manufacturing and trading enterprises, which could import or export goods falling within their approved scopes of business. China also granted trading rights to certain foreign-invested enterprises, allowing them to import inputs for their production purposes and export their finished products.

In its accession agreement, China committed to substantial liberalization in the area of trading rights. Most importantly, China agreed to eliminate its system of examination and approval of trading rights and make full trading rights automatically available for all Chinese enterprises, Chinese-foreign joint ventures, wholly foreign-owned enterprises and foreign individuals, including sole proprietorships, within three years of its accession, or by December 11, 2004, the same deadline for China to eliminate most restrictions in the area of distribution services. The only exceptions applied to products listed in an annex to China's accession agreement, such as grains, cotton and tobacco, for which China reserved the right to engage in state trading.

As previously reported, the NPC issued a revised *Foreign Trade Law*, which provided for trading rights to be automatically available through a registration process for all domestic and foreign entities and individuals, effective July 2004, while MOFCOM issued implementing rules setting out the procedures for registering as a foreign trade operator. U.S. companies have reported few problems with this trading rights registration process.

Books, Movies and Music

Under the terms of China's accession agreement, trading rights for copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs and music should have been automatically available to all Chinese enterprises, Chinese-foreign joint ventures, wholly foreign-owned enterprises and foreign individuals as of December 11, 2004. These products are not included in the list of

products for which China reserved the right to engage in state trading. Nevertheless, China did not liberalize trading rights for these products. China continued to reserve the right to import these products to state trading enterprises, as reflected in a complex web of measures issued by numerous agencies, including the State Council, the State Administration of Radio, Film and Television (SARFT), MOFCOM, the NDRC, the Ministry of Culture, the General Administration of Press and Publication (GAPP) and the General Administration of Customs.

As previously reported, the United States initiated a WTO dispute settlement case against China in April 2007, challenging China's restrictions on the importation and distribution of copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs and music. The WTO panel established to hear this case issued its decision in August 2009, ruling in favor of the United States on all significant claims. China appealed the panel's decision in September 2009, and the WTO's Appellate Body rejected China's appeal on all counts in December 2009. China agreed to comply with these rulings by March 2011. China subsequently issued several revised measures, and repealed other measures, relating to the importation restrictions on books, newspapers, journals, DVDs and music. However, China did not issue any measures addressing theatrical films and instead proposed bilateral discussions with the United States in order to seek an alternative solution.

After months of negotiations, which included discussions between the two sides' Vice Presidents, the United States and China reached agreement in February 2012 on an MOU providing for substantial increases in the number of foreign films imported and distributed in China each year, substantial additional revenue for foreign film producers and the opening up of film distribution opportunities for imported films. The MOU provides that it will be reviewed after five years in order for the two sides to discuss issues of concern, including additional compensation for the U.S. side.

To date, while significantly more U.S. films have been imported and distributed in China on a revenue-sharing basis since the signing of the MOU and the revenue received by U.S. film producers has increased significantly, China has not yet fully implemented its MOU commitments, including with regard to critical commitments to open up film distribution opportunities for imported revenue-sharing films and imported flat-fee films. In addition, U.S. industry reports that China has been imposing an informal quota on the total number of U.S. revenue-sharing films and flat-fee films that can be imported each year, which, if true, would undermine the terms of the MOU.

As a result, the United States has been pressing China for full implementation of the MOU. At the June 2015 S&ED meeting, China committed to ensure that any Chinese enterprise licensed to distribute films in China can distribute imported flat-fee films on their own and without having to contract with or otherwise partner with China Film Group or any other state-owned enterprise. China further committed that SAPPFT, China Film Group or any other state-owned enterprise would not directly or indirectly influence the negotiation, terms, amount of compensation or execution of any distribution contract between a licensed Chinese distributor and a U.S. flat-fee film producer. To date, China has not taken steps to implement its distribution commitments as they apply to imported revenue-sharing films.

The films MOU provides that it will be reviewed in calendar year 2017 in order for the two sides to discuss issues of concern, including additional compensation for the U.S. side. At the November 2016 JCCT meeting, China agreed that those discussions will seek to increase the number of revenue-sharing films to be imported each year and the share of gross box office receipts received by U.S. enterprises as well as seek to address outstanding U.S. concerns relating to other policies and practices that may impede the U.S. film industry's access to China's market, such as

importation rights, the number of distributors of imported films and the independence of distributors, among other issues.

IMPORT REGULATION

Tariffs

China has timely implemented its tariff commitments for industrial goods each year.

During its bilateral negotiations with interested WTO members leading up to its accession, China agreed to greatly increase market access for U.S. and other foreign companies by reducing tariff rates on industrial goods over a period of years running from 2002 through 2010. The agreed reductions are set forth as tariff “bindings” in China’s Goods Schedule, meaning that while China cannot exceed the bound tariff rates, it can decide to apply them at a lower rate, as many members do when trying to attract particular imports. As previously reported, each year, China implemented its scheduled tariff reductions on January 1 as required.

The annual tariff changes that China made following its WTO accession significantly increased market access for U.S. exporters in a range of industries, as China reduced tariffs on goods of greatest importance to U.S. industry from a base average of 25 percent (in 1997) to approximately 7 percent, while it made similar reductions throughout the agricultural sector (see the Agriculture section below). In addition, U.S. exports have benefited from China’s ongoing participation in the Information Technology Agreement (ITA), which requires the elimination of tariffs on computers, semiconductors and other ICT products. U.S. exports also have continued to benefit from China’s ongoing adherence to another significant tariff initiative, the WTO’s Chemical Tariff Harmonization Agreement, completed in 2005. Overall, U.S. goods exports to China declined slightly in 2015, falling approximately 6 percent from the level in 2014, and they continued to decline by about the same percentage for the first several months of 2016

before stabilizing and slightly increasing later in the year, when compared to 2015.

A breakthrough in the plurilateral negotiations to update and expand the coverage of the ITA, achieved during the run-up to the November 2014 summit meeting between President Obama and President Xi, led to the participants in the ITA expansion negotiations agreeing on product coverage in July 2015. In December 2015, at the WTO Ministerial Conference in Nairobi, Kenya, the participants announced final agreement on ITA expansion, with an agreed timetable for eliminating tariffs for the covered products. This expansion of the ITA should lead to significant additional benefits for U.S. manufacturers and exporters in the future. According to U.S. industry estimates, expansion of the ITA’s coverage will eliminate tariffs on approximately \$1 trillion in annual global sales of ICT products and increase annual global GDP by an estimated \$190 billion. In addition, because the United States is a global leader in high-technology manufacturing, U.S. industry also estimates that the expanded ITA will support up to 60,000 additional U.S. jobs. By December 2016, a large majority of ITA expansion participants had begun to implement their tariff commitments.

Despite the significant reductions in China’s tariffs that WTO members were able to negotiate with China in connection with its accession to the WTO and through plurilateral initiatives like the ITA, China retains the right to impose relatively high tariffs on some products that compete with sensitive domestic industries. For example, the tariff on most automobiles is 25 percent, and most audio and video recorders still face 30 percent tariffs.

Customs and Trade Administration

Like other acceding WTO members, China agreed to take on the WTO obligations set forth in three agreements that address the means by which customs and other trade administration officials check imports and establish and apply relevant trade regulations. These agreements cover the areas of

customs valuation, rules of origin and import licensing.

CUSTOMS VALUATION

China has issued measures that bring its legal regime for making customs valuation determinations into compliance with WTO rules, but implementation of these measures has been inconsistent from port to port, both in terms of customs clearance procedures and valuation determinations.

The WTO Agreement on the Implementation of GATT Article VII (Agreement on Customs Valuation) is designed to ensure that determinations of the customs value for the application of duty rates to imported goods are conducted in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. Adherence to the Agreement on Customs Valuation is important for U.S. exporters, particularly to ensure that market access opportunities provided through tariff reductions are not negated by unwarranted and unreasonable “uplifts” in the customs value of goods to which tariffs are applied. China agreed to implement its obligations under the Agreement on Customs Valuation upon accession, without any transition period. In addition, China’s accession agreement reinforces China’s obligation not to use minimum or reference prices as a means for determining customs value. It also called on China to implement the *Decision on Valuation of Carrier Media Bearing Software for Data Processing Equipment* and the *Decision on Treatment of Interest Charges in Customs Value of Imported Goods* by December 11, 2003.

As previously reported, in 2002, shortly after China acceded to the WTO, China issued regulations addressing the inconsistencies that had existed between China’s customs valuation methodologies and the Agreement on Customs Valuation. China’s Customs Administration subsequently issued rules that were intended to clarify provisions of the regulations addressing the valuation of royalties and

license fees. In addition, China issued a measure on interest charges and a measure requiring duties on software to be assessed on the basis of the value of the underlying carrier medium, meaning, for example, the CD-ROM or floppy disk itself, rather than based on the imputed value of the content, which includes, for example, the data recorded on a CD-ROM or floppy disk.

In September 2015, China accepted the WTO Trade Facilitation Agreement (TFA), which includes provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issue. The TFA will enter into force once two-thirds of the WTO membership accepts it. As of December 2016, approximately 90 percent of the needed acceptances had been received by the WTO.

Customs Clearance Procedures

U.S. exporters continue to be concerned about inefficient and inconsistent customs clearance procedures in China. These procedures vary from port to port, lengthy delays are not uncommon, and the fees charged appear to be excessive, giving rise to concerns about China’s compliance with its obligations under Article VIII of GATT 1994.

Tariff Classifications

U.S. industry notes that Chinese customs officers appear to have wide discretion in classifying goods for tariff purposes, and their classifications sometimes appear to be arbitrary. This lack of uniformity and predictability creates unnecessary challenges for U.S. and other foreign companies seeking to export their goods to China.

Customs Valuation Determinations

China has still not uniformly implemented the various customs valuation measures issued following its accession to the WTO. U.S. exporters continue to

report that they are encountering valuation problems at many ports.

According to U.S. exporters, even though the Customs Administration's measures provide that imported goods normally should be valued on the basis of their transaction price, meaning the price the importer actually paid, many Chinese customs officials are still improperly using "reference pricing," which usually results in a higher dutiable value. Indeed, it appears that the practice of using reference prices is increasing. Imports of information technology products are often subjected to reference pricing, as are other imported products, such as wood products.

In addition, some of China's customs officials are reportedly not applying the rules set forth in the Customs Administration's measures as they relate to software royalties and license fees. Rather, following their pre-WTO accession practice, these officials are still automatically adding royalties and license fees to the dutiable value (for example, when an imported personal computer includes pre-installed software), even though the rules expressly direct them to add those fees only if they are import-related and a condition of sale for the goods being valued.

U.S. exporters also have continued to complain that some of China's customs officials are assessing duties on digital products based on the imputed value of the content, such as the data recorded on a floppy disk or CD-ROM. China's own regulations require this assessment to be made on the basis of the value of the underlying carrier medium, meaning the floppy disk or CD-ROM itself.

More recently, U.S. exporters have begun complaining about the Customs Administration's use of outdated and arbitrary pricing methodologies that do not take account of modern, complex supply chain models. In particular, according to these exporters, China's customs officials do not seem to understand transfer pricing, inbound and outbound bonded zone valuation, and customer rebates and

sales discounts associated with modern supply chains.

When the United States first presented its concerns about the customs valuation problems being encountered by U.S. companies several years ago, China indicated that it was working to establish more uniformity in its adherence to WTO customs valuation rules. Since then, the United States has sought to assist in this effort in part by conducting technical assistance programs for Chinese government officials on WTO compliance in the customs area. The United States has also raised its concerns about particular customs valuation problems before the WTO's Committee on Customs Valuation and during the WTO's biannual Trade Policy Reviews of China, the most recent of which was held in July 2016. At present, China still needs to improve its adherence to applicable customs valuation measures.

RULES OF ORIGIN

China has issued measures that bring its legal regime for making rules of origin determinations into compliance with WTO rules.

Upon its accession to the WTO, China became subject to the WTO Agreement on Rules of Origin, which sets forth rules designed to increase transparency, predictability and consistency in both the establishment and application of rules of origin, which are necessary for import and export purposes, such as determining the applicability of import quotas, determining entitlement to preferential or duty-free treatment and imposing antidumping or countervailing duties or safeguard measures, and for the purpose of confirming that marking requirements have been met. The Agreement on Rules of Origin also provides for a work program leading to the multilateral harmonization of rules of origin. This work program is ongoing, and China specifically agreed to adopt the internationally harmonized rules of origin once they were completed. In addition, China confirmed that it would apply rules of origin equally for all purposes

and that it would not use rules of origin as an instrument to pursue trade objectives either directly or indirectly.

As previously reported, it took China nearly three years after its accession to the WTO for China's State Council to issue the regulations intended to bring China's rules of origin into conformity with WTO rules for import and export purposes. Shortly thereafter, the Customs Administration issued implementing rules addressing the issue of substantial transformation. U.S. exporters have not raised concerns with China's implementation of these measures.

IMPORT LICENSING

China has issued measures that bring its legal regime for import licenses into compliance with WTO rules, although a variety of specific compliance issues continue to arise.

The Agreement on Import Licensing Procedures (Import Licensing Agreement) establishes rules for all WTO members, including China, that use import licensing systems to regulate their trade. Its aim is to ensure that the procedures used by members in operating their import licensing systems do not, in themselves, form barriers to trade. The objective of the Import Licensing Agreement is to increase transparency and predictability and to establish disciplines to protect the importer against unreasonable requirements or delays associated with the licensing regime. The Import Licensing Agreement covers both "automatic" licensing systems, which are intended only to monitor imports, not regulate them, and "non-automatic" licensing systems, which are normally used to administer import restrictions, such as tariff-rate quotas, or to administer safety or other requirements, such as for hazardous goods, armaments or antiquities. While the Import Licensing Agreement's provisions do not directly address the WTO consistency of the underlying measures that licensing systems regulate, they do

establish the baseline of what constitutes a fair and non-discriminatory application of import licensing procedures. In addition, China specifically committed not to condition the issuance of import licenses on performance requirements of any kind, such as local content, export performance, offsets, technology transfer or research and development, or on whether competing domestic suppliers exist.

Shortly after China acceded to the WTO, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) issued regulations revising China's automatic import licensing regime, and it later supplemented these regulations with implementing rules. MOFTEC also issued regulations revising China's non-automatic licensing regime. In 2016, as in prior years, the United States continued to monitor implementation of these regulations by MOFTEC's successor, MOFCOM.

Iron Ore

In 2005, China began imposing new import licensing procedures for iron ore, a key steel input, for which Chinese steel producers are dependent on foreign suppliers. China restricted the number of licensed importers, but did not make public a list of the qualified enterprises or the qualifying criteria used. In the years after 2005, China further reduced the number of licensed importers. In 2008, China reportedly temporarily suspended the issuance of licenses to importers of Australian iron ore in 2008 in an effort to limit price increases being negotiated between foreign exporters of iron ore and Chinese steelmakers.

The United States raised its concerns about China's restrictive iron ore licensing procedures bilaterally, such as through U.S.-China Steel Dialogue meetings. The United States also raised its concerns in meetings before the WTO's Committee on Import Licensing and Council for Trade in Goods as well as during the June 2012 Trade Policy Review of China at the WTO, given that the WTO's Import Licensing Agreement calls for import licensing procedures that do not have a restrictive effect on trade.

In June 2013, MOFCOM issued the *Notice Regarding Implementing Online Registration for Iron Ore and Aluminum Oxide Automatic Import Licensing*, which purports to establish an automatic online import licensing system for iron ore (and aluminum oxide). While this measure does not on its face impose any qualification requirements for importers, it is not yet clear how the new import licensing procedures are being administered, although it appears that the number of iron ore importers is increasing.

In 2017, the United States will continue to monitor China's iron ore import licensing system procedures closely. The United States also will examine other Chinese government actions that may seek to influence iron ore prices.

Other Issues

The United States has focused considerable attention on import licensing issues that have arisen in a variety of other specific contexts since China's WTO accession. In 2016, these included the administration of the tariff-rate quota system for fertilizer (discussed below in the section on Tariff-rate Quotas on Industrial Goods), the administration of the tariff-rate quota system for certain agricultural commodities (discussed below in the section on Tariff-rate Quotas on Bulk Agricultural Commodities), various SPS measures (discussed below in the section on Sanitary and Phytosanitary Issues) and inspection-related requirements for soybeans, meat, poultry, pork and dairy products (discussed below in the section on Inspection-Related Requirements).

Non-tariff Measures

China has adhered to the agreed schedule for eliminating non-tariff measures, but prohibitions on the import of remanufactured products have generated concerns.

In its WTO accession agreement, China agreed that it would eliminate numerous trade-distortive non-

tariff measures (NTMs), including import quotas, licenses and tendering requirements covering hundreds of products. Most of these NTMs, including, for example, the NTMs covering chemicals, agricultural equipment, medical and scientific equipment and civil aircraft, had to be eliminated by the time that China acceded to the WTO. China committed to phase out other NTMs, listed in an annex to the accession agreement, over a transition period ending on January 1, 2005. These other NTMs included import quotas on industrial goods such as air conditioners, sound and video recording apparatuses, color TVs, cameras, watches, crane lorries and chassis, and motorcycles as well as licensing and tendering requirements applicable to a few types of industrial goods, such as machine tools and aerials.

As previously reported, China's import quota system was beset with problems, despite consistent bilateral engagement by the United States. Some of the more difficult problems were encountered with the auto import quota system, resulting at times in significant disruption of wholesale and retail operations for imported autos. However, China did fully adhere to the agreed schedule for the elimination of all of its import quotas as well as all of its other NTMs, the last of which China eliminated in January 2005. In some cases, China even eliminated NTMs ahead of schedule, as it did with the import quotas on crane lorries and chassis, and motorcycles.

Remanufactured Products

China prohibits the importation of remanufactured products, which it typically classifies as used goods. China also maintains restrictions that prevent remanufacturing process inputs (known as cores) from being imported into China's customs territory, except special economic zones. These import prohibitions and restrictions undermine the development of industries in many sectors in China, including mining, agriculture, healthcare, transportation and communications, among others, because companies in these industries are unable to

purchase high-quality, lower-cost remanufactured products produced outside of China.

Despite these import prohibitions and restrictions, China does permit foreign companies to participate with domestic companies in pilot programs, which allow them to engage in a limited way in the manufacture and sale of remanufactured goods in China. However, overall China's import prohibitions and restrictions remain a serious problem and U.S. companies' activities remain severely restricted. To help address this problem, the United States has convened annual U.S.-China Remanufacturing Dialogues, which include relevant government and industry stakeholders from both countries as participants. In addition, the United States has continued to press China to lift its import prohibitions and to expand the scope of remanufacturing activity allowed to be conducted in China through other bilateral engagement, including both the JCCT and the Asia-Pacific Economic Cooperation (APEC) forum, where the United States has urged China to join the APEC Pathfinder Initiative on Facilitating Trade in Remanufactured Goods.

Tariff-rate Quotas on Industrial Products

Concerns about transparency and administrative guidance have plagued China's tariff-rate quota system for industrial products, particularly fertilizer, since China's accession to the WTO.

In its WTO accession agreement, China agreed to implement a system of TRQs designed to provide significant market access for three industrial products, including fertilizer, a major U.S. export. Under this TRQ system, a set quantity of imports is allowed at a low tariff rate, while imports above that level are subject to a higher tariff rate. In addition, the quantity of imports allowed at the low tariff rate increases annually by an agreed amount. China's accession agreement specifies detailed rules, requiring China to operate its fertilizer TRQ system in a transparent manner and dictating precisely how and when China is obligated to accept quota

applications, allocate quotas and reallocate unused quotas.

As previously reported, since China began implementing its TRQ system for fertilizer in 2002, it has not functioned smoothly. Despite repeated bilateral engagement and multilateral engagement at the WTO, including formal consultations with China in Geneva under the headnotes in China's Goods Schedule, concerns about inadequate transparency and administrative guidance have persisted. U.S. fertilizer exports to China declined sharply after China acceded to the WTO, as separate Chinese government policies promoting domestic fertilizer – including export duties (discussed below in the Export Regulation section) and discriminatory internal taxes (discussed below in the Taxation section) – appear to have made it difficult for foreign producers to compete in China's market.

Other Import Regulation

ANTIDUMPING

China has issued laws and regulations bringing its legal regime in the AD area largely into compliance with WTO rules, although China still needs to issue additional procedural guidance such as rules governing expiry reviews. More significantly, China needs to improve its commitment to the transparency and procedural fairness requirements embodied in WTO rules, as the WTO found in three disputes brought by the United States. In addition, China needs to eliminate its apparent use of trade remedy investigations as a retaliatory tool.

By the time of its accession to the WTO, China agreed to revise its regulations and procedures for AD proceedings, in order to make them consistent with the AD Agreement. That agreement sets forth detailed rules prescribing the manner and basis on which a WTO member may take action to offset the injurious dumping of products imported from another WTO member. China also agreed to provide for judicial review of determinations made in its AD investigations and reviews.

China has become a leading user of AD measures since its accession to the WTO. Currently, China has in place 95 AD measures, affecting imports from 16 countries or regions. China also has 5 AD investigations in progress. The greatest systemic shortcomings in China's AD practice continue to be in the areas of transparency and procedural fairness. In addition, as discussed below, in recent years, China has invoked AD and CVD remedies under troubling circumstances. In response, the United States has pressed China both bilaterally and in WTO meetings to adhere strictly to WTO rules in the conduct of its AD investigations, and the United States has consistently pursued WTO litigation where necessary.

Legal Regime

As previously reported, China has put in place much of the legal framework for its AD regime. Under this regime, until 2014, MOFCOM's Bureau of Fair Trade for Imports and Exports (BOFT) was charged with making dumping determinations, and MOFCOM's Bureau of Industry Injury Investigation (IBII) was charged with making injury determinations. In 2014, MOFCOM consolidated BOFT and IBII into a new entity, the Trade Remedy and Investigation Bureau (TRIB), which makes both dumping and injury determinations. In cases where the subject merchandise is an agricultural product, the Ministry of Agriculture may be involved in the injury investigation. The State Council Tariff Commission continues to make the final decision on imposing, revoking or retaining AD duties, based on recommendations provided by the TRIB, although its authority relative to MOFCOM has not been clearly defined in the regulations and rules since MOFCOM was established.

China continues to add new regulations and rules to its AD legal framework, although not all of these measures have been notified to the WTO in a timely manner. In July 2009, MOFCOM solicited public comments on draft revisions of its rules on new shipper reviews, AD duty refunds and price

undertakings. In August 2015, MOFCOM solicited public comments on draft revisions of its rules regarding AD and CVD investigation hearings, interim reviews of AD margins and AD investigation questionnaires. To date, however, China still has not finalized revisions to any of these rules. Once finalized, China is obligated to notify these revised rules to the WTO so that all Members have an opportunity to review the rules for compliance with the AD Agreement and seek any needed clarifications.

Meanwhile, another area generating concern involves expiry reviews. China has still not issued any regulations specifically establishing the rules and procedures governing expiry reviews. In May 2013, MOFCOM solicited public comments on rules concerning the implementation of WTO rulings in trade remedy cases. While purportedly final, these rules have not yet been notified to the WTO.

Conduct of Antidumping Investigations

In practice, it appears that China's conduct of AD investigations in many respects continues to fall short of full commitment to the fundamental tenets of transparency and procedural fairness embodied in the AD Agreement. In 2016, respondents from the United States and other WTO members continued to express concerns about key lapses in transparency and procedural fairness in China's conduct of AD investigations. The principal areas of concern include the inadequate disclosure of key documents placed on the record by domestic Chinese producers, insufficiently detailed disclosures of the essential facts underlying MOFCOM decisions, such as dumping margin calculations, evidence supporting injury and dumping conclusions, and MOFCOM not adequately addressing critical arguments or evidence put forward by interested parties. These aspects of China's AD practice have been challenged by the United States in the WTO cases involving GOES, chicken broiler products and automobiles. In each of the cases, the WTO has upheld U.S. claims relating to transparency and procedural fairness.

The United States and other WTO members have also expressed serious concerns about China's evolving practice of launching AD and CVD investigations that appear designed to discourage the United States or other trading partners from the legitimate exercise of their rights under WTO AD and CVD rules and the trade remedy provisions of China's accession agreement. This type of retaliatory conduct is not typical of WTO members, and it may have its roots in China's *Foreign Trade Law* and AD and CVD implementing regulations, which authorize "corresponding countermeasures" when China believes that a trading partner has discriminatorily imposed antidumping or countervailing duties against imports from China. Further, when China has pursued investigations under these circumstances, it appears that its regulatory authorities have tended to move forward with the imposition of duties regardless of the strength of the underlying legal and factual support. The United States' successful WTO cases challenging the duties imposed by China on imports of U.S. GOES, U.S. chicken broiler products and U.S. automobiles offer telling examples of this problem.

The United States initiated the GOES WTO case in September 2010, claiming that China's regulatory authorities appeared to have imposed the duties at issue without necessary legal and factual support and without observing certain transparency and procedural fairness requirements, in violation of various WTO obligations under the AD Agreement and the Subsidies Agreement. Consultations were held in November 2010. A WTO panel was established to hear this case at the United States' request in March 2011, and eight other WTO members joined the case as third parties. Hearings before the panel took place in September and December 2011. The panel issued its decision in June 2012, finding in favor of the United States on all significant claims. China appealed the panel's decision in July 2012. The WTO's Appellate Body rejected China's appeal in October 2012, and China subsequently agreed to come into compliance with the WTO's rulings by July 2013. China issued a redetermination in July 2013, but it appeared to be

inconsistent with the WTO's rulings. In January 2014, the United States launched a challenge to China's redetermination in a proceeding under Article 21.5 of the DSU. This compliance challenge was the first one that any WTO member had initiated to challenge a claim by China that it had complied with adverse WTO findings. A hearing before the panel took place in October 2014. MOFCOM terminated the duties at issue in April 2015, and the panel issued its decision in July 2015, confirming, as the United States had argued, that MOFCOM's redetermination did not comply with the WTO's rulings.

In September 2011, the United States initiated a WTO case challenging the antidumping and countervailing duties that China imposed on imports of certain U.S. chicken products known as "broiler products." Once again, in the course of its AD and CVD investigations, China's regulatory authorities appeared to have imposed the duties at issue without necessary legal and factual support and without observing certain transparency and procedural fairness requirements, in violation of various WTO obligations under the AD Agreement and the Subsidies Agreement. Consultations were held in October 2011. A WTO panel was established to hear this case at the United States' request in January 2012, and seven other WTO members joined the case as third parties. Hearings before the panel took place in September and December 2012, and the panel issued its decision in August 2013, finding in favor of the United States on all significant claims. China decided not to appeal the panel's decision and subsequently agreed to come into compliance with the WTO's rulings by July 2014. China issued a redetermination in July 2014 that left the duties in place, but it appeared to be inconsistent with the WTO's rulings. In May 2016, the United States launched a challenge to China's redetermination in a proceeding under Article 21.5 of the DSU. In 2017, a hearing before the panel is expected to take place, and the panel is expected to issue its decision.

In July 2012, the United States initiated a WTO case challenging China's imposition of antidumping and

countervailing duties on imports of certain U.S. automobiles. Again, China's regulatory authorities appeared to have imposed the duties at issue without necessary legal and factual support and without observing certain transparency and procedural fairness requirements, in violation of various WTO obligations under the AD Agreement and the Subsidies Agreement. Consultations took place in August 2012. A WTO panel was established to hear this case in October 2012, and eight other WTO members joined the case as third parties. Hearings before the panel took place in June 2013 and then in October 2013. Two months later, in December 2013, China terminated the duties at issue. In May 2014, the panel issued its decision, finding in favor of the United States on all significant claims.

The United States and U.S. industry also have been concerned about the antidumping and countervailing duties that China imposed on imports of U.S. polysilicon in 2014, about 13 months after the United States imposed antidumping and countervailing duties on imports of Chinese solar modules and cells. In 2016, the United States continued to engage with China, including at high levels, in an effort to address the trade distortions in the solar supply chain exacerbated by China's duties on U.S. polysilicon.

Throughout 2016, the United States also continued to work closely with U.S. companies subject to Chinese AD investigations in an effort to help them better understand the Chinese system. In addition, the United States advocated on their behalf in connection with ongoing AD investigations, with the goal of obtaining fair and objective treatment for them, consistent with the AD Agreement.

In addition, the United States continued to engage China vigorously on the various concerns generated by China's AD practices, including systemic concerns in the areas of transparency and procedural fairness. The United States also raised concerns about China's apparent decisions to use AD and CVD remedies against U.S. imports as a means to discourage the

United States from the legitimate exercise of its rights under WTO AD and CVD rules and the trade remedy provisions of China's accession agreement. In addition to pursuing litigation at the WTO to address these concerns, as discussed above, the United States has engaged China during meetings before the WTO's AD Committee. The United States also has engaged China bilaterally through the Trade Remedies Working Group, which was established under the auspices of the JCCT in 2004. This working group has given U.S. AD experts a dedicated forum to speak with China's AD authorities directly and in detail on issues facing U.S. exporters subject to Chinese AD investigations. The working group has held several meetings since its creation in April 2004, including most recently a meeting in October 2016. In between meetings, U.S. experts also have frequent informal exchanges with China's AD authorities, which are intended to promote greater accountability in China's AD regime.

Meanwhile, as China's AD regime has matured, many of the AD orders put in place have reached the five-year mark, warranting expiry reviews. MOFCOM is currently conducting 12 expiry reviews, three of which involve products from the United States. Every expiry review involving U.S. products to date has resulted in the measure at issue being extended. In addition, several of China's AD measures are due to expire in 2017, including ones covering U.S. products. Given the problems that respondents have encountered in China's AD investigations, it is critical that China publish rules and procedures specifically governing the conduct of expiry reviews, as required by the AD Agreement. The United States has repeatedly pressed China to issue regulations governing expiry reviews and will continue to do so.

Finally, it appears that no interested party from the United States or any other WTO member to date has filed for judicial review of a Chinese AD proceeding. However, as China continues to launch AD investigations and apply AD measures against imports, the opportunity for interested parties to seek judicial review will become more critical.

Evasion of Duties

In 2015 and 2016, the United States raised concerns before the WTO Antidumping Committee about the proliferation of so-called “evasion services,” which are services offered to exporters and importers to assist them with evading the application of antidumping duties and countervailing duties. Many of the businesses providing these services are Chinese companies seeking to assist exporters and importers evade the application of antidumping duties and countervailing duties imposed by the United States. Efforts to evade the application of antidumping duties and countervailing duties undermine the effectiveness of the WTO Antidumping Agreement and Subsidies Agreement and, more generally, erode confidence in the rules-based multilateral trading system.

In February 2016, the United States enacted legislation establishing a new, enhanced mechanism in the United States for investigating claims of duty evasion. U.S. Customs and Border Protection followed up with the issuance of implementing regulations in August 2016.

Going forward, the United States will continue to raise awareness of this problem at the WTO. It also will continue to seek the cooperation of other WTO members, including China, to help counter and eliminate this problem.

COUNTERVAILING DUTIES

China has issued laws and regulations bringing its legal regime in the CVD area largely into compliance with WTO rules, although China still needs to issue additional procedural guidance such as rules governing expiry reviews. More significantly, China needs to improve its commitment to the transparency and procedural fairness requirements embodied in WTO rules, as the WTO has found in three disputes brought by the United States. In addition, China needs to eliminate its apparent use of trade remedy investigations as a retaliatory tool.

In its WTO accession agreement, China committed to revising its regulations and procedures for conducting CVD investigations and reviews by the time of its accession, in order to make them consistent with the Subsidies Agreement. The Subsidies Agreement sets forth detailed rules prescribing the manner and basis on which a WTO member may take action to offset the injurious subsidization of products imported from another WTO member. Although China did not separately commit to provide judicial review of determinations made in CVD investigations and reviews, Subsidies Agreement rules require independent review.

China initiated its first CVD investigations in 2009. Each of these investigations involved imports of products from the United States – GOES, chicken broiler products and automobiles – and were initiated concurrently with AD investigations of the same products. As discussed above in the Antidumping section, China initiated these CVD investigations under troubling circumstances. China also appears to have committed significant methodological errors that raise concerns, in light of Subsidies Agreement rules. In addition, many of the concerns generated by China's AD practice with regard to transparency and procedural fairness also apply to these CVD investigations. In response, the United States has pressed China both bilaterally and in WTO meetings to adhere strictly to WTO rules in the conduct of its CVD investigations, and the United States has pursued WTO litigation to address the problems with China's imposition of duties on imports of GOES, chicken broiler products and automobiles from the United States, as discussed below.

Legal Regime

As previously reported, China has put in place much of the legal framework for its CVD regime. Under this regime, like in the AD area, MOFCOM's TRIB is charged with making both subsidy and injury determinations.

It appears that China has attempted to conform its CVD regulations and procedural rules to the provisions and requirements of the Subsidies Agreement and the commitments in its WTO accession agreement. China's regulations and procedural rules generally track those found in the Subsidies Agreement, although there are certain areas where key provisions are omitted or are vaguely worded. In addition, China has not yet issued regulations specifically establishing the rules and procedures governing expiry reviews.

Since China's accession, the United States and other WTO members have sought clarifications on a variety of issues concerning China's regulatory framework and have pressed China for greater transparency both during regular meetings and the annual transitional reviews before the WTO's Subsidies Committee. The United States will continue to seek clarifications as needed in 2017.

Conduct of Countervailing Duty Investigations

MOFCOM initiated China's first CVD investigation in June 2009. This investigation addressed alleged subsidies being provided to the U.S. GOES industry, concurrently with MOFCOM's AD investigation of imports of GOES from the United States. Later that year, MOFCOM initiated additional CVD investigations involving imports of chicken broiler products and automobiles from the United States, along with concurrent AD investigations.

These three CVD investigations, along with two additional ones involving imports of U.S. polysilicon initiated in July 2012 and imports of U.S. dried distillers' grains initiated in January 2016, make clear that, as in the AD area, China needs to improve its transparency and procedural fairness when conducting these investigations. In addition, the United States has noted procedural concerns specific to China's conduct of CVD investigations. For example, China initiated investigations of alleged subsidies that raised concerns, given the

requirements regarding "sufficient evidence" in Article 11.2 of the Subsidies Agreement. The United States is also concerned about China's application of facts available under Article 12.7 of the Subsidies Agreement. In addition, as in the AD area, the United States has expressed serious concerns about China's pursuit of AD and CVD remedies that appear intended to discourage the United States and other trading partners from the legitimate exercise of their rights under WTO AD and CVD rules and the trade remedy provisions of China's accession agreement.

As discussed above in the Antidumping section, in September 2010, the United States initiated – and later won – a WTO case challenging the final AD and CVD determinations in China's GOES investigations because China's regulatory authorities appeared to have imposed the duties at issue without necessary legal and factual support and without observing certain transparency and procedural fairness requirements, in violation of various WTO obligations under the AD Agreement and the Subsidies Agreement. For similar reasons, the United States initiated a second WTO case in September 2011 challenging the final AD and CVD determinations in China's chicken broiler products investigations and won that case, too. The United States initiated a third WTO case in July 2012 challenging the final AD and CVD determinations in China's automobiles investigations. Again, the United States won.

In addition to pursuing WTO dispute settlement, the United States has raised its concerns bilaterally with MOFCOM, principally through the JCCT Trade Remedies Working Group, as well as at the WTO in meetings before the Subsidies Committee. The United States has also actively participated in MOFCOM's ongoing CVD investigations, and will continue to do so as envisioned by WTO rules, in order to safeguard the interests of U.S. industry. Going forward, the United States will continue to impress upon China the importance of strictly adhering to WTO rules when conducting CVD investigations and imposing countervailing duties.

SAFEGUARDS

China has issued measures bringing its legal regime in the safeguards area largely into compliance with WTO rules, although concerns about potential inconsistencies with WTO rules continue to exist.

In its WTO accession agreement, China committed to revising its regulations and procedures for conducting safeguard investigations by the time of its WTO accession in order to make them consistent with the WTO Agreement on Safeguards (Safeguards Agreement). That agreement articulates rules and procedures governing WTO members' use of safeguard measures.

Legal Regime

As previously reported, it appears that China has made an effort to establish a WTO-consistent safeguard regime through the issuance of regulations and procedural rules that became effective in January 2002. While the provisions of these measures generally track those of the Safeguards Agreement, there are some potential inconsistencies, and certain omissions and ambiguities remain. In addition, some provisions do not have any basis in the Safeguards Agreement. In earlier transitional reviews before the WTO's Committee on Safeguards, the United States noted several areas of potential concern, including transparency, determination of developing country status, treatment of non-WTO members, protection of confidential data, access to non-confidential information, refunding of safeguard duties collected pursuant to provisional measures when definitive measures are not imposed, and the conditions governing the extension of a safeguard measure.

Conduct of Safeguards Investigations

To date, China has completed only one safeguard proceeding, which resulted in the imposition of tariff-rate quotas on imports of nine categories of steel products from various countries, including the United States, in November 2002. Although U.S.

companies exported little of this merchandise to China, there were complaints from interested parties that China's process for allocating quotas under the safeguard measures was unclear, making it difficult for them to determine the quota available and obtain a fair share. China terminated the safeguard measures in December 2003.

In September 2016, China launched a safeguard investigation of sugar imports. According to some reports, the Chinese government set minimum prices at which it would purchase sugar from Chinese farmers under its market price support program too high in recent years, causing Chinese prices to climb above international price levels and leading to a strong flow of imports. China appears to have timed its safeguard investigation so that it will be able to impose import relief before the government unloads the excessive sugar reserves that it has built up. While U.S. companies export relatively little sugar to China, concern has been expressed that China's safeguard investigation of sugar imports could set a precedent for more strategically important grains, where China is struggling to reduce large reserves accumulated over the past few years as the government bought at above-market prices.

EXPORT REGULATION

China maintains numerous export restraints that raise serious concerns under WTO rules, including specific commitments that China made in its WTO accession agreement. In the two WTO cases decided to date in this area, the WTO found that exports restraints maintained by China on raw material inputs breached China's WTO obligations.

Upon acceding to the WTO, China took on the obligations of Article XI of the GATT 1994, which generally prohibits WTO members from maintaining export restraints (other than duties, taxes or other charges), although certain limited exceptions are allowed. China also agreed to eliminate all taxes and charges on exports, including export duties, except as included in Annex 6 to its WTO accession

agreement or applied in conformity with Article VIII of GATT 1994. Article VIII of GATT 1994 only permits fees and charges limited to the approximate cost of services rendered and makes clear that any such fees and charges shall not represent an indirect protection to domestic products or a taxation of exports for fiscal purposes.

As in prior years, China maintains numerous export restraints despite the prohibitions set forth in the GATT 1994 and the specific commitments that China made in its WTO accession agreement. These export restraints distort trade in raw materials as well as intermediate and downstream products.

Export Restraints on Raw Materials

Following its accession to the WTO, China continued to impose restraints on exports of raw materials, including export quotas, related export licensing and bidding requirements, minimum export prices and export duties, as China's economic planners continued to guide the development of downstream industries. These export restraints were widespread. For example, China maintained some or all of these types of export restraints on antimony, bauxite, coke, fluor spar, indium, lead, magnesium carbonate, manganese, molybdenum, phosphate rock, rare earths, silicon, silicon carbide, talc, tin, tungsten, yellow phosphorus and zinc, all of which are of key interest to U.S. downstream producers.

These types of export restraints can significantly distort trade, and for that reason WTO rules normally outlaw them. In the case of China, the trade-distortive impact can be exacerbated because of the size of China's production capacity. Indeed, for many of the raw materials at issue, China is the world's leading producer.

China's export restraints affect U.S. and other foreign producers of a wide range of downstream products, such as steel, chemicals, hybrid and electric cars, energy efficient light bulbs, wind turbines, hard-disk drives, magnets, lasers, ceramics, semiconductor chips, refrigerants, medical imagery,

aircraft, refined petroleum products, fiber optic cables and catalytic converters, among numerous others. The export restraints can create serious disadvantages for these foreign producers by artificially increasing China's export prices for their raw material inputs, which also drives up world prices. At the same time, the export restraints can artificially lower China's domestic prices for the raw materials due to significant increases in domestic supply, enabling China's domestic downstream producers to produce lower-priced products from the raw materials and thereby creating significant advantages for China's domestic downstream producers when competing against foreign downstream producers both in the China market and in other countries' markets. The export restraints can also create pressure on foreign downstream producers to move their operations, technologies and jobs to China.

As previously reported, the United States began raising its concerns about China's continued use of export restraints shortly after China's WTO accession, while also working with other WTO members with an interest in this issue, including the EU and Japan. In response to these efforts, China refused to modify its policies in this area. In fact, over time, China's economic planners expanded their use of export restraints and also made them increasingly restrictive, particularly on raw materials.

China's export restraints on raw materials are particularly concerning because they can skew the playing field against the United States and other countries by creating substantial competitive benefits for downstream Chinese producers that use these materials as inputs in the production and export of further processed and finished products. The export restraints also can create substantial pressure on U.S. and other non-Chinese downstream producers to move their operations, jobs and technologies to China.

In June 2009, the United States and the EU initiated a WTO case challenging export quotas, export duties and other restraints maintained by China on the

export of several key raw material inputs for which China is a leading world producer. The materials at issue include bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorus and zinc. Mexico subsequently became a co-complainant in August 2009.

At the time of the initiation of this case, China's treatment of coke, a key steel input, provided a clear example of the trade distortions engineered by China's export restraints. In 2008, China produced 336 million MT of coke, but it limited exports of coke to 12 million MT and additionally imposed 40 percent duties on coke exports. With these export restraints in place, the effects of the export restraints on pricing were dramatic. In August 2008, the world price for coke reached \$740 per MT at the same time that China's domestic price was \$472 per MT. This \$268 per MT price difference created a huge competitive advantage for China's downstream steel producers over their foreign counterparts, as coke represents about one-third of the input costs for integrated steel producers.

A WTO panel and the Appellate Body rejected China's defenses, which had attempted to portray China's export restraints as conservation or environmental protection measures or measures taken to manage critical shortages of supply, and found in favor of the United States and its co-complainants on all significant claims, ruling that the export restraints at issue were inconsistent with China's WTO obligations. China subsequently agreed to come into compliance with the WTO's rulings by the end of December 2012. China took timely steps to remove the export quotas and export duties on the raw materials at issue, while imposing automatic export licensing requirements on a subset of those materials. Since then, the United States has been closely monitoring China's export licensing regime to ensure that it operates automatically and does not distort trade.

While the United States was prosecuting this first WTO case on export restraints, China's export restraints on rare earths – a collection of 17 different

chemical elements used in a variety of green technology products, among other products – began to generate significant concern among China's trading partners. At the time, China controlled about 97 percent of the global rare earths market and had been imposing increasingly restrictive export quotas and export duties on rare earth ores, oxides and metals.

In March 2012, when it had become clear that China would not abandon its use of export restraints on rare earths and certain other raw materials in the face of further U.S. engagement, the United States, joined by the EU and Japan, initiated a WTO case challenging export quotas, export duties and other restraints maintained by China on the export of rare earths, tungsten and molybdenum. These materials are key inputs in a multitude of U.S.-made products, including not only a variety of green technology products, such as hybrid car batteries, wind turbines and energy-efficient lighting, but also steel, advanced electronics, automobiles, petroleum and chemicals. The export restraints appeared to be inconsistent with China's obligations under various provisions of the GATT 1994 and China's accession agreement.

As in the first WTO case on export restraints, a WTO panel and the Appellate Body rejected China's defenses and found in favor of the United States and its co-complainants on all significant claims, ruling that the export restraints at issue were inconsistent with China's WTO obligations. China subsequently agreed to come into compliance with the WTO's rulings by May 2015, and it later announced that it had eliminated the export quotas and export duties at issue by that deadline. The United States currently is monitoring China's compliance efforts.

In July 2016, the United States, joined by the EU, initiated a third WTO case challenging export quotas and export duties maintained by China. This case addresses the export of various forms of 11 raw materials, including antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum and tin. These raw materials are key

inputs in important U.S. manufacturing industries, including aerospace, automotive, construction and electronics. The export restraints at issue appear to be inconsistent with China's obligations under various provisions of the GATT 1994 and China's accession agreement. Joint consultations took place in September 2016. A WTO panel was established to hear the case at the complaining parties' request in November 2016, and 14 other WTO members joined the case as third parties.

Border Tax Policies

China's economic planners attempt to manage the export of many primary, intermediate and downstream products by raising or lowering the VAT rebate available upon export and sometimes by imposing or retracting export duties. With VAT rebates ranging from zero to 17 percent and export duties typically ranging from zero to 40 percent, these border tax practices have caused tremendous disruption, uncertainty and unfairness in the global markets for the affected products – particularly when these practices operate to incentivize the export of downstream products for which China is a leading world producer or exporter such as steel, aluminum and soda ash.

Typically, the objective of China's border tax adjustments is to make larger quantities of primary and intermediate products in a particular sector available domestically at lower prices than the rest of the world, giving China's downstream producers of finished products using these inputs a competitive advantage over foreign downstream producers. To accomplish this objective, China discourages the export of the relevant primary and intermediate products by reducing or eliminating VAT rebates and perhaps also imposing export duties on them, resulting in increased domestic supply and lower domestic prices. China's downstream producers, in turn, benefit not only from these lower input prices but also from full VAT rebates when they export their finished products.

In some situations, China has also used its border taxes to encourage the export of certain finished products over other finished products within a particular sector. For example, in the past, China has targeted value-added steel products, particularly wire products and steel pipe and tube products, causing a surge in exports of these products, many of which ended up in the U.S. market.

For several years, the United States and other WTO members have raised broad concerns about the trade-distortive effects of China's VAT export rebate and export duty practices, including through each of the biannual Trade Policy Reviews of China at the WTO, including the one held in July of this year, as well as through many of the annual transitional reviews before the Committee on Market Access and the Council for Trade in Goods. Bilaterally, the United States also has raised broad concerns about the trade-distortive effects of China's variable VAT export rebate practices in connection with multiple JCCT and S&ED meetings. Through this engagement, the United States highlighted in particular the harm being caused to specific U.S. industries, including steel, aluminum and soda ash.

To date, China has acknowledged that its eventual goal is to provide full VAT rebates for all exports like other WTO members with VAT systems. In addition, at the December 2012 JCCT meeting, China agreed to begin holding serious discussions with the United States in order to work toward a mutual understanding of China's VAT system and the concepts on which a trade-neutral VAT system is based. Subsequently, at the July 2014 S&ED meeting, China agreed to improve its value-added tax rebate system, including by actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade. The United States continued to press China in this area in 2016, but to date China has been unwilling to commit to abandon its use of trade-distortive VAT export rebates and to adopt a trade-neutral VAT system.

INTERNAL POLICIES AFFECTING TRADE

Non-discrimination

While China has revised many laws, regulations and other measures to make them consistent with WTO rules relating to most-favored nation treatment and national treatment, concerns about compliance with these rules still arise in some areas.

In its WTO accession agreement, China agreed to assume the obligations of GATT 1994, the WTO agreement that establishes the core principles that constrain and guide WTO members' policies relating to trade in goods. The two most fundamental of these core principles are the most-favored nation (MFN), or non-discrimination, rule – referred to in the United States as “normal trade relations” – and the rule of national treatment.

The MFN rule (set forth in Article I of GATT 1994) attempts to put the goods of all of an importing WTO member's trading partners on equal terms with one another by requiring the same treatment to be applied to goods of any origin. It generally provides that if a WTO member grants another country's goods a benefit or advantage, it must immediately and unconditionally grant the same treatment to imported goods from all WTO members. This rule applies to customs duties and charges of any kind connected with importing and exporting. It also applies to internal taxes and charges, among other internal measures.

The national treatment rule (set forth in Article III of GATT 1994) complements the MFN rule. It is designed to put the goods of an importing WTO member's trading partners on equal terms with the importing member's own goods by requiring, among other things, that a WTO member accord no less favorable treatment to imported goods than it does for like domestic goods. Generally, once imported goods have passed across the national border and import duties have been paid, the importing WTO member may not subject those goods to internal

taxes or charges in excess of those applied to domestic goods. Similarly, with regard to measures affecting the internal sale, purchase, transportation, distribution or use of goods, the importing WTO member may not treat imported goods less favorably than domestic goods.

In its WTO accession agreement, China agreed to repeal or revise all laws, regulations and other measures that were inconsistent with the MFN rule upon accession. China also confirmed that it would observe this rule with regard to all WTO members, including separate customs territories, such as Hong Kong, Macau and Taiwan. In addition, China undertook to observe this rule when providing preferential arrangements to foreign-invested enterprises within special economic areas. With regard to the national treatment rule, China similarly agreed to repeal or revise all inconsistent laws, regulations and other measures. China also specifically acknowledged that its national treatment obligation extended to the price and availability of goods or services supplied by government authorities or state-owned enterprises, as well as to the provision of inputs and services necessary for the production, marketing or sale of finished products. Among other things, this latter commitment precludes dual pricing, i.e., the practice of charging foreign or foreign-invested enterprises more for inputs and related services than Chinese enterprises. China also agreed to ensure national treatment in respect of certain specified goods and services that had traditionally received discriminatory treatment in China, such as boilers and pressure vessels (upon accession), after sales service (upon accession), and pharmaceuticals, chemicals and spirits (one year after accession).

As previously reported, China reviewed its pre-WTO accession laws and regulations and revised many of those which conflicted with its WTO MFN and national treatment obligations in 2002 and 2003. However, since then, concerns have arisen regarding China's observation of MFN and national treatment requirements in some areas.

Strategic Emerging Industries

In 2010, China unveiled a new high-level government plan to rapidly spur innovation in seven high-technology sectors dubbed the strategic emerging industries (SEIs). The *Decision of the State Council on Accelerating the Cultivation and Development of Strategic Emerging Industries* established an early, broad framework for “developing and cultivating” innovation in energy efficient environmental technologies, next generation information technology, biotechnology, high-end equipment manufacturing, new energy, new materials and new energy vehicles (NEVs). The subsequently issued *National 12th Five-year Plan for the Development of Strategic Emerging Industries* defined SEI sectors, set priorities, and recommended fiscal and taxation policy support.

By 2012, China had issued additional policy documents and catalogues explaining the development priorities for key technologies and products considered to be SEIs, identifying specific sub-sectors, technologies and products in each SEI sector, and setting forth a variety of specific policies and support measures designed to spur development in each sub-sector. One of these documents, a catalogue issued by the Ministry of Industry and Information Technology (MIIT), instructed sub-central government authorities to identify firms, technologies and measures supporting the central government’s SEI initiative, listed relevant companies and research and development units for each sub-sector and further indicated that the list should be used by other Chinese government ministries to “issue targeted supporting fiscal and taxation policies.” Only a very small number of companies listed had any foreign investment, as the list was dominated by Chinese-invested companies, particularly state-owned enterprises and domestic national champions.

By January 2013, China had created a central government-level support fund for SEI development while encouraging local governments to establish their own local SEI support funds. Sub-central

government transparency varies greatly, and in many provinces very limited information on the SEI initiative is publicly available.

Since the unveiling of China’s SEI plan in 2010, the United States has voiced strong concerns over the direction of some of China’s SEI policy development, particularly with regard to policies that discriminate against U.S. firms or their products, encourage excessive government involvement in determining market winners and losers, encourage technology transfer, are targeted at exports or tied to localization or the use of domestic intellectual property, or could lead to injurious subsidization. Through this engagement, the United States was able to obtain commitments from China at the November 2011 and December 2012 JCCT meetings. Specifically, China committed in 2011 to provide a “fair and level playing field for all companies, including U.S. companies” in the development of China’s SEIs. In 2012, China went further by committing to provide foreign enterprises with fair and equitable participation in the development of SEIs, and announcing that policies supporting SEI development would be equally applicable to qualified domestic and foreign enterprises.

In 2013 and 2014, the United States continued to follow closely China’s SEI policy development, including the various forms of financial support that the Chinese government provides to SEI sectors. Through the JCCT process, the United States urged China to be more transparent about the financial and other benefits being provided to these sectors. In addition, at the WTO, the United States submitted a request for information pursuant to Article 25.8 of the Subsidies Agreement regarding Chinese government subsidies available to enterprises in China’s SEI sectors in 2014, and the United States followed up on this request with a counter notification under Article 25.10 of the Subsidies Agreement in 2015, as discussed below in the Subsidies section.

The United States also has pressed China to repeal or modify several problematic SEI-related measures.

For example, a development plan for the LED industry issued by the Shenzhen municipal government included a call to support research and development in products and technologies that have the ability to substitute for imports. Shenzhen rescinded the plan in 2013 following U.S. Government intervention with China's central government authorities. Another example involves the high-end equipment manufacturing sector. In this sector, China maintains central, provincial and local government measures that condition the receipt of subsidies on an enterprise's use of at least 60 percent Chinese-made components when manufacturing intelligent manufacturing equipment. As the United States has made clear to China, these measures raise serious concerns, both in light of China's WTO obligations and China's past bilateral commitments relating to SEIs and the fair and equitable treatment of foreign enterprises. In 2015, China reported that it had decided not to renew this subsidy program.

In January 2015, China announced a new SEI development fund that raised concerns about procurement preferences for both Chinese government agencies and state-owned enterprises, as well as strong support for national champions and the inclusion of Chinese IP or R&D localization requirements. This new fund and other new policies are directing billions of dollars of investment into key Chinese industries. At the June 2015 S&ED meeting, China agreed that its industry development plans and investment funds for SEIs are available on an equal basis for foreign-invested enterprises, and that China will strengthen the transparency of these plans and funds.

In 2016, as in prior years, the United States continued its efforts to address problems that had begun to arise after China's economic planners decided that the Chinese auto industry should focus on developing expertise in manufacturing NEVs, which include alternative fuel vehicles such as electric, fuel cell and bio-diesel vehicles. As discussed below in the Investment section, China has pursued policies in support of both NEVs and NEV

batteries that, among other things, appear to discriminate against imported NEVs and NEV batteries and have generated serious concerns in light of China's WTO obligations.

In 2017, the United States will continue to monitor developments in this area closely. The United States also will continue to raise concerns over any policies that appear to run counter to China's WTO obligations or bilateral commitments.

Other Areas

U.S. industries report that China continues to apply the value-added tax in a manner that unfairly discriminates between imported and domestic goods, both through official measures and on an *ad hoc* basis, as discussed below in the Taxation section. In addition, China's industrial policies on automobiles, including NEVs, and steel call for discrimination against foreign producers and imported goods, as discussed below in the Investment section. It also appears that China has applied sanitary and phytosanitary measures in a discriminatory manner since it acceded to the WTO, as discussed below in the Agriculture section, while concerns about discriminatory treatment also remain prevalent in a variety of services sectors, as discussed below in the Services section. Additionally, various aspects of China's legal framework, such as China's extensive use of administrative licensing, create opportunities for Chinese government officials to treat foreign companies and foreign products less favorably than domestic companies and domestic products, as discussed below in the Other Legal Framework Issues section. The United States continued to address these and other MFN and national treatment issues with China in 2016, both bilaterally and in WTO meetings. The United States will continue to pursue these issues vigorously in 2017.

Taxation

China has used its taxation system to discriminate against imports in certain sectors. This tax

treatment raises concerns under WTO rules relating to national treatment.

China committed to ensure that its laws and regulations relating to taxes and charges levied on imports and exports would be in full conformity with WTO rules upon accession, including, in particular, the MFN and national treatment provisions of Articles I and III of GATT 1994.

Since China's WTO accession, certain aspects of China's taxation system have raised national treatment concerns under Article III of GATT 1994. One of these issues – the discriminatory VAT rates applied to imported versus domestically produced integrated circuits – was resolved in 2004 after the United States filed a WTO case, as previously reported. Other taxation issues remain, however.

Regional Aircraft VAT

In December 2015, the United States brought a new WTO case against China, once again involving discriminatory VAT rates applied to imported versus domestically produced products. In this case, the United States challenged discriminatory Chinese government measures exempting sales of certain aircraft produced in China, including general aviation aircraft, agricultural aircraft, business jets and regional jets, from the VAT while imposing that same tax on sales of imported aircraft. Compounding this problem, it appeared that the Chinese government never published these measures as required by China's WTO commitments. Consultations took place in January 2016. In October 2016, the United States announced that it had confirmed that China had terminated the discriminatory tax measures at issue.

Fertilizer VAT

China has used VAT policies to benefit domestic fertilizer production. In July 2001, the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) issued a circular exempting all phosphate fertilizers except diammonium phosphate

(DAP) from a 13 percent VAT. DAP, a product that the United States exports to China, competes with similar phosphate fertilizers produced in China, particularly monoammonium phosphate.

The United States raised this issue bilaterally with China soon after it acceded to the WTO and in many subsequent bilateral meetings, including high-level meetings. The United States has also raised this issue at the WTO in meetings before the Committee on Market Access. To date, China has not eliminated its discriminatory treatment of DAP.

Meanwhile, a larger concern for U.S. fertilizer exporters remains the rapid expansion of China's domestic fertilizer production. This expanded production, which appears to have been brought on in part by China's export duties on phosphate rock, a key fertilizer input, has saturated China's market with low-priced fertilizer and greatly reduced demand for imported fertilizer.

VAT Irregularities

Several U.S. industries have continued to express concerns more generally about the unfair operation of China's VAT system. They report that Chinese producers are often able to avoid payment of the VAT on their products, either as a result of poor collection procedures, special deals or even fraud, while the full VAT still must be paid on competing imports. In discussions with Chinese government officials on this issue, the United States has raised its serious concerns about the *de facto* discriminatory treatment accorded to foreign products, while also continuing to emphasize the value to China of a properly functioning VAT system as a revenue source.

Border Trade

China's border trade policy also continues to generate MFN and other concerns. China provides preferential import duty and VAT treatment to certain products, often from Russia, apparently even when those products are not confined to frontier

traffic as envisioned by Article XXIV of GATT 1994. China began to address these concerns in 2003 shortly after acceding to the WTO when it eliminated preferential treatment for boric acid and 19 other products. However, several other products continue to benefit from preferential treatment. During past meetings before the WTO's Council for Trade in Goods, the United States has urged China to eliminate the preferential treatment for these remaining products.

Subsidies

China continues to provide injurious subsidies to its domestic industries, and some of these subsidies appear to be prohibited under WTO rules. Although China submitted a WTO subsidies notification in 2016 that included sub-central government programs for the first time, this notification was far from complete. In addition, China continued to have a poor record of responding to other WTO members' questions about its subsidies before the WTO's Subsidies Committee or in other venues.

Upon its accession to the WTO, China agreed to assume the obligations of the WTO Subsidies Agreement, which addresses not only the use of CVD measures by individual WTO members (see the section above on Import Regulation, under the heading of Countervailing Duties), but also a government's use of subsidies and the application of remedies through enforcement proceedings at the WTO. As part of its accession agreement, China committed that it would eliminate, by the time of its accession, all subsidies prohibited under Article 3 of the Subsidies Agreement, which includes subsidies contingent on export performance (export subsidies) and subsidies contingent on the use of domestic over imported goods (import substitution subsidies).

China also agreed to various special rules that apply when other WTO members pursue the disciplines of the Subsidies Agreement against Chinese subsidies, either in individual WTO members' CVD proceedings or in WTO enforcement proceedings. These rules

address the identification and measurement of Chinese subsidies and also govern the actionability of subsidies provided to state-owned enterprises in China.

Subsidies Notification

As previously reported, following repeated pressure from the United States and other WTO members, China submitted its first subsidies notification to the WTO's Subsidies Committee in April 2006, nearly five years late. Although the notification reported on more than 70 subsidy programs, it was also notably incomplete, as it failed to notify any subsidies provided by provincial and local government authorities or any subsidies provided by state-owned banks, whether in the form of preferential loans, debt forgiveness or otherwise. In addition, while China notified several subsidies that appear to be prohibited, it did so without making any commitment to withdraw them, and it failed to notify other subsidies that appear to be prohibited.

Following the submission of China's 2006 subsidies notification, the United States devoted additional time and resources to monitoring and analyzing China's subsidy practices, and these efforts helped to identify significant omissions in China's subsidies notification. These efforts also made clear that provincial and local governments play an important role in implementing China's industrial policies, including through subsidization of enterprises, much of which is misdirected into sectors with excess capacity, such as steel and aluminum.

In the ensuing years, the United States repeatedly raised concerns about China's incomplete subsidies notification and identified numerous unreported subsidies both in bilateral meetings and in meetings before the Subsidies Committee as well as during the WTO's Trade Policy Reviews of China. At the October 2009 meeting of the Subsidies Committee, China indicated that it would finalize a second subsidies notification in the coming months while noting that this notification would again not include any subsidies provided by provincial and local

government authorities. China reiterated this same pledge a year later at the October 2010 meeting of the Subsidies Committee.

In response to these unfulfilled promises from China, the United States pressed China on this issue through the filing of a “counter notification” under Article 25.10 of the Subsidies Agreement in October 2011. In this counter notification, the United States identified more than 200 unreported subsidy measures that China maintained, including many emanating from provincial and local government authorities. Shortly after the United States filed its counter notification, China finally submitted the new subsidies notification that it had been promising. Unfortunately, China’s new notification covered only the period from 2005 to 2008, and it again failed to notify a single subsidy administered by provincial or local governments. In addition, the central government subsidies included in the new notification were largely the same partial listing of subsidies as those notified in China’s 2006 notification. The new notification also did not include any significant programs related to key industries, such as steel and aluminum, and only included a small number of the more than 200 subsidy measures identified in the U.S. counter notification. As a result, China’s new notification was again far from complete.

In 2012, the United States continued to highlight China’s failure to abide by its important transparency obligations under the Subsidies Agreement. For example, both bilaterally and before the Subsidies Committee, the United States regularly noted that China should have submitted its subsidies notification for the period 2009-2010 in July 2011 and its subsidies notification for the period 2010-2012 in July 2013. In addition, in connection with the October 2012 meeting of the Subsidies Committee, the United States submitted a written request for information pursuant to Article 25.8 of the Subsidies Agreement in which it provided evidence of 110 central government and sub-central government subsidy measures that China had not yet notified, including, for example, various stimulus

programs for steel, non-ferrous metals, semiconductors, aircraft and fish implemented in response to the global financial crisis in 2008.

In April 2014, the United States submitted another request for information pursuant to Article 25.8. This request covered extensive subsidies provided by China in support of its so-called “strategic emerging industries,” including over 60 subsidy measures at the central, provincial, county and city levels of government, covering industries such as electric vehicles, specialized steel, semiconductors, high-end equipment manufacturing and medical technology.

Despite the obligation of WTO members to answer questions posed pursuant to Article 25.8 “as quickly as possible and in a comprehensive manner,” China failed to provide substantive answers to the questions set forth in the United States’ 2012 Article 25.8 request for information on various stimulus programs. Accordingly, in October 2014, the United States submitted a counter notification under Article 25.10 of the Subsidies Agreement. This counter notification addressed the same 110 Chinese subsidy measures that were the subject of the United States’ 2012 Article 25.8 submission. Similarly, after China failed to answer the United States’ 2014 Article 25.8 questions on its strategic emerging industries programs, the United States submitted a counter notification in October 2015. This counter notification addressed the same 60 subsidy measures that were the subject of the United States’ 2014 Article 25.8 submission.

In 2015, the United States also submitted another written request for information pursuant to Article 25.8 of the Subsidies Agreement. This submission addressed fisheries subsidies provided by China at central and sub-central levels of government. The subsidies at issue were set forth in nearly 40 measures and included a wide range of subsidies, including: fishing vessel acquisition and renovation grants; a 100-percent corporate income tax exemption; grants for new fishing equipment; subsidies for insurance; subsidized loans for processing facilities; fuel subsidies; and the

preferential provision of water, electricity and land. Once again, when China did not respond to these questions, the United States was compelled to submit a counter notification covering the same measures.

In total, taking into account all of the U.S. counter notifications, the United States has now submitted counter notifications of more than 400 Chinese subsidy measures. To date, China has included in its subsidy notifications only a small number of the subsidy programs identified in those counter notifications, and China has refused to engage in bilateral discussions to address the subsidy measures that it has failed to notify.

In October 2015, China did submit a new subsidies notification, covering the period from 2009 to 2014. As in its two previous subsidy notifications, this notification was far from complete, and it included numerous programs that should not have been notified as subsidies, such as programs for poverty alleviation, the disabled and HIV medication. Consequently, China's notification suffers from both significant under-reporting and over-reporting.

In July 2016, China submitted its first subsidy notification that included sub-central government subsidy programs since becoming a WTO member in 2001. While this was a positive development, the number and range of sub-central government subsidy programs covered represent a very small sample of the programs administered at the sub-central levels of government. Moreover, notifying a program several years after its implementation, or after a program has been terminated, as is the case with most of the reported sub-central government subsidy programs, contributes little to the transparency of China's subsidies regime.

In 2017, the United States will continue to research and analyze the various forms of financial support that the Chinese government provides to manufacturers and exporters in China, including in the steel, aluminum, green technology, semiconductor and fisheries sectors, among other

sectors, and assess whether the support being provided is consistent with WTO rules. The United States will also continue to raise its concerns with China's subsidies practices in bilateral meetings with China. In addition, before the WTO's Subsidies Committee, the United States will continue to press China to submit more complete and timely subsidies notifications.

Prohibited Subsidies

Immediately after China submitted its first subsidies notification in April 2006, the United States began seeking changes to China's subsidies practices. As previously reported, after bilateral dialogue failed to resolve the matter, the United States, together with Mexico, initiated WTO dispute settlement proceedings against China in February 2007, challenging tax-related subsidies that took the form of both export subsidies, which make it more difficult for U.S. manufacturers to compete against Chinese manufacturers in the U.S. market and third-country markets, and import substitution subsidies, which make it more difficult for U.S. manufacturers to export their products to China. China subsequently agreed to and did eliminate all of the subsidies at issue by January 2008.

After bringing the WTO case challenging China's tax-related prohibited subsidies, the United States developed information that appeared to show that China may have been attempting to use prohibited subsidies outside its taxation system in an effort to increase the market share of numerous Chinese brands in markets around the world. Many of these subsidies appeared to be provided by provincial and local governments seeking to implement central government directives found in umbrella programs, such as the "Famous Export Brand" program and the "World Top Brand" program. These subsidies appeared to offer significant payments and other benefits tied to qualifying Chinese companies' exports. The United States also developed information about several other export subsidies apparently provided by sub-central governments

independent of the two brand programs. As previously reported, after unsuccessfully pressing China to withdraw these subsidies, the United States, together with Mexico, initiated a WTO dispute settlement proceeding against China in December 2008. Guatemala became a co-complainant in January 2009. Joint consultations were held in February 2009, followed by intense discussions as China took steps to repeal or modify the numerous measures at issue. In December 2009, the parties concluded a settlement agreement in which China confirmed that it had eliminated all of the export-contingent benefits in the challenged measures.

In December 2010, following an investigation in response to a petition filed under section 301 of the Tariff Act of 1974, as amended, USTR announced the filing of a WTO case challenging what appeared to be prohibited import substitution subsidies being provided by the Chinese government to support the production of wind turbine systems in China. Specifically, the United States challenged subsidies being provided by the Chinese government to manufacturers of wind turbine systems that appeared to be contingent on the use of domestic over imported components and parts. Consultations were held in February 2011. Following consultations, China issued a notice invalidating the measures that had created the subsidy program at issue.

In September 2012, the United States initiated a WTO case challenging numerous subsidies provided by the central government and various sub-central governments in China to automobile and automobile-parts enterprises located in regions in China known as "export bases." These subsidies appeared to be inconsistent with China's obligation under Article 3 of the Subsidies Agreement not to provide subsidies contingent upon export performance. In addition, the United States challenged the apparent failure of China to abide by WTO transparency obligations requiring it to publish the measures at issue in an official journal, to make translations of them available in one or more WTO languages and to notify them to the Subsidies

Committee. Consultations were held in November 2012. The two sides subsequently engaged in further discussions, as China began to take steps to address U.S. concerns.

In February 2015, the United States launched a further WTO case challenging numerous Chinese central government and sub-central government export subsidies provided to manufacturers and producers across seven industries located in designated clusters of enterprises called "Demonstration Bases." These subsidies operated in a similar way to the subsidies at issue in the export bases case and therefore appeared to be inconsistent with China's obligation under Article 3 of the Subsidies Agreement not to provide subsidies contingent upon export performance. Consultations took place in March 2015. In April 2015, a WTO panel was established to hear the case at the United States' request, and the two sides subsequently engaged in further discussions exploring steps for China to take to address U.S. concerns. In April 2016, the United States announced that China had terminated the subsidies at issue pursuant to a memorandum of understanding.

U.S. CVD Investigations

Concerns about China's subsidies practices led the U.S. paper industry to file a petition with the Commerce Department in October 2006 requesting the initiation of a CVD investigation based on allegations of subsidized imports of coated free sheet paper from China causing injury in the U.S. market. As previously reported, in the ensuing investigation, the Commerce Department changed its longstanding policy of not applying U.S. CVD law to China or any other country considered a "non-market economy" for AD purposes. The Commerce Department began applying U.S. CVD law to China after finding that reforms to China's economy in recent years had removed the obstacles to applying the CVD law that were present in the "Soviet-era economies" at issue when the Commerce

Department first declined to apply the CVD law to non-market economies in the 1980s.

Since then, many other U.S. industries, including the steel, textiles, chemicals, solar panels, tires and paper industries, among others, have expressed concern about the injurious effects of various Chinese subsidies in the U.S. market as well as in China and third-country markets, leading to the filing of additional CVD petitions, together with companion AD petitions. In response, the Commerce Department has initiated CVD investigations of imports of Chinese passenger vehicle and light truck tires, dry 53-foot containers, boltless shelving, chlorinated isocyanurates, calcium hypochlorite, tetrafluoroethane, off-road tires, oil country tubular goods and various other types of steel pipe, laminated woven sacks, magnets, thermal paper, citric acid, kitchen racks and shelves, lawn groomers, pre-stressed concrete wire strand, steel grating, wire decking, narrow woven ribbons, carbon bricks, coated paper for high-quality print graphics, steel fasteners, phosphate salts, drill pipe, aluminum extrusions, multilayered wood flooring, steel wheels, galvanized steel wire, high pressure steel cylinders, photovoltaic cells and modules, wind towers, drawn stainless steel sinks, plywood, frozen warmwater shrimp, melamine, GOES, non-oriented electrical steel, hot-rolled steel, cold-rolled steel, corrosion-resistant steel, cut-to-length steel plate, integral geogrid products, ammonium sulfate, 1-hydroxyethylidene-1, 1-diphosphonic acid and amorphous silica fabric. The subsidy allegations investigated have involved preferential loans, income tax and VAT exemptions and reductions, the provision of goods and services on non-commercial terms, among other subsidies provided by the central government, along with a variety of provincial and local government subsidies.

In September 2008, China requested WTO consultations with the United States regarding the Commerce Department's final determinations in the AD and CVD investigations on Chinese imports of steel pipe, steel tube, off-road tires and laminated woven sacks. Among other things, China challenged

the imposition of anti-dumping duties calculated using a "non-market economy" measurement methodology while also imposing countervailing duties to address subsidization of the same imports (known as the "double remedies" issue). Consultations were held in November 2008, and proceedings before a WTO panel took place in July and November 2009. The panel issued a decision in October 2010, finding in favor of the United States on the "double remedies" issue. China filed an appeal with the WTO's Appellate Body in December 2010. In March 2011, the Appellate Body issued its decision, which overturned the panel's findings on double remedies. The United States subsequently agreed to come into compliance with the WTO's ruling, which required the Commerce Department to revisit its double remedies approach. The Commerce Department accordingly undertook so-called "Section 129" proceedings pursuant to U.S. law and issued final determinations in August 2012 that complied with the WTO's rulings on the double remedies. Pursuant to the new approach announced in the Section 129 proceedings, when the Commerce Department is imposing antidumping duties calculated using a "non-market economy" measurement methodology while also imposing countervailing duties to address subsidization of the same imports, it now adjusts the antidumping duty rates in circumstances in which factual evidence shows that the domestic subsidies at issue lowered export prices.

Separately, in September 2012, China initiated a WTO case challenging, among other things, Public Law 112-99, new U.S. legislation enacted in March 2012 that expressly confirms the applicability of the U.S. CVD law to countries that have been determined to be "non-market economies" for purposes of the U.S. AD law and that grants the Commerce Department authority to adjust for the possibility of "double remedies" when AD duties and CVD duties are applied concurrently to the same imports. Consultations were held in November 2012. Hearings before the panel took place in July and August 2013. The panel issued its decision in March 2014, rejecting China's challenge to the U.S.

legislation. China appealed the panel's decision in April 2014, and the WTO's Appellate Body rejected China's appeal in July 2014.

Price Controls

China has progressed slowly in reducing the number of products and services subject to price control or government guidance pricing.

In its WTO accession agreement, China agreed that it would not use price controls to restrict the level of imports of goods or services. In addition, in an annex to the agreement, China listed the limited number of products and services remaining subject to price control or government guidance pricing, and it provided detailed information on the procedures used for establishing prices. China agreed that it would try to reduce the number of products and services on this list and that it would not add any products or services to the list, except in extraordinary circumstances.

In 2016, China continued to maintain price controls on several products and services provided by both state-owned enterprises and private enterprises. Published through the China Economic Herald and NDRC's website, these price controls may be in the form of either absolute mandated prices or specific pricing policy guidelines as directed by the government. Products and services subject to government-set prices include pharmaceuticals, tobacco, natural gas and certain telecommunications services. Products and services subject to government guidance prices include gasoline, kerosene, diesel fuel, fertilizer, cotton, edible oils, various grains, wheat flour, various forms of transportation services, professional services such as engineering and architectural services, and certain telecommunications services.

The United States obtained additional information about China's use of price controls in connection with the Trade Policy Reviews of China at the WTO, held in April 2006, May 2008, May 2010, June 2012,

July 2014 and July 2016. The United States will continue to use that mechanism in 2018 to monitor China's progress in eliminating price controls.

At the July 2014 S&ED meeting, building on the Third Plenum pronouncement directing that the market should play a decisive role in the allocation of resources, the United States was able to secure a commitment from China to move toward market-based prices. Specifically, China agreed to accelerate the process of market-based price reforms for petroleum, electricity and natural gas, and to realize market-based prices in competitive sectors as soon as possible. In November 2015, China published a draft five-year plan covering the period from 2016 to 2020 in which it proposes to liberalize the prices in competitive sectors, including electricity, oil, natural gas, transportation and telecommunications. To date, a trend toward more market-based pricing can be seen in China in these sectors, but prices are not yet market-based.

Medical Devices

Beginning in 2006, NDRC released proposals for managing the prices of medical devices, with the stated objectives of avoiding excessive mark-ups by distributors and reducing health care costs. Among other things, the proposals would impose limits on the allowable mark-ups on medical devices. The proposals also would require manufacturers to provide sensitive pricing information.

Since 2006, the United States and U.S. industry have raised their concerns about NDRC's proposals. In particular, U.S. industry has been able to engage in an informal dialogue with NDRC, and the United States has pressed China in this area using the JCCT process. While acknowledging China's legitimate concerns regarding the need to provide effective and affordable medical devices to patients and the need to address inefficiency, excessive mark-ups and irregular business practices among wholesalers and distributors of medical devices, the United States and U.S. industry have urged China to develop an approach that will not inhibit increased imports of

the same innovative and effective health care products that China is seeking to encourage.

In 2012, NDRC released an updated draft of a pricing proposal, which would impose price mark-up controls on six major categories of implantable medical devices. U.S. industry expressed concern that NDRC's proposal would significantly discriminate against foreign manufacturers. Similar pricing proposals had appeared at the provincial government level in the past. For example, in 2010, Guangdong Province published a medical device pricing system for public comment that is similar to the one proposed by NDRC. Going forward, the United States will continue to work to ensure that NDRC and provincial government authorities seek its input and input from U.S. industry stakeholders in a transparent and meaningful way as China develops new policies and measures.

Separately, in 2008, China's Ministry of Health (MOH) published procedures for the centralized tender of certain medical devices. These tendering procedures built on a 2007 MOH measure establishing a centralized procurement system for medical devices for the stated purposes of reigning in escalating healthcare costs and ensuring high-quality healthcare. The United States and U.S. industry immediately expressed concern to the Chinese government that MOH's tendering procedures could operate to unfairly disadvantage high-quality, advanced technology products, a large proportion of which are made by U.S. companies. In response to these concerns, at the September 2008 JCCT meeting, China agreed to hold discussions with the United States and U.S. industry to ensure that MOH's tendering policies are fair and transparent and that the quality and innovation of medical devices are given adequate consideration in purchasing decisions. MOH subsequently entered into discussions directly with U.S. industry.

During the run-up to the December 2010 JCCT meeting, U.S. industry presented a risk-based approach to medical device classification based on Global Harmonization Task Force principles. Since

then, the United States has continued to work closely with U.S. industry and to promote a cooperative resolution of U.S. concerns.

At the December 2012 JCCT meeting, China committed that any measures affecting the pricing of medical devices will treat foreign and domestic manufacturers equally. China further committed that it will take into account comments that it receives from the United States, including on the issue of how to improve transparency.

Since then, the United States has been engaging China on its proposals to centralize pricing and tendering procedures. At the same time, provincial governments have begun pushing for consolidated tendering of medical devices for purchase by public hospitals and clinics within their territories. While provincial governments' centralized purchasing plans vary widely, many of them contain requirements that unfairly disadvantage foreign manufacturers.

According to reports from U.S. industry, some plans impose ceiling prices for tenders to be determined in a manner that is unfair and discriminates against imported medical technology products, and some plans require the manufacturers to disclose sensitive data. Certain provincial government plans also impose controls on imported products or limit certain procurements to only domestically manufactured products, and some provincial governments directly subsidize the purchase of domestically manufactured products. Furthermore, the "Manufactured in China 2025" plan announced by the State Council in 2015 seeks to elevate the competitiveness of China's domestic medical device manufacturing capacity through a series of support policies, including targeted funds and procurement policies, in order to increase significantly the market share of domestically owned and produced medical devices by 2025.

The United States and U.S. industry have expressed concerns to the Chinese government about developments in this area, and continue to press the relevant government regulatory authorities to

develop sound payment systems that adequately reward research and development and not to require foreign companies to transfer manufacturing activities to China in order to receive preferential benefits. In a positive development, at the November 2015 JCCT meeting, China agreed that, in the area of market access, it will give imported medical devices the same treatment as those manufactured or developed domestically.

In August 2015, China's State Council issued a normative document entitled *Opinions of the State Council on Reforming the Review and Approval System for Drugs and Medical Devices*, which outlined the State Council's guidance for sweeping reforms relating to China's drug and medical devices registration review and approval systems. As discussed in the Pharmaceuticals section below, the State Council issued this measure without first soliciting public comment, and the United States has since raised both transparency concerns and concerns regarding certain of the proposed reforms. In 2017, the United States will continue to closely monitor China's efforts to implement these reforms.

Standards, Technical Regulations and Conformity Assessment Procedures

China continues to take actions that generate WTO compliance concerns in the areas of standards, technical regulations and conformity assessment procedures, particularly with regard to transparency, national treatment, the pursuit of unique Chinese national standards, and duplicative testing and certification requirements.

With its accession to the WTO, China assumed obligations under the Agreement on Technical Barriers to Trade (TBT Agreement), which establishes rules and procedures regarding the development, adoption and application of standards, technical regulations and the conformity assessment procedures (such as testing or certification) used to determine whether a particular product meets such standards or regulations. Its aim is to prevent the

use of technical requirements as unnecessary barriers to trade. The TBT Agreement applies to all products, including industrial and agricultural products. It establishes rules that help to distinguish legitimate standards and technical regulations from protectionist measures. Among other things, standards, technical regulations and conformity assessment procedures are to be developed and applied transparently and on a non-discriminatory basis by WTO members and should be based on relevant international standards and guidelines, when appropriate.

In its WTO accession agreement, China also specifically committed that it would ensure that its conformity assessment bodies operate in a transparent manner, apply the same technical regulations, standards and conformity assessment procedures to both imported and domestic goods and use the same fees, processing periods and complaint procedures for both imported and domestic goods. China agreed to ensure that all of its conformity assessment bodies are authorized to handle both imported and domestic goods within one year of accession. China also consented to accept the Code of Good Practice (set forth in Annex 3 to the TBT Agreement) within four months after accession, which it has done, and to speed up its process of reviewing existing technical regulations, standards and conformity assessment procedures and harmonizing them with international norms.

In addition, in the Services Schedule accompanying its WTO accession agreement, China committed to permit foreign service suppliers that have been engaged in inspection services in their home countries for more than three years to establish minority foreign-owned joint venture technical testing, analysis and freight inspection companies upon China's accession to the WTO, with majority foreign ownership no later than two years after accession and wholly foreign-owned subsidiaries four years after accession. China further agreed that qualifying joint venture and wholly foreign-owned enterprises would be eligible for accreditation in China and accorded national treatment.

REGULATORY REFORMS

Shortly after its accession to the WTO, China restructured its regulators for standards, technical regulations and conformity assessment procedures in order to eliminate discriminatory treatment of imports, although in practice China's regulators sometimes have not appeared to enforce regulatory requirements as strictly against domestic products as imports. More recently, China has begun considering reforms to its standards setting processes.

As previously reported, in anticipation of its WTO accession, China made significant progress in the areas of standards and technical regulations. China addressed problems that foreign companies had encountered in locating relevant regulations and how they would be implemented, and it took steps to overcome poor coordination among the numerous regulators in China. In October 2001, China announced the creation of the Standardization Administration of China (SAC) under the State Administration of Quality Supervision, Inspection and Quarantine (AQSIQ). SAC is charged with unifying China's administration of product standards and aligning its standards and technical regulations with international practices and China's commitments under the TBT Agreement. SAC is the Chinese member of the International Organization for Standardization and the International Electrotechnical Commission.

China also began to take steps in 2001 to address problems associated with its multiplicity of conformity assessment bodies, whose task is to confirm compliance to technical regulations and mandatory standards. AQSIQ was established as a new ministry-level agency in April 2001. It is the result of a merger of the State Administration for Quality and Technical Supervision and the State Administration for Entry-Exit Inspection and Quarantine. China's officials explained that this merger was designed to eliminate discriminatory treatment of imports and requirements for multiple testing simply because a product was imported rather than domestically produced. China also

formed the quasi-independent National Certification and Accreditation Administration (CNCA), which is attached to AQSIQ and is charged with the task of unifying the country's conformity assessment regime.

Despite these changes, U.S. industry still has concerns about significant conformity assessment and testing-related issues in China. For example, U.S. exporters representing several sectors continue to report that China's regulatory requirements are not enforced as strictly or uniformly against domestic producers as compared to foreign producers. In addition, in some cases, China's regulations provide only that products will be inspected or tested upon entry into China's customs territory, without any indication as to whether or how the regulations will be applied to domestic producers. The United States will continue to monitor these issues in 2016 to determine if U.S. industry is being adversely affected.

In a positive development, SAC released a standardization reform plan in March 2015 entitled the *Reform Plan on Further Improving Standardization Work*. This plan aimed to streamline standards and reduce government involvement in standards-setting by reducing the number of government-set mandatory and voluntary standards, fostering the development of non-governmental standards-setting organizations and encouraging companies to set their own standards.

Since then, the Chinese government has taken a series of steps at the central and provincial government levels to implement this plan. For example, SAC issued draft "Association Standardization – Part 1: Guidelines for Good Practice" and accepted public comments on these draft national standards. The American National Standards Institute and other U.S. stakeholders commented on these draft national standards.

In March 2016, the State Council Legislative Affairs Office circulated proposed amendments to China's *Standardization Law* for public comment. China's

stated objectives for reforming its standardization system included the creation of a system in which the private sector would play a greater role in standards development. In response to China's solicitation of public comments, the United States expressed its view that China should carefully evaluate its obligations under the TBT and SPS Agreements as it revises the draft law and that China should ensure that the final version of the law conforms to both the letter and the spirit of the TBT Agreement. For example, the United States urged China to ensure that the final law sets an open policy for participating in the development of draft standards, including by persons of other countries. Additionally, the United States expressed concerns about provisions in the draft law that appear to create tension with laws designed to protect the intellectual property incorporated into standards.

Through this and other avenues, the United States continued to urge China to allow foreign organizations and individuals to participate in the development of standards, technical regulations and conformity assessment procedures on a non-discriminatory basis in 2016. The United States will continue to do so in 2017, both in the context of legal regime revisions and the functioning of China's current standardization system.

STANDARDS AND TECHNICAL REGULATIONS

China continues to pursue the development of unique Chinese national standards, despite the existence of well-established international standards, apparently as a means for protecting domestic companies from competing foreign technologies and standards.

Shortly after its accession to the WTO, China began the task of bringing its standards regime more in line with international practice. One of its first steps was AQSIQ's issuance of rules designed to facilitate China's adoption of international standards. China subsequently embarked on the task of reviewing all of China's existing 21,000 standards and technical regulations to determine their continuing relevance and consistency with international standards.

During transitional reviews before the TBT Committee, China has periodically reported on the status of this review process and the number of standards and technical regulations that have been nullified, but it remains unclear whether these actions have had a beneficial impact on U.S. market access.

The United States continues to make efforts to assist China through bilateral exchanges and training, as China works to improve its standards regime. For example, in May 2005, a new U.S. private sector standards office, using funding from the U.S. Department of Commerce, opened in Beijing. Its goals are to strengthen ties with Chinese government regulatory authorities, Chinese industry associations and Chinese standards developers and, in particular, to ensure that close communication exists between U.S. and Chinese standards developers. More recently, three international standards development organizations, ASTM International, the American Society of Mechanical Engineers and the American Petroleum Institute, opened their own offices in China in order to encourage Chinese participation in their standardization and conformity assessment activities.

The United States also continued to provide technical assistance to China. Since 2004, this technical assistance has focused on broad standards-development issues, such as the relationship between intellectual property rights and standards, and specific standards in a number of industries, including petroleum, information and telecommunications technology, chemicals, steel, water conservation, energy efficiency, hydrogen infrastructure, elevators, electrical safety, gas appliances, distilled spirits, heating, ventilation and air conditioning, and building fire safety. The United States has also conducted programs addressing China's regulation of hazardous substances and China's new chemical management system.

In addition, in 2006, the U.S. Trade and Development Agency (TDA) launched the U.S.-China Standards and

Conformity Assessment Cooperation Project. In 2015, this project, with funding from TDA and U.S. industry, continued to provide education and training to Chinese policy makers and regulators with regard to U.S. standards and conformity assessment procedures. Programs held this year covered topics such as environmental protection in shale gas development, electric vehicle technology and standardization, brownfield remediation and meat safety.

The American National Standards Institute, with funding and participation from the U.S. Department of Commerce, also maintains a Standards Portal in cooperation with SAC. The Standards Portal contains dual language educational materials on the structure, history and operation of the U.S. and Chinese standards systems, a database of U.S. and Chinese standards and access to other standards from around the world.

At the same time, concern has grown over the past few years that China seems to be actively pursuing the development of unique requirements, despite the existence of well-established international standards, as a means for protecting domestic companies from competing foreign standards and technologies. Indeed, China has already adopted unique standards for digital televisions, and it is trying to develop unique standards and technical regulations in a number of other sectors, including, for example, autos, telecommunications equipment, Internet protocols, wireless local area networks, radio frequency identification tag technology, audio and video coding and fertilizer as well as software encryption and mobile phone batteries. This strategy has the potential to create significant barriers to entry into China's market, as the cost of compliance will be high for foreign companies, while China will also be placing its own companies at a disadvantage in its export markets, where international standards prevail.

In 2015 and 2016, the United States raised concerns at the WTO TBT Committee regarding several Chinese measures. These measures covered

registration fees for drugs and medical devices products, banking sector ICT rules, insurance sector ICT rules, cosmetics labeling, the supervision and administration of medical devices, and infant formula rules.

Wi-Fi Standards

Since shortly after its accession to the WTO, China has pursued unique standards for encryption over Wireless Local Area Networks (WLANs), applicable to domestic and imported equipment containing WLAN (also known as Wi-Fi) technologies, despite the existence of well-established international standards. These efforts appear designed to protect Chinese companies from competing foreign standards and technologies.

As previously reported, China's initial focus was on the WLAN Authentication and Privacy Infrastructure (WAPI) encryption technique for secure communications. China eventually moved forward with plans to mandate the use of the WAPI standard in mobile handsets, despite the growing commercial success of computer products in China complying with the internationally recognized ISO/IEC 8802-11 WLAN standard, otherwise known as "Wi-Fi," and despite serious concerns raised by the United States, both through the JCCT process and in meetings of the TBT Committee.

A new issue related to Wi-Fi standards arose in 2011, after China published a proposed voluntary wireless LAN industry standard known as the "UHT/EUHT standard." China's UHT/EUHT standard appears to be an alternative to the international standard IEEE 802.11n, which is the wireless LAN industry standard currently used throughout the world in Wi-Fi networks. The Chinese UHT/EUHT standard was released for only a 15-day public comment period on September 20, 2011. U.S. industry groups submitted comments, arguing, among other things, that there are technical compatibility concerns regarding the interoperability of the UHT/EUHT standard with the existing Chinese national standard (WAPI) and with the most widely used and recognized WLAN industry

standard (IEEE 802.11). Separately, the United States expressed concerns to China that, if China integrates standards such as the UHT/EUHT standard into its certification or accreditation schemes, these standards would become *de facto* mandatory and therefore would raise questions in light of China's obligations under the WTO TBT Agreement. In February 2012, MIIT approved the UHT/EUHT standard as a voluntary standard, but U.S. industry has expressed concern that the unusual approval process for UHT/EUHT may reflect a desire within the Chinese government to promote this indigenous standard, despite technical concerns raised by industry participants in the technical committee relating to its compatibility and co-existence with 802.11 products. Since then, the United States has raised its concerns about the *de facto* mandating of voluntary standards like UHT/EUHT via certification or accreditation schemes, and the United States will continue to do so in 2017.

3G Telecommunications Standards

The United States elevated another standards issue to the JCCT level beginning in 2004. The U.S. telecommunications industry was very concerned about increasing interference from Chinese regulators, both with regard to the selection of 3G telecommunications standards and in the negotiation of contracts between foreign telecommunications service providers and their Chinese counterparts. The United States urged China to take a market-based and technology neutral approach to the development of next generation wireless standards for computers and mobile telephones. At the April 2004 JCCT meeting, China announced that it would support technology neutrality with regard to the adoption of 3G telecommunications standards and that telecommunications service providers in China would be allowed to make their own choices about which standard to adopt, depending on their individual needs. China also announced that Chinese regulators would not be involved in negotiating royalty payment terms with relevant intellectual property rights holders.

By the end of 2004, it had become evident that there was still pressure from within the Chinese government to ensure a place for China's home-grown 3G telecommunications standard, known as TD-SCDMA. In 2005, China continued to take steps to promote the TD-SCDMA standard. It also became evident that they had not ceased their attempts to influence negotiations on royalty payments. Then, in February 2006, China declared TD-SCDMA to be a "national standard" for 3G telecommunications, heightening concerns among U.S. and other foreign telecommunications service providers that Chinese mobile telecommunications operators would face Chinese government pressure when deciding what technology to employ in their networks.

The United States again raised the issue of technology neutrality in connection with the April 2006 JCCT meeting. At that meeting, China restated its April 2004 JCCT commitment to technology neutrality for 3G telecommunications standards, agreeing to ensure that mobile telecommunications operators would be allowed to make their own choices as to which standard to adopt. China also agreed to issue licenses for all 3G telecommunications standards in a technologically neutral manner that does not advantage one standard over others.

Throughout 2008, China's test market for its TD-SCDMA standard continued to grow, and widespread test networks were put in place in time for the August 2008 Summer Olympics in Beijing. In January 2009, China's MIIT issued 3G licenses based on the three different technologies, with a TD-SCDMA license for China Mobile, a W-CDMA license for China Unicom and a CDMA2000 EV-DO license for China Telecom. However, despite the issuance of licenses for all three standards, the Chinese government continued to heavily promote, support and favor the TD-SCDMA standard. For example, China's economic stimulus-related support plan for Information Technology and Electronics, approved by the State Council and published in April 2009, specifically identifies government support for TD-SCDMA as a priority.

In March 2010, U.S. concerns over China's preferential treatment of TD-SCDMA were exacerbated by the inclusion of products based on this technology in the *Opinions on Advancing Third-Generation Communications Network Construction*, issued by MIIT, NDRC, the Ministry of Science and Technology (MOST), MOF, the Ministry of Land and Resources, the Ministry of Housing and Urban-Rural Development and SAT. Specifically, the United States was concerned that this measure would lead to these products being entitled to government procurement preferences.

Meanwhile, China's insistence on promoting TD-SCDMA discouraged further innovation. For example, China was reluctant to permit operators to deploy alternative technologies, including 4G technologies.

Throughout 2010, the United States continued to press China to reaffirm the principle of technology neutrality for current and future services and technologies. In an important development at the December 2010 JCCT meeting, China agreed to technology neutrality for 3G networks and future networks based on new technologies, allowing operators to choose freely among those technologies and without the Chinese government providing any preferential treatment based on the standard or technology used by an operator.

Since then, the United States has carefully monitored developments in this area, stressing to China in bilateral meetings the importance of a continuing commitment to technology neutrality in line with China's JCCT commitments, both for 3G standards and for emerging 4G standards issues. In November 2013, however, China licensed 4G spectrum in a manner that is not technology neutral, as it licensed only the domestically favored Long-Term Evolution (LTE) standard known as LTE-TDD and not the other common standard known as LTE-FDD.

In July 2014, the U.S. government, under the framework of the JCCT Information Industry Working

Group (IIWG), organized a U.S.-China Spectrum Roundtable to discuss spectrum allocation issues. The Spectrum Roundtable included participants from U.S. and Chinese industry as well as government representatives. China subsequently agreed to an additional roundtable discussion of this issue, which took place in an August 2016 meeting. At that meeting, and in other bilateral engagements in 2016, the United States urged China to work to identify spectrum for auction and set eligibility rules that make clear that foreign-invested enterprises may participate in any future spectrum auctions with domestic competitors on an equal basis.

ZUC Encryption Algorithm Standard

Beginning in late 2011, China moved ahead with the rollout of a Chinese government-developed 4G LTE encryption algorithm known as the ZUC standard. The European Telecommunication Standards Institute (ETSI) 3rd Generation Partnership Project (3GPP) had approved ZUC as a voluntary standard in September 2011. According to U.S. industry reports, MIIT, in concert with the State Encryption Management Bureau, informally announced in early 2012 that only domestically developed encryption algorithms, such as ZUC, would be allowed for 4G TD-LTE networks in China, and it appeared that burdensome and invasive testing procedures threatening companies' sensitive intellectual property could be required.

In response to U.S. industry concerns, the United States urged China not to mandate any particular encryption standard for 4G LTE telecommunications equipment, in line with its bilateral commitments and the global practice of allowing commercial telecommunications services providers to work with equipment vendors to determine which security standards to incorporate into their networks. Any mandate of a particular encryption standard such as ZUC would contravene a commitment that China made to its trading partners in 2000, which clarified that foreign encryption standards were permitted in the broad commercial marketplace and that strict "Chinese-only" encryption requirements would only

be imposed on specialized IT products whose “core function” is encryption. Additionally, a ZUC mandate would contravene China’s 2010 JCCT commitment on technology neutrality, in which China had agreed to take an open and transparent approach with regard to operators’ choices and not to provide preferential treatment based on the standard or technology used in 3G or successor networks, so that operators could choose freely among whatever existing or new technologies might emerge to provide upgraded or advanced services.

The United States pressed China on this issue throughout the run-up to the December 2012 JCCT meeting. At that meeting, China agreed that it will not mandate any particular encryption standard for commercial 4G LTE telecommunications equipment.

In 2013, the United States worked to ensure that MIIT’s voluntary testing and approval process for the ZUC 4G telecom equipment standard fully protects applicants’ intellectual property by not requiring source code or other sensitive business confidential information to be provided during the approval process. At the December 2013 JCCT meeting, China committed that it will not require applicants to divulge source code or other sensitive business information in order to comply with the ZUC provisions in the MIIT application process for 4G devices. Since then, the United States has closely monitored developments in this area to ensure China followed through on this JCCT commitment, and will continue to do so in 2017.

Mobile Smart Device Regulations

In 2012, MIIT began to develop a new draft regulatory framework for the mobile smart device market. MIIT’s stated objective is to help protect consumer interests relating to the privacy of users and the security of their personal information in connection with the operation of their mobile smart devices.

In April 2012, MIIT shared a draft *Notice Regarding Strengthening Management of the Network Access*

for Mobile Smart Devices with select foreign companies for informal comments. It appears that the draft measure would impose numerous new obligations and technical mandates on information technology and telecommunications hardware, operating systems, applications, application stores and other related services. The draft measure also may impose, by reference, mandatory technical regulations and testing requirements on these same goods and services, as well as on the mobile smart devices themselves. In addition, the China Communications Standardization Association is in the process developing numerous “industry standards” relating to smart terminal requirements, which appear to be linked to the development of the draft measure.

The United States expressed its concerns to MIIT and requested that China notify the measure to the WTO TBT Committee. The United States also offered to work with MIIT on best practices for addressing privacy and security associated with mobile smart devices. In response, in June 2012, MIIT published the draft measure on the MIIT website and asked for public comments within 30 days. In addition, in November 2012, China notified the draft measure to the WTO TBT Committee and indicated that it would accept comments for a 60-day period.

The United States and U.S. industry were concerned because the far-reaching regulatory approach embodied in the draft measure – which is exclusively oriented toward government mandates rather than voluntary private sector-developed global standards and public-private cooperation – is unprecedented among the leading markets for mobile smart devices and could create significant trade barriers. Furthermore, the potential inclusion of numerous voluntary standards relating to smart terminal requirements could create further trade barriers, as it could readily lead to these voluntary standards becoming mandatory standards within MIIT’s testing and certification process. Unfortunately, in November 2013, MIIT finalized and began implementing this measure, along with two associated voluntary standards. In 2017, the United

States will continue to closely monitor developments in this area.

Patents Used in Chinese National Standards

China has prioritized the development of Chinese national standards in documents such as the *Outline for the National Medium to Long-Term Science and Technology Development Plan (2006-2020)*, issued by the State Council in February 2006, and amplified shortly thereafter in the *11th Five-year Plan (2006-2010) for Standardization Development*, issued by SAC. More recently, China has also publicly expressed its resolve to rely on either non-patented technology or patented technology made available at prices lower than those that patent owners would otherwise seek to charge when developing standards. As a result, China's treatment of patents in the standard setting process has garnered increasing attention and concern around the world, including in the United States.

The United States has engaged repeatedly with China on issues relating to the use of national standards, including through the submission of extensive comments on draft measures. For example, in November 2009, SAC circulated a draft of the *Provisional Rules regarding Administration of the Establishment and Revision of National Standards Involving Patents* for public comment. This draft measure would implement China's vision for a standards development process that uses government power to deny or lower the royalty rates owed to owners of patents incorporated into Chinese national standards. The draft measure would establish the general principle that mandatory national standards should not incorporate patented technologies. However, when they do incorporate patented technologies, the draft measure provides for the possibility of a compulsory license if a patent holder does not grant a royalty-free license. In 2004, SAC circulated a similar draft measure – the *Interim Regulations for National Standards Relating to Patents* – for public comment, although it was never finalized. SAC's 2009 draft measure appears

to incorporate many of the problematic aspects of the 2004 draft measure.

The United States provided comments to SAC on the 2009 draft measure in December 2009, requesting that SAC not move forward with it and instead consult with stakeholders. SAC reportedly received comments from 300 other interested parties as well. A draft measure with similar provisions was issued by the China National Institute for Standards (CNIS) in February 2010, and the United States provided comments to CNIS in March 2010. Throughout 2010, the United States also raised its concerns in meetings with China's regulators, and as of December 2010 neither SAC nor CNIS had moved forward to finalize their draft measures.

At the December 2010 JCCT meeting, the United States and China agreed that patent issues related to standards raise complex issues that require standard setting organizations to take into account the appropriate balance among the interests of patentees, standard users and the public when developing and adopting their rules on patent issues. The two sides also agreed to have further discussions on patent issues related to standards, including in the JCCT IPR Working Group, involving participants from all relevant U.S. and Chinese agencies.

In late 2012, SAC published for public comment a revised draft of the draft measure originally published in 2009. In written comments submitted in January 2013, the United States commended SAC for addressing various concerns raised in the United States' prior written comments, but also urged SAC to address important outstanding concerns. SAC, jointly with the State Intellectual Property Office (SIPO), subsequently issued final rules that took effect on January 1, 2014.

Meanwhile, since 2009, China's State Administration for Industry and Commerce (SAIC) has published draft rules regarding the application of the *Anti-monopoly Law* to intellectual property-related conduct that have drawn U.S. comments and

engagement. In July 2014, the United States provided written comments on the eighth draft of the *Rules of the Administration for Industry and Commerce on the Prohibition of Abuses of Intellectual Property Rights for the Purposes of Eliminating or Restricting Competition*. In April 2015, SAIC adopted the final version of this measure. A key U.S. industry concern in the measure is that Article 13 suggests that a patent holder is subject to a commitment to license its patent on fair, reasonable and non-discriminatory (FRAND) terms merely because its patent has been incorporated into a standard.

The United States also has engaged with China's Supreme People's Court (SPC) regarding a series of draft judicial interpretations relating to standards. In June 2009, the SPC published a draft *Interpretation on Several Issues Regarding Legal Application in the Adjudication of Patent Infringement Cases* for public comment. The United States subsequently met with the SPC to discuss this draft measure and recommended modifications to clarify that a Chinese court could find a patent holder to be a participant in the group developing a standard incorporating patented technology only if the patent holder had consented to the inclusion of its patented technology in that standard. The United States also emphasized that if the patent holder had consented to the inclusion of its patent on the condition that it be licensed on specified terms, then the draft measure should make clear that a Chinese court should enforce those licensing terms. When the SPC issued the final measure in January 2010, it did not include the provisions of concern.

In September 2014, the United States provided comments on the draft *Interpretations of the Supreme People's Court on Certain Issues Concerning the Application of Law in the Trial of Patent Infringement Cases II*. Article 27 of this draft measure addressed disputes between patent holders and potential licensees relating to non-compulsory national, industrial or local standards. The United States recommended that Article 27 be modified in several ways, including to clarify that

Article 27 should apply only to patents that the patent holder has committed voluntarily, and without coercion by government or quasi-government entities, to license on FRAND terms as part of its participation in a standards-setting process. The United States also recommended that Article 27 be modified to clarify the circumstances under which a patent holder may be found to have violated FRAND principles by negotiating in bad faith and also make clear that an alleged infringer should have an opportunity to assert non-infringement and that patent holders are entitled to FRAND compensation where infringers are permitted to continue to use a patented invention. The United States further recommended that, where courts must determine an appropriate FRAND royalty, they should take into account that patent holders in China face challenges in enforcing their patents and securing appropriate compensation for the use of their patents and, in addition, take steps to avoid outcomes that under-compensate patent holders or undermine incentives to innovate.

At the December 2014 JCCT meeting, the United States and China recognized that standards setting can promote innovation, competition and consumer welfare and also reaffirmed that IPR protection and enforcement is critical to promote innovation, including when companies voluntarily agree to incorporate patents protecting technologies into a standard. The two sides also recognized that concerns may exist relating to the licensing of standards-essential patents that are subject to licensing agreements.

In 2015, as in-depth discussion of these issue continued, the United States expressed concern because China's standard setting rules do not ensure that participation in the standards development process is open to all persons. Indeed, reports from U.S. industry indicate that even foreign enterprises with operations in China are unable to participate in standards setting on a non-discriminatory basis. At the November 2015 JCCT meeting, China welcomed U.S.-invested firms in China to participate in the development of national recommendatory and social

organization standards in China on a non-discriminatory basis. While the United States welcomed this step, it continued to press China in 2016 to take further steps to ensure that standards development processes are open to all interested parties, both within the context of China's consideration of its draft *Standardization Law* and the functioning of China's current standardization system.

China also made one other standards-related commitment at the November 2015 JCCT meeting. It agreed that licensing commitments for patents in voluntary standards are made voluntarily and without government involvement in negotiations over those commitments, except as otherwise provided by legally binding measures. Throughout 2016, the United States urged China to further ensure that the rights of patent owners to determine how to utilize their proprietary technology in standards development are protected.

Information Security Standards

In August 2007, China notified to the TBT Committee a series of 13 proposed technical regulations relating to information security for various information technology products, including routers, smart cards and secure databases and operating systems. China requested that comments be provided within 60 days, but did not specify implementation dates for the proposed regulations. Subsequently, in March 2008, CNCA issued an announcement indicating that the final regulations would be published in May 2008, and would become mandatory one year later.

In part because of past actions that China has taken in this area, including China's issuance of mandatory encryption standards for Wi-Fi technologies in 2003 and regulations that China had issued in 1999 requiring the registration of a wide range of hardware and software products containing encryption technology, these proposed regulations generated immediate concerns for the United States and U.S. industry. In particular, the proposed

regulations go substantially beyond global norms by mandating testing and certification of information security in commercial information technology products, not just products for government use in national security applications. In other countries, mandatory testing and certification for information security is only required for products used in sensitive government and national security applications.

The United States and other WTO members expressed serious concerns to China about these proposed regulations in numerous bilateral meetings, including during the run-up to the September 2008 JCCT meeting, as well as at meetings of the TBT Committee in 2008 and during China's second Trade Policy Review, held in May 2008. At the September 2008 JCCT meeting, China announced that it would delay publication of final regulations while Chinese and foreign experts continue to discuss the best ways to ensure information security in China.

In April 2009, CNCA, AQSIQ and MOF announced that the implementation of compulsory certification for thirteen types of information security products would be delayed until May 2010, and would only be applied when products are sold to the government, representing a significant reduction in the scope of the requirements from China's original plan. In September 2009, during the run-up to the October 2009 JCCT meeting, China confirmed that the compulsory certification requirement only applies when products are sold to government agencies, and not to state-owned enterprises or other sectors of China's economy.

In 2010, the United States continued to meet with China's regulators to discuss their regulation of information security products. China's State Encryption Management Commission, in bilateral meetings, confirmed that it was considering revisions to its 1999 encryption regulations. The United States noted the earlier widespread concerns about these regulations and asked China to ensure that any revisions to these regulations would be

published in draft form with opportunity for comment by interested parties.

Additionally, beginning in 2010 and continuing through 2012, both bilaterally and during meetings of the WTO's TBT Committee, the United States raised its concerns with China about framework regulations for information security in critical infrastructure known as the Multi-Level Protection Scheme (MLPS), first issued in June 2007 by the Ministry of Public Security and MIIT. The MLPS regulations put in place guidelines to categorize information systems according to the extent of damage a breach in the system could pose to social order, public interest and national security. The MLPS regulations also appear to require, by reference, purchasers' compliance with certain information security technical regulations and encryption regulations that are referenced within the MLPS regulations.

Among other things, the MLPS regulations bar foreign products from information systems graded level 3 and above, because all products deployed must be developed by Chinese information security companies and must bear Chinese intellectual property in their key components. Additional troubling product testing provisions for level 3 and above require companies to disclose product source code, encryption keys and other confidential business information. To date, hundreds of request for proposals (RFPs) incorporating MLPS requirements have come from government agencies, the financial sector, telecommunications companies, the power grid, educational institutions and hospitals in China. These RFPs cover a wide range of information security software and hardware, and many of them exclude the purchase of foreign products by incorporating level-3 requirements.

If implementing rules for the MLPS regulations are issued and apply broadly to commercial sector networks and IT infrastructure, they could have a significant impact on sales by U.S. information security technology providers in China. The United States therefore has urged China to notify any MLPS

implementing rules laying down equipment-related requirements in accordance with China's obligations under the TBT Agreement.

At the December 2012 JCCT meeting, China indicated that it would begin the process of revising the MLPS regulations. It also agreed that, during that process, it would enter into discussions with the United States regarding U.S. concerns. Throughout 2013 and 2014, using the JCCT process, the United States pressed China to fully and quickly implement its JCCT commitment to revise the MLPS regulations. To date, however, China has not yet revised those regulations. In 2015, concerns about the MLPS regulations were heightened in light of provisions contained in the draft *Administrative Regulations on the Informatization of Insurance Institutions* that mandate compliance with MLPS requirements. At the November 2015 JCCT meeting, China agreed to strengthen exchange and dialogue with the United States in this area.

In a positive development, at the November 2015 JCCT meeting, China acknowledged an important clarification that it had made in a March 2000 announcement. In that clarification, China made clear that it limits the scope of its encryption regulations to software and hardware specifically dedicated to encryption functions.

In 2016, concerns about China's MLPS regulations were amplified as China adopted new measures, such as the *Cybersecurity Law*. These measures appear to create an analogous or overlapping "cybersecurity multi-level protection scheme." As discussed the Secure and Controllable ICT Policies section below, the United States actively engaged China when it was drafting the *Cybersecurity Law* while also continuing to press China on its overall approach with regard to regulation in the area of cybersecurity.

Secure and Controllable ICT Policies

Since 2015, concerns about China's regulations addressing information security have heightened as

China has pursued a series of measures that would impose severe restrictions on a wide range of U.S. and other foreign ICT products and services with an apparent long-term goal of replacing foreign ICT products and services. These measures include provisions relating to standards and conformity assessment procedures as well as provisions relating to intellectual property ownership and research and development requirements. These provisions stem from a May 2014 announcement by the Cyberspace Administration of China (CAC) that it would implement a broad-reaching "Cybersecurity Review Regime" focused on ensuring that technology in China is "secure and controllable." This policy direction was affirmed in November 2016 with China's passage of a *Cybersecurity Law*, which puts in place an overarching statutory framework for the regulation of cybersecurity in China.

Previously, a draft measure issued by the China Banking Regulatory Commission (CBRC) in December 2014, the *Guidelines for Promoting the Application of Secure and Controllable Information Technology in Banking Sector*, which included an accompanying *Classification Catalogue of Banking Information Technology Assets and Indexes of Security and Controllability* (collectively the "Banking ICT Rules"), called for 75 percent of ICT products used in China's banking system to be "secure and controllable" by 2019. The applicable criteria, which would have required banks to file source code for all software with the Chinese government, use chips and software that are "under" indigenous intellectual property rights (rather than comply with performance requirements), and submit encryption products to Chinese regulators for testing and certification, raised serious concerns in the U.S. and global ICT industry.

The Banking ICT Rules appeared to require encryption pre-approval by government regulators via conformity assessment procedures. According to current Chinese law, this pre-approval would require divulging source code and other sensitive design information, a matter of enormous concern to U.S. industry. Since 1999, China has agreed to impose

these requirements only on ICT products whose "core function" was encryption and not to apply encryption registration requirements to the broader world of commercial ICT products. The Banking ICT Rules appeared to abandon that policy, and Chinese regulatory officials have discussed applying rules similar to the Banking ICT Rules in other priority sectors. China's encryption regulations have been discussed on numerous occasions for the past 15 years, with the United States, the EU and others expressing serious concerns about any potential expansion of China's encryption regulations.

The United States raised serious concerns about the Banking ICT Rules at the highest levels of government in China. Other governments, and numerous global stakeholders, also raised serious concerns. Subsequently, in April 2015, China announced that it would suspend implementation of the Banking ICT Rules.

At the June 2015 S&ED meeting, China agreed that any future ICT regulations in the banking sector will be non-discriminatory and will not impose nationality-based conditions or restrictions on the purchase, sale or use of ICT products and services by commercial enterprises. China also committed to providing opportunities for public comment on draft regulations relating to ICT products and services before issuing them in final form. During the September 2015 state visit of President Xi, China extended its non-discrimination commitments to all ICT products in the commercial sector. Additionally, at the November 2015 JCCT meeting, China confirmed that while CBRC reconsiders the Banking ICT Rules, Chinese banks are free to purchase and use the ICT products and services of their choosing.

In October 2015, China's Insurance Regulatory Commission (CIRC) published draft regulations that impose information security-related requirements on ICT systems in the insurance sector and implement "secure and controllable" principles. This draft measure, the *Administrative Regulations on the Informatization of Insurance Institutions*, includes provisions relating to MLPS and China's encryption

regulations and gives priority to buying “secure and controllable” hardware and software products. The United States, other WTO members and stakeholders from around the world expressed serious concerns about this draft measure. At the November 2015 JCCT meeting, China agreed that it will notify the draft measure to the WTO TBT Committee and formulate it in an open and transparent manner.

Other problematic measures proposed or finalized by China in 2015 and 2016 relate to cybersecurity and include an ostensible information security-related rationale for potential trade restrictive policies. Throughout this time period, given China's pursuit of new laws on national security, counterterrorism and cybersecurity, and given past acute concerns about China's pursuit of ICT rules in the banking and insurance sectors, the United States prioritized engagement with China on how to best strengthen cybersecurity while at the same time promoting an open, interoperable, secure and reliable global cyberspace that fosters appropriate conditions for continued global trade, investment and technological innovation, makes use of international standards and protects intellectual property rights including trade secrets.

In July 2015, the National People's Congress passed a *National Security Law* with a stated purpose of safeguarding China's security. However, this law included sweeping provisions addressing economic and industrial policy.

In December 2015, the National People's Congress passed a *Counterterrorism Law*. Leading up to the passage of this law, the United States and numerous stakeholders around the world had expressed serious concerns about the then-draft *Counterterrorism Law*, particularly with regard to provisions that seemed to extend far beyond the law's general objective of reinforcing the government's authority to investigate and prevent terrorism. Especially troubling trade-related concerns in the original draft law included in-country data storage requirements and restrictions on cross-

border data flows for “all telecom and Internet businesses,” as well as requirements for telecommunications and Internet service providers to pre-install cryptographic solutions in their equipment. The final version of the law removed those requirements and restrictions, but it remains unclear whether they will nevertheless be included in subsequent implementing measures. Additionally, new obligations in the *Counterterrorism Law* requiring companies in the telecommunications and Internet-related services sectors to “provide technical support and assistance, including handing over access or interface information and decryption keys,” to proactively monitor their networks for terrorism information and to disclose any discovered terrorism information to the regulatory authorities could present undue burdens on foreign companies.

In November 2016, the National People's Congress passed the *Cybersecurity Law*, which will go into effect in June 2017. Leading up to the passage of this law, the United States and numerous other WTO members had expressed serious concerns to China about the contents of two circulated drafts of the law, as did private sector stakeholders. For example, in August 2016, 46 global industry groups signed a letter to China's Premier Li describing their serious concerns. Confirming WTO member and private sector concerns, the final version of the law imposed far-reaching and onerous trade restrictions on imported ICT products and services in China. Among other things, the law will require testing for products sold into “critical information infrastructure,” which is vaguely and broadly defined. China has yet to detail the testing requirements for a variety of “secure and controllable” products.

China's implementation of its “secure and controllable” policies extended beyond the pursuit of these new laws. Over the past two years, China has adopted a large number of other measures incorporating the concept of “secure and controllable.” Indeed, in 2016 alone, the United States extensively discussed with China more than 30 “secure and controllable” measures. Particular areas of concern include the vague definition of

“secure and controllable” and its potential implications for discrimination against foreign firms, cross-border data flow restrictions and requirements for in-country storage of data, as well as encryption requirements.

To date, Chinese legislators and regulators have never publicly defined the term “secure and controllable.” The United States has expressed its strong concern, based on its understanding of the ICT Banking Rules, that the term appears to mean products and technologies with domestically owned and registered intellectual property or conforming to other localization requirements and that this term will be interpreted to mean products, technologies or intellectual property of domestic origin. Numerous global technology stakeholders and governments have expressed similar concern that the lack of a concrete definition of “secure and controllable” allows Chinese regulators to interpret the term in a discriminatory fashion.

Requirements in various “secure and controllable” measures to use domestically owned and registered intellectual property call into question China’s prior bilateral commitments to treat intellectual property owned or developed in other countries the same as intellectual property owned or developed in China. In addition, these requirements undermine the flexibility needed by domestic and foreign companies to make their own ICT product procurement decisions on the basis of their unique business considerations and as dictated by any legal or fiduciary responsibilities to protect their customers’ information. These requirements also could impair the ability of companies to quickly and effectively respond to new cybersecurity risks. Furthermore, these requirements could result in companies needing to operate different ICT platforms for different markets, which would increase costs prohibitively and detract from business efficiencies without any guarantee of more or enhanced security. These requirements also create concerns by associating intellectual property rights with national security.

China’s numerous “secure and controllable” measures also have included potential generally applicable restrictions on cross-border data flows and requirements for in-country storage of data, which have been criticized by the United States and numerous other WTO members and by the private sector. Given the international nature of the modern economy, a company’s ability to transfer data across borders to its headquarters or other locations is important for conducting data analysis to improve the quality of its risk management. Cross-border data transfers also can be necessary for international businesses to meet regulatory obligations in their home countries or other jurisdictions. Similarly, requirements for in-country storage of data would not appear to further data security and integrity, but instead would impose restrictions that could unduly raise the cost for international firms doing business in China, as well as for Chinese companies that have global operations. These requirements also run counter to trends in most major economies, where efforts are expended not in restricting data transfers or requiring local data storage, but rather in ensuring that appropriate protections are in place once information has been transferred.

With regard to encryption requirements in China’s numerous “secure and controllable” measures, the United States has emphasized to China the importance of China’s acknowledgement at the November 2015 JCCT meeting of its prior bilateral commitment that it would only regulate encryption technologies that, “at their core, are dedicated to encryption and decryption operations.” Numerous references in recent Chinese measures to “domestic” cryptography create concern that they may refer to various measures related to cryptography that set goals of applying domestic cryptography requirements across China’s financial services sector and other sectors. Accordingly, the United States has urged China to live up to its commitment not to mandate in generally applicable measures the use of domestic encryption technologies, so as to ensure that companies are

free to utilize the encryption technologies most appropriate for their needs, regardless of their country of origin.

Given all these concerns, the United States has identified the issue of technology policy as a top U.S. priority. In the context of bilateral engagement, China has made a series of commitments with regard to technology policy and information security policy.

At the November 2015 JCCT meeting, China committed that new information security measures will not limit commercial sales opportunities for foreign suppliers of ICT products and services unnecessarily. That commitment built on assurances provided by China during the state visit of President Xi in September 2015 that generally applicable measures to enhance ICT cybersecurity in commercial sectors should be consistent with WTO rules, be narrowly tailored, take into account international norms, be non-discriminatory and not impose nationality-based conditions or restrictions on the purchase, sale or use of ICT products by commercial enterprises unnecessarily.

Subsequently, at the November 2016 JCCT meeting, China expressly confirmed that its prior commitments relating to information security measures apply to its "secure and controllable" policies. China also agreed that it would notify relevant "secure and controllable" technical regulations to the WTO TBT Committee.

Secure and Controllable ICT Standards

In November 2016, the National Information Security Standardization Technical Committee, chaired by the Cyberspace Administration of China (CAC), released 26 proposed cybersecurity standards for public comment. Included among the standards were proposed "secure and controllable" product standards for central processing units (CPUs), operating systems (OS) and office software suites, as well as standards on testing specifications for "secure and trustworthy" office information systems. Seven standards relating to the MLPS were

released, covering cloud computing, mobile Internet and other applications.

U.S. industry stakeholders immediately expressed serious concerns about stringent requirements laid out in these draft standards, which would make it difficult for foreign technology companies to comply. As of December 2016, the United States was working closely with U.S. industry stakeholders as it prepared to engage China on a range of concerns relating to these draft standards.

CONFORMITY ASSESSMENT PROCEDURES

China appears to be turning more and more to in-country testing for a broader range of products, which does not conform with international practices that generally accept foreign test results and certifications.

China's regulatory authorities appear to be turning more and more to in-country testing for a broader range of products. This policy direction is troubling, as it is inconsistent with common international conformity assessment practices, which favor processes that accept test results from internationally recognized laboratories, the concept of a "supplier's declaration of conformity" and other similar trade-facilitating conformity assessment mechanisms.

The United States is unaware of any meaningful efforts by China to move toward a system that recognizes test results or conformity assessment certifications from bodies other than Chinese government-run testing, certification, or accreditation entities. Instead, China has developed plans to expand the China Compulsory Certification Mark (CCC Mark) scheme and its mandatory testing requirements to information security, an area in which most countries do not engage in government certification. China also continues to prepare to implement in-country government testing for compliance with its new regulations on hazardous substances in electronic information products. In addition, China issued a measure, which it

subsequently suspended, establishing a burdensome new regime for government inspection of imported medical devices that have already satisfied applicable Chinese certification requirements before being exported to China. Working with U.S. industry, the United States will continue to urge China in 2016 to reverse this trend and move in the direction of more globally recognized conformity assessment practices.

Telecommunications Equipment

In the past, the product testing and certification processes in China for mobile phones have been significantly more burdensome and time-consuming than in other markets, which increases the costs of exporting products to China. With the rollout of 3G licenses in China in 2009, U.S. industry has expressed concern that there will be growing problems because a surge in new handset models will be running through the approval process. In addition, as U.S. industry has reported, testing fees may increase as smartphones and other devices evolve with new functionalities, given that these fees are dependent on the number of functions on a particular device.

China's three main type approval certification processes for mobile phones are the Network Access License (NAL), the Radio Type Approval (RTA), and the CCC Mark. While each one represents a different certification process, there are overlapping testing requirements among them, particularly between the NAL and the RTA with regard to radio telecommunications testing requirements for electromagnetic interference and between the NAL and the CCC Mark with regard to electromagnetic compatibility and product safety. In addition to redundancy, China's testing requirements are often unclear and subject to change without written notification and adequate time for companies to adjust. Companies must often determine what testing requirements are applicable by communicating directly with the relevant regulatory body, rather than by having access to a comprehensive, published list of testing

requirements. The WAPI mandate in MIIT's approval certification process for mobile phones represents a clear example of unpublished requirements. Companies have also reported that, in some cases, testing requirements for products can change on an almost monthly basis.

In bilateral meetings in 2010, the United States and China discussed testing and certification redundancies in the area of telecommunications equipment. As a result of these meetings, China's MIIT and U.S. regulatory officials, together with global industry stakeholders, conducted a one-day workshop in May 2010 to discuss prevalent concerns about telecommunications testing and certification requirements from a technical perspective. China also committed, at the December 2010 JCCT meeting, that it would develop a one-stop shopping mechanism for telecommunications network access license and radio type approval. At the November 2011 JCCT meeting, China agreed to publish the procedures for this new mechanism by the end of 2011. In December 2011, MIIT announced the implementation of its December 2010 JCCT commitment through the establishment of a single application window for both RTA and NAL testing and certification. In February 2012, a one-stop-shopping mechanism became operational on MIIT's website, with MIIT's Telecommunications Equipment Certification Center being appointed to process applications for both testing and certification processes.

Based on industry's experience to date, it does not appear that MIIT's approach is meaningful in terms of streamlining the MIIT processes. The United States remains concerned that it does not actually eliminate any redundancies or unnecessary elements of the testing and certification processes. It also does not appear to address a fundamental concern that unnecessary functionality testing is a major cause of the burdensome nature of these processes. In addition, the lack of transparency in the NAL testing and certification process remains a concern, as NAL requirements are not readily available to the public.

In 2016, building on an outcome from the November 2015 JCCT meeting relating to the need for a mutual recognition agreement for telecommunications equipment, the United States engaged in comprehensive technical discussions with CNCA and MIIT. These discussions included the topic of the APEC Tel-MRA.

In 2017, the United States will continue to monitor developments in this area closely. The United States also will continue to engage China and pursue progress in enhancing transparency and streamlining China's telecommunications testing and certification requirements.

CCC Mark System

As previously reported, CNCA regulations establishing a new Compulsory Product Certification System, issued in December 2001, took full effect in August 2003. Under this system, there is now one safety mark – the CCC Mark – issued to both Chinese and foreign products. Under the old system, domestic products were only required to obtain the “Great Wall” mark, while imported products needed both the “Great Wall” mark and the “CCIB” mark. Despite the changes made by the regulations, U.S. companies in some sectors continued to express concerns in 2016 about duplication in certification requirements, particularly for radio and telecommunications equipment, medical equipment and automobiles.

Meanwhile, to date, China has granted more than 150 Chinese enterprises accreditation to test and at least 14 Chinese enterprises accreditation to certify for purposes of the CCC Mark. Despite China's commitment that qualifying majority foreign-owned joint venture conformity assessment bodies would be eligible for accreditation and would be accorded national treatment, China so far has only accredited six foreign-invested conformity assessment bodies. It is not clear whether these six foreign-invested conformity assessment bodies play a sizeable role in accrediting products sold in China. China has also not developed any alternative, less trade-restrictive

approaches to third-party certification, such as recognition of a supplier's declaration of conformity. As a result, U.S. exporters to China are often required to submit their products to Chinese laboratories for tests that may be unwarranted or have already been performed abroad, resulting in greater expense and a longer time to market. One U.S.-based conformity assessment body has entered into an MOU with China allowing it to conduct follow-up inspections (but not primary inspections) of manufacturing facilities that make products for export to China requiring the CCC Mark. However, China has not been willing to grant similar rights to other U.S.-based conformity assessment bodies, explaining that it is only allowing one MOU per country. Reportedly, Japan has MOUs allowing two conformity assessment bodies to conduct follow-up inspections, as does Germany.

In 2012, as in prior years, the United States raised its concerns about the CCC Mark system and China's limitations on foreign-invested conformity assessment bodies with China both bilaterally and during meetings of the WTO's TBT Committee. At the December 2012 JCCT meeting, China confirmed that eligible foreign-invested testing and certification entities registered in China can participate in CCC Mark-related work and that China's review of applications from foreign-invested entities will use the same conditions as those applicable to Chinese domestic entities.

In 2013, the United States pressed China to move ahead to seek new testing and certification entities for CCC Mark-related work in order to produce practical results from its 2012 announcement that foreign-invested entities are permitted in this sector. At the December 2013 JCCT meeting, China committed that, beginning in Spring 2014, it would use the same conditions that are applicable to domestic entities when reviewing applications from foreign-invested entities registered in China to be designated as CCC Mark testing and certification organizations. Subsequently, in June 2014, CNCA issued a Notice calling for applications for new designated certification bodies to be submitted by

July 25, 2014, and it accepted applications from foreign certification companies.

In 2017, the United States will continue to monitor developments in this area. The United States also will work to further expand the scope of testing and certification activities available to U.S. providers in China.

Medical Devices

Since the creation of China's CCC Mark system, one of the more significant problem areas has been duplicative certification requirements for imported medical equipment. At the April 2006 JCCT meeting, as previously reported, the United States was able to obtain China's commitment to eliminate the redundancies to which imported medical equipment has been subjected. However, China only took steps to address duplicative product testing. China did not address the more burdensome duplicative factory inspection, certification and registration requirements applicable to imported electro-medical equipment or additional product-specific concerns, such as redundancies on border inspections for imported pacemakers.

The United States raised its continuing concerns in this area through various bilateral meetings in 2006, 2007 and 2008, including the JCCT meetings held in December 2007 and September 2008, as well as during the transitional reviews before the TBT Committee in November 2006 and November 2007. In September 2008, CNCA and China's State Food and Drug Administration (SFDA) jointly issued an announcement eliminating redundant testing, fees and factory inspections.

Following further U.S. engagement, in May 2013, China removed eight categories of medical devices from the list of products requiring CCC Mark registration. Since then, the United States has continued to encourage China to take further steps to address duplicative or onerous testing and certification requirements applicable to medical devices.

In April 2009, SFDA circulated for public comment a draft measure intended to supersede the *Administrative Measures on Medical Device Registration*, originally issued in 2004, but did not notify the draft measure, entitled *Regulations on Supervision and Administration of Medical Devices*, to the WTO. The United States subsequently expressed concerns about this draft measure in bilateral discussions with SFDA and during the October 2009 JCCT meeting as well as at the transitional review before the WTO's TBT Committee later that year. At the October 2009 JCCT meeting, China committed to accept a prior approval document of a medical device issued by a foreign country regardless of its exporting origin, country of manufacture or legal manufacture to satisfy any prior approval registration requirement.

In 2012, China issued the third draft of the *Regulations on Supervision and Administration of Medical Devices*. Despite apparent agreement at the October 2009 JCCT meeting that China would reconsider its requirement that a medical device be registered in the country of export before it can obtain approval in China, the draft continued to require prior marketing approval by the country of origin or country of legal manufacture.

In March 2014, China's State Council finalized and published Order No. 650, the *Regulations for the Supervision and Administration of Medical Devices*. The Order expected to result in the creation and update of numerous rules and requirements pertaining to clinical trials, testing, inspections, evaluations, re-registration and post-market surveillance. While China has notified many of the draft implementing rules to the WTO and has solicited public comments on them, the Order itself has not yet been notified to the WTO.

The United States and U.S. industry have raised concerns relating to Order No. 650 and the various implementing rules with the relevant Chinese government authorities, using the JCCT process and meetings of the WTO TBT Committee, among other fora. Particular provisions of concern include the

requirement that a medical device be registered in the country of export before it can obtain approval in China, and new local clinical trial requirements. The lack of necessary transition periods to avoid serious market disruptions is also troubling.

The requirement that a medical device must be registered in the registrant's country of domicile before it can be accepted for registration in China appears to be more stringent than prior policy allowing registrants to submit marketing authorization in the manufacturer's country of origin. In consultations through the JCCT process, SFDA's successor, CFDA, assured the United States that implementation would be effectively the same as the prior requirement and that certification from the country of origin would satisfy the requirement under Order No. 650. However, the United States remains concerned about this requirement, as it places unnecessary market entry delays on imported medical devices, while offering no further assurance regarding the safety and efficacy of the medical devices in question. The lack of registration in the manufacturer's home country or country of export would not necessarily be an indication that a medical device is unsafe.

The United States is also concerned about new clinical trial requirements and CFDA's catalogues of exempted Class II and Class III devices, which do not capture the full range of products that meet the exemption criteria as laid out in Order No. 650. For products not listed in the exemption catalogues, the ways through which foreign manufacturers can demonstrate safety and effectiveness to obtain clinical trial waivers lack clarity and are severely limited. The United States has urged CFDA to expand the ways that foreign companies can demonstrate eligibilities for these exemptions. At the November 2015 JCCT meeting, China agreed to further expand the scope of the medical device clinical trial exemption catalogues and to conduct training for companies applying for clinical trial waivers. China further agreed to improve communication with manufacturers of innovative medical devices by designating dedicated personnel

to provide guidance and to respond promptly upon request. For other types of medical device registration applications, China will conduct weekly group consultations for applicants. At the November 2016 JCCT meeting, China agreed to continue its work in adjusting the exemption catalogues, including through soliciting input from stakeholders.

In 2015, China reinstated and increased registration fees for both medical devices and pharmaceutical products. For Class II medical devices, while foreign manufacturers are required to pay a set amount, registration fees for domestic manufacturers are set by the provincial regulatory authorities and can vary. The United States continues to press relevant Chinese regulatory authorities to ensure equitable treatment and access for U.S. medical device manufacturers and to keep the registration fees at a reasonable level. The United States also has pressed China to establish concrete metrics to ensure that the performance of China's regulatory authorities in reducing product approval delays, given the additional resources flowing from the substantial registration fees. At the November 2015 JCCT meeting, China agreed to publish annual reports evaluating how its registration and approval processes for pharmaceuticals and medical devices are performing.

Separately, in April 2009, AQSIQ circulated draft *Regulations on the Recall of Defective Products*, which would apply to medical devices. Given that the Ministry of Health and SFDA began a process in 2008 to develop a recall system that would also cover medical devices, the United States became concerned about the possibility of redundant recall procedures. In bilateral discussions with China during the run-up to the October 2009 JCCT meeting, as well as at the transitional review before the TBT Committee, held in early October 2009, the United States raised its concerns. At the October 2009 JCCT meeting, China indicated that it would ensure that its product recall procedures for medical devices would not be redundant and that the Ministry of Health and SFDA would be the relevant regulatory authorities for medical device recalls. Since 2010,

U.S. industry has not reported problems with the medical device recall system. In 2017, the United States will continue to monitor developments in this area to ensure that China's regulatory approach is consistent with China's JCCT commitments.

Cosmetics

In December 2013, CFDA issued a notice requiring foreign cosmetics manufacturers to submit a certificate of free sale establishing that an imported product is also being sold in the country of origin. As many cosmetics products are manufactured globally and designed specifically for particular destination markets, this new requirement amounted to an effective ban on many imported cosmetics normally sold in China and contributed to severe time-to-market delays. The United States has raised concerns with China about this new requirement in both bilateral meetings and before the WTO TBT Committee.

In November 2014, CFDA released a draft measure, the *Regulations on the Supervision and Administration of Cosmetics*, for public comment. U.S. industry had concerns about several provisions in this draft measure, including provisions that appeared to contain unfair requirements for foreign products. For example, the draft measure retained the certificate of free sale requirement for imported cosmetics. It also generated concerns relating to product safety determinations and ingredient management and treatment of confidential business information during claims substantiation.

Later that same month, CFDA issued another draft measure, the *Administrative Measures on Cosmetic Labeling*, for public comment. This draft measure poses many concerns for the U.S. industry, including a blanket ban of over-labels on cosmetics packages, which would require foreign manufacturers to re-design packages specifically for the Chinese market. This requirement could result in high production costs and lengthy time-to-market delays, as well as a loss of brand equity.

In coordination with U.S. industry, the United States has been engaging with CFDA in order to highlight U.S. industry's concerns regarding the two November 2014 draft measures. It appears that China has since placed the draft *Administrative Measures on Cosmetic Labeling* on hold. In addition, in July 2015, the SCLAO released a revised draft *Cosmetics Supervision and Administration Regulation* for public comment. The revised draft adopts a number of practices welcomed by international cosmetics companies, including changes more in line with international practices relating to the management of product safety determinations and the notification of new ingredients, as well as a reduction in the number of cosmetics products classified as special. At the same time, there are remaining concerns on claims management, given unclear provisions as to how confidential business information will be addressed in substantiation.

In order to strengthen mutual understanding and cooperation, at the November 2015 JCCT meeting, the United States and China agreed to hold a Cosmetics Regulatory Dialogue in the first half of 2016. This dialogue included participation by government officials from the relevant regulatory authorities and other interested ministries as well as private sector representatives and was designed to facilitate the exchange of views on various issues relating to administrative regulations, departmental rules and regulatory practices in the area of cosmetics. At the November 2016 JCCT meeting, the United States and China agreed to hold another Cosmetics Regulatory Dialogue in the first half of 2017. This dialogue will include participation by government officials and stakeholders, including industry experts, and will be designed to enhance mutual understanding of administrative regulations, departmental rules and regulatory practices in the area of cosmetics and to promote consumer safety.

China RoHS

The United States continues to be concerned by China's *Administrative Measures for Controlling*

Pollution Caused by Electronic Information Products, issued by MIIT and several other Chinese agencies effective March 2007. This measure is modeled after existing EU regulations that restrict hazardous substances in electronic products and is known as "China RoHS." While both the EU regulations and China's regulations seek to ban lead and other hazardous substances from a wide range of electronic products, there are significant differences between the two regulatory approaches.

Throughout the process of developing the China RoHS regulations, there was no formal process for interested parties to provide comments or consult with MIIT, and as a result foreign stakeholders had only limited opportunity to comment on proposals or to clarify MIIT's implementation intentions. China did eventually notify the regulations to the TBT Committee, but the regulations did not provide basic information such as the specific products for which mandatory testing will be required or any details on the applicable testing and certification protocols, generating concern among U.S. and other foreign companies that they would have insufficient time to adapt their products to China's requirements and that in-country testing requirements would be burdensome and costly.

In October 2009, China issued for public comment its first draft catalogue, covering electronic information products that will be subject to hazardous substance restrictions and mandatory testing and conformity assessment under the China RoHS regulations. The draft catalogue, which was subsequently finalized and issued in final form, included mobile phones, other phone handsets and computer printers and was supposed to come into force ten months after its adoption. However, information on the applicable testing, certification and conformity assessment regime was not included in either the draft or final catalogue.

China subsequently proposed revisions to the original China RoHS regulations. Specifically, in October 2010, China notified the draft *Measures for*

the Administration of the Pollution Control of Electronic or Electrical Products to the WTO's TBT Committee and also solicited public comment on it. China has not yet finalized this measure.

In May 2010, MIIT and CNCA jointly issued the *Opinions on the Implementation of the National Voluntary Certification Program for Electronic Information Products Subject to Pollution Control*, which announced a voluntary program to certify electronic information products to the China RoHS limits established for six substances. More recently, MIIT and CNCA indicated that they intend to encourage electronic information product manufacturers, sellers and importers to take advantage of the program's financial and tax incentives and priority in government procurement. MIIT and CNCA began implementing this voluntary program in November 2011.

In July 2012, MIIT posted on its website another draft revision of the China RoHS regulations for public comment, and U.S. industry submitted comments on it. To date, MIIT has not finalized this draft revision.

In January 2016, MIIT announced a new RoHS measure that expands both the set of restricted chemicals as well as the scope of products subject to RoHS restrictions, effective July 2016. This expansion was of serious concern to manufacturers in the United States, given that it requires new labeling and certification procedures for many products. Despite a detailed frequently asked questions (FAQ) document issued by MIIT in May 2016 and the since-passed July 2016 implementation date, it remains unclear how China will proceed with implementation of the new RoHS measure. Throughout 2016, the United States engaged China, urging it to extend the deadline for manufacturers to comply with the requirements set forth in the new RoHS measure and to take steps to ensure that the new RoHS measure will not disrupt commerce. The United States will continue to actively engage China in this area in 2017.

TRANSPARENCY

China has made progress but still does not appear to notify all new or revised standards, technical regulations and conformity assessment procedures as required by WTO rules.

In the area of transparency, AQSIQ's TBT inquiry point, established shortly after China acceded to the WTO, has continued to be helpful to U.S. companies as they try to navigate China's system of standards, technical regulations and conformity assessment procedures. In addition, China's designated notification authority, MOFCOM, has been notifying proposed technical regulations and conformity assessment procedures to the TBT Committee so that interested parties in WTO members are able to comment on them, as required by the TBT Agreement.

However, in 2016, as in prior years, almost all of the notified measures have emanated from AQSIQ, SAC or CNCA and have rarely included measures from other agencies that appear to require notification, such as MOH, MIIT, the Ministry of Environmental Protection and CFDA. Several years ago, in part to address this problem, China had reportedly formed a new inter-agency committee, with representatives from approximately 20 ministries and agencies and chaired by AQSIQ, to achieve better coordination on TBT (and SPS) matters, but progress has been inconsistent in this area.

As a result, some of China's TBT measures continue to enter into force without having first been notified to the TBT Committee, and without foreign companies having had the opportunity to comment on them or even being given a transition period during which they could make necessary adjustments. In addition, as the United States has consistently highlighted during regular meetings and the annual transitional reviews before the TBT Committee, the comment periods established by China for the TBT measures that have been actually notified continue to be unacceptably brief in some cases. In other cases, some U.S. companies have

reported that even when sufficient time was provided, written comments submitted by U.S. and other foreign interested parties seemed to be wholly disregarded. In still other cases, insufficient time was provided for Chinese regulatory authorities to consider interested parties' comments before a regulation was adopted.

Other Internal Policies

STATE-OWNED AND STATE-INVESTED ENTERPRISES

The Chinese government has heavily intervened in investment and other strategic decisions made by state-owned and state-invested enterprises in certain sectors.

While many provisions in China's WTO accession agreement indirectly discipline the activities of state-owned and state-invested enterprises, China also agreed to some specific disciplines. In particular, it agreed that laws, regulations and other measures relating to the purchase of goods or services for commercial sale by state-owned and state-invested enterprises, or relating to the production of goods or supply of services for commercial sale or for non-governmental purposes by state-owned and state-invested enterprises, would be subject to WTO rules. China also affirmatively agreed that state-owned and state-invested enterprises would have to make purchases and sales based solely on commercial considerations, such as price, quality, marketability and availability, and that the government would not influence the commercial decisions of state-owned and state-invested enterprises.

In the first few years after China's accession to the WTO, U.S. officials did not hear many complaints from U.S. companies regarding WTO compliance problems in this area, although a lack of available information made it a difficult area to assess. However, after China's establishment of SASAC in 2003, it became evident that the Chinese government was intent on heavily intervening in a broad range of decisions related to the strategies,

management and investments of state-owned enterprises. SASAC was specifically created to represent the state's shareholder interests in state-owned enterprises, and its basic functions include guiding the reform of state-owned enterprises, taking daily charge of supervisory panels assigned to large state-owned enterprises, appointing and removing chief executives and other top management officials of state-owned enterprises, supervising the preservation and appreciation of value of state-owned assets, reinvesting profits and drafting laws, regulations and departmental rules relating to the management of state-owned assets.

In December 2006, the State Council issued the *Guiding Opinions on Promoting the Adjustment of State-owned Assets and the Restructuring of State-owned Enterprises*, which calls on SASAC to "enhance the state-owned economy's controlling power," "prevent the loss of state-owned assets," encourage "state-owned capital to concentrate in major industries and key fields relating to national security and national economic lifelines" and "accelerate the formation of a batch of predominant enterprises with independent intellectual property rights, famous brands, and strong international competitiveness." The decree then specifically identifies seven "strategic" industries, where state capital must play a leading role in every enterprise. These industries include civil aviation, coal, defense, electric power and grid, oil and petrochemicals, shipping and telecommunications. The decree also provides that key enterprises in "pillar" industries must remain under state control. These industries include automotive, chemical, construction, equipment manufacturing, information technology, iron and steel, nonferrous metals, and surveying and design, among others.

Particularly since the start of the global economic downturn in late 2008, state-owned enterprises at the central government level have been aggressively acquiring and merging with other central state-owned enterprises as well as provincial and local state-owned enterprises and private enterprises. According to one Chinese government statement, 82

percent of central state-owned enterprises' assets are concentrated in the petro-chemicals, electric power and grid, defense, telecommunications, transport, mining, metallurgy and machinery sectors. Central state-owned enterprises also supply almost all of the crude oil, natural gas, ethylene and basic telecommunication services for China's economy.

In October 2008, China's National People's Congress passed the *Law on State-owned Assets of Enterprises*, which became effective in May 2009. The objectives of this law are to safeguard the basic economic system of China, consolidate and develop China's state-owned enterprise assets, enable state-owned enterprises to play a dominant role in the national economy, especially in "key" sectors, and promote the development of China's "socialist market economy." The law calls for the adoption of policies to promote these objectives and to improve the management system for state-owned assets. It also addresses SASAC's role, the rights and obligations of state-owned enterprises, corporate governance and major matters such as mergers, the issuance of bonds, enterprise restructuring and asset transfers. The law further stipulates that the transfer of state assets to foreigners should follow relevant government policies and shall not harm national security or the public interest.

In March 2010, SASAC issued a potentially far-reaching measure, the *Interim Provisions on Guarding Central State-Owned Enterprises' Commercial Secrets*, effective as of the date of its issuance. This measure appears to implement the *Law on Guarding State Secrets*, which the National People's Congress amended in 2009. It is unclear why the commercial secrets of state-owned enterprises need to be protected through a measure applicable only to state-owned enterprises, when the commercial secrets of all enterprises in China are already subject to protection.

In July 2010, the Central Committee of the Communist Party and the State Council issued the *Opinions on Further Promoting the Implementation of the "Three-Major One-Large" Decision-making*

System. This measure requires state-owned enterprises to establish a collective decision-making system in which the Communist Party plays a significant role in major business decisions, major personnel changes and major project arrangements (known as the “three majors”). It also requires the movement of large amounts of funds (the “one large”) to be decided collectively by the leadership team, which includes representatives from the Communist Party.

Separately, the Chinese government also has issued a number of measures that restrict the ability of state-owned and state-invested enterprises to accept foreign investment, particularly in key sectors. Some of these measures are discussed below in the Investment section, and include restrictions on foreign investment not only in the public sector but also in China's private sector.

Particularly in recent years, the United States has sought to engage China on these and a variety of other issues related to state-owned enterprises. The United States has used bilateral avenues such as the Economic Track of the S&ED and the JCCT process as well as meetings at the WTO, principally through the Subsidies Committee and the Committee on Government Procurement.

At the May 2012 S&ED meeting, the United States obtained commitments from China designed to help create a more level playing field for U.S. enterprises competing against China's state-owned enterprises. China committed to providing non-discriminatory treatment to all enterprises, regardless of type of ownership, in terms of credit, taxation, and regulatory policies. China also agreed to increase the number of state-owned enterprises that pay dividends as well as to increase the amount of dividends actually paid. In addition, China agreed that it would encourage listed state-owned enterprises – which include China's largest and most profitable state-owned enterprises – to increase the portion of profits that they pay out in dividends so as to be in line with market levels.

Throughout 2013, using the S&ED and JCCT processes, the United States pressed China to eliminate subsidies primarily benefitting state-owned enterprises engaged in commercial activities. The United States also pressed China to take steps to improve corporate governance, including by ensuring that there is no government or political involvement in the management of these enterprises or in their employment decisions.

According to 2013 Chinese government statistics, the assets of state-owned enterprises account for 41 percent of the total assets of Chinese industrial enterprises, representing a significant decrease from the 1978 figure of 92 percent. Nevertheless, the continuing concentration of state-owned enterprises in key sectors has meant that their economic influence has not decreased correspondingly.

In November 2013, as previously reported, the Third Plenum Decision endorsed a number of far-reaching economic reform pronouncements, which called for making the market “decisive” in allocating resources, reducing Chinese government intervention in the economy, accelerating China's opening up to foreign goods and services, and improving transparency and the rule of law to allow fair competition in China's market. It also called for reforming China's state-owned enterprises. While these pronouncements do signal a high-level determination to accelerate needed economic reforms, they do not appear designed to reduce the presence of state-owned enterprises in China's economy. Rather, in the case of state-owned enterprises, the reform objectives are to consolidate and to strengthen those enterprises and to place them on a more competitive footing, both in China and globally.

At the July 2014 S&ED meeting, China did agree to incremental reforms for state-owned enterprises. Specifically, it committed to further deepen the reform of state-owned enterprises by improving and standardizing modern corporate governance structure and by reasonably increasing the proportion of market-based recruitment of

management personnel for state-owned enterprises. China also pledged to increase significantly the dividends that state-owned enterprises pay to the government for social spending, reaching 30 percent by 2020.

Nevertheless, the Third Plenum Decision has not yet led to significant reform of state-owned enterprises, as new policies were still being formulated. In August 2015, China's State Council issued the *Opinions on Comprehensive State-Owned Enterprise Reform*, a measure that contains a number of important objectives. The ultimate significance of this measure will be determined by China's implementation, of which there is not much evidence to date. The United States has sought intensive dialogue with China on state-owned enterprise governance issues, but so far China has rebuffed U.S. requests, although China has indicated a willingness to apprise the United States of state-owned enterprise reform developments on an ongoing basis.

In September 2016, SASAC and MOF jointly released the reportedly State Council-approved *Implementing Plan for Perfecting Central Enterprise Functional Classification and Performance Evaluation*, which announces that central state-owned enterprises will be categorized as commercially driven enterprises, strategic enterprises or public-interest enterprises, subject to different performance evaluation criteria. While the focus for commercial state-owned enterprises is to be on reasonable returns on capital, this measure also provides that returns will be satisfactory if these enterprises need to, for example, safeguard national security (meaning not only national defense security, but also energy and resource security, food security and cyber and information security), provide public services, contribute to the development of strategic emerging industries or implement major "go-global" programs. This approach to commercial state-owned enterprises indicates that it may be challenging for China to meet its May 2012 S&ED commitment to develop a market environment of fair competition for enterprises of all kinds of ownership and to

provide them with non-discriminatory treatment in terms of credit provision, taxation incentives and regulatory policies.

In 2017, the United States will continue to address the growing number of issues relating to state-owned enterprises in China in order to ensure that China fully adheres to its WTO obligations and that the actions of the Communist Party, the Chinese government and China's state-owned enterprises do not impede the ability of U.S. firms to invest in China and compete with China's state-owned enterprises in China and other markets. The United States also will continue to work to promote positive reforms called for by the Third Plenum Decision.

STATE TRADING ENTERPRISES

It is difficult to assess the activities of China's state trading enterprises, given inadequate transparency and China's failure to meet the WTO's detailed reporting requirements for state trading enterprises.

In its WTO accession agreement, China agreed to disciplines on the importing and exporting activities of state trading enterprises. China committed to provide full information on the pricing mechanisms of state trading enterprises and to ensure that their import purchasing procedures are transparent and fully in compliance with WTO rules. China also agreed that state trading enterprises would limit the mark-up on goods that they import in order to avoid trade distortions.

Since China's WTO accession, the United States and other WTO members repeatedly have sought information from China on the pricing and purchasing practices of state trading enterprises, principally through the transitional reviews at the WTO. However, China has only provided general information, which does not allow a meaningful assessment of China's compliance efforts.

China also has not been making notifications under Article XVII:4(a) of the GATT 1994 and paragraph 1 of the Understanding on the Interpretation of Article

XVII of the GATT 1994, which requires China to notify its state trading enterprises. Prior to this year, China had not submitted a notification since 2003, despite the emergence of new state trading enterprises in subsequent years.

In September 2014, after failing to persuade China to submit an up-to-date notification of its state trading enterprises, the United States submitted a counter notification to the Working Party on State Trading Enterprises pursuant to paragraph 4 of the Understanding on the Interpretation of Article XVII of the GATT 1994. In this counter notification, the United States identified 153 state trading enterprises, including 44 state trading enterprises not previously notified by China, and provided detailed information on the establishment and operations of these enterprises for the benefit of other WTO members and the public.

In October 2015, China finally submitted a notification addressing its state trading enterprises. However, this notification did not include much of the detailed information envisioned by the WTO's notification requirement.

GOVERNMENT PROCUREMENT

While China is moving slowly toward fulfilling its commitment to accede to the GPA, it is maintaining and adopting government procurement measures that give domestic preferences.

The WTO Agreement on Government Procurement or GPA, is a plurilateral agreement that currently covers the United States and 46 other WTO members. The GPA applies to the procurement of goods and services by central and sub-central government agencies and government enterprises specified by each party, subject to specified thresholds and certain exceptions. It requires GPA parties to provide MFN and national treatment to the goods, services and suppliers of other GPA parties and to conduct their procurement in accordance with procedures designed to ensure

transparency, fairness and predictability in the procurement process.

China is not yet a party to the GPA. It committed, in its WTO accession agreement, to initiate negotiations for accession to the GPA "as soon as possible." Until it completes its accession to the GPA, China has committed in its WTO accession agreement that all of its central and local government entities will conduct their procurements in a transparent manner. China also agreed that, where it opens a procurement to foreign suppliers, it will provide MFN treatment by allowing all foreign suppliers an equal opportunity to participate in the bidding process.

GPA Accession

U.S. firms have made clear that China's timely GPA accession is a top priority for them. As a result, shortly after China became an observer to the WTO Committee on Government Procurement in February 2002, the United States began pressing China both bilaterally and in WTO meetings to move as quickly as possible toward GPA accession.

At the April 2006 JCCT meeting, China agreed to initiate GPA negotiations no later than December 2007. China subsequently initiated negotiations on its accession to the GPA in December 2007 with the submission of its application for accession and its initial offer of coverage, known as its Appendix I Offer. In May 2008, the United States submitted its Initial Request for improvements in China's Initial Appendix I Offer, and other GPA parties submitted similar requests. In September 2008, China submitted its responses to the Checklist of Lists for Provision of Information Relating to Accession. In 2009, the United States held three rounds of negotiations with China on the terms and conditions of China's GPA accession. In addition, at the July 2009 S&ED meeting, China agreed to submit a report to the WTO's Government Procurement Committee, before its October 2009 meeting, setting out the improvements that China would make in its revised

offer. In October 2009, China submitted the report, which indicated that improvements to its offer would provide for the coverage of more entities, goods and services and lower thresholds. Subsequently, following further bilateral engagement by the United States, China committed during the October 2009 JCCT meeting to submit a revised offer as early as possible in 2010.

In 2010, the United States held three more rounds of negotiations with China on the terms and conditions of China's GPA accession and the development of its government procurement system. In addition, the United States submitted questions to China on its responses to the Checklist of Lists for Provision of Information Relating to Accession. At the May 2010 S&ED meeting, China committed to submit its first Revised Offer in July 2010, as it later did. The United States then submitted its Second Request for improvements in China's proposed coverage of government procurement in September 2010.

At the December 2010 JCCT meeting, the United States obtained China's commitment to accelerate its accession to the GPA, as China agreed to work with provincial and local governments and to submit a robust revised offer of coverage in 2011. During President Hu's January 2011 visit to Washington, China expressly committed that its next revised offer would include sub-central entities. Subsequently, China reiterated that it would submit a second revised offer in 2011, which it did in November 2011.

In 2011, the United States held three rounds of negotiations with China on its accession to the GPA. The negotiations included U.S. experts who explained the U.S. government procurement system and the implementation of U.S. commitments under the GPA. The negotiations also focused on the coverage of government enterprises under the GPA, with the United States requesting that China add state-owned enterprises to its GPA coverage.

At the May 2012 S&ED meeting, China committed to submit "a new comprehensive revised offer that

responds to the requests of the GPA parties . . . before the [GPA] committee's final meeting in 2012." China subsequently submitted its third revised offer in November 2012. This revised offer falls short of the coverage provided by the United States and other GPA parties, as China responded to few requests made by GPA parties. These requests had sought to extend coverage to state-owned enterprises, include additional services coverage, eliminate broad exclusions and significantly expand coverage of sub-central entities. The United States, the EU and other GPA parties described the revised offer as highly disappointing, both in terms of scope and coverage. At the December 2012 JCCT meeting, China agreed to engage seriously with the United States on outstanding core issues relating to the scope of projects that qualify as government procurement and the extent to which state-owned enterprises in China engage in government procurement activities.

In 2013, using a new mechanism for technical discussions with China established through the S&ED process, the United States secured two commitments from China in an effort to expedite China's accession to the GPA while continuing to push for robust terms that are comparable to the coverage of the United States and other GPA parties. At the July 2013 S&ED meeting, China agreed to submit by the end of 2013 a new revised offer to join the GPA. China followed through by submitting its fourth revised offer, which amongst other improvements contained lower thresholds and expanded sub-central coverage, among other improvements. However, even with these improvements, China's offer remains short of the coverage provided by other GPA parties.

At the December 2013 JCCT meeting, China agreed to accelerate its GPA accession negotiations and submit in 2014 an additional revised offer that is on the whole commensurate with the coverage of GPA parties. In December 2014, China tabled a revised offer consistent with timeline agreed at the December 2013 JCCT meeting. The offer included

improvements in a number of areas, including thresholds, entity coverage and services coverage. Nevertheless, it was not on the whole commensurate with the coverage of GPA parties and remains far from acceptable to the United States and other GPA parties, as significant deficiencies remain in a number of critical areas including thresholds, entity coverage, services coverage and exclusions.

In 2017, the United States will continue to use the mechanism for technical discussions established by the S&ED process to work with China, and it also will continue to consult and coordinate with other interested GPA parties. The United States' goal is to bring about China's accession to the GPA as expeditiously as possible and on robust terms that are comparable to the coverage of the United States and other GPA parties.

China's Government Procurement Regime

In January 2003, China implemented its *Government Procurement Law*, which generally reflects the GPA and incorporates provisions from the United Nations Model Law on Procurement of Goods. However, China's *Government Procurement Law* also directs central and sub-central government entities to give priority to "local" goods and services, with limited exceptions, as China is permitted to do, because it is not yet a party to the GPA. China envisioned that its *Government Procurement Law* would improve transparency, reduce corruption and lower government costs. This law was also seen as a necessary step toward reforming China's government procurement system in preparation for China's accession to the GPA. Since the adoption of the *Government Procurement Law*, MOF has issued various implementing measures, including regulations that set out detailed procedures for the solicitation, submission and evaluation of bids for government procurement of goods and services and help to clarify the scope and coverage of the *Government Procurement Law*. MOF also issued measures relating to the announcement of government procurements and the handling of

complaints by suppliers relating to government procurement.

It is notable, however, that the *Government Procurement Law* does not cover most public works projects, which represent at least one-half of China's government procurement market. Those projects are subject to a different regulatory regime, established by China's *Tendering and Bidding Law*, which entered into force in January 2000. In September 2009, the State Council circulated NDRC's draft regulations implementing the *Tendering and Bidding Law* for public comment. In October 2009, the United States submitted written comments on these draft regulations in which it emphasized, among other things, the need for greater clarification of the relationship between the *Tendering and Bidding Law* and China's *Government Procurement Law*, and the need to define "domestic products." In December 2011, the State Council issued the final implementing regulations for the *Tendering and Bidding Law*, which entered into force in February 2012.

As previously reported, beginning in 2003, the United States expressed concerns about policies that China was developing with regard to government procurement of software. In 2003, the United States specifically raised concerns about MOF implementing rules on software procurement, which reportedly contained guidelines mandating that central and local governments – the largest purchasers of software in China – purchase only software developed in China to the extent possible. The United States was concerned not only about the continuing access of U.S. software exporters to China's large and growing market for packaged and custom software – \$7.5 billion when the MOF rules went into effect – but also about the precedent that could be established for other sectors if China proceeded with MOF's proposed restrictions on the purchase of foreign software by central and local governments. At the July 2005 JCCT meeting, China indicated that it would indefinitely suspend its drafting of implementing rules on government software procurement.

Subsequently, in 2007 and 2008, the United States grew concerned with statements and announcements being made by some Chinese government officials indicating that state-owned enterprises should give priority to the purchase of domestic software. In response, at the September 2008 JCCT meeting, China clarified that its formal and informal policies relating to software purchases by Chinese enterprises, whether state-owned or private, will be based solely on market terms without government direction.

Meanwhile, in December 2007, one day before China tabled its Initial Appendix I Offer in connection with its GPA accession, MOF issued two measures that would substantially restrict the Chinese government's purchase of foreign goods and services. The first measure, the *Administrative Measures for Government Procurement on Initial Procurement and Ordering of Indigenous Innovative Products*, was directed at restricting government procurement of "indigenous innovative" products to "Chinese" products manufactured within China. The central government and provincial governments followed up by creating catalogues of qualifying "indigenous innovation products." The second measure, the *Administrative Measures for Government Procurement of Imported Products*, severely restricted government procurement of imported foreign products and technologies. While China may maintain these measures until it completes its GPA accession, the United States has raised strong concerns about them, as they run counter to the liberalization path expected of a WTO member seeking to accede to the GPA.

In 2009, China reinforced its existing "Buy China" measures at the central, provincial and local government levels. For example, in May 2009, MIIT issued a circular entitled *Government Procurement Administration Measures*, which applies to MIIT and its direct subsidiaries. The measure required entities engaging in government procurement to give priority to domestic products, projects and services as well as to indigenous innovation products, except where the products or services cannot be produced

or provided in China or are for use outside of China. Similarly, in May 2009, nine central government ministries and agencies jointly issued the *Opinions on Further Strengthening Supervision of Tendering and Bidding Activities in Construction Projects*, which included a "Buy China" directive for all projects under China's stimulus package. This directive specifically requires that priority be given to "domestic products" for all government-invested projects, unless the products are not available in China, cannot be purchased on reasonable commercial terms in China or are for use abroad.

Using the S&ED and JCCT processes in 2009, the United States obtained important commitments from China that, if implemented, should lead to a government procurement regime that is more favorable to foreign-invested enterprises. First, during the July 2009 S&ED meeting, China committed to treat products produced in China by foreign-invested enterprises the same as products produced in China by Chinese enterprises for purposes of its *Government Procurement Law*. China later reaffirmed this commitment and further committed during the October 2009 JCCT meeting to issues rules implementing it. In addition, the United States and China agreed to establish a multi-agency working group to conduct regular discussions addressing issues raised by government procurement and by the purchases of state-affiliated enterprises and organizations and private entities pursuing national strategic objectives.

In 2010, China circulated two draft measures intended to implement its *Government Procurement Law*. The first draft measure, the *Regulations to Implement the Government Procurement Law*, was issued by MOF in January 2010. The United States submitted comments in February, in which, among other things, it expressed concern that the draft measure did not provide a GPA-consistent regime. The United States also expressed concern that the draft measure did not provide more specificity about the conduct of government procurement. The second draft measure, the *Administrative Measures for Government Procurement of Domestic Products*,

was issued for public comment in May 2010 by MOF, MOFCOM, NDRC and the General Administration of Customs. In accordance with China's October 2009 JCCT commitment, this draft measure set out the requirements for a product to qualify as a "domestic product." The United States submitted comments on this draft measure in June, in which it expressed concerns about the lack of details regarding how the draft measure would be implemented as well as its broad application.

Separately, in November 2009, MOST, NDRC and MOF issued the *Circular on Launching the 2009 National Indigenous Innovation Product Accreditation Work*, requiring companies to file applications by December 2009 for their products to be considered for accreditation as "indigenous innovation products." This measure provides for preferential treatment in government procurement to any products that are granted this accreditation. Subsequently, the United States and U.S. industry, along with the governments and industries of many of China's other trading partners, expressed serious concerns to China about this measure, as it appears to establish a system designed to provide preferential treatment in government procurement to products developed by Chinese enterprises.

In April 2010, MOST, NDRC and MOF issued a draft measure for public comment, the *Circular on Launching 2010 National Innovation Product Accreditation Work*. The draft measure would amend certain of the product accreditation criteria set forth in the November 2009 measure, but would leave other problematic criteria intact, along with the accreditation principles, application form and link to government procurement. In addition, the draft measure originally was to become effective the day after comments were due. The United States submitted comments in May 2010, in which it asked China to suspend the implementation of the indigenous innovation accreditation system and to engage in consultations with the United States to address U.S. concerns with the system. To date, the draft measure has not been finalized, and the

Chinese authorities have not requested or accepted applications for accreditation.

At the December 2010 JCCT meeting, China took important steps to address some of the U.S. concerns about China's indigenous innovation policies. Specifically, China agreed not to maintain any measures that provide government procurement preferences for goods or services based on the location where the intellectual property is owned or was developed. One month later, during President Hu's visit to Washington in January 2011, China went further by agreeing that it would "not link its innovation policies to the provision of government procurement preferences." Subsequently, at the May 2011 S&ED meeting, China also committed to "eliminate all of its government procurement indigenous innovation products catalogues" when implementing the agreement reached during President Hu's visit. Finally, at the November 2011 JCCT meeting, China announced that the State Council had issued a measure requiring provincial and local governments to eliminate all links between China's innovation policies and government procurement preferences by December 2011. However, recent reports have identified measures that a number of Chinese provincial and local governments have adopted, or have continued to maintain, that call for government procurement preferences for indigenous innovation products.

At the December 2010 JCCT meeting, China also agreed that, in 2011, it would revise a major MIIT catalogue, which covers heavy equipment and other industrial machinery, and that it would not use the revised catalogue for import substitution or the provision of export subsidies or otherwise to discriminate against foreign suppliers. MIIT issued a draft of the revised catalogue for public comment shortly before the November 2011 JCCT meeting, but it has not yet issued a final revised catalogue.

Additionally, in November 2011, MIIT issued the *Management Rules for Model Selection of Official*

Vehicles of the Party and Governmental Organs, which addressed the procurement of official use vehicles. In February 2012, MIIT circulated an accompanying draft *Catalogue of Vehicle Models for Selection for Official Use by Party and Government Organs*. The November 2011 measure conditioned procurement on enterprises investing at least three percent of operating revenue on research and development in China, and on holding the intellectual property rights in China as well as the rights to improve, transfer or license the intellectual property. These criteria ran counter to China's JCCT and S&ED commitments not to require technology transfer, not to link innovation policies to government procurement, and not to make the location of IP ownership or development a condition for government procurement. The draft catalogue, meanwhile, would have excluded vehicles produced by foreign and foreign-invested firms from procurement opportunities. In response to U.S. engagement, China subsequently committed at the 2012 JCCT meeting not to move forward with this initiative.

In 2014, the United States further engaged with China on the draft *Implementation Rules of the Government Procurement Law* and the draft *Administrative Measures for Government Procurement of Domestic Goods*. The United States recommended that China ensure that the provisions contained in these measures allow enough flexibility for Chinese government agencies to continue to procure high-quality items with complex international supply chains at a reasonable price and to avoid disruptions of trade. In January 2015, China issued the final version of the implementing rules, which took effect in March 2015. Consistent with its commitment at the 2011 S&ED meeting, the implementing rules remove a provision calling for measures that accord preferences to indigenous innovation products. The implementing rules also removed a provision that would have treated all intellectual property as a good. However, they still contain a non-exhaustive list of bases according to which future rules and policies could be adopted that discriminate against foreign goods and services.

At the December 2014 JCCT meeting, China confirmed that it will publish for public comment a further draft of the *Administrative Measures for the Government Procurement of Domestic Goods* after revising and improving it on the basis of thorough consideration of various opinions, including achieving cost savings, decreasing administrative burdens and increasing flexibilities.

In April 2016, the MOF released a draft of the *Administrative Measures for the Bidding and Bids for Government Procurement of Goods and Services*. This draft measure builds on China's *Government Procurement Law* and lays out information that should be made available to bidders in the government procurement process and how procuring agencies and procurement officials should evaluate bids to determine a winning bidder. In May 2016, the United States submitted comments on the draft measure. These comments asked for clarifications and provided comments calling on MOF to increase transparency in procedures and timelines for tendering and bidding, create a domestic review or challenge procedure for bidders to utilize, increase predictability for bidders by turning optional provisions into required ones, and promote consistency with requirements of the GPA in order to provide benefits for potential bidders from the United States. To date, China has not provided any direct reply to these comments.

In September 2016, SASAC and MOF jointly released the *Implementing Plan for Perfecting Central Enterprise Functional Classification and Performance Evaluation*, which divides China's central government level state-owned enterprises into three categories for purposes of regulation, i.e., commercial, strategic and public interest. Ensuring coverage of state-owned enterprises that conduct procurements for governmental purposes is critical to China's successful GPA accession. This issue will continue to receive attention from the United States and others going forward.

In 2017, the United States will continue to work with China to move forward on its GPA accession and to

address a range of other government procurement issues. In addition, the United States will continue to monitor the treatment accorded to U.S. suppliers under China's government procurement regime and will continue to urge China to apply its regulations and implementing rules in a transparent, non-discriminatory manner. The United States also will continue to encourage China to develop its government procurement system in a manner that will facilitate its expeditious accession to the GPA.

INVESTMENT

China has revised many laws, regulations and other measures on foreign investment to eliminate WTO-inconsistent requirements relating to export performance, local content, foreign exchange balancing and technology transfer. However, some of the revised measures continue to "encourage" these requirements. Although China continues to consider reforms to its investment regime, including the use of a "negative list," many aspects of China's investment regime, including lack of a substantially liberalized market, maintenance of administrative approvals and the potential for a new and overly broad national security review system, continue to cause foreign investors great concern. China also has issued industrial plans covering the auto and steel sectors that include guidelines that appear to conflict with its WTO obligations. In addition, China has added a variety of restrictions on investment that appear designed to shield inefficient or monopolistic Chinese enterprises from foreign competition.

Upon its accession to the WTO, China assumed the obligations of the Agreement on Trade-Related Investment Measures (TRIMS Agreement), which prohibits investment measures that breach GATT Article III obligations to treat imports no less favorably than domestic products or the GATT Article XI obligation not to impose quantitative restrictions on imports. The TRIMS Agreement thus expressly requires elimination of measures such as those that require or provide benefits for the incorporation of local inputs (known as local content

requirements) in the manufacturing process, or measures that restrict a firm's imports to an amount related to its exports or related to the amount of foreign exchange a firm earns (known as trade balancing requirements). In its WTO accession agreement, China also agreed to eliminate export performance, local content and foreign exchange balancing requirements from its laws, regulations and other measures, and not to enforce the terms of any contracts imposing these requirements. In addition, China agreed that it would no longer condition importation or investment approvals on these requirements or on requirements such as technology transfer and offsets.

China continues to consider a number of reforms to its investment regime. Although China has repeatedly affirmed its plans to further open China to foreign investment, including in the November 2013 Third Plenum Decision and in other key policy documents, such as the November 2015 Fifth Plenum Decision and the 13th Five-year Plan, released in March 2016, China has not followed through on these promises, except in limited instances, and in the case of some promises it seems to be going backwards on access. China also has pursued other actions that discriminate against or otherwise disadvantage foreign investors, including an administrative approval system providing a case-by-case review of any foreign investment. Foreign investors also have expressed great concern that draft Chinese laws and policy statements seem to suggest that China intends to pursue a broad definition of "national security," to include "economic security," under its national security review regime.

In addition, China's investment restrictions are often accompanied by other problematic industrial policies, such as the development of China-specific standards (see the Standards and Technical Regulations section above) and the increased use of subsidies. Many of these policies appear to represent protectionist tools created by the Chinese government's industrial planners to shield inefficient or monopolistic enterprises, particularly those in

which the Chinese government has an ownership interest, from competition. At the same time, foreign investors in China also continue to voice concerns about lack of transparency, inconsistent enforcement of laws and regulations, weak IPR protection, corruption and a legal system that is unreliable and fails to enforce contracts and judgments.

As discussed below, the United States has raised the need for China to substantially liberalize its investment restrictions and related policies in bilateral fora, such as the JCCT and the S&ED, and multilaterally in WTO meetings. The November 2013 Third Plenum Decision, as reinforced by some aspects of the November 2015 Fifth Plenum Decision, affirms China's plan to allow the market to play a decisive role and directs the government to broaden foreign investment access in China, including for a number of services sectors, and to explore the possibility of a mechanism for allowing foreign investment under a "negative list" approach. The 13th Five-year Plan further emphasizes China's plans to expand sector openings, reduce market access barriers and encourage foreign capital. However, for the most part, China has not taken any meaningful steps to implement these pledges.

China's current Foreign Investment Catalogue, as revised in March 2015, did liberalize investment in a few areas, but it did not provide liberalization in most of the areas important to foreign investors, and in some areas it seems to go backwards on market access. China released a draft of a revised Foreign Investment Catalogue in December 2016.

China also is taking steps relating to the development of a negative list that would apply to both domestic and foreign investors. Under this approach, foreign investors also would have to comply with any restrictions that are specific to foreign investment.

In January 2015, MOFCOM released a draft *Foreign Investment Law* that potentially would unify China's existing three general laws applying to foreign

investment and would specifically provide a framework for providing pre-establishment and post-establishment national treatment for foreign investors under a negative list approach. The United States has a number of concerns with the draft law, including the existence of many elements that could be used to prohibit or restrict market access for foreign investors, such as a case-by-case approval system and a new, overly broad national security review.

In October 2015, China's State Council issued the *Opinions on the Implementation of the Market Access Negative List System*, which focuses on the implementation of a negative list under China's investment regime. This measure applies to both domestic and foreign investors and launches negative list pilot programs in select regions in China from December 2015 to December 2017 in order to lay the groundwork for formally introducing a unified nationwide market access negative list system starting in 2018. Of particular concern, the measure also sets forth a broad definition of "national security," which includes factors such as economic, cultural and financial security, for China's regulatory authorities to take into account when implementing the negative list. The United States is also concerned about many other aspects of the proposed national security review, including its application to greenfield investments and the invitation for Chinese competitors to nominate transactions for review.

In March 2016, NDRC and MOFCOM followed up on the October 2015 measure by releasing a draft Market Access Negative List to be piloted in four free trade zones through the end of 2017. Notably, the draft Market Access Negative List seems to be a codification of China's existing regime rather than providing any investment liberalization.

Subsequently, in September 2016, the National People's Congress adopted a decision amending four foreign investment laws and calling for the replacement of China's use of a Foreign Investment Catalogue with the negative list approach to foreign

investment on a nationwide basis. To date, however, it appears that in practice the negative list approach has not yet been followed.

The United States and China have continued to seek to conclude a high-standard BIT. Building on China's commitment at the July 2013 S&ED meeting to negotiate a BIT that will provide national treatment at all phases of investment, including market access (i.e., the "pre-establishment" phase of investment), and will employ a negative list approach in identifying exceptions (meaning that all investments are permitted except for those explicitly excluded), the United States and China have engaged in extensive negotiations, which were ongoing as of December 2016.

Investment Approvals

Since China's accession to the WTO in December 2001, U.S. and other foreign companies have expressed serious concerns about the administrative licensing process in China, both in the context of the foreign investment approval process currently being used by China (about which the United States has serious concerns) and in myriad other contexts. While China took initial steps to improve administrative licensing in 2004 with the issuance of the *Administrative Licensing Law*, which was designed to improve transparency, create uniformity and streamline the licensing process, significant problems remain. U.S. industry reports that, in practice, many Chinese government bodies at the central, provincial and municipal government levels do not comply with this law. U.S. industry also reports that vague criteria and possibilities for delay in the licensing process provide licensing officials with tremendous discretion, thereby creating opportunities for corruption, and sometimes lead to foreign enterprises and products being treated less favorably than their domestic counterparts.

China's maintenance of any type of formal or informal foreign investment approval process is of great concern. As set forth in an extensive study conducted for a U.S. industry association,

confidential accounts from foreign companies indicate that Chinese government officials at times use China's current foreign investment approval process to restrict or unreasonably delay market entry for foreign companies, to require the foreign company to take on a Chinese partner, or to extract valuable, deal-specific commercial concessions as a price for market entry. These same accounts also indicate that the Chinese government officials at times tell the foreign company that it will have to transfer technology, conduct research and development in China or satisfy performance requirements relating to exportation or the use of local content if it wants its investment approved, even though none of these requirements is set forth in Chinese law and China committed in its WTO accession agreement not to impose these requirements.

This situation has been able to persist in part because of the absence of the rule of law in China, which fosters the use of vague and unwritten policies and does not provide for meaningful administrative or judicial review of Chinese regulatory actions, thereby enabling government officials to take unilateral actions without fear of legal challenge. Exacerbating this situation is the fact that foreign companies are hesitant to speak out publicly, or to be perceived as working with their governments to challenge China's foreign investment review practices, because they fear retaliation from Chinese government officials. The U.S. industry association study notes that foreign companies have confidentially reported receiving explicit or implicit threats from Chinese government officials – typically made orally rather than in writing – about possible retaliatory actions that could have severe repercussions for a company's business prospects in China.

In many cases, it appears that Chinese government officials are motivated by China's industrial policy objectives when they use their unchecked power to dictate or influence foreign investment outcomes. With China's state-led economic development model, the government issues five-year plans that

set objectives for virtually every sector of the economy. While these plans in broad terms seek to foster national champions, protect state-owned enterprises, promote indigenous innovation and guide the development of Chinese domestic industry up the value chain, they also include specific guidelines addressing matters such as technology transfer and the use of local content, as well as decisions about industry consolidation, production capacity, product lines and similar decisions normally made by the marketplace.

Even though China has revised a number of laws, regulations and other measures on foreign investment to eliminate requirements relating to export performance, local content, foreign exchange balancing and technology transfer, as China committed to do in its accession agreement, some of the revised measures, for example, continue to encourage technology transfer or the use of local content, without formally requiring it. From the beginning, U.S. companies were concerned that this “encouragement” in practice could amount to a “requirement” in many cases, in light of the high degree of discretion provided to Chinese government officials when reviewing foreign investment applications. Moreover, according to U.S. companies, even without formal encouragement, some Chinese government officials still consider factors such as technology transfer and the use of local content when deciding whether to approve an investment or to take some other action, such as recommend approval of a loan from a Chinese policy bank, which is often essential to the success of a project.

Over the years, the United States and other WTO members, including the EU and Japan, have raised concerns in this area during meetings of the WTO TRIMS Committee. The United States and several other WTO members also highlighted this area during China's Trade Policy Reviews, including the most recent one, which took place in July 2016.

On the bilateral front, the United States has pressed its concerns with technology transfer through the

JCCT and S&ED processes and other avenues. During the February 2012 visit of then-Vice President Xi to the United States, China affirmed that technology transfer and technological cooperation shall be decided by businesses independently and will not be used by the Chinese government as a pre-condition for market access. At the December 2012 JCCT meeting, China also confirmed that it would correct in a timely manner any measures that were inconsistent with this commitment.

Further progress was made at the July 2014 S&ED meeting. There, China committed to treat applicants for administrative licenses and approvals under the same rules and standards as the United States with regard to the resources available to accept and process applications and the number of applications permitted at one time from an applicant, and to strictly implement existing laws and regulations to adequately protect any trade secret or sensitive commercial information provided by the applicant during the administrative licensing or approval process, as required by law.

U.S. companies are encouraged by the overall reduction in license approval requirements and the focus on decentralizing licensing approval processes. To date, however, U.S. companies report that these efforts have only had a marginal impact on their licensing experiences so far.

New Investment Restrictions

The United States and U.S. industry have become particularly concerned about new restrictions on investment being proposed and implemented by China. Often, these restrictions are accompanied by other problematic industrial policies, such as the increased use of subsidies, preferences for using domestic rather than imported goods, and the development of China-specific standards.

In August 2006, China made a further move toward a more restrictive investment regime when it issued new regulations on mergers and acquisitions (M&A) involving foreign investors. These regulations

strengthened MOFCOM's supervisory role over foreign investment, in part by requiring MOFCOM's approval of M&A transactions that it believes impact "national economic security" or involve traditional Chinese brands or well-known Chinese trademarks. Three years later, in July 2009, China issued revised regulations addressing M&A involving foreign investors, without having provided a notice-and-comment period. The revised regulations retain the review criteria from the 2006 regulations.

In December 2006, as discussed above in the State-owned and State-Invested Enterprises section, SASAC, the government entity charged with overseeing China's interests in state-owned enterprises, published a list of key sectors that it deemed critical to the national economy. SASAC committed to restrict foreign participation in these sectors by limiting further foreign investment in state-owned enterprises operating in these sectors.

In August 2007, as discussed above in the State-owned and State-Invested Enterprises section, China enacted its *Anti-monopoly Law*. Among other things, this law called for China to establish a review process to screen inward investment for national security implications. China finally passed a *National Security Law* in July 2015. While this law's stated purpose is to safeguard China's security, it includes sweeping provisions addressing economic and industrial policy.

More generally, U.S. industry has expressed serious concerns about China's increasing use of these and other investment restrictions, which are often seen as protectionist tools used by China's economic planners to shield selected Chinese domestic enterprises, including inefficient or monopolistic enterprises, from foreign competition. U.S. industry views China's investment restrictions – including the restrictions on foreign acquisitions of Chinese companies – as deeply worrisome and counter to the market-oriented principles that have been the basis for much of China's economic success over the past few decades. U.S. industry has observed that these investment restrictions are more likely to

retard the growth and development of the Chinese economy than to accomplish the state planners' ultimate objective of creating internationally competitive domestic enterprises.

In 2016, as in prior years, the United States raised its concerns about China's investment restrictions on multiple occasions, using bilateral mechanisms such as the JCCT process and the Economic Track of the S&ED. The United States also raised investment-related concerns in meetings at the WTO, as it will continue to do in the future, including as part of the Trade Policy Review of China at the WTO, which took place most recently in July 2016.

Foreign Investment Catalogue

Since shortly after China acceded to the WTO, as previously reported, the United States has urged China to liberalize its investment regime and to remove restrictions on industries of key interest to the United States. For the most part, these efforts have yielded little progress.

In 2002 and 2005, the State Council issued revised versions of the *Catalogue Guiding Foreign Investment in Industry* (Foreign Investment Catalogue). These versions of the Foreign Investment Catalogue generally reflected China's decision to adhere to its commitments to open up certain sectors to foreign investment, although notable exceptions involved the importation and distribution of copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs and music (see the Trading Rights section above). In addition, while China continued to allow foreign investment in a number of sectors not covered by its WTO accession agreement, one notable exception to this progress continued to be the area of production and development of genetically modified plant seeds, which China continued to place in the "prohibited" category.

In 2007, the State Council issued a revised Foreign Investment Catalogue, which placed new restrictions

on several industries, including chemicals, auto parts, rare earths processing, biofuel production and edible oil processing, while the prohibitions and restrictions facing copyright-intensive products and genetically modified plant seeds remained in place. From a positive standpoint, the revised Foreign Investment Catalogue encouraged foreign investment in highway cargo transport and modern logistics, while it removed from the “encouraged” category projects of foreign-invested enterprises that export all of their production.

In December 2011, China published another revised Foreign Investment Catalogue, which entered into force in January 2012. The revised Foreign Investment Catalogue made only minor improvements, including by allowing wholly foreign-owned medical establishments and by removing the retailing of over-the-counter medicines from the “restricted” category.

China's most recent revised Foreign Investment Catalogue, issued in March 2015, did liberalize investment in a few areas, including the manufacturing of chemicals and chemical raw materials. However, it did not provide liberalization in most of the areas important to foreign investors, such as services sectors, agriculture, extractive industries and other manufacturing sectors, and in some cases, it seemed to go backwards on access.

In December 2016, China released a draft of a revised Foreign Investment Catalogue for public comment. The United States is currently reviewing the proposed changes in the draft catalogue. While the draft catalogue does not address all areas of importance to foreign investors, it does seem to include certain improvements to the March 2015 Foreign Investment Catalogue.

Automotive Sector

In a separate commitment, China agreed to revise its *Industrial Policy for the Automotive Sector* to make it compatible with WTO rules and principles by the time of its accession. However, China missed this

deadline, and U.S. industry reported that some local officials were continuing to enforce the WTO-incompatible provisions of the policy. Following repeated engagement by the United States and other WTO members, including the EU, Japan and Canada, China issued its new auto policy in May 2004. This policy included provisions discouraging the importation of automobile parts and encouraging the use of domestic technology. It also required new automobile and automobile engine plants to include substantial investment in research and development facilities, even though China expressly committed in its WTO accession agreement not to condition the right of investment on the conduct of research and development.

In 2005, as previously reported, China began to issue measures implementing the new auto policy. One measure that generated strong criticism from the United States, the EU, Japan and Canada was the *Measures on the Importation of Parts for Entire Automobiles*, issued by NDRC in February 2005. This measure imposed charges that unfairly discriminated against imported automobile parts and discouraged automobile manufacturers in China from using imported automobile parts in the assembly of vehicles. This treatment appeared to be inconsistent with several WTO provisions, including Article III of GATT 1994 and Article 2 of the TRIMS Agreement, as well as the commitment in China's accession agreement to eliminate all local content requirements relating to importation. In 2006, the United States, the EU and Canada initiated WTO cases challenging China's treatment of automobile parts, once it had become clear that dialogue would not lead to a satisfactory resolution. A WTO panel and the WTO's Appellate Body both issued decisions in 2008 in favor of the United States and the other complaining parties, finding that China's treatment of automobile parts was WTO-inconsistent. China repealed its discriminatory rules on automobile parts in 2009.

Over the last few years, additional problems began to arise after China's economic planners decided that the Chinese auto industry should focus on

developing expertise in manufacturing so-called new energy vehicles, or NEVs, which include alternative fuel vehicles such as electric, fuel cell and bio-diesel vehicles. With that decision, China began devoting substantial resources – and creating new policies – to assist Chinese automobile enterprises in developing cutting-edge NEV technologies and building domestic brands that could succeed in global markets.

The most significant policies pursued by China can be traced to regulations issued by NDRC in 2007 and by MIIT in 2009 requiring manufacturers of NEVs in China to “demonstrate mastery” over, and hold intellectual property rights in, core NEV technologies. Because China only allows foreign automobile manufacturers to operate in China through joint ventures with Chinese enterprises, and none of these joint ventures can be majority foreign-owned, this requirement effectively requires foreign automobile manufacturers to transfer their core NEV technologies to their Chinese joint venture partners.

The NDRC and MIIT regulations also require NEV manufacturers to establish research and development centers in China. Reportedly, China also was considering additional regulations that would require all NEVs manufactured in China to be sold under Chinese, rather than foreign, brands by 2015. These same reports indicated that China's regulators had already informed foreign automobile manufacturers that their joint ventures must commit to launch Chinese NEV brands in order to get approval for new or expanded production facilities.

All of these regulatory requirements appeared to be inconsistent with commitments that China made in its WTO accession agreement. Specifically, China agreed not to tie investment approvals to the transfer of technology, the conduct of research or the use of local content, and China also agreed to eliminate all restrictions on the types of cars foreign enterprises could produce or sell in China.

China has also pursued related policies similarly designed to promote the development of a Chinese

NEV industry at the expense of foreign enterprises. For example, in March 2011, NDRC issued a draft Foreign Investment Catalogue that proposes a new limitation on foreign ownership in NEV parts manufacturing facilities in China to no more than 50 percent. Previously, foreign automobile parts manufacturers could establish in China as wholly foreign-owned enterprises. Ultimately, in the final Foreign Investment Catalogue that went into effect in January 2012, China narrowed the scope of these proposed investment restrictions, and it applied the 50-percent investment cap only to NEV battery manufacturing facilities.

China also has used a catalogue of approved NEV models to determine eligibility for consumer subsidies and other incentive programs maintained by the Chinese government. It appears that to date domestic but not imported NEVs are included in this catalogue, raising national treatment concerns.

Similarly, municipal government-level restrictions intended to reduce pollution raise national treatment concerns. For example, in November 2013, the Beijing municipal government introduced new license plate restrictions that reserve a proportion of Beijing license plates for Chinese-made NEVs, beginning in 2014. Since then, additional Chinese municipalities have adopted or are considering similar measures.

In 2011, the United States repeatedly raised serious concerns about China's NEV policies during the run-up to the November 2011 JCCT meeting, including during the Industries and Competitiveness Dialogue held under the auspices of the JCCT. The United States also highlighted its concerns about China's NEV policies during the final transitional review before the WTO's TRIMS Committee in October 2011. At the November 2011 JCCT meeting, China committed that it will not require foreign automobile manufacturers to transfer technology to Chinese enterprises or to establish Chinese brands in order to invest in China's market for NEVs. China also committed that foreign-invested enterprises would have equal access to subsidies and other

preferential policies for NEVs and that these policies would conform to WTO rules.

To date, it has been difficult to assess to what degree China has been implementing its November 2011 JCCT commitments. Public announcements by several foreign automobile manufacturers indicate that their joint ventures with Chinese enterprises have been approved by NDRC and MIIT to establish new production facilities in China, and these approvals have coincided with public commitments by the foreign automobile manufacturers to launch new Chinese NEV brands and to establish or expand research and development in China. This pattern of investment approvals is troubling, as it suggests that Chinese regulators may be pressuring foreign automobile manufacturers to establish Chinese brands and to make additional research and development investments in China as conditions for approving new production facilities. A number of other foreign automobile manufacturers have announced plans to manufacture NEVs in China, and therefore the United States will closely monitor developments related to China's commitment not to require technology transfer, as these automobile manufacturers seek regulatory approval for the launch of their NEV models.

In October 2012, MOF, MIIT and MOST issued two new measures establishing a fiscal support fund for manufacturers of NEVs and NEV batteries. Because these ministries issued the measures in final form without having first circulated them in proposed form for public comment, the United States and U.S. industry did not have an opportunity to comment on them before they were finalized. It appears that, in order to qualify for funding under these measures, an enterprise must demonstrate ownership of intellectual property and "mastery" of core NEV technologies and also meet a minimum level of investment in China-based research and development. As foreign automobile manufacturers are required to form 50-percent joint ventures with Chinese partners, these requirements could effectively require them to transfer core NEV technology to their Chinese joint-venture partners in

order to receive the available government funding. These measures therefore raise serious questions in light of China's November 2011 JCCT commitment not to mandate technology transfer and China's May 2012 S&ED commitment to treat intellectual property rights owned or developed in other countries the same as Chinese-owned or Chinese-developed intellectual property rights.

During the run-up to the December 2012 JCCT meeting, the United States pressed its concerns about China's progress in implementing its November 2011 JCCT commitments in numerous bilateral meetings, including the JCCT Industries and Competitiveness Dialogue. The United States also raised concerns about the October 2012 fiscal support measures and, in particular, the conditions that must be satisfied to receive the funds available to manufacturers of NEVs and NEV batteries. The United States continued these efforts in 2014, using the JCCT process, but China has not revised its measures.

In recent years, it appears that China has begun to tie subsidies and other support for manufacturers of NEVs and NEV batteries to lists of qualified manufacturers located in China. For example, the central government and certain local governments provide subsidies in connection with the purchase of NEVs, but they only make these subsidies available when certain Chinese-made NEVs, not imported NEVs, are purchased. China appears to pursue similar policies involving NEV batteries, leading to lost sales by U.S.-based manufacturers. This discriminatory treatment raises serious concerns in light of China's WTO obligations, and the United States has been pressing China through the JCCT process, including the 2016 JCCT process, to repeal or modify the underlying measures.

Two years ago, in 2014, China's regulatory agencies began a review of existing automotive "brand sales measures" affecting the distribution of automobiles and auto parts and aftersales and brand experiences. The United States continues to closely monitor the review of these measures to ensure that any new or

revised measures comply with China's WTO obligations and bilateral commitments.

Steel Sector

In July 2005, China issued a new *Steel and Iron Industry Development Policy*. As previously reported, this policy contains many government mandates pertaining to the commercial behavior of Chinese steel enterprises and created high barriers for potential foreign investors in China's steel sector. The policy also appears to discriminate against foreign equipment and technology imports. Like other measures, this policy encourages the use of local content by calling for a variety of government financial support for steel and iron projects utilizing newly developed domestic equipment. It also calls for the use of domestically produced steel-manufacturing equipment and domestic technologies, despite the commitment that China made in its WTO accession agreement not to condition the right of investment or importation on whether competing domestic suppliers exist.

China's 2005 steel policy is also striking because of the extent to which it attempts to dictate industry outcomes and involve the government in making decisions that should be made by the marketplace. This high degree of government direction regarding the allocation of resources into and out of China's steel industry raises concerns not only because of the commitment that China made in its WTO accession agreement that the government would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, but also more generally because it represents another significant example of China reverting to a reliance on government management of market outcomes instead of moving toward a reliance on market mechanisms. Indeed, this increasing tendency is at the root of many of the WTO compliance concerns raised by U.S. industry.

In June 2010, the State Council published the *Opinions on Strengthening Energy Saving and Emission Reduction and Accelerating Structural*

Adjustment in the Iron and Steel Sector. This measure reiterated existing steel policies, specifically identifying a number of well-known objectives for the sector, such as controlling steel industry growth, strengthening efforts to eliminate outdated capacity, promoting energy savings and emissions reduction, technical innovation, accelerating mergers, disciplining access to iron ore imports and promoting domestic iron ore mining, and encouraging domestic steel producers to explore mining and steel investments abroad.

In July 2010, MIIT released the *Regulations and Conditions of Production and Operation of the Iron and Steel Industry*. These regulations are intended to support the objectives laid out in the State Council's June 2010 measure. They also indicate that small steel mills will be shut down, establish operating standards for larger steelmakers and address issues such as product quality and environmental protection. At the time, steel analysts viewed these regulations as a prelude to China's next five-year steel plan.

In October 2011, MIIT published China's 12th Five-year Plan for the steel industry, covering the period from 2011 to 2015. As the plan itself notes, China's steel production grew from 350 million MT in 2005 to 684 million MT in 2011, with the steel industry accounting for ten percent of national industrial output. Indeed, despite China's goal of eliminating inefficient steel capacity, and despite slowing growth in domestic steel demand, stagnant demand in export markets and significant Chinese steel company losses, steel production in China continued to grow throughout the period of the 12th Five-year Plan. Indeed, the steel industry's rate of growth during this period exceeded the growth rates of the Chinese economy as a whole as well as the global steel industry, and China shifted from being a net importer of steel to being a large net exporter of steel. These developments led many analysts, including the OECD Steel Committee, to raise concerns that significant excess capacity in China may cloud the prospects for the steel industry's profitability, both in China and in other economies.

China's 12th Five-year Plan for the steel industry raised a number of specific concerns. In particular, the plan continues to place the government in the role of closely managing the development of the steel industry. The plan specifies where to build, close or relocate steelmaking capacity, how much to spend on research and development, and even what products Chinese steel producers are to make. In addition, the plan continues to emphasize "self-sufficiency" in steel production and states that continued reliance on imports of certain steel products is a problem to be addressed. For example, the plan appears to set specific targets for Chinese producers' share of the domestic market in high-grade steel products that are currently supplied primarily by foreign steelmakers, including U.S. steelmakers. In the case of automotive steel and silicon steel sheets, the plan sets a goal of Chinese producers supplying 90 percent of the domestic market by 2015. The plan also provides no indication that China's current restrictions on foreign investment are to be liberalized. At the same time, the plan lays out objectives for overseas investment by China's steel producers and explains that incentives will be provided to support investment in foreign iron ore mines and steel plants to create groups with "powerful international competitive strength." Additionally, as envisioned by the plan, China is continuing to support the largest steel companies through subsidies, raw materials export restrictions and other preferential government policies.

Effective October 2012, MIIT issued the *Iron and Steel Industry Normative Conditions*, which serve as the guiding norms for the steelmaking industry in China. These industry norms offer incentives for compliance and disincentives for non-compliance. Qualifying enterprises are entitled to preferential support policies, including bank loans and government grants for technology upgrades, while non-qualifying enterprises may be forced to restructure and local governments are directed to adopt measures to restructure or phase out these enterprises. In 2013, China announced two batches of qualifying steelmaking enterprises that are

entitled to government support. While China has heralded the use of industry norms as a move toward a more "market-oriented" approach to guiding the industry, the MIIT norms maintain a high degree of government direction regarding the allocation of resources toward China's steel industry and demonstrate China's continued reliance on government management of market outcomes.

In October 2013, China's State Council issued the *Guiding Opinions on Resolving the Problem of Severe Excess Capacity* to address excess capacity in the steel, cement, electrolytic aluminum, plate glass and shipbuilding industries. As the measure itself notes, China's current steel capacity dramatically exceeds market demand and, as of the end of 2012, China's steel utilization rate was only 72 percent – much lower than the international average. While the measure aims to rein in excess capacity, it also raises a number of concerns. For example, it encourages banks to provide financing for technology upgrades, and it calls for policies to encourage Chinese steelmakers with excess capacity to relocate their excess capacity abroad, such as tax rebates for equipment and products relocated abroad.

In November 2013, MOF issued a new subsidy measure that provides grants for the "transformation and upgrade" of centrally controlled state-owned enterprises in a handful of industries, including steel. This measure provides grants of up to RMB 500 million (\$82 million) for large projects.

At present, looking back at the time period from 2000 to 2014, the data show that China accounted for more than 75 percent of global steelmaking capacity growth. Currently, China's capacity alone exceeds the combined steelmaking capacity of the EU, Japan, the United States, and Russia. China has no comparative advantage with regard to the energy and raw material inputs that make up the majority of costs for steelmaking, yet China's capacity has continued to grow exponentially and is estimated to have exceeded 1.4 billion MT in 2014, despite weakening demand domestically and abroad. While China's steel production is slowing and China may

produce approximately 2 to 3 percent less steel in 2015 than in 2014, steel demand in China is projected to decrease 5 percent this year. As a result, China's steel exports grew to be the largest in the world, at 93 million MT in 2014, a 50-percent increase over 2013 levels, despite sluggish steel demand abroad. In 2015, there is rising concern that China's steel exports are still growing and may have increased 25 percent in the first ten months of 2015, as compared to the same period in 2014.

The United States has focused its engagement of China on steel issues in the JCCT process, including through the U.S.-China Steel Dialogue, a dialogue established under the auspices of the JCCT shortly after China issued its 2005 steel policy. The two sides have held four Steel Dialogue meetings, which have included participation from U.S. and Chinese steel industry officials, and have sought to increase mutual understanding of the challenges faced by each industry and to discuss strategies for addressing trade imbalances and overcapacity in the steel industry, including the benefits of increased reliance on market mechanisms.

At the WTO, the United States has also pressed its concerns regarding China's steel policy, in regular meetings and through the transitional reviews before the Committee on Import Licensing, the TRIMS Committee, the Subsidies Committee and the Council for Trade in Goods, with support from other WTO members, including Canada, Mexico, the EU and Japan. The United States also focused on China's steel policy in connection with China's first five Trade Policy Reviews at the WTO, held in 2006, 2008, 2010, 2012 and 2014, and in plurilateral fora such as meetings of the OECD Steel Committee.

In particular, the United States and other WTO members, including Canada and Mexico, have called for China to eliminate subsidies to its steel industry, except for those designed to facilitate capacity elimination or to address worker dislocation, to implement steel industry stimulus policies in a manner that encourages domestic consumption rather than exports and does not discriminate

against imports, to eliminate the use of differential VAT rebates and duties on steel exports as a tool of industrial policy, to allow market forces rather than restraints on imports and exports to determine steelmaking raw material input supply and to eliminate restrictions on foreign investment in China's steel industry. Several steel industry associations from North and South America and Europe have pressed similar concerns.

At the July 2014 S&ED meeting, the United States secured a commitment from China to establish mechanisms that strictly prevent the expansion of crude steelmaking capacity and that are designed to achieve, over the next five years, major progress in addressing excess production capacity in the steel sector. In addition, at the December 2014 JCCT meeting, the United States and China held an extended discussion of the root causes of excess capacity, the significant and varied costs associated with it and potential solutions for addressing the type of excess capacity challenges currently confronting China.

At the November 2015 JCCT meeting, China agreed to hold discussions with the United States in 2016 regarding capacity, production and trade in the steel sector and to provide updates on its progress in implementing its July 2014 S&ED commitment to establish mechanisms that strictly prevent the expansion of crude steelmaking capacity and that are designed to achieve major progress in addressing excess production capacity in the steel sector within five years.

This year, at the June 2016 S&ED meeting, China made several further commitments with regard to excess industrial capacity. Specifically, China committed to take effective steps to address the challenges of excess capacity so as to enhance market function and encourage adjustment. With regard to excess capacity in the steel industry, where China's State council had issued guidelines calling for the elimination of 100 to 150 million MT of steel capacity, China committed to undertake further steps to ensure market forces are not constrained,

so that its steel industry develops a stronger market orientation to enhance efficiency, and, in doing so, progressively reduces excess capacity. China also committed to ensure that no central government plans, policies, directives, guidelines, lending or subsidization targets the net expansion of steel capacity. China further committed to adopt measures to strictly contain steel capacity expansion, reduce net steel capacity, eliminate outdated steel capacity and urge the exit of steel production capacity that falls short of environment, energy consumption, quality or safety requirement standards and to actively and appropriately dispose of “zombie enterprises” through bankruptcies and other means. Additionally, China agreed to participate in the global community's actions to address global excess capacity, including by considering the feasibility of forming a global steel forum envisioned to serve as a cooperative platform for dialogue and information-sharing on global capacity developments and on policies and support measures taken by governments.

At the Presidential summit in Hangzhou, in September 2016, the two sides were able to build on the extensive commitments that China made at the June 2016 S&ED meeting to help address excess steel capacity. Specifically, the United States secured China's agreement to support the establishment of a Global Forum on Steel Excess Capacity, with active participation of G-20 members and interested members the OECD, as a cooperative platform for dialogue and information-sharing on global capacity developments and on policies and support measures taken by governments, to be facilitated by the OECD Secretariat. Shortly after the Presidential summit, at a meeting hosted by China as the G20 President, the G20 Leaders issued a communiqué similarly calling for the establishment of a Global Forum on Steel Excess Capacity.

More broadly, the two Presidents also recognized the importance of the establishment and improvement of impartial bankruptcy systems and mechanisms to resolving excess industrial capacity. Importantly, the Chinese side also agreed to

implement bankruptcy laws by continuing to establish special bankruptcy tribunals, further improving the bankruptcy administrator systems and using modern information tools.

Subsequently, at the November 2016 JCCT meeting, building on prior commitments, including ones made in the September 2016 G20 Leaders Communiqué and at the September 2016 summit between President Obama and China's President Xi, the United States secured China's support for the expeditious establishment of the Global Forum on Steel Excess Capacity. Bilaterally, the United States and China also agreed to intensify their dialogue relating to excess capacity in the steel industry.

In December 2016, the new G20 President, Germany, called the first meeting of the Global Forum on Steel Excess Capacity. Participants included G20 members and interested OECD members. It is envisioned that this Global Forum will meet at least twice per year, will examine subsidies and other types of government support that can cause market distortions and can contribute to global excess capacity, and will agree on effective steps to address the challenges of excess capacity in the steel industry so as to enhance market function and encourage adjustment.

In 2017, the United States will continue to engage China, through the JCCT and S&ED processes, at the WTO and in plurilateral fora such as the Global Forum on Steel Excess Capacity and the OECD. The United States also will continue to work with Canada, Mexico and the EU to monitor and support concrete steps by China to rein in its steelmaking capacity.

Aluminum Sector

In 2015, excess capacity in China's aluminum sector contributed to a severe decline in global aluminum prices, harming U.S. producers and workers. As the data show, monthly production of aluminum in China doubled between January 2011 and July 2015 and continues to grow. Large new facilities are being

built with government support, including through energy subsidies. At the November 2015 JCCT meeting, China agreed to intensify discussions with the United States regarding excess capacity in the aluminum sector.

In 2016, the United States pressed China during the months leading up to the S&ED meeting in June to take steps to address excess aluminum capacity. Shortly after the S&ED meeting, the State Council issued guiding opinions on structural adjustment needed for China's non-ferrous metals industries, including the aluminum industry.

Three months later, in September 2016, at the summit meeting between President Obama and President Xi in Hangzhou, excess aluminum capacity was again a focal point. The Presidents acknowledged that excess aluminum capacity had become a global issue and agreed to work together to address it.

At the November 2016 JCCT meeting, the two sides again discussed excess aluminum capacity. The two sides agreed to begin exchanging information as part of their efforts to follow up on the Presidents' directive to work together to address excess aluminum capacity.

In 2017, the United States will continue to engage China bilaterally on the issue of excess aluminum capacity. As part of this effort, the United States also will continue to urge China to take appropriate steps to rein in its primary aluminum capacity.

AGRICULTURE

While China has timely implemented its tariff commitments for agricultural goods, a variety of non-tariff barriers continue to impede market access, particularly in the areas of SPS measures and inspection-related requirements. In addition, China's TRQ system for bulk agricultural commodities does not seem to function consistent with China's WTO accession agreement. It also appears that China is

exceeding its domestic support commitments for certain commodities.

Upon its accession to the WTO, China assumed the obligations of the WTO Agreement on Agriculture, which contains commitments in three main policy areas for agricultural products: market access, domestic support and export subsidies. In some instances, China also made further commitments, as specified in its accession agreement.

In the area of market access, WTO members committed to the establishment of a tariff-only regime, tariff reduction and the binding of all tariffs. As a result of its accession negotiations, China agreed to significant reductions in tariff rates on a wide range of agricultural products. China also agreed to eliminate quotas and implement a system of TRQs designed to provide significant market access for certain bulk commodities upon accession. This TRQ system is very similar to the one governing fertilizers (discussed above in the Import Regulation section). China's goods schedule sets forth detailed rules intended to limit the discretion of the agriculture TRQ administrator – originally the State Development and Planning Commission (SDPC), which is now called NDRC – and to require it to operate with transparency and according to precise procedures for accepting quota applications, allocating quotas and reallocating unused quotas.

In the area of domestic support, the WTO objective is to encourage a shift in policy to the use of measures that minimize the distortion of production and trade. Essentially, WTO members committed to reduce over time the types of domestic subsidies and other support measures that distort production and trade, while remaining free to maintain or even increase support measures that have little or no distorting effect, such as agricultural research or training by the government. China committed to a cap for trade- and production-distorting domestic subsidies that is lower than the cap permitted for developing countries and that includes the same elements that developed countries use in determining whether the cap has been reached.

In the area of export subsidies, WTO members committed to ban the use of these subsidies unless they fall within one of four categories of exceptions. The principal exception allows export subsidies subject to certain reduction commitments. However, like many other WTO members, China agreed to eliminate all export subsidies upon its accession to the WTO and did not take any exceptions.

Another important agricultural area is covered by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), under which China also became obligated. The SPS Agreement establishes rules and procedures regarding the formulation, adoption and application of sanitary and phytosanitary measures, i.e., measures taken to protect against risks associated with plant or animal borne pests and diseases, additives, contaminants, toxins and disease-causing organisms in foods, beverages or feedstuffs. The rules and procedures in the SPS Agreement require that sanitary and phytosanitary measures address legitimate human, animal and plant health concerns, do not arbitrarily or unjustifiably discriminate between WTO members' agricultural and food products, and are not disguised restrictions on international trade. The SPS Agreement requires that the measures in question be based on scientific grounds, developed through risk assessment procedures and adopted with transparency, while at the same time it preserves each member's right to choose the level of protection it considers appropriate with regard to sanitary and phytosanitary risks.

Other WTO agreements also place significant obligations on China in the area of agriculture. Three of the most important ones are GATT 1994, the Import Licensing Agreement and the TBT Agreement, which are discussed above (in the sections on Import Regulation and Internal Policies Affecting Trade).

China also made several additional commitments intended to rectify other problematic agricultural

policies, either upon accession or after limited transition periods. For example, China agreed to permit non-state trading enterprises to import specified TRQ shares of wheat, corn, rice, cotton, wool and vegetable oil, although these products had been subject to import monopolies by state trading enterprises.

China's tariff reductions have encouraged imports, and since China's accession to the WTO China's imports have reached record highs for many agricultural products, largely due to greater demand. At the same time, a variety of non-tariff barriers have continued to impede U.S. agricultural trade with China, particularly in the area of sanitary and phytosanitary measures, where China's actions often have not appeared to be guided by scientific principles, and in the administration of tariff-rate quotas for certain bulk agricultural commodities, where low quota fill persists despite domestic demand for imported products. The United States and China have only been able to resolve some of these issues, and those resolutions have required protracted negotiations.

In 2016, serious problems remained for U.S. exporters, who are faced with non-transparent application of sanitary and phytosanitary measures, many of which have appeared to lack scientific bases and have impeded market access for many U.S. agricultural products. China's seemingly unnecessary and arbitrary inspection-related import requirements also continued to impose burdens and regulatory uncertainty on U.S. agricultural producers exporting to China in 2016, as did the registration requirements that China imposes on U.S. food manufacturers. China's duties on imports of U.S. chicken broiler products, which the United States continues to challenge at the WTO, also disrupted trade.

On the positive side, U.S. agricultural products continued to experience strong sales to China, although they declined from \$24 billion in 2014 to \$20 billion in 2015. U.S. exports also are down about 3 percent through the first ten months of

2016, when compared to the same period in 2015. While China was the United States' largest agricultural export market in 2014, it has since dropped down to become the United States' second largest agricultural export market.

Tariffs

China has timely implemented its tariff commitments for agricultural goods each year.

Tariffs on agricultural goods of greatest importance to U.S. farmers and ranchers were lowered from a 1997 average of 31 percent to 14 percent, in almost all cases over a period of five years running from January 1, 2002, or by January 1, 2006. China did not have to implement any new tariff reductions in 2015, as the last few required tariff reductions on agricultural goods took place in 2008.

The accumulated tariff reductions made by China, coupled with increased demand, contributed to continued healthy exports of certain U.S. products to China in 2016. Exports of some bulk agricultural commodities have increased dramatically in recent years, and continue to perform strongly, including soybeans, as discussed below in the sections on China's Biotechnology Regulations and Tariff-rate Quotas for Bulk Agricultural Commodities. Exports of consumer-oriented agricultural products totaled \$1.9 billion in 2015, down from \$2.4 billion in 2014, but are up 12 percent during the first ten months of 2016, compared to the same period in 2015. Meanwhile, two product categories that fall outside the scope of the WTO Agreement on Agriculture also remained healthy. U.S. exports of forest products to China totaled \$2.1 billion in 2015, down from \$2.7 billion in 2014, but are up 22 percent during the first ten months of 2016, compared to the same period in 2015. U.S. fish and seafood exports to China totaled \$1.0 billion in 2015, down from \$1.2 billion in 2014, and are down 9 percent during the first ten months of 2016, compared to the same period in 2015.

However, the full market access potential of China's tariff cuts was not realized for some products. As

discussed below, a variety of non-tariff barriers continue to impede market access for U.S. agricultural exports to China, particularly exports of consumer-ready and value-added products.

Tariff-rate Quotas on Bulk Agricultural Commodities

China's TRQ system for bulk agricultural commodities does not seem to be consistent with China's WTO accession agreement and is characterized by opaque management practices. In December 2016, the United State launched a WTO case challenging China's administration of TRQs for rice, wheat and corn.

An issue of particular concern involves China's commitments relating to TRQs on bulk agricultural commodities, which include several commodities of particular importance to U.S. farmers, such as wheat, corn and rice. Since SDPC (and later NDRC) began implementing these commitments following China's accession, a series of problems have undermined the market access envisioned by WTO members. NDRC's lack of transparency continues to create significant concern.

As previously reported, in 2002, the first year of this TRQ system, it appeared that SDPC had decided to allocate TRQs in a manner that would protect domestic farm interests and maintain the monopoly enjoyed by state trading enterprises. SDPC operated with only limited transparency, refusing to provide specific details on the amounts and the recipients of the allocations. At the same time, SDPC reserved a significant portion of the TRQs for the processing and re-export trade, despite China's commitment to provide market access and national treatment for imported products. SDPC also allocated a portion of the TRQs for some commodities in smaller than commercially viable quantities, and it employed burdensome licensing requirements.

In 2003, NDRC issued new regulations for shipments beginning January 2004. Key changes included the elimination of separate allocations for general trade

and processing trade, the elimination of certain unnecessary licensing requirements, and the creation of a new mechanism for identifying allocation recipients. At the same time, transparency continued to be problematic, although some improvement did take place for some of the commodities subject to TRQs.

While these systemic changes were taking place, spurred on by sustained U.S. engagement, exports of some bulk agricultural commodities from the United States showed substantial increases, as changes in market conditions created import demand and the TRQ system, at least in part, was used to facilitate imports.

For example, while U.S. exports of wheat to China totaled an unusually high amount of \$495 million in 2004, as the TRQ allocations for wheat did not appear to act as a limiting factor, in subsequent years they declined dramatically. Beginning in 2011, U.S. exports of wheat to China started to climb again, reaching \$1.3 billion in 2013 before dropping precipitously in 2014 to \$194 million and in 2015 to \$160 million. U.S. exports of wheat to China increased by 26 percent during the first ten months of 2016, compared to the same period in 2015.

U.S. exports of corn to China have increased in recent years, growing from \$8 million in 2007 to \$1.3 billion in 2012, before declining to \$974 million in 2013. In 2014, due to China's biotechnology policies, and concurrent with China's decision to liquidate substantial domestic corn stocks, corn exports tumbled to \$83 million. In 2015, U.S. corn exports to China nearly doubled, but remained relatively low compared to previous years. Through the first ten months of 2016, U.S. corn exports to China have declined by 67 percent, compared to the same period in 2015.

Exports of U.S. rice to China have long been hampered by the lack of an agreed phytosanitary protocol. However, if the United States were able to resolve this issue, market access for U.S. rice would

likely still be hampered by the low fill rates for China's rice TRQs.

In February 2016, China submitted its WTO notification on TRQ fill rates for 2013 and 2014. In both 2013 and 2014, China filled less than 50 percent of its TRQ allocation for rice. Currently, the United States does not have market access to fill China's quota for rice. While the United States and China have come to completion of a phytosanitary protocol to allow imports of rice from the United States, China has not given a timeline for signing the protocol, despite numerous high-level requests from the United States.

Throughout 2016, the United States continued to raise concerns about NDRC's TRQ administration, both bilaterally and at the WTO. These concerns related to allocation principles and transparency, among other matters. The TRQs for rice, corn and wheat are of particular concern. Due to China's poorly defined criteria for applicants, unclear procedures for distributing TRQ allocations, and failure to announce quota allocation and reallocation results, traders are unsure of available import opportunities and producers worldwide have reduced market access opportunities. In order to improve this situation, in December 2016, the United States launched a WTO case challenging China's administration of TRQs for rice, wheat and corn. Consultations are expected to take place in 2017.

China's Biotechnology Regulations

China's dysfunctional biotechnology approval process continues to affect trade.

As previously reported, one of the most contentious agriculture trade issues that arose during China's first year of WTO membership involved new rules implementing June 2001 regulations relating to biotechnology safety, testing and labeling. The implementing rules, issued by China's Ministry of

Agriculture (MOA) shortly before China's WTO accession, did not provide adequate time for scientific assessment and the issuance of formal safety certificates for biotechnology products. The U.S. products most affected were soybeans, which had seen exports to China grow to more than \$1 billion in 2001, while corn and other products, such as consumer products made from biotech commodities, remained at risk. Following concerted, high-level pressure from the United States, China agreed to issue temporary safety certificates until formal safety certificates could be issued. China subsequently issued a formal safety certificate for a U.S. biotechnology soybean variety known as Roundup Ready soybeans in February 2004. By the time of the April 2004 JCCT meeting, China had also issued formal safety certificates for six corn events, seven canola events and two cotton events. China issued a formal safety certificate for another corn event a few months later, leaving only one corn event still awaiting formal approval. China issued a formal safety certificate for this last corn event at the time of the July 2005 JCCT meeting.

With some stability added to China's market through the issuance of temporary safety certificates, trade disruptions were minimized, and U.S. exports performed strongly. In 2003, U.S. soybean exports reached a then-record level of \$2.9 billion, representing an increase of 185 percent over 2001. In subsequent years, U.S. soybean exports continued to increase dramatically, as China remained the leading export destination for U.S. soybeans. U.S. soybean exports to China totaled \$14.5 billion in 2014 but then declined to \$10.5 billion in 2015. Through the first ten months of 2016, U.S. soybeans exports to China have increased by 31 percent, as compared to the same time period in 2015.

In November 2006, MOA issued an announcement about the renewal requirements for existing safety certificates covering imported biotechnology crops. Because safety certificates for cotton, soybeans, corn and canola expired beginning in February 2007, it was possible that trade in these products would be disrupted. However, U.S. intervention ensured the

timely renewal of the events that were about to expire.

Meanwhile, other U.S. concerns with China's biotechnology regulations and implementing rules remain. For example, China requires a product to be approved in the country of origin before it can be submitted in China for approval, and China's National Biosafety Committee normally reviews new product applications only during three meetings each year. In 2014, the United States learned that MOA only will issue regulatory decisions on applications once a year, and that MOA considers factors other than science, such as public opinion, when evaluating new biotechnology applications. These practices present significant and unnecessary delays for bringing U.S. goods into the China market. China's lack of clarity on the requirements applicable to products stacked with multiple traits is a cause for additional concern, as are China's sometimes duplicative and unprecedented testing requirements.

In 2007, MOA developed, issued and implemented some troubling new regulations without circulating them for public comment in advance or even consulting with relevant stakeholders such as the United States and U.S. industry. For example, in January 2007, MOA added a new requirement that biotechnology seed companies turn over key intellectual property as part of the application process when seeking safety certificates. MOA later dropped this requirement, although it still unnecessarily requires the submission of other intellectual property. In another example, in March 2007, MOA halted a pilot program, which had been developed over two years of bilateral discussions, aimed at allowing MOA to review products under development in the United States prior to completion of the U.S. approval process. As a result, the MOA approval process can still only begin after the completion of the U.S. approval process. Even if the MOA approval process proceeds quickly, trade may still be disrupted, as importers need time to apply for vessel based safety certificates and Quarantine Inspection Permits, both of which

require valid safety certificates for biotechnology products and can take up to 30 working days.

In 2007, 2008 and 2009, the United States raised its concerns about these developments in several bilateral meetings, including JCCT working group meetings and other bilateral meetings focused on biotechnology issues. At the December 2007 JCCT meeting, China addressed one of the U.S. concerns that had arisen in 2007 when it agreed to eliminate a requirement to submit viable biotechnology seeds for testing during the approval process, which will reduce the possibility of illegal copying of patented agricultural materials.

Disruptions to trade continued to be a concern thereafter due to China's asynchronous approval process, excessive data requests, duplicative requirements, an onerous process for extension of existing certificates and the potential for low-level presence of an unapproved event. In late 2012, China also re-introduced the requirement that biotechnology seed companies must submit viable seed with their biotechnology applications. In addition, an apparent slow-down in issuing approvals generated concern, as approvals were overdue for numerous biotechnology events. At the same time, investment restrictions continued to constrain foreign companies' ability to increase product development in China and to maintain control over important genetic resources.

In 2014, China's regulatory system for biotechnology products became increasingly problematic. For example, China stalled several applications by issuing notices temporarily suspending their approval, citing public opinion and other non-scientific reasons. U.S. exports of corn and dried distillers' grains with solubles, or DDGS, were particularly affected by China's problematic regulatory system.

China had begun rejecting shipments of imported corn in November 2013 because of the detection of an unapproved genetically engineered (GE) event, MIR 162. Subsequently, some traders were able to re-route shipments to other markets, and trade from

U.S. corn shippers to China largely ceased for the whole of 2014, with corn shipments dropping from \$1.3 billion in 2013 to \$84 million in 2014.

In July 2013, the Chinese regulatory authorities notified the United States that U.S. DDGS must be accompanied by a "GMO test report" with an official U.S. government stamp certifying that the product does not contain unapproved GE events. Eventually, China accepted an industry polymerase chain reaction (PCR) test report or certificate statement indicating the use of PCR testing. However, this step did not take place before some U.S. exports of DDGS to China were disrupted because they contained MIR 162.

In early December 2014, during the run-up to the JCCT meeting, China announced action on overdue approvals for some of the outstanding biotechnology events. Specifically, China announced that it would be issuing import approvals for three outstanding biotechnology products of significant importance to U.S. farmers, including two soybean events and one corn event, MIR 162. China's subsequent import approval for MIR 162 in late December 2014 resolved the immediate-term trade disruptions facing U.S. exports of corn and DDGS.

Throughout 2014, the United States continued to press China on multiple fronts, using both multilateral meetings at the WTO and bilateral engagement, to address the serious systemic problems with China's regulatory system for biotechnology products. At the November 2014 summit between President Obama and President Xi in Beijing, the two sides agreed to intensify science-based agricultural innovation for food security, and to strengthen dialogue in order to enable the increased use of innovative technologies in agriculture. Subsequently, at the December 2014 JCCT meeting, the United States and China agreed on a new Strategic Agricultural Innovation Dialogue (SAID), which was intended to implement the agreement reached between President Obama and President Xi. This new dialogue was designed to bring together a diverse set of Chinese ministries

and U.S. agencies at the Vice Minister level and focus on science-based agricultural innovation and the increased use of innovative technologies in agriculture.

In April 2015, China published a draft proposal to revise elements of its biotechnology regulatory process. China's proposed revisions included a reduction in the frequency of regulatory decisions and the use of factors other than science, including politics and public opinion, when evaluating new biotechnology applications. These changes, if made permanent, would further slow the regulatory review process beyond the systemic delay already brought about by China's asynchronous approvals policy.

During the September 2015 state visit of President Xi, China committed to further improve the administration of the biotechnology regulatory approval process, including by implementing a timely, transparent, consistent, predictable and science-based process following international standards. At the time of the state visit, the United States and China also co-chaired the inaugural SAID meeting, which focused broadly on creating an enabling environment for innovation in agriculture.

In 2015, MOA started routinely asking biotechnology seed companies for new data, even though the OECD recommends that new data should be requested only in exceptional circumstances. To date, in other countries where the regulatory authorities have approved biotechnology products, the regulatory authorities have never asked for new data, which is a particularly onerous requirement.

At the November 2015 JCCT meeting, the United States pressed China to reaffirm its commitment to adopt a timely, transparent, predictable and science-based approval process. The United States also pressed China to move expeditiously to approve backlogged biotech event applications. Despite this engagement, delays in China's approvals of agricultural products derived from biotechnology

worsened in 2016, creating increased uncertainty among traders and resulting in adverse trade impact, particularly for U.S. exports of corn. In addition, the asynchrony between China's product approvals and the product approvals made by other countries widened.

In February 2016, China issued safety certificates for only three of the 11 products of agricultural biotechnology under review. However, China continued to delay approvals for eight other products, with applications dating as far back as 2011, even though more than a dozen other countries previously have deemed them to be safe.

At the June 2016 S&ED meeting, the United States agreed to provide China's regulators with a study addressing the impact of asynchronous approvals on sustainability, innovation and trade. The United States subsequently commissioned a study, which has been provided to China's regulators.

At the November 2016 JCCT meeting, China indicated that it would have the opportunity to review the status of its safety evaluation for these products in December 2016. However, China gave no indication as to whether it would issue safety certificates for them.

In 2017, the United States will continue to actively engage China and its regulators. The United States will pursue the range of agricultural biotechnology issues, with an emphasis on working with the Chinese side to revise and upgrade China's dysfunctional biotechnology approval process.

Sanitary and Phytosanitary Issues

China's regulatory authorities continue to impose SPS measures in a non-transparent manner and without clear scientific bases, including BSE-related import bans on U.S. beef and beef products, pathogen standards and residue standards for raw meat and poultry products, and an Avian Influenza-

related import suspension on all U.S. poultry products. Meanwhile, China has made progress but still does not appear to notify all proposed SPS measures as required by WTO rules.

In 2016, China's SPS measures continued to pose increasingly serious problems for U.S. agricultural producers exporting to China. As in prior years, the United States repeatedly engaged China on a number of SPS issues, in high-level bilateral meetings and technical discussions as well as during meetings of the WTO's SPS Committee.

Market access for U.S. soybeans and grain continued in 2016. However, little progress was made in addressing SPS barriers for beef and poultry products, and market entry requirements for processed foods and horticultural products continue to be burdensome. In addition, China continued its nationwide suspension of imports of U.S.-origin poultry and poultry products tied to highly pathogenic AI.

In many instances, progress on SPS matters was made difficult by China's inability to provide relevant science-based rationale for maintaining its import restrictions against U.S.-origin products. For example, China has been unable to provide a science-based rationale for import restrictions on U.S. beef and poultry products and some U.S. pork products, as described below. In addition, China's regulatory authorities continued to issue significant new SPS measures without first notifying them to the SPS Committee and providing WTO members with an opportunity to comment, including many new food safety and hygiene standards since China's issuance of a new *Food Safety Law* in October 2015. Traders are concerned because there appears to be a considerable amount of overlap among food safety and hygiene measures issued by different regulatory authorities and a lack of clarity about the new requirements.

The United States will continue to press for resolution of these and other outstanding issues in 2017.

BSE-related Import Bans

In December 2003, China and other countries imposed a ban on imports of U.S. cattle, beef and processed beef products in response to a case of BSE found in the United States. Since that time, on numerous occasions, the United States has provided China with extensive technical information on all aspects of its BSE-related surveillance and mitigation measures, internationally recognized by the World Organization for Animal Health (known by its historical French acronym OIE) as effective and appropriate, for both food safety and animal health.

At the April 2006 JCCT meeting, China agreed to conditionally reopen the Chinese market to U.S. beef, subject to the negotiation and finalization of a protocol by technical experts. Jointly negotiated protocols, and accompanying export certificates, are normal measures necessary for the export of any livestock products from the United States to any trading partner. However, further negotiations in 2006 and 2007 made it clear that China was only contemplating a limited market opening, rather than displaying a willingness to begin accepting U.S. beef and beef products in a manner consistent with the OIE's classification, and China provided no scientific justification for the limitation.

At the December 2010 JCCT meeting, the United States and China agreed to resume talks on U.S. beef market access. The two sides subsequently held a series of meetings, which did not produce agreement on market access terms, but did help to clarify the conditions both sides seek for trade to resume.

In May 2013, the United States received the lowest risk status for BSE from the OIE, i.e., negligible risk. Using the JCCT process, the United States again pressed for a science-based market opening by China for U.S. beef, and China agreed to re-engage, and further meetings took place in 2013 and 2014.

In 2014, U.S. officials at all levels pressed China to follow through on its 2013 JCCT commitment. In

June 2014, a team of Chinese officials visited the United States to study the BSE issue. Further discussions were subsequently held in October and November 2014 in an effort to reach agreement on the terms and conditions for U.S. beef to access China's market, but these discussions did not yield a positive outcome. China's requirements remained inconsistent with OIE guidelines and continue to contrast sharply with U.S. requirements. At the JCCT meeting in December 2014, the United States continued to press China to re-consider its approach, given the negligible risk status that U.S. beef has obtained from the OIE, and to propose alternative terms and conditions that are consistent with OIE guidelines. However, China remained unwilling to alter its approach. In 2015 and 2016, the United States continued to urge China to agree to an OIE-consistent market opening for U.S. beef. Despite these efforts, the ban remained in place, and the United States continued pressing its concerns with China.

In September 2016, China's Premier Li stated that China was willing to re-open its market for U.S. beef. This statement was preceded by a Chinese delegation visit to the United States to verify the status of U.S. animal health, food safety and traceability systems. Following Premier Li's statement, MOA and AQSIQ published a joint announcement lifting the ban on bone-in and boneless beef under 30 months, conditioned on the United States meeting certain animal health and traceability requirements. While the announcement removed one regulatory barrier, it did not include other regulatory changes that are necessary for a resumption of market access for U.S. beef. To fully restore market access for U.S. beef, the two governments must still negotiate an export protocol and conduct an audit to verify the protocol before exports of U.S. beef to China can resume. To date, however, China's regulatory agencies have been demanding that the protocol include unscientific requirements that deviate from current U.S. government and industry standards. In 2017, the United States will continue pressing China for a

restoration of access for U.S. beef exports in China's market.

Pathogen Standards and Residue Standards

Since 2002, as previously reported, China has applied SPS-related requirements on imported raw meat and poultry that are not based on science or current scientific testing practices. One requirement establishes a zero tolerance limit for the presence of Salmonella bacteria in raw meat and poultry. Similar zero tolerance standards exist for Listeria and other pathogens. Meanwhile, the complete elimination of these bacteria in raw meat and poultry is generally considered unachievable. Moreover, China apparently does not apply this same standard to domestic raw meat and poultry, raising national treatment concerns.

In 2008, despite assurances from China's regulatory authorities that they were in the process of revising China's pathogen standards, little progress was seen. At the September 2008 JCCT meeting, China did agree to re-list several U.S. poultry plants that had earlier been de-listed for alleged violations of zero tolerance standards for pathogens. Although this step did not address the important underlying need for China to revise its pathogen standards, it did enable some U.S. poultry plants to resume shipment to China.

In December 2008, the United States hosted a team of Chinese government officials and academic experts to observe how the U.S. government and U.S. industry regulate the use of veterinary drugs related to animal health. This visit was intended to address China's continuing ban on ractopamine residue in pork. China maintains that it has serious concerns about the safety of ractopamine, but to date it has not provided any evidence that it has conducted a risk assessment despite repeated U.S. requests.

During several subsequent JCCT working group meetings, the United States requested that China

adopt an interim maximum residue level (MRL) for ractopamine in order to address the problems presented by China's current zero-tolerance policy, while China awaited the results of deliberations at the Codex Alimentarius (Codex) Commission regarding the finalization of international MRLs for ractopamine. However, China would not agree to take any steps to address its zero-tolerance policy.

Since July 2014, pork products have been exported from the United States to China under the Never Fed Beta Agonist program of the U.S. Department of Agriculture's Agricultural Marketing Service (AMS). Through this program, the AMS certifies that a pork product has been produced from pigs that have been tested for ractopamine, and the pork product is tracked from plant entry to issuance of an export certificate and shipment to China. While the program description originally discussed with China states that ractopamine test results will not accompany shipments, China has been insisting that shipments include those test results. In addition, in September 2014, China suspended 12 production and cold storage facilities due to ractopamine detections that predated the implementation of the Never Fed Beta Agonist program. In November 2014, China suspended an additional establishment. In December 2015, China released several hundred new MRL limits for horticultural products. In a positive sign, the majority of these limits were adopted at Codex levels. About six months later, China released another set of MRL limits, the majority of which also were in line with Codex standards. However, many of these MRL limits were set as "temporary" MRL limits, and China has indicated that it may change the limits at a later date.

Overall, China continues to maintain without scientific justification maximum limits for certain heavy metals, MRLs for veterinary drugs and regulatory action levels for other residues that are inconsistent with Codex guidelines and other international standards. China also enforces a zero tolerance for some residues, even where Codex has

adopted guidelines that many of China's major trading partners have adopted. U.S. regulatory officials have encouraged their Chinese counterparts to adopt MRLs that are scientifically based, safe and minimally trade-disrupting. In 2017, the United States will continue to press China to revise these problematic standards.

Avian Influenza Import Suspensions

In January 2015, China announced a suspension of imports of U.S. poultry and poultry products from all U.S. states in response to the U.S. Department of Agriculture's December 2014 notification of the presence of high-pathogenic AI in several U.S. states. China has been unwilling to follow OIE guidelines and accept poultry from regions in the United States unaffected by this disease.

As of December 2016, China is the only major market that maintained a nationwide suspension of imports of U.S.-origin poultry and poultry products in direct response to the high-pathogenic AI outbreak, which has been eradicated from the United States. China is the largest of these trading partners, blocking \$391 million in U.S. exports (based on 2014 values).

U.S. officials have continued to urge China to take steps to remove or limit the suspension, which remains in place. In this regard, the United States increasingly has stressed the importance of regionalization as a long-term solution in a globalized economy. AI outbreaks, both low-pathogenic and high-pathogenic, are occurring with greater frequency due to migratory bird movements and globalized trade flows. The United States has continued to press for OIE-approved regionalization measures in cases of isolated outbreaks, like those in the United States. To date, although U.S. regulators have met with China to discuss regionalization, China has remained unwilling to adopt regionalization measures, even for low-pathogenic AI. Nevertheless, at the November 2016 JCCT meeting, China agreed to exchange information and

collaborate with the United States on efforts to move toward a regionalization approach for AI consistent with OIE guidelines in place of the current nationwide ban that China has imposed on the United States.

In 2017, the United States will pursue the discussions announced at the November 2016 JCCT meeting and will continue to urge China to follow the OIE's guidelines relating to AI. The United States also will press China to lift the current nationwide suspension of imports of U.S.-origin poultry and poultry products.

Dairy Certification Requirements

In April 2010, China's AQSIQ notified the United States that it would begin imposing new conditions on the import of dairy products under a December 2009 measure, which was to become effective on May 1, 2010. Of specific concern were requirements that the United States certify on export certificates for dairy shipments that they are free of many diseases that are not of concern in pasteurized milk products. Responding to requests from the United States, China delayed the effective date to June 1, 2010, and subsequently allowed the United States to continue to ship products to China after that date, so long as technical discussions were ongoing. However, this situation was still creating a heightened level of uncertainty for U.S. exporters and their potential Chinese buyers. In December 2012, the United States and China provisionally agreed upon a bilateral certificate, and it was fully implemented in early 2013. Since then, the United States has been monitoring this situation, and it appears that the finalized certificate is generally helping to facilitate market access for exports of U.S. dairy products to China.

Transparency

As in the TBT context, some of China's SPS measures continue to enter into force without having first been notified to the SPS Committee, and without

other WTO members having had the opportunity to comment on them, even though they appear to be the type of measures that are subject to the notification requirements of the SPS Agreement. Many of these unnotified measures are of key concern to foreign traders. Indeed, in 2016 alone, the United States identified more than 20 SPS measures implementing important new registration requirements, residue standards, inspection requirements and quarantine requirements – none of which China notified to the SPS Committee, even though these measures constrain U.S. exports of frozen meat, dairy products, grain, poultry, feed, horticultural products, and a variety of processed products and alcoholic beverages.

In 2016, as in prior years, the United States urged China's regulatory authorities to improve the transparency of their SPS regime by notifying more measures. The United States also highlighted this concern during meetings before the WTO's SPS Committee. The United States will continue to seek improvements from China in this area in 2017.

Inspection-related Requirements

China's regulatory authorities continue to administer onerous inspection-related requirements, and a new food safety certificate requirement has the potential to create significant market access challenges.

In 2009, AQSIQ began implementing a measure, known as Decree 118, requiring all overseas feed and feed ingredients manufacturers shipping to China to undergo facility and product registration. In 2012, AQSIQ implemented another measure, known as Decree 145, which currently extends this registration process to meat, poultry, seafood, dairy and infant formula exporters and which eventually will expand it to include to all overseas food manufacturers. Under Decrees 118 and 145, AQSIQ determines the registration requirements industry-by-industry and announces each industry's registration requirements separately.

This registration process has been extremely onerous and cumbersome for U.S. agricultural exporters. In particular, the requirement for AQSIQ to individually inspect all or most facilities for each product, combined with limited AQSIQ staffing, has resulted in extensive delays. Decree 118 has already resulted in trade disruptions in feed ingredients and additives, and there is currently no process for new feed additives to gain market approval in China. In addition, Decree 145 created a significant backlog in the registration of U.S. dairy products. In response, the United States has urged AQSIQ to limit trade disruptions under Decrees 118 and 145. The United States also has been working closely with U.S. agricultural exporters to facilitate their navigation of the requirements established by these decrees.

In 2016, AQSIQ informed the U.S. Embassy in Beijing about a new requirement that imported foods shipped to China be accompanied by an official certificate. AQSIQ cited Article 92 of China's 2015 *Food Safety Law* and the Codex Guidelines on the General Format Official Certificates as the basis for the new requirement, which will be reflected in implementing regulations being drafted. According to AQSIQ, importers will be required to provide certificates attesting that food shipments comply with the requirements of Chinese laws, regulations and standards. Certificates currently required for certain food products and being issued by countries in accordance with other Chinese legal requirements governing imported food safety or under bilateral agreements will remain valid. AQSIQ explained that this new requirement will take effect following a grace period of 18 months. Beginning in October 2017, all imported food products that do not have an existing certificate requirement must comply with the new requirement.

The United States has raised concerns about this issue at high levels within the Chinese government. The United States has requested that China provide additional clarification and scientific justification for the new requirement and that China notify draft implementing regulations to the WTO. The United States is also discussing and sharing information on

the new requirement with like-minded trading partners. In 2017, the United States will continue to pursue this issue vigorously.

Domestic Support

In recent years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector. In September 2016, the United States launched a WTO case challenging China's government support for the production of rice, wheat and corn as being in excess of China's commitments.

As previously reported, several years ago, China began making significant changes to its domestic subsidies and other support measures for its agricultural sector. China has established a direct payment program, instituted minimum support prices for basic commodities and sharply increased input subsidies. China has implemented a cotton reserve system, based on minimum purchase prices, although, since 2014, facing large stocks of cotton reserves, China has moved away from minimum purchase prices to a target price-based support approach. China also has begun several new support schemes for hogs and pork, along with a purchasing reserve system for pork.

In October 2011, China submitted its overdue notification concerning domestic support measures for the period 2005 through 2008. Even though this notification documented an increase in China's support levels, the United States was concerned that the methodologies used by China to calculate support levels, particularly with regard to China's price support policies and direct payments, resulted in underestimates of those support levels. Indeed, since China's accession to the WTO, it appeared that China's agriculture system had transformed from a system focused on generating tax revenues from agricultural producers into a system that provided substantial net subsidies to agricultural producers, with many of the subsidy mechanisms tied to production incentives and resulting in increased

production of Chinese agricultural products that compete with imports from the United States.

In 2015, the United States pressed China to address the mounting concerns about its increased domestic support spending, which are negatively impacting global trade flows. In May 2015, China submitted its most recent notification concerning domestic support measures to the WTO, but it only provided information up to 2010. The United States remains concerned that the methodologies used by China to calculate support levels, particularly with regard to its price support policies and direct payments, may result in underestimates. In addition, reports commissioned by certain U.S. farm groups to calculate support levels for certain commodities, including corn, wheat, rice and soybeans, have concluded that China may be substantially exceeding its WTO-agreed domestic support spending limits.

In September 2016, the United States initiated a WTO case against China, challenging government support for the production of rice, wheat and corn as being in excess of China's commitments. Like other WTO members, China had made commitments that its support for these commodities would not exceed certain levels, but the United States' investigation of the market price support programs maintained by the Chinese government for these commodities appear to exceed the agreed levels. This excessive support creates price distortions and encourages overproduction. Consultations took place in October 2016. The United States requested the establishment of a WTO panel in this case in December 2016.

In 2017, in addition to pursuing this WTO case, the United States will continue to monitor closely China's use of domestic subsidies and other support measures in the agricultural sector. The United States also will press China to provide an up-to-date notification of its domestic support measures to the WTO and also to provide more clarity regarding its methodologies for calculating support levels in order to ensure proper reporting and China's adherence to its WTO commitments.

Export Subsidies

It is difficult to determine whether China maintains export subsidies in the agricultural sector, in part because China has not notified all of its subsidies to the WTO.

Shortly after China's WTO accession, U.S. industry became concerned that China was providing export subsidies on corn, despite China's commitment to eliminate all export subsidies upon accession. It appeared that significant quantities of corn had been exported from China, including corn from Chinese government stocks, at prices that may have been 15 to 20 percent below China's domestic prices. As a result, U.S. corn exporters were losing market share for corn in their traditional Asian markets, such as South Korea and Malaysia, while China was exporting record amounts of corn.

The United States has pressed its concerns about possible export subsidies on corn with China in bilateral meetings. The United States has also raised its concerns and sought additional information about China's corn policies – including the use of potentially excessive VAT export rebates – during meetings before the Committee on Agriculture, including the transitional reviews. Eventually, however, China began trending toward becoming a net importer of corn, and it appeared that China's exports were being made on a commercial basis, although concern remains regarding the operation of China's VAT rebate system for corn.

It is difficult to determine whether or to what extent China maintains export subsidies in the agricultural sector, in part because China has not notified all of its subsidies to the WTO. For example, China has not notified subsidies provided in connection with agricultural export bases, which appear to include subsidies contingent upon export performance.

The United States will continue to investigate the Chinese government's subsidization practices in 2017, although China's incomplete subsidy notifications hinder those efforts. The United States

will make every effort to ensure that any use of export subsidies is eliminated.

INTELLECTUAL PROPERTY RIGHTS

Despite ongoing revisions of laws and regulations relating to intellectual property rights, and greater emphasis on rule of law and enforcement campaigns in China, key weaknesses remain in China's protection and enforcement of intellectual property rights, particularly in the area of trade secret misappropriation. Intellectual property rights holders face not only a complex and uncertain enforcement environment, but also pressure to transfer intellectual property rights to enterprises in China through a number of government policies and practices.

With its acceptance of the TRIPS Agreement, China agreed to adhere to generally accepted international norms to protect and enforce the intellectual property rights held by U.S. and other foreign companies and individuals. Specifically, the TRIPS Agreement sets minimum standards of protection for copyrights and related rights, trademarks, geographical indications, industrial designs, patents, integrated circuit layout designs and undisclosed information. The TRIPS Agreement also sets minimum standards for IPR enforcement in administrative and civil actions and, in regard to copyright piracy and trademark counterfeiting, in criminal actions and actions at the border. The TRIPS Agreement requires as well that, with very limited exceptions, WTO members provide national and most favored nation treatment to the nationals of other WTO members with regard to the protection and enforcement of intellectual property rights.

Since its accession to the WTO, China has established a framework of laws, regulations and departmental rules that largely satisfies its WTO commitments. However, reforms are needed in key areas, such as updating China's laws and regulations

in the area of trade secrets, providing regulatory data protection for pharmaceutical products in a manner consistent with international research and development practices and legal standards, further improvement of China's measures for copyright protection on the Internet following China's accession to the WIPO Internet treaties, addressing deficiencies in China's criminal IPR enforcement measures and revising measures conditioning government procurement, financial benefits and preferences on intellectual property developed by, owned by or licensed to a Chinese party.

Effective IPR enforcement remains a serious problem throughout China. Despite individual reports of welcome cooperation between certain rights holders and local authorities, overall IPR enforcement is hampered by inefficient civil recourse mechanisms as well as a still insufficient commitment overall, as demonstrated by resource constraints, lack of training, lack of initiative, lack of transparency in the enforcement process and its outcomes, procedural obstacles to civil enforcement, lack of coordination among Chinese government ministries and agencies, and local protectionism and corruption.

Legal Framework

Overview

As previously reported, at the time of its accession to the WTO, China was in the process of modifying the full range of IPR laws, regulations and departmental rules. Within several months after its accession, China had completed amendments to its *Patent Law*, *Trademark Law* and *Copyright Law*, along with regulations and departmental rules to implement them. China had also issued regulations and departmental rules covering specific subject areas, such as integrated circuits, computer software and pharmaceuticals. U.S. experts carefully reviewed these measures after their issuance and, together with other WTO members, participated in a comprehensive review of them as part of the first

transitional review before the TRIPS Council in 2002. Since then, China has periodically issued new IPR measures. The United States has reviewed these measures and pursued bilateral discussions and TRIPS Council reviews to address its concerns. Over time, China has become more willing to circulate proposed measures for public comment and to discuss proposed measures with interested trading partners and stakeholders. However, in recent years, there have been instances of measures issued in final form without an opportunity for public comments, such as measures issued in the form of "opinions" or "guidance" that nevertheless have a decisive effect on how policies that affect IPR are implemented.

In addition, the United States repeatedly has urged China to pursue additional legislative and regulatory changes, using both bilateral meetings and the annual transitional reviews before the WTO's TRIPS Council. The United States also has provided detailed comments on various draft measures relating to intellectual property rights. The focus of the United States' efforts is to persuade China to improve its laws and regulations across all critical areas, including criminal, civil and administrative IPR enforcement and legislative and regulatory reform. For example, obstacles that have been noted in the area of criminal enforcement include China's high criminal thresholds, the lack of criminal liability for certain acts of copyright infringement, the profit motive requirement in copyright cases, the requirement of identical trademarks in counterfeiting cases, and the absence of minimum, proportional sentences and clear standards for initiation of police investigations in cases where there is a reasonable suspicion of criminal activity. The United States also has been pressing China to adopt a variety of improvements to its administrative and civil enforcement regimes. For example, China's failure to clarify that sports broadcasts are eligible for copyright protections is an ongoing concern. While not all of these issues raise specific WTO concerns, all of them will continue to detract from China's enforcement efforts until addressed.

Technology Localization

The United States is seriously concerned about a range of Chinese policies and practices that condition market access or the receipt of government benefits or preferences on relevant intellectual property being owned or developed in China or on key intellectual property being disclosed to Chinese government authorities. These policies and practices are objectionable not only because of their discriminatory treatment of foreign rights holders, but also because they are calculated to pressure foreign companies to transfer their technologies to enterprises in China. These policies and practices also discourage Chinese enterprises from developing their own innovative technologies. Concerns among U.S. and other foreign stakeholders are growing because of new and proposed measures being issued by China in this area.

As previously reported, in prior years, China has made JCCT and S&ED commitments not to maintain any measures that condition eligibility for government procurement preferences for goods or services based on where associated intellectual property is owned or was developed, and to treat IPR owned or developed in other countries the same as IPR owned or developed in China. In addition, China previously has agreed to revise or eliminate various measures that appeared to be inconsistent with this commitment. In order to ensure the full implementation of this commitment, at the November 2016 JCCT meeting, China announced that its State Council had issued a new document "requiring all local regions and agencies to further clean up related measures involving linking the indigenous innovation policy to the provision of government procurement preferences, so as to practically implement the commitment made by the Chinese side."

At the July 2014 S&ED meeting, China agreed to take an affirmative step to address U.S. concerns about China's pursuit of intellectual property localization. Specifically, China committed that its Ministry of Science and Technology would develop a pilot

program addressing an eligibility condition for a tax measure requiring high technology enterprises to, as an alternative to IP ownership, hold a global exclusive license to the relevant technology. Because this work stream has not resulted in necessary amendments to the measure, these concerns remain unaddressed.

At the December 2014 JCCT meeting, China clarified and underscored that it will treat intellectual property rights owned or developed in other countries the same as domestically owned or developed intellectual property rights. China further committed that enterprises are free to base technology transfer decisions on business and market considerations, and are free to independently negotiate and decide whether and under what circumstances to assign or license intellectual property rights to affiliated or unaffiliated enterprises.

In December 2014, the CBRC published draft *Guidelines for Promoting the Application of Secure and Controllable Information Technology in Banking Sector*, along with an accompanying *Classification Catalogue of Banking Information Technology Assets and Indexes of Security and Controllability*, which would regulate the use of ICT products, services and technologies by financial institutions operating in China by requiring that an increasing percentage of these products, services and technologies be purchased from suppliers whose IPR is indigenously Chinese. In addition, the rules would require foreign firms to conduct ICT-related research and development in China and to divulge proprietary IP as a condition for the sale of ICT products in China. The United States pressed its serious concerns with China throughout 2015. At the June 2015 S&ED meeting and during the September 2015 state visit of President Xi, China affirmed that it will not impose nationality-based conditions or restrictions on the purchase, sale or use of ICT products and services by commercial enterprises. At the November 2016 JCCT meeting, China expressly affirmed these key

understandings regarding its “secure and controllable” policies.

However, despite this sustained U.S. engagement and the bilateral commitments that China has made to date, China has continued to issue new and proposed Chinese policies and practices discriminating against foreign rights holders and pressuring foreign companies to transfer their technologies to enterprises in China. A number of measures issued in the name of enhancing cyber security or protecting national security impose unwarranted IP disclosure conditions and contain provisions requiring related IP rights to be owned and developed in China. Of additional concern are recently issued measures affecting the pharmaceuticals and medical devices industries, including the provision of expedited regulatory treatment for localized manufacturing or owning a Chinese patent.

Another technology transfer issue involves the innovation-impeding restrictions relating to the licensing of intellectual property imposed by the State Council's *Regulations on Technology Import and Export*, which went into effect in 2002. These regulations appear to impose contractual restrictions on the licensing of foreign technology to Chinese enterprises, such as by requiring mandatory indemnities against third party infringement, mandatory ownership by licensees of improvements and mandatory access to markets. These same restrictions do not appear to apply to license agreements between two Chinese enterprises or when a Chinese enterprise is exporting technology. At the November 2016 JCCT meeting, China committed to actively research how to revise these regulations to address U.S. concerns and to hold a joint seminar with the United States on this topic.

In 2017, the United States will continue to press China to closely adhere to the important bilateral commitments that it has made in the area of technology localization. The United States also will

urge China to take further steps to address U.S. concerns.

Online Copyright Protection

Since China acceded to the WTO, a sustained focus of U.S. engagement has involved China's online copyright protection, which is especially important in light of China's rapidly increasing number of Internet users. This engagement has seen important but incomplete steps forward by China.

As previously reported, an early forward step was a 2004 measure issued by the National Copyright Administration (NCA). This measure, the *Measures for Administrative Protection of Copyright on the Internet*, requires Internet service providers to take remedial actions to delete content that infringe on copyrights upon receipt of a complaint from the rights holder, or face administrative penalties ranging from confiscation of illegal gains to fines of up to RMB 100,000 (\$16,400). The United States also made it a priority to press China to accede to the WIPO Internet treaties and to fully harmonize its regulations and implementing rules with them. While compliance with the treaties is not required under WTO rules, they reflect important international norms for providing copyright protection on the Internet. At the July 2005 JCCT meeting, China committed to begin the process of acceding to the WIPO Internet treaties, and China acceded to these treaties a little more than one year later.

In 2006, the State Council adopted the *Regulations on the Protection of Copyright over Information Networks*. Although it does not appear to fully implement the WIPO Internet Treaties, this measure represented a welcome step, demonstrating China's determination to improve protection of the Internet-based right of communication to the public. Several aspects of this measure nevertheless would benefit from further clarification.

More recently, in 2012, the United States urged China to improve its online copyright protection by

clarifying how Chinese law treats the issue of secondary liability. In December 2012, fulfilling a commitment that China had made at the JCCT meeting earlier that month, China's Supreme People's Court issued a Judicial Interpretation clarifying that those who facilitate the commission of copyright infringement will be equally liable for infringement. Since then, the United States has pressed China to incorporate the principles established in this Judicial Interpretation into the *Copyright Law*, which China is still in the process of revising.

At the December 2014 JCCT meeting, China agreed to strengthen its enforcement against unlawful trademark counterfeiting and copyright piracy activities in the online environment and to deter the occurrence of infringement and counterfeiting through criminal, civil and administrative remedies and penalties. China further agreed that, in a practical and timely fashion, it will classify products with significant impacts on public health and safety as priorities, and carry-out enhanced enforcement actions.

At the November 2015 JCCT meeting, China agreed to protect the original recordings of sports broadcasts against acts of unauthorized exploitation, including the unauthorized retransmission of sports broadcasts over computer networks. The United States and China further agreed to continue discussing the issue of copyright protection for sports broadcasts in China. These discussions continued throughout 2016, and at the November 2016 JCCT meeting China committed to continue its consideration of U.S. concerns and to hold technical discussions with U.S. experts.

At the November 2016 JCCT meeting, China also committed to actively promote e-commerce-related legislation. As part of this commitment, China further agreed to strengthen supervision over online infringement and counterfeiting, and to work with the United States to explore the use of new approaches to enhance online enforcement capacity.

Trademark Issues

The United States has pressed China to address a variety of weaknesses in China's legal framework that do not effectively deter, and that may even encourage, certain types of infringing activity. For instance, U.S. companies continue to face numerous trademark challenges in China, such as unauthorized parties' "squatting" on foreign company names, designs, trademarks and domain names, the registration of other companies' trademarks as design patents and vice versa, the use of falsified or misleading license documents or company documentation to create the appearance of legitimacy in counterfeiting operations, false indications of geographic origin of products, and trademark registrations that are made in bad faith by unscrupulous Chinese registrants.

In August 2013, China's National People's Congress amended China's *Trademark Law*, including provisions to combat bad faith trademark filings, expanding protection to sound marks, permitting multiclass registration and streamlining application and appeal proceedings. The United States welcomes these long-sought reforms, but notes that a number of important issues were not clarified in the *Trademark Law* or in implementing regulations issued in April 2014. While the implementation of the amended law has yielded some positive benefits, it has not been sufficient to surmount the great challenges facing rights holders, particularly in curbing bad faith registrations of foreign marks. The United States has raised key unresolved questions with China, such as the need to clarify the constructive knowledge standard applied in landlord liability proceedings.

Of particular and growing concern is the continuing registration of trademarks in bad faith, as disputes involving bad faith trademark filings persisted in 2016. Although China has taken some steps to address this problem, such as by amending its *Trademark Law*, U.S. companies across industry sectors continue to face Chinese applicants registering their marks and "holding them for

ransom" or seeking to establish a business building off of the U.S. company's global reputation. These incidents have caused consumer confusion, commercial harm and costly legal proceedings. At the November 2016 JCCT meeting, China noted the harm that may be caused by bad faith trademarks and confirmed that it is taking further efforts to combat bad faith trademark filings.

Pharmaceuticals

In 2015 and 2016, China embarked on wide-ranging reforms to its pharmaceuticals regulatory framework that could negatively affect market access and IPR protection for U.S. companies. While the United States welcomes the aim of China's regulatory reform effort, which is to reduce the review and approval times for pharmaceuticals to enter China's markets, several aspects of the measures issued by China raise serious concerns. In particular, the *Opinions on Reforming the Review and Approval Systems for Drugs and Medical Devices*, a normative document issued by the State Council in final form in April 2015 without an opportunity for public comment, contains provisions incentivizing technology transfer to China, calls for the conditioning of marketing approvals based upon pricing considerations, and puts forward a definition of "new drug" that departs from international best practices. While the United States secured important commitments relating to the role of pricing considerations in drug marketing approvals at the November 2016 JCCT meeting as discussed in the Medical Devices section above, China's implementation of the April 2015 State Council measure will remain a central focus of the United States going forward.

Patent protection is another area of serious concern of U.S. pharmaceutical stakeholders. In particular, SIPO examination guidelines governing information disclosure requirements for pharmaceutical patent applications have been revised through a series of amendments making these guidelines more restrictive. As a result, applications for

pharmaceutical patents have been denied in China, even as U.S. and other leading patenting authorities granted patents for the same pharmaceutical innovations. In addition, patents granted prior to the adoption of the more restrictive SIPO guidelines have been vulnerable to invalidation challenges in China based on the retroactive application of these guidelines.

In a sustained effort to address this problem, the United States engaged China in technical and legal dialogues and signaled the urgent need for SIPO to return to an appropriate interpretation of supplemental disclosure requirements, in greater harmony with the prevailing practice in the United States and other countries hosting innovative pharmaceutical industries, and to restrict the retroactive application of more restrictive examination practices. As previously reported, during Vice President Biden's December 2013 visit to China, China took an important step to strengthen the protection of pharmaceutical innovations by announcing that patent holders will be able to submit additional data to support their patents after filing their initial applications. At the December 2013 JCCT meeting, China reaffirmed this commitment and further affirmed that its existing patent requirements and procedures ensure that pharmaceutical inventions receive patent protection during examinations and re-examinations and before China's courts. In October 2016, SIPO issued proposed revisions to the patent examination guidelines that partially bear on U.S. concerns. One proposed revision would clarify that, in their examination process, examiners must consider post-filing supplemental data having an "obtainable" basis in the original specification. If implemented, this change would represent an important step toward the supplemental data practice in the United States and other jurisdictions.

The United States also has been pressing China to adopt comprehensive reforms to ensure that all Chinese producers of bulk chemical and biological substances capable of being used as APIs for medicinal products are subject to CFDA's registration

requirements and operate in compliance with CFDA's Good Manufacturing Practices. In this area, Vice President Biden's December 2013 visit to China resulted in China's commitment to take steps toward introducing a framework for registering manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients, which would be a critical step in combatting dangerous counterfeit and substandard pharmaceuticals around the world. Building on this commitment, at the July 2014 S&ED meeting, China committed to develop and seriously consider amendments to the *Drug Administration Law* that will require regulatory control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients. At the June 2015 S&ED meeting, China agreed to share with the United States its proposal to enact regulatory and enforcement oversight and to be more transparent by publishing its revised *Drug Administration Law* in draft form for public comments and to take into account opinions from the United States and other relevant stakeholders.

The United States also continues to be concerned about the extent to which China provides effective protection against unfair commercial use of, and unauthorized disclosure of, undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. China's law, and a commitment that it made in its WTO accession agreement, require China to ensure that no subsequent applicant may rely on the undisclosed test or other data submitted in support of an application for marketing approval of new pharmaceutical products for a period of at least six years from the date of marketing approval in China. However, Chinese law does not include an appropriate definition of the term "new chemical entity" for purposes of identifying test or other data entitled to protection. There is evidence that, as a result of this situation, generic manufacturers of pharmaceutical products have been granted marketing approvals by China's CFDA prior to the expiration of the six-year protection period and, in some cases, even before the originator's product has been approved.

At the December 2012 JCCT meeting, China took a step toward establishing effective regulatory data protection by agreeing to define the term “new chemical entity” in a manner consistent with international research and development practices in order to ensure regulatory data of pharmaceutical products are protected against unfair commercial use and unauthorized disclosure. Despite extensive subsequent engagement, however, China has not yet adopted the contemplated definition of “new chemical entity.” At the same time, China has incorporated a problematic definition of “new” as part of its recent drug regulatory reform efforts, guided by the *Opinions on Reforming the Review and Approval Systems for Drugs and Medical Devices*. Going forward, the United States will continue to seek resolution of this concern and other outstanding concerns in this area through engagement with CFDA and other relevant agencies.

An additional area of concern in the pharmaceuticals sector involves the long delays in China's review of applications for permission to market new and innovative pharmaceutical products in China, and for these products to be placed on approved reimbursement lists. These concerns, along with analogous concerns relating to medical devices, have been the focus of various bilateral meetings with China. As the United States has pointed out, a reduction in regulatory delays would speed access by China's public to potentially life-saving medications and help sustain incentives for further pharmaceutical innovation. At the December 2014 JCCT meeting, China committed to take several specific steps to streamline and speed up its regulatory review and approval systems for new pharmaceutical products and new medical devices. China also agreed to an enhanced dialogue with expert and high-level officials of relevant Chinese and U.S. agencies in 2015 to promote efficient pharmaceutical and medical device regulation and market access. However, the United States is concerned that some of the steps contemplated by China to implement reforms to address the regulatory delays would serve to promote domestic

Chinese enterprises at the expense of foreign enterprises and foreign-invested enterprises in China and reduce incentives for innovative treatments to be introduced into the Chinese market.

In August 2015, China's State Council issued a normative document entitled *Opinions of the State Council on Reforming the Review and Approval System for Drugs and Medical Devices*, which outlined the State Council's guidance for reforming China's drug and medical devices registration review and approval systems. This measure called for several reforms that could have far-reaching implications for the registration and approval of foreign pharmaceutical products. For example, it proposes linking the approval of a new drug with pricing commitments made by the applicant. It also calls for the creation of a Marketing Authorization Holder pilot program to provide marketing flexibilities for pharmaceutical companies. However, restrictions in the pilot program appear to limit the ability of foreign companies to participate. The State Council measure also proposes a new definition for “new drug” that could significantly affect the introduction of foreign pharmaceuticals into China's market and that would be inconsistent with international best practices. In addition, the State Council measure calls for providing accelerated review and approval for innovative new pharmaceuticals where the applicant has shifted manufacturing activities to China. It also calls for the expedited review and approval of pharmaceuticals listed in a catalogue determined, in part, by MIIT – an agency without a direct link to determining safety and efficacy or public health priorities.

The State Council did not publish its *Opinions on Reforming the Review and Approval Systems for Drugs and Medical Devices* in draft for public comment before issuing it in final form. At about the same time, CFDA released a series of draft measures implementing the State Council measure. The United States raised transparency concerns and pressed China to allow comment on the substance of these various measures before they were finalized

and implemented. The United States also urged China to use the opportunity of amending these measures to promote the early notification and resolution of patent disputes and to ensure that China provides effective protection of regulatory test data.

At the November 2015 JCCT meeting, China characterized the State Council measure as providing guidelines for reforming China's pharmaceutical and medical device review and approval systems and agreed that CFDA will provide a public comment period of no less than 30 days for future administrative regulations and departmental rules implementing the State Council measure. China also affirmed that it will abide by its TBT notification commitments at the WTO, and China followed through by notifying proposed amendments to its drug registration rules to the WTO TBT Committee earlier this year.

In April 2016, CFDA issued the draft *Announcement Concerning the Undertaking on the Sales Price of Newly Marketed Drug* without soliciting public comment. This draft measure effectively would require drug manufacturers to commit to price concessions as a pre-condition for marketing approval of new drugs. Given its inconsistency with international science-based regulatory practices, which are based on safety, efficacy and quality, the draft measure elicited serious concerns from the United States and U.S. industry. Subsequently, at the November 2016 JCCT meeting, China agreed not to link a pricing commitment to drug registration evaluation and approval. In addition, China agreed not to require any specific pricing information when implementing the final measure.

In 2017, the United States will continue to closely monitor China's development of administrative regulations, departmental rules and normative documents intended to implement the April 2015 State Council measure providing guidance for the reform of China's drug and medical devices registration review and approval systems.

Other Patent Issues

China's regulatory authorities have issued a draft update to its Standardization Law, as well as proposed and final measures relating to standards that incorporate patents, including interim rules from SAC and SIPO on national standards involving patents (effective January 2014), departmental rules on competition enforcement as it relates to intellectual property from *Anti-monopoly Law* enforcement agencies, draft patent law amendments, and a judicial interpretation on patent infringement proceedings. Individually and collectively, these proposed and final measures continue to generate concerns among U.S. and other foreign stakeholders. The United States has been carefully monitoring developments and has raised concerns with particular aspects of these measures.

China also has been working on other measures that can have significant implications for the intellectual property rights of foreign rights holders, particularly holders of patented technologies. For example, China enacted an *Anti-monopoly Law* that became effective in August 2008, and more recently China released for public comment draft implementing regulations addressing, among other things, the application of the law to conduct involving intellectual property. China's enforcement of this law continues to generate concerns, including among foreign companies holding patented technologies. As discussed in the Competition Policy section below, these concerns extend both to procedural fairness and remedial measures.

Geographical Indications

At the December 2014 JCCT meeting, the United States reached agreement with China on how China should handle intellectual property protection for geographical indications, or GIs. China agreed that a term, or its translation or transliteration, is not eligible for protection as a GI in its territory where the term is generic in its territory, that the relationship between trademarks and GIs is to be

handled in accordance with relevant articles in the TRIPS Agreement, and that legal means are available for interested third parties on the above grounds to object to and to cancel any registration or recognition granted to a GI. In addition, where a component of a compound GI is generic in its territory, China agreed that the GI protection is not to extend to that generic component. Among other things, these commitments will benefit U.S. exporters that use common terms to identify their products. At the November 2015 JCCT meeting, China further clarified that these commitments apply to all GIs, including those protected pursuant to international agreements. China also committed to follow transparent procedures for developing cancellation procedures for already-granted GIs and targeted the end of 2016 for publishing these procedures in draft for public comment.

In March 2016, AQSIQ issued the *Measures on Protection of Foreign Geographical Indication Products*, which lists circumstances for the revocation of foreign GIs. The United States has been raising questions and making suggestions to improve this system and continues to work with AQSIQ on ways to help ensure that common names are not disadvantaged in China and to address possible inconsistencies between AQSIQ's treatment of GIs and the trademark and GI systems maintained by SAIC and MOA.

Enforcement

Overview

The TRIPS Agreement requires China to ensure that enforcement procedures are available so as to permit effective action against any act of IPR infringement covered by the TRIPS Agreement, including expeditious remedies to prevent infringement and remedies that constitute a deterrent to further infringement. Although the central government has modified China's IPR laws and regulations in an effort to bring them into line with China's WTO commitments, effective IPR

enforcement has not been achieved, and IPR infringement remains a serious problem throughout China. IPR enforcement is hampered by inefficient civil recourse mechanisms as well as a still insufficient commitment overall, as demonstrated by resource constraints, lack of training, lack of initiative, lack of transparency in the enforcement process and its outcomes, procedural obstacles to civil enforcement, lack of coordination among Chinese government ministries and agencies, and local protectionism and corruption.

Largely as a reflection of enforcement concerns, the United States elevated China to the Special 301 "Priority Watch List" in April 2005, where it has remained through 2016. Over the years, China has taken important steps to address problems identified in the Special 301 report, including through legal reforms, enforcement campaigns and cooperation with U.S. authorities. Despite laudable steps forward, challenges have evolved over time, and important new concerns have arisen. The Special 301 Report for 2016 welcomes high-level policy statements from China supporting increased protection of intellectual property rights and other positive developments, but underscores the broad range of ongoing challenges in what remains a complex and uncertain environment for IP rights holders.

No longer published concurrently with the Special 301 report, the Notorious Markets List identifies online and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting. As in prior years, the December 2016 Notorious Markets List included several examples of notorious physical and online markets located in China, although several markets have been de-listed from the Notorious Markets List due to their work with rights holders to significantly decrease infringing products for sale or distribution.

The United States continues to place the highest priority on addressing IPR protection and enforcement problems in China. A domestic Chinese business constituency is also increasingly active in

promoting IPR protection and enforcement. In fact, Chinese rights holders own the vast majority of design and utility model patents, trademarks and plant varieties in China and have become the principal filers of invention patents. In addition, the vast majority of the IPR enforcement efforts in China are now undertaken at the behest of Chinese rights holders seeking to protect their interests. Nevertheless, it is clear that there will continue to be a need for sustained efforts from the United States and other WTO members and their industries, along with the devotion of considerable resources and political will to IPR protection and enforcement by the Chinese government, if significant improvements are to be achieved.

In 2016, as in prior years, the United States worked with central, provincial and local government officials in China in a sustained effort to improve China's IPR enforcement, with a particular emphasis on the need for dramatically increased utilization of criminal remedies as well as the need to improve the effectiveness of civil and administrative enforcement mechanisms. In addition, a variety of U.S. agencies held regular bilateral discussions with their Chinese counterparts, which have been periodically supplemented by technical assistance programs. The United States' efforts have also benefited from cooperation with other WTO members in seeking improvements in China's IPR enforcement, both on the ground in China and at the WTO during meetings of the TRIPS Council. For example, several WTO members participated as supportive third parties in the United States' two IPR-related WTO cases against China. Previously, Japan and Switzerland had joined the United States in making coordinated requests under Article 63.3 of the TRIPS Agreement in order to obtain more information about IPR infringement levels and enforcement activities in China. In addition, since then, the United States and the EU have increased coordination and information sharing on a range of China IPR issues. China's membership in the APEC forum also brings increased importance to APEC's work to develop regional IPR best practices.

Meanwhile, the United States has continued to pursue a comprehensive initiative to combat the enormous global trade in counterfeit and pirated goods, including exports of infringing goods from China to the United States and the rest of the world. The Intellectual Property Enforcement Coordinator, a White House position, coordinates these and other efforts. In fiscal year 2015, U.S. customs authorities effected 28,865 seizures of IPR infringing goods, which, if genuine, would have had a total estimated manufacturer's suggested retail price (MSRP) value of \$1.35 billion. Of these seizures, 52 percent, by estimated MSRP value, originated from China, with a total estimated MSRP value of \$697 million.

At the same time, China is making positive efforts to improve IPR enforcement, and cooperation between the United States and China has produced some successful enforcement actions. At the urging of the United States, China took the important step away from short-term enforcement campaigns toward a more permanent and systemic effort, with greater resources and capacity. In 2011, China committed to establish a State Council-level leadership structure, headed by a Vice Premier, to lead and coordinate IPR enforcement across China in order to enhance China's ability to crack down on IPR infringement. Since then, the United States has been closely monitoring the implementation and effectiveness of this leadership structure and regularly has met with Chinese government officials within the leadership structure. The United States also has urged China to use it as an opportunity to tackle emerging enforcement challenges, particularly the sale of pirated and counterfeit goods on the Internet and media box piracy, and to ensure that these efforts lead to sustained and systemic improvements in enforcement and deterrence of intellectual property crimes in China.

Despite its many positive efforts to improve IPR enforcement, China has pursued other policies that continue to impede effective enforcement. Several of these policies were the focus of a WTO case initiated by the United States in April 2007, seeking

changes to China's legal framework that would facilitate the utilization of criminal remedies against piracy and counterfeiting, enhance border enforcement against counterfeit goods and provide copyright protection for works that have not obtained approval from China's censorship authorities. These changes should be an important objective for China, given the lack of deterrence clearly evident in China's current enforcement regime. As discussed above, China did not appeal WTO panel rulings in favor of the United States and subsequently modified the measures at issue, effective March 2010.

At the same time, other changes were needed to address market access concerns. As the WTO ruled in 2009 in a WTO case brought by the United States, China maintains market access barriers, such as import and distribution restrictions, which discourage and delay the introduction of numerous types of legitimate foreign products into China's market. These barriers have created additional incentives for infringement of copyrighted products like books, newspapers, journals, theatrical films, DVDs and music and inevitably lead consumers to the black market, compounding the severe problems already faced by China's enforcement authorities. The United States welcomed the steps that China took in 2011 to comply with the WTO rulings in this case with regard to books, newspapers, journals, DVDs and music. The United States also welcomed the U.S.-China MOU covering theatrical films, which so far has provided significant increases in the number of foreign films imported and distributed in China each year and significant additional revenue for foreign film producers. As discussed above, China has not yet fully implemented its MOU commitments, including with regard to opening up film distribution opportunities, and as a result the United States has been pressing China for full implementation of the MOU. In calendar year 2017, the United States and China are scheduled to re-visit the films MOU, by its terms, so that the two sides can discuss issues of concern, including additional compensation for the U.S. side.

Trade Secrets

The United States remains seriously concerned about a growing number of instances in which important trade secrets of U.S. companies have been stolen by, or for the benefit of, Chinese competitors. It has been difficult for some U.S. companies to obtain legal relief through China's legal system against those who have benefitted from this theft or misappropriation, despite apparently compelling evidence demonstrating guilt. The United States is also concerned that many more trade secrets cases involving U.S. companies and Chinese competitors go unreported, because U.S. companies want to avoid the costs of pursuing legal relief, when weighed against the likelihood of obtaining no redress through Chinese legal channels and possible commercial repercussions for shining light on the conduct at issue.

As previously reported, the United States and China have increased their bilateral exchanges on the important issue of trade secrets, including in the JCCT IPR Working Group and the S&ED process and through direct engagement between senior-level U.S. and Chinese government officials. Ensuring that companies are able to protect and enforce their IPR in China effectively, including trade secrets, is essential to promoting successful commercial relationships between U.S. and Chinese companies.

At the December 2013 JCCT meeting, China committed to cooperate with, and give serious consideration to the views of, the United States in 2014 on proposals to amend China's trade secrets law as well as on related legislative and policy issues. China further committed to adopt and publish an action plan on trade secrets protection and enforcement for 2014 that was expected to include concrete enforcement actions, improvements of public awareness about trade secrets infringement, and requirements for strict compliance with all legal measures providing for trade secrets protection and enforcement by all enterprises and individuals. China subsequently published work plans prioritizing

efforts to enhance enforcement and public awareness efforts with regard to trade secrets, but the United States still would like to see China's adoption of an ongoing, robust action plan on trade secrets protection and enforcement.

At the July 2014 JCCT meeting, the United States secured China's commitment to vigorously investigate and prosecute cases of trade secrets theft, to publish civil and criminal judgments, and to protect trade secrets in the context of regulatory, administrative, and other government proceedings. China also agreed to continue to promote awareness of the importance of trade secrets, and to continue to prioritize trade secrets protection and enforcement in its enforcement agencies' work plans.

At the December 2014 JCCT meeting, China confirmed that trade secrets submitted to the government in administrative or regulatory proceedings are to be protected from improper disclosure to the public and only disclosed to government officials in connection with their official duties and that government officials who illegally disclose companies' trade secrets are to be subject to administrative or legal liability. China further committed to study various specified ways in which it could improve its laws, regulations and administrative procedures governing the protection of trade secrets in the context of administrative or regulatory proceedings.

During the September 2015 state visit of China's President Xi to the United States, China committed that "states should not conduct or knowingly support misappropriation of intellectual property, including trade secrets or other confidential business information with the intent of providing competitive advantages to their companies or commercial sectors." Subsequently, at the November 2015 JCCT meeting, China also announced that it is in the process of amending its *Anti-unfair Competition Law*, intends to issue model or guiding court cases and intends to clarify rules on preliminary injunctions, evidence preservation orders and damages.

In February 2016, China put forward draft amendments to the *Anti-unfair Competition Law* that included helpful revisions such as the elimination of the "practical utility" requirement and increased range of administrative fines for those who misappropriate trade secrets. However, important questions remain unresolved, and the United States has urged China to take a holistic approach and to address many critically needed elements to strengthen its trade secrets regime, including in the areas of enhancing access to preliminary injunctions and evidence preservation orders, increasing damages, clarifying the scope of applicability of the *Anti-unfair Competition Law*, and protecting trade secrets from damaging disclosure by government bodies.

At the November 2016 JCCT meeting, China confirmed that it is strengthening trade secrets protection in several ways. China explained that it plans to make further amendments to the *Anti-unfair Competition Law*, to bolster other facets of trade secrets protection, including regarding civil evidence preservation orders and damages, and to issue a judicial interpretation on preliminary injunctions and other matters.

In 2017, protection against trade secret misappropriation in China will continue to be a top priority in the United States' bilateral engagement with China. The United States will work to ensure that China fully implements past commitments and will press China for further needed improvements in its trade secrets regime.

Software Piracy

For several years, the United States has raised serious concerns about software piracy in China. A major focus of the United States' engagement of China in this area has focused on Chinese government agencies and state-owned enterprises.

As previously reported, in response to U.S. concerns about software piracy raised during the run-up to the April 2006 JCCT meeting, China issued rules

requiring that computers be pre-installed with licensed operating system software and that government agencies purchase only computers satisfying this requirement, and a series of other JCCT and S&ED commitments relating to software piracy, including ones requiring Chinese government agencies at all levels of government and central state-owned enterprises to purchase and use legitimate software, and to promote the centralized procurement of software.

Nevertheless, the relatively modest progress made by China over the last several years in reducing the rate of end-user business software piracy rates is of continuing concern to the United States and to a variety of software developers. The United States looks forward to timely, meaningful and verifiable implementation of China's JCCT and S&ED commitments to eliminate the use of unauthorized software at all levels of government and to discourage the use of unauthorized software by enterprises, including major state-owned and state-invested enterprises, beginning with pilot projects encouraging automated software asset management and increased deterrent penalties for violators.

China exacerbated the challenges facing U.S. and other foreign suppliers of software in 2013 when the State Council and MOF issued measures that impose price controls and related requirements on software purchases by government entities and possibly state-owned enterprises that appear to promote the purchase of domestic software over foreign software. The United States has raised serious concerns with China about these measures, particularly in light of China's JCCT and S&ED commitments relating to intellectual property localization.

Other Piracy Issues

Despite many special campaigns in China over the years to combat piracy, repeated bilateral commitments by China to increase enforcement and an increase in civil IPR cases, sales of U.S. copyright-intensive goods and services in the China market

remain substantially below levels in other markets, measured in a variety of ways, ranging from spending on legitimate music as a percentage of GDP to software sales per personal computer. The United States accordingly has urged China to continue its efforts to improve both protection and enforcement and to ensure that they result in an increase of sales of legitimate goods and services from all sources, including imports.

One problem is that television and radio tariffs for the broadcast of musical works were not adopted in China until January 2010, nine years after it was obligated to do so. These tariffs remain remarkably low.

In addition, piracy of movies (including during the pre-release phase), television programming and music remains widespread, particularly online, as China's Internet users are increasingly turning to streaming media to watch foreign movies and television programming. The encouraging growth of legitimate platforms streaming licensed content experienced a damaging setback when new Chinese regulations governing content review imposed procedural obstacles that have resulted in extensive delays in legitimate platforms obtaining broadcast permissions. The United States is strongly encouraging China to streamline procedures to avoid impediments to the streaming of licensed content.

An additional and growing concern involves illegal online content distribution via over-the-top set-top-boxes, known as media boxes. Not only is this illegal practice widespread in China, but also China is reported to be the source of a substantial share of media boxes pre-adapted to connect the user to online sources providing unlicensed content. China's regulatory authorities have taken some initial enforcement steps, but more steps are needed, as is closer cooperation with their U.S. counterparts.

Counterfeiting Issues

China's widespread counterfeiting not only harms the business interests of rights holders, both foreign

and domestic, but also includes many products that pose a direct threat to the health and safety of consumers in the United States, China and elsewhere, such as pharmaceuticals, food and beverages, batteries, auto parts, industrial equipment and toys, among many other products. At the same time, the harm from counterfeiting is not limited to rights holders and consumers. China estimated its own annual tax losses due to counterfeiting at more than \$3.2 billion back in 2002, and this figure could only have grown in the ensuing years. While the United States has received some positive reports about administrative and criminal enforcement efforts taken against some of the largest and most egregious offenders, it is clear that these efforts collectively have failed to arrest growth of counterfeiting in China, which remains the world's largest counterfeit producer and seller.

In 2014, there were continuing reports concerning the impact that counterfeiting was having on U.S. agricultural industries, including the fruit and vegetable industries and the wine industry. Of particular concern were counterfeit semiconductors entering the supply chain, creating the risk of the installation of fake and shoddy semiconductor components in electronic equipment, including in equipment used for critical functions related to agricultural safety and security.

In 2015 and 2016, several cases involving infringing and adulterated agricultural chemicals came to light. These cases caused significant public health, economic and environmental damage in China. In addition, some trademark rights holders are beginning to report a noticeable reduction in the visibility of counterfeit goods for sale in certain major retail and wholesale markets in China. This development appears to be the result of intensified administrative and criminal enforcement in certain areas. It also may be attributable to steps taken by national and local AICs to target landlords of physical markets as part of a wider effort to promote enforcement of intellectual property rights, as well as court decisions that have found landlords liable for infringement that they knew or should have

known was taking place on their premises. However, as noted above, greater clarity and uniformity in standards governing landlord liability is sorely needed, as many markets in China continue to trade in counterfeit and pirated merchandise.

Border Enforcement

With regard to border enforcement, the United States has encouraged China's Customs Administration to build on and expand enforcement cooperation relating to counterfeit and pirated goods destined for export. In 2007, the Customs Administration entered into a cooperation agreement with U.S. customs authorities to fight exports of counterfeit and pirated goods. Following the first working group meeting under the agreement in January 2013, both sides exchanged information on IPR enforcement practices and cooperatively developed a plan to conduct a joint IPR enforcement operation focused on interdicting counterfeit consumer electronics. The month-long operation was successfully conducted in April 2013 and an additional successful joint operation occurred in April 2016. At the same time, the United States remains concerned about various aspects of the Regulations on the Customs Protection of Intellectual Property Rights, issued by the State Council in December 2003, and implementing rules issued by the Customs Administration in March 2009.

SERVICES

While China has implemented most of its services commitments, concerns remain in some service sectors. In addition, challenges still remain in ensuring the benefits of many of the commitments that China has nominally implemented are available in practice, as China has continued to maintain or erect restrictive or cumbersome terms of entry or internal expansion in some sectors. These barriers, often imposed through non-transparent and lengthy licensing processes, prevent or discourage foreign suppliers from gaining market access through

informal bans on entry, high capital requirements, branching restrictions or restrictions taking away previously acquired market access rights.

The commitments that China made in the services area begin with the General Agreement on Trade in Services. The GATS provides a legal framework for addressing market access and national treatment limitations affecting trade and investment in services. It includes specific commitments by WTO members to restrict their use of those limitations and provides a forum for further negotiations to open services markets around the world. These commitments are contained in national services schedules, similar to the national schedules for tariffs.

In its Services Schedule, China committed to the substantial opening of a broad range of services sectors over time through the elimination of many existing limitations on market access, at all levels of government, particularly in sectors of importance to the United States, such as banking, insurance, telecommunications, distribution and professional services. At the time, these commitments were viewed as a good start toward opening up China's services sectors, particularly when compared to the services commitments of many other WTO members.

China also made certain "horizontal" commitments, which are commitments that apply to all sectors listed in its Services Schedule. The two most important of these cross-cutting commitments involve acquired rights and the licensing process. Under the acquired rights commitment, China agreed that the conditions of ownership, operation and scope of activities for a foreign company, as set out in the respective contractual or shareholder agreement or in a license establishing or authorizing the operation or supply of services by an existing foreign service supplier, will not be made more restrictive than they were on the date of China's accession to the WTO. In other words, if a foreign company had pre-WTO accession rights that went

beyond the commitments made by China in its Services Schedule, the company could continue to operate with those rights.

In the licensing area, prior to China's WTO accession, foreign companies in many services sectors did not have an unqualified right to apply for a license to establish or otherwise provide services in China. They could only apply for a license if they first received an invitation from the relevant Chinese regulatory authorities, and even then the decision-making process lacked transparency and was subject to inordinate delay and discretion. In its accession agreement, China committed to licensing procedures that were streamlined, transparent and more predictable.

Under the terms of its Services Schedule, China was allowed to phase in many of its services commitments over time. The last of these commitments was scheduled to have been phased in by December 11, 2007.

At present, 15 years after China's accession to the WTO, significant challenges still seem to remain in securing the benefits of many of China's services commitments. Through WTO dispute settlement, the United States was able to fully open China's financial information services sector in 2009, as China followed through on the terms of a settlement agreement requiring China to create an independent regulator and to remove restrictions that had been placed on foreign financial information service suppliers. Similarly, through WTO dispute settlement, the United States was able to secure the removal of importation and distribution restrictions applicable to copyright-intensive products such as books, newspapers, journals, DVDs and music, while also entering into a commercially beneficial MOU with China relating to the importation and distribution of theatrical films. However, concerns remain with regard to the implementation of other important services commitments, such as in the area of electronic payment services, where China has not yet opened up its market to permit foreign

companies to supply electronic payment services for domestic currency credit and debit card transactions, even though it lost a WTO dispute on this issue and agreed to come into compliance with its GATS commitments by July 31, 2013.

In 2016, China also continued to maintain or erect restrictive or cumbersome terms of entry in some sectors that prevent or discourage foreign suppliers from gaining market access. Many of these actions raise questions about commitments made by China in its Services Schedule. For example, China maintains an informal ban on entry in the basic telecommunications sector, and despite its commitments to open this sector China has not granted any new licenses since acceding to the WTO on December 11, 2001. The requirement that any joint venture partners for basic telecommunications services be majority government-owned provides a direct, non-transparent mechanism for enforcing this ban, and shuts off foreign suppliers from private Chinese enterprises that may be more attractive partners. China also has issued very few licenses for foreign value-added telecommunications suppliers and continues to seek to regulate this sector according to a very restrictive listing of licenses that does not correspond to the innovative nature of the services involved. In addition, although China announced that it was removing registered capital requirements for many sectors (on a non-discriminatory basis) in 2014, the subsequently issued implementing rules are somewhat vague and the impact on foreign suppliers in many sectors is still not clear. Moreover, in sectors such as banking, insurance and legal services, uneven and sometimes discriminatory application of branching regulations limit or delay market access for foreign suppliers. In other sectors, particularly construction services, problematic measures appear to be taking away previously acquired market access rights.

In 2017, the United States will continue its efforts to resolve the many concerns that have arisen in the area of services.

DISTRIBUTION SERVICES

China has made substantial progress in implementing its distribution services commitments, although significant concerns remain in some areas.

Prior to its WTO accession, China generally did not permit foreign enterprises to distribute products in China, i.e., to provide wholesaling, commission agents', retailing or franchising services or to provide related services, such as repair and maintenance services. These services were largely reserved to Chinese enterprises, although some foreign-invested enterprises were allowed to engage in distribution services within China under certain circumstances.

In its WTO accession agreement, China committed to eliminate national treatment and market access restrictions on foreign enterprises providing these services through a local presence within three years of China's accession (or by December 11, 2004), subject to limited product exceptions. In the meantime, China agreed to progressively liberalize its treatment of wholesaling services, commission agents' services and direct retailing services (except for sales away from a fixed location), as described below.

Overall, China has made substantial progress in implementing its distribution services commitments. As discussed below, however, significant concerns remain in some areas.

Wholesaling Services

China has issued regulations generally implementing its commitments in the area of wholesaling and commission agents' services. One significant exception involves China's restrictions on the distribution of imported theatrical films. In 2012, following a successful WTO case brought by the United States challenging these restrictions, the United States and China entered into an MOU providing for substantial increases in the number of U.S. films imported and distributed in China each

year and substantial additional revenue for foreign film producers, although China has not yet fully implemented its MOU commitments. Meanwhile, U.S. companies continue to have concerns about restrictions on the distribution of other products, such as pharmaceuticals, crude oil and processed oil.

China committed that, immediately upon its accession to the WTO, it would begin to eliminate national treatment and market access limitations on foreign enterprises providing wholesaling services and commission agents' services through a local presence pursuant to an agreed schedule of liberalization. Within three years after accession (or by December 11, 2004), almost all of the required liberalization should have been implemented. By this time, China agreed to permit foreign enterprises to supply wholesaling services and commission agents' services within China through wholly foreign-owned enterprises. In addition, exceptions that China had been allowed to maintain for books, newspapers, magazines, pharmaceutical products, pesticides and mulching films were to be eliminated. Exceptions for chemical fertilizers, processed oil and crude oil (but not salt and tobacco) were to be eliminated within five years after accession (or by December 11, 2006).

As previously reported, MOFCOM issued the *Measures on the Management of Foreign Investment in the Commercial Sector* in April 2004 following sustained engagement by the United States, including through the JCCT process. Among other things, these regulations lifted market access and national treatment restrictions on wholly foreign-owned enterprises and removed product exceptions for books, newspapers, magazines, pesticides and mulching films as of the scheduled phase-in date of December 11, 2004. The regulations also required enterprises to obtain central or provincial-level MOFCOM approval before providing wholesale services, and they appeared to set relatively low qualifying requirements, as enterprises needed only to satisfy the relatively modest capital requirements of the *Company Law* rather than the high capital requirements found in many other services sectors.

Since the issuance of the regulations, U.S. companies have been able to improve the efficiency of their China supply chain management. In addition, many of them have been able to restructure their legal entities to integrate their China operations into their global business more fully and efficiently, although problems remain in certain areas.

Books, Movies and Music

As in the area of trading rights, China continued to impose restrictions on foreign enterprises' distribution of copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs and music, despite its commitments to remove most market access and national treatment restrictions applicable to the distribution of these products by no later than December 11, 2004. China's restrictions were set forth in a complex web of measures issued by numerous agencies, including the State Council, NDRC, MOFCOM, the Ministry of Culture, SARFT and GAPP.

As previously reported, the United States initiated a WTO dispute settlement case against China in April 2007 challenging the importation and distribution restrictions applicable to copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs and music. As discussed above in the Trading Rights section, a WTO panel issued its decision in August 2009, ruling in favor of the United States on all significant claims, and China appealed. The WTO's Appellate Body rejected China's appeal on all counts in December 2009, and China agreed to come into compliance with these rulings by March 2011. China subsequently issued several revised measures, and repealed other measures, relating to its distribution restrictions on imported books, newspapers, journals, DVDs and music, although these steps have not yet brought China into full compliance with the WTO's rulings, particularly with regard to the online distribution of music.

With regard to theatrical films, China proposed bilateral discussions with the United States in order to seek an alternative solution. After months of

negotiations, which included discussions between the two sides' Vice Presidents, the United States and China reached agreement in February 2012 on an MOU providing for substantial increases in the number of foreign films imported and distributed in China each year, substantial additional revenue for foreign film producers and the opening up of film distribution opportunities for imported films. The MOU also provides that it will be reviewed after five years in order for the two sides to discuss issues of concern, including additional compensation for the U.S. side.

To date, while significantly more U.S. films have been imported and distributed in China on a revenue-sharing basis since the signing of the MOU and the revenue received by U.S. film producers has increased significantly, China has not yet fully implemented its MOU commitments, including with regard to critical commitments to open up film distribution opportunities for imported films. In addition, U.S. industry reports that China has been imposing an informal quota on the total number of U.S. revenue-sharing films and flat-fee films that can be imported each year, which, if true, would undermine the terms of the MOU. As a result, the United States has been pressing China for full implementation of the MOU, particularly with regard to films that are distributed in China on a flat-fee basis rather than a revenue-sharing basis. At the June 2015 S&ED meeting, China committed to ensure that any Chinese enterprise licensed to distribute films in China can distribute imported flat-fee films on their own and without having to contract with or otherwise partner with China Film Group or any other state-owned enterprise. China further committed that SAPPRFT, China Film Group or any other state-owned enterprise would not directly or indirectly influence the negotiation, terms, amount of compensation or execution of any distribution contract between a licensed Chinese distributor and a U.S. flat-fee film producer.

The films MOU provides that it will be reviewed in calendar year 2017 in order for the two sides to discuss issues of concern, including additional

compensation for the U.S. side. At the November 2016 JCCT meeting, China agreed that those discussions will seek to increase the number of revenue-sharing films to be imported each year and the share of gross box office receipts received by U.S. enterprises as well as seek to address outstanding U.S. concerns relating to other policies and practices that may impede the U.S. film industry's access to China's market, such as importation rights, the number of distributors of imported films and the independence of distributors, among other issues.

Pharmaceuticals

China committed to allow foreign suppliers to distribute pharmaceuticals by December 11, 2004, and it began accepting applications from and issuing wholesale licenses to foreign pharmaceutical companies about six months after that deadline. At the same time, despite overall progress in this area, many other restrictions affecting the pharmaceuticals sector continue to make it difficult for foreign pharmaceutical companies to realize the full benefits of China's distribution commitments. The United States is continuing to engage the Chinese regulatory authorities in these areas as part of a broader effort to promote comprehensive reform and to reduce the unnecessary trade barriers that foreign companies face.

Crude Oil and Processed Oil

China committed to permit foreign enterprises to engage in wholesale distribution of crude oil and processed oil, e.g., gasoline, by December 11, 2006. Shortly before this deadline, as previously reported, China issued regulations that prevent U.S. and other foreign enterprises from realizing the full benefits of this important commitment. In particular, China's regulations impose high thresholds and other potential impediments on foreign enterprises seeking to enter the wholesale distribution sector, such as requirements relating to levels of storage capacity, pipelines, rail lines, docks and supply contracts. The United States has raised concerns

about these regulations in connection with past transitional reviews before the Council for Trade in Services, while U.S. industry has attempted to compete under difficult circumstances. In consultation with U.S. industry, the United States will continue to assess the effects of China's restrictive regulations in 2017 while urging China to remove unwarranted impediments to market entry. China's 2015 Foreign Investment Catalogue did remove "wholesale of refined petroleum" from the restricted list. However, it is not clear how in practice this change relates to remaining restrictions applying to construction and management of gas stations.

Automobiles

China began to implement several measures related to the distribution of automobiles by foreign enterprises in 2005, including the February 2005 *Implementing Rules for the Administration of Brand-Specific Automobile Dealerships*, jointly issued by MOFCOM, NDRC and SAIC. In November 2005, NDRC followed up with the *Rules for Auto External Marks*, and in January 2006 MOFCOM issued the *Implementing Rules for the Evaluation of Eligibility of Auto General Distributors and Brand-specific Dealers*. While U.S. industry has generally welcomed these measures, they do contain some restrictions on foreign enterprises that may not be applied to domestic enterprises. The United States has been closely monitoring how China applies these measures in an effort to ensure that foreign enterprises are not adversely affected by these restrictions.

Retailing Services

China has issued regulations generally implementing its commitments in the area of retailing services, although some concerns remain with regard to licensing discrimination. China continues to maintain restrictions on the retailing of processed oil.

China committed that, immediately upon its accession to the WTO, it would begin to eliminate

national treatment and market access limitations on foreign enterprises providing retailing services through a local presence pursuant to an agreed schedule of liberalization. Within three years after accession (or by December 11, 2004), almost all of the required liberalization should have been implemented. By this time, China agreed to permit foreign enterprises to supply retailing services through wholly foreign-owned enterprises. In addition, by this time, exceptions that China had been allowed to maintain for pharmaceutical products, pesticides, mulching films and processed oil were to be eliminated. An exception for chemical fertilizers was to be eliminated within five years after accession (or by December 11, 2006).

As previously reported, the April 2004 distribution regulations issued by MOFCOM lifted market access and national treatment limitations on wholly foreign-owned enterprises and removed the product exceptions for pesticides and mulching films as of the scheduled phase-in date of December 11, 2004. These regulations also removed the product exception for chemical fertilizer as of the scheduled phase-in date of December 11, 2006. In addition, in the revised *Catalogue Guiding Foreign Investment in Industry*, issued in December 2011, China removed the retailing of over-the-counter medicines from the "restricted" category of foreign investments.

Processed Oil

China committed to allow wholly foreign-owned enterprises to sell processed oil, e.g., gasoline, at the retail level by December 11, 2004, without any market access or national treatment limitations. However, to date, China has treated retail gas stations as falling under the chain store provision in its Services Schedule, which permits only joint ventures with minority foreign ownership for "those chain stores which sell products of different types and brands from multiple suppliers with more than 30 outlets." This treatment has severely restricted foreign suppliers' access to China's retail gas market, a situation that has since been exacerbated by China's restrictions on foreign enterprises that seek

to engage in wholesale distribution of crude oil. As in prior years, the United States is working with U.S. industry to assess the effects of China's unwarranted restrictions on wholesale and retail distribution in this sector and will continue to engage the Chinese government in 2017 in an effort to ensure that U.S. industry realizes the full benefits to which it is entitled in this sector.

Franchising Services

China has issued regulations generally implementing its commitments in the area of franchising services.

As part of its distribution commitments, China committed to permit the cross-border supply of franchising services immediately upon its accession to the WTO. It also committed to permit foreign enterprises to provide franchising services in China, without any market access or national treatment limitations, by December 11, 2004.

In December 2004, as previously reported, MOFCOM issued new rules governing the supply of franchising services in China, which included a requirement that a franchiser own and operate at least two units in China for one year before being eligible to offer franchises in China. In 2007, following U.S. engagement, China eased the requirement that a franchiser own and operate at least two units in China by allowing a franchiser to offer franchise services in China if it owns and operates two units anywhere in the world. The United States welcomed this action and has been monitoring developments in this area since then.

Direct Selling Services

China has issued regulations generally implementing its commitments in the area of direct selling services, although regulatory restrictions, including service center requirements imposed on the operations of direct sellers, continue to generate concern.

In its WTO accession agreement, China did not agree to any liberalization in the area of direct selling, or sales away from a fixed location, during the first three years of its WTO membership. By December 11, 2004, however, China committed to lift market access and national treatment restrictions in this area.

As previously reported, the Chinese regulatory authorities issued implementing measures in 2005 and 2006, which contained several problematic provisions. For example, one provision requires a direct seller to establish a service center in each urban district in which it intends to do business – which translates into many thousands of service centers to carry out direct selling throughout China. Another provision essentially outlaws multi-level marketing practices allowed in every country in which the U.S. industry operates – reportedly 170 countries in all – by refusing to allow direct selling enterprises to pay compensation based on team sales, where upstream personnel are compensated based on downstream sales. Other problematic provisions include a three-year experience requirement that only applies to foreign enterprises, not domestic enterprises, a cap on single-level compensation, restrictions on the cross-border supply of direct selling services and high capital requirements that may limit smaller direct sellers' access to the market. To date, extensive U.S. engagement has failed to persuade China to reconsider the various problematic provisions in these measures.

Meanwhile, MOFCOM's application and review process initially proved to be opaque and slow, although a number of companies, including several foreign companies, obtained direct selling licenses. However, beginning in May 2007, it appeared that MOFCOM was not issuing any new licenses even though several companies had applied for them. In 2009, following extensive U.S. engagement, China issued a direct selling license to one additional U.S. direct selling company, although no further licenses have been issued to foreign companies. The United

States is continuing to closely monitor MOFCOM's progress in issuing new direct selling licenses.

Financial Services

BANKING SERVICES

China has taken a number of steps to implement its banking services commitments, although some of these efforts have generated concerns, and there are some instances in which China still does not seem to have fully implemented particular commitments, such as with regard to Chinese-foreign joint banks and bank branches.

Prior to its accession to the WTO, China had allowed foreign banks to conduct foreign currency business in selected cities. Although China had also permitted foreign banks, on an experimental basis, to conduct domestic currency business, the experiment was limited to foreign customers in two cities.

In its WTO accession agreement, China committed to a five-year phase-in for banking services by foreign banks. Specifically, China agreed that, immediately upon its accession, it would allow U.S. and other foreign banks to conduct foreign currency business without any market access or national treatment limitations and conduct domestic currency business with foreign-invested enterprises and foreign individuals, subject to certain geographic restrictions. The ability of U.S. and other foreign banks to conduct domestic currency business with Chinese enterprises and individuals was to be phased in. Within two years after accession, foreign banks were also to be able to conduct domestic currency business with Chinese enterprises, subject to certain geographic restrictions. Within five years after accession, foreign banks were to be able to conduct domestic currency business with Chinese enterprises and individuals, and all geographic restrictions were to be lifted. Foreign banks were also to be permitted to provide financial leasing services at the same time that Chinese banks are permitted to do so.

Since its accession to the WTO, China has taken a number of steps to implement its banking services commitments. At times, however, China's implementation efforts have generated concerns, and there are some instances in which China still does not seem to have fully implemented particular commitments.

As previously reported, shortly after China's accession to the WTO, the PBOC issued regulations governing foreign-funded banks, along with implementing rules, which became effective February 2002. The PBOC also issued several other related measures. Although these measures appeared to keep pace with the WTO commitments that China had made, it became clear that the PBOC had decided to exercise significant caution in opening up the banking sector. In particular, it imposed working capital requirements and other requirements that exceeded international norms and made it more difficult for foreign banks to establish and expand their market presence in China. Many of these requirements, moreover, did not apply equally to foreign and domestic banks.

For example, China appears to have fallen behind in implementing its commitments regarding the establishment of Chinese-foreign joint banks. In its Services Schedule, China agreed that qualified foreign financial institutions would be permitted to establish Chinese-foreign joint banks immediately after China acceded, and it did not schedule any limitation on the percentage of foreign ownership in these banks. To date, however, China has limited the sale of equity stakes in existing state-owned banks to a single foreign investor to 20 percent, while the total equity share of all foreign investors is limited to 25 percent. For several years, the United States and other WTO members have urged China to relax these limitations, although no progress has yet been achieved.

Another problematic area involves the ability of U.S. and other foreign banks to participate in the domestic currency business in China, the business that foreign banks were most eager to pursue in

China, particularly with regard to Chinese individuals. As previously reported, despite high capital requirements and other continuing impediments to entry into the domestic currency business, participation of U.S. and other foreign banks in the domestic currency business expanded tremendously after China acceded to the WTO on December 11, 2001, first with regard to foreign-invested enterprises and foreign individuals and later with regard to Chinese enterprises, subject to geographic restrictions allowed by China's WTO commitments. China had committed to allow foreign banks to conduct domestic currency business with Chinese individuals by December 11, 2006, but it was only willing to do so subject to a number of problematic restrictions.

In November 2006, the State Council issued the *Regulations for the Administration of Foreign-funded Banks*. Among other things, these regulations mandated that only foreign-funded banks that have had a representative office in China for two years and that have total assets exceeding \$10 billion can apply to incorporate in China. After incorporating, moreover, these banks only become eligible to offer full domestic currency services to Chinese individuals if they can demonstrate that they have operated in China for three years and have had two consecutive years of profits. The regulations also restricted the scope of activities that can be conducted by foreign banks seeking to operate in China through branches instead of through subsidiaries. In particular, the regulations restricted the domestic currency business of foreign bank branches. While foreign bank branches can continue to take deposits from and make loans to Chinese enterprises in domestic currency, they can only take domestic currency deposits of RMB 1 million (\$164,000) or more from Chinese individuals and cannot make any domestic currency loans to Chinese individuals. In addition, unlike foreign banks incorporated in China, foreign bank branches cannot issue domestic currency credit and debit cards to Chinese enterprises or Chinese individuals.

Other problems arose once the *Regulations for the Administration of Foreign-funded Banks* went into effect in December 2006. For example, Chinese regulators did not act on the applications of foreign banks incorporated in China to issue domestic currency credit and debit cards, or to trade or underwrite commercial paper or long-term listed domestic currency bonds.

In 2007 and 2008, working closely with U.S. banks, the United States was able to use the SED process and meetings of the U.S.-China Joint Economic Committee to improve the access of U.S. banks to the domestic currency business. For example, China committed to act on the applications of foreign banks incorporated in China seeking to issue their own domestic currency credit and debit cards. However, the PBOC insists as a condition of its approval that the banks move the data processing for these credit and debit cards onshore, a costly step that has limited foreign participation in the market to date. In addition, China agreed to reduce its limitations on foreign bank issuance of local currency denominated subordinated debt in order to be able to raise capital to expand operations. China also agreed to allow foreign incorporated banks to trade bonds in the interbank market on the same basis as Chinese banks and to allow foreign banks to increase liquidity on an exceptional basis through guarantees or loans from affiliates abroad.

At the July 2009, May 2010 and May 2011 S&ED meetings, China reiterated its commitment to deepen financial system reform. In addition, China agreed to continue to allow foreign-invested banks incorporated in China that meet relevant prudential requirements to enjoy the same rights as domestic banks with regard to underwriting corporate bonds in the interbank market. Subsequently, in April 2011, China's interbank bond market oversight body issued qualifying criteria for underwriters and opened up a window for applications. Many U.S. and other foreign institutions applied, although only one foreign bank has been approved to underwrite.

At the May 2011 S&ED meeting, China took additional steps to deepen financial market opening. Specifically, China committed to allow locally incorporated U.S. and other foreign banks in China to distribute mutual funds, act as custodians for mutual funds, and serve as margin depository banks for qualified foreign institutional investors engaging in financial futures transactions.

At the July 2013 S&ED meeting, China pledged that locally incorporated foreign banks and securities firms will be able to directly trade government bond futures and to encourage investment by foreign and domestic institutional investors in these financial products. China also welcomed participation by foreign firms in corporate bond underwriting and pledged to facilitate further evaluations of underwriters in a fair and open process. China further agreed to give active consideration to reducing the waiting period for a foreign bank branch to apply for an RMB license.

In 2014, the United States continued to press China for further liberalization. At the July 2014 S&ED meeting, China committed to actively study policies concerning the further opening-up of the banking sector.

In 2015 and 2016, the United States continued to press China for further liberalization. At the June 2016 S&ED meeting, China committed to gradually raise the permitted equity holding of qualified foreign financial institutions in securities and fund management companies. China also welcomed qualified foreign financial institutions to apply for registration of private fund management entities to engage in private securities fund management business.

In 2017, the United States will continue to make every effort to ensure that China fully implements its WTO commitments and that U.S. banks realize the full benefits to which they are entitled. The United States also will continue to press for further liberalization in this sector.

MOTOR VEHICLE FINANCING SERVICES

China has implemented its commitments with regard to motor vehicle financing.

In its WTO accession agreement, China agreed to open up the motor vehicle financing sector to foreign non-bank financial institutions for the first time, and it did so without any limitations on market access or national treatment. These commitments became effective immediately upon China's accession to the WTO. As previously reported, China finally implemented the measures necessary to allow foreign financial institutions to obtain licenses and begin offering auto loans in October 2004, nearly three years after its accession to the WTO.

At the May 2012 S&ED meeting, China committed to approve applications by qualified auto financing companies (AFCs), including foreign-invested entities, to issue financial bonds in China, so that they have regular access to financing in the interbank bond market. In addition, China committed that foreign-invested and Chinese-invested AFCs would enjoy the same treatment in issuing asset-backed securities during the trial period of asset securitization in China.

INSURANCE SERVICES

China has issued measures implementing most of its insurance commitments, but these measures have also created market access problems and foreign insurers' share of China's market remains very low.

Prior to its accession to the WTO, China allowed selected foreign insurers to operate in China on a limited basis and in only two cities. Three U.S. insurers had licenses to operate, and several more were either waiting for approval of their licenses or were qualified to operate but had not yet been invited to apply for a license by China's insurance regulator, the China Insurance Regulatory Commission.

In its WTO accession agreement, China agreed to phase out existing geographic restrictions on all types of insurance operations during the first three years after accession. It also agreed to expand the ownership rights of foreign companies over time. Specifically, China committed to allow foreign life insurers to hold a 50-percent equity share in a joint venture upon accession. China also committed to allow foreign property, casualty and other non-life insurers to establish as a branch or as a joint venture with a 51-percent equity share upon accession and to establish as a wholly foreign-owned subsidiary two years after accession. In addition, foreign insurers handling large scale commercial risks, marine, aviation and transport insurance, and reinsurance were to be permitted to establish as a wholly foreign-owned subsidiary five years after accession. China further agreed to permit all foreign insurers to expand the scope of their activities to include health, group and pension/annuities lines of insurance within three years after accession.

China also made additional significant commitments relating specifically to branching. China committed to allow non-life insurance firms to establish as a branch in China upon accession and to permit internal branching in accordance with the lifting of China's geographic restrictions. China further agreed that foreign insurers already established in China that were seeking authorization to establish branches or sub-branches would not have to satisfy the requirements applicable to foreign insurers seeking a license to enter China's market.

As previously reported, CIRC issued several new insurance regulations and implementing rules after China acceded to the WTO. These measures implemented many of China's commitments, but they also created problems in the critical areas of capitalization requirements, branching and transparency, and foreign insurers have often faced restrictions or obstacles that hinder them from expanding their presence in China's market.

Since China's accession to the WTO, the United States has used all available opportunities to engage

China and its insurance regulator, CIRC, on needed improvements to China's insurance regime. On the bilateral front, this engagement has included the JCCT process, the S&ED process and an Insurance Dialogue with CIRC, while multilateral engagement has included transitional review meetings before the WTO's Committee on Trade in Financial Services and the Trade Policy Reviews for China.

As previously reported, U.S. engagement has led to improvements with regard to capital requirements and licensing, although many other needed improvements remain. For example, China continues to use formal and informal policies and practices to maintain market access barriers that limit the market share of foreign-invested insurance companies in China following China's accession to the WTO. At present, in the life insurance sector, where China only permits foreign companies to participate in Chinese-foreign joint ventures, with foreign equity capped at 50 percent, the market share of these foreign-invested companies is less than four percent. The market share of foreign-invested companies in the non-life (i.e., property and casualty) insurance sector is only one percent. In addition, China has entirely closed its market for political risk insurance to foreign participation. In May 2012, as discussed below, China did open up its mandatory third-party liability auto insurance market to foreign participation, which was a welcome shift.

The United States has continued to press China regarding the need for CIRC to follow non-discriminatory procedures to approve U.S. companies for internal branches and sub-branches, following established regulatory time frames and recognizing the right to obtain approval for multiple, concurrent branches. In a newer development, China continues to take steps regarding the ability of insurance companies to provide certain insurance services over the Internet, which has started to provide additional useful channels to reach Chinese consumers. The United States has encouraged China to further expand the types of insurance allowed to be provided over the Internet.

Using annual U.S.-China Insurance Dialogue meetings and related bilateral meetings, including the JCCT and S&ED processes, the United States has continued to press CIRC to further open up the life, health and pensions insurance, insurance brokerage and other insurance sectors, and to follow non-discriminatory procedures when approving new licensing requests and internal branching requests. At the July 2013 S&ED meeting, China announced that it plans to expand its pilot projects for tax-deferred insurance pension products to additional regions and that it will treat domestic enterprises and foreign-invested enterprises equally with regard to participation and any future expansion. At the July 2014 S&ED meeting, China announced that it welcomes foreign companies to submit applications for internal branches and that it will follow the timeframes set forth in its own regulations in reviewing and approving those applications.

Despite continuing challenges, a number of U.S. and other foreign insurers are currently operating in China, and they are continuing to work to broaden their presence in China. In 2017, as in prior years, the United States will continue to use both bilateral and multilateral engagement to address issues of concern to these and other U.S. insurers. The United States is committed to seeking market access for U.S. insurers on a transparent, fair and equitable basis.

Enterprise Annuities Services

China maintains a complex approval process for the licensing of suppliers of enterprise annuities services, and China's regulatory authorities – which include the Ministry of Human Resources and Social Security as well as the China Banking Regulatory Commission, the China Securities Regulatory Commission and CIRC – have not granted any new licenses in more than six years. Even under previous licensing windows, China licensed very few foreign suppliers, and only for limited elements of enterprise annuities services. The United States has been urging China to re-open its licensing process for suppliers of enterprise annuities services and to

ensure that its licensing procedures are transparent and do not discriminate against qualified foreign suppliers. In 2017, the United States will continue to press China to re-open this sector on a transparent and non-discriminatory basis.

Auto Insurance Services

For years, the United States had sought the opening of China's mandatory third party liability auto insurance services sector to foreign-invested insurance companies. During the May 2011 S&ED meeting, China pledged to "actively study and push forward the opening of" mandatory third party liability auto insurance in China to foreign-invested insurance companies, even though China was not required to open this services sector by its GATS commitments. At the May 2012 S&ED meeting, China noted that it had amended its regulations to allow foreign-invested insurance companies to sell mandatory third party liability auto insurance in China. U.S. and other foreign insurers strongly welcomed the opening of this market, and many of them are now selling mandatory third party liability auto insurance in China, although the United States continues to engage with China regarding regulatory issues connected with the provision of this type of insurance.

FINANCIAL INFORMATION SERVICES

In response to a WTO case brought by the United States, China has established an independent regulator for the financial information sector and has removed restrictions that had placed foreign suppliers at a serious competitive disadvantage.

In its WTO accession agreement, as noted above, China committed that, for the services included in its Services Schedule, the relevant regulatory authorities would be separate from, and not accountable to, any service suppliers they regulated, with two specified exceptions. One of the services included in China's Services Schedule – and not listed as an exception – is the "provision and transfer of

financial information, and financial data processing and related software by suppliers of other financial services.”

As previously reported, following its accession to the WTO, China did not establish an independent regulator in the financial information services sector. Xinhua, the Chinese state news agency, remained the regulator of, and became a major market competitor of, foreign financial information service providers in China. In addition, in 2006, a major problem developed when Xinhua issued a measure that precluded foreign providers of financial information services from contracting directly with or providing financial information services directly to domestic Chinese clients. Instead, foreign financial information service providers were required to operate through a Xinhua-designated agent, and the only agent designated was a Xinhua affiliate. These new restrictions did not apply to domestic financial information service providers and, in addition, contrasted with the rights previously enjoyed by foreign information service providers since the issuance of the 1996 rules, well before China's accession to the WTO in December 2001.

In March 2008, after it had become clear that sustained bilateral engagement of China would not resolve the serious WTO concerns generated by Xinhua's restrictions, the United States and the EU initiated WTO dispute settlement proceedings against China. Canada later joined in as a co-complainant in September 2008. In November 2008, an MOU was signed in which China addressed all of the concerns that had been raised by the United States, the EU and Canada. Among other things, China agreed to establish an independent regulator, to eliminate the agency requirement for foreign suppliers and to permit foreign suppliers to establish local operations in China, with all necessary implementing measures issued by April 2009, effective no later than June 2009. Subsequently, China timely issued the measures necessary to comply with the terms of the MOU.

ELECTRONIC PAYMENT SERVICES

China has not yet implemented electronic payment services commitments that were scheduled to have been phased in no later than December 11, 2006. China agreed to implement these commitments by July 2013 in order to comply with the rulings in a WTO case brought by the United States, but it has not yet done so.

In the Services Schedule accompanying its Protocol of Accession, China committed to remove market access limitations and provide national treatment for foreign suppliers providing payment and money transmission services, including credit, charge, and debit cards. This commitment was to be implemented by no later than December 11, 2006.

In the years leading up to 2006, China's regulator, the PBOC, placed severe restrictions on foreign suppliers of electronic payment services, like the major U.S. credit card companies, which typically provide electronic payment services in connection with the operation of electronic networks that process payment transactions involving credit, debit, prepaid and other payment cards. Through these services, they enable, facilitate and manage the flow of information and the transfer of funds from cardholders' banks to merchants' banks. However, the PBOC prohibited foreign suppliers from handling the typical payment card transaction in China, in which a Chinese consumer makes a payment in China's domestic currency, known as the renminbi, or RMB. Instead, through a variety of measures, the PBOC created a national champion, allowing only one domestic entity, CUP, an entity created by the PBOC and owned by participating Chinese banks, to provide these services.

Beginning in 2006, as the deadline for implementation of China's commitments approached, a number of troubling proposals were attributed to CUP and apparently supported by the PBOC. The common theme of these proposals was

that CUP would continue to be designated as a monopoly provider of electronic payment processing services for Chinese consumers for RMB processing, and that no other providers would be able to enter this market. Through a series of bilateral meetings beginning in September 2006, the United States cautioned China that none of the proposals being attributed to CUP seemed to satisfy the commitments that China had made to open up its market to foreign providers of electronic payment services. The United States reinforced this message during the transitional reviews before the Committee on Trade in Financial Services, held in November 2006. The United States also raised this issue on the margins of the first SED meeting, held in December 2006.

After China's deadline of December 11, 2006, which passed without any action having been taken by China, the United States again pressed China. The United States raised its concerns in connection with SED meetings and other bilateral meetings in 2007 and 2008 as well as at the WTO during the transitional reviews before the Committee for Trade in Financial Services in 2007, 2008 and 2009 and China's second and third Trade Policy Reviews, held in 2008 and 2010, without making progress.

In September 2010, the United States brought a WTO case challenging China's various restrictions on foreign suppliers of electronic payment services in an effort to ensure that U.S. suppliers would enjoy the full benefits of the market-opening commitments that China made in its Services Schedule. Consultations were held in October 2010. At the United States' request, a WTO panel was established to hear this case in March 2011, and six other WTO members joined the case as third parties. Hearings before the panel took place in October and December 2011, and the panel issued its decision in July 2012. The panel found the challenged restrictions to be inconsistent with China's commitments under the GATS. China decided not to appeal the panel's decision and subsequently agreed to come into compliance with the WTO's rulings by

July 2013. China did take some steps toward complying with the WTO's rulings. China repealed certain challenged measures, but imposed a new licensing requirement for foreign suppliers to be able to provide these services, without also taking the critical step of establishing a process for foreign suppliers actually to obtain the needed licenses.

In October 2014, China's State Council announced that China would be opening its market to foreign suppliers of electronic payment services, but it did not issue an official decision confirming the opening until April 2015. In that decision, the State Council sets out various requirements that must be satisfied by a company in order to receive a license and creates a two-step application process. It also calls for the PBOC to issue regulations to implement this licensing process.

In August 2015, the PBOC issued draft licensing regulations for public comment, and the United States and U.S. stakeholders submitted comments. However, it was not until June 2016 during the S&ED meeting that the PBOC issued final licensing regulations.

Since then, PBOC appears to have issued technical guidance for potential applicants, and it reportedly is developing substantive guidance for potential applicants. As of December 2016, U.S. suppliers remained blocked from entering China's market. Accordingly, the United States continues to actively press China and is considering additional next steps to ensure that China complies fully with the WTO's rulings.

Legal Services

China has issued measures intended to implement its legal services commitments, although these measures give rise to WTO compliance concerns because they impose an economic needs test, restrictions on the types of legal services that can be provided and lengthy delays for the establishment of new offices.

Prior to its WTO accession, the Chinese government had imposed various restrictions in the area of legal services. The Chinese government maintained a prohibition against representative offices of foreign law firms practicing Chinese law or engaging in profit-making activities of any kind. It also imposed restrictions on foreign law firms' formal affiliation with Chinese law firms, limited foreign law firms to one representative office and maintained geographic restrictions.

China's WTO accession agreement provides that, upon China's accession to the WTO, foreign law firms may provide legal services through one profit-making representative office, which must be located in one of several designated cities in China. The foreign representative offices may act as "foreign legal consultants" who advise clients on foreign legal matters and may provide information on the impact of the Chinese legal environment, among other things. They may also maintain long-term "entrustment" relationships with Chinese law firms and instruct lawyers in the Chinese law firm as agreed between the two law firms. In addition, all quantitative and geographic limitations on representative offices were to have been phased out within one year of China's accession to the WTO, which means that foreign law firms should have been able to open more than one office anywhere in China beginning on December 11, 2002.

As previously reported, the State Council issued the *Regulations on the Administration of Foreign Law Firm Representative Offices* in December 2001, and the Ministry of Justice issued implementing rules in July 2002. While these measures removed some market access barriers, they also generated concern among foreign law firms doing business in China. In many areas, these measures were ambiguous. Among other things, these measures could be interpreted as imposing an economic needs test for foreign law firms that want to establish offices in China, which raises WTO concerns. In addition, the procedures for establishing a new office or an additional office seem unnecessarily time-consuming. For example, a foreign law firm may not

establish an additional representative office until its most recently established representative office has been in practice for three consecutive years. Furthermore, new foreign attorneys must go through a lengthy approval process that can take more than one year.

These measures also include other restrictions that make it difficult for foreign law firms to take advantage of the market access rights granted by China's WTO accession agreement. For example, foreign attorneys may not take China's bar examination, and foreign law firms may not hire registered members of the Chinese bar as attorneys to provide advice on Chinese law, nor may foreign attorneys working in China otherwise provide advice on Chinese law to clients. Foreign law firms have also reported that they are not given the uniform right to attend or provide consultancy services to clients during regulatory proceedings administered by Chinese government agencies and that at times they are barred from accompanying their clients to certain government meetings, raising concerns in light of China's GATS commitments. In addition, foreign law firms are subject to taxes at both the firm and individual levels, while domestic law firms are only taxed as partnerships.

The United States has raised its concerns in this area both bilaterally through the JCCT process and at the WTO during meetings before the Council for Trade in Services and China's Trade Policy Reviews, with support from other WTO members. To date, although a number of U.S. and other foreign law firms have been able to open additional offices in China, little progress has been made on the other issues affecting access to China's legal services market. The United States will continue to engage China in 2017 in an attempt to resolve these outstanding concerns.

Telecommunications Services

It appears that China has nominally kept to the agreed schedule for phasing in its WTO commitments in the telecommunications sector.

However, restrictions maintained by China on value-added services have created serious barriers to market entry for foreign suppliers seeking to provide value-added services. In addition, China's restrictions on basic services, such as informal bans on new entry, a requirement that foreign suppliers can only enter into joint ventures with state-owned enterprises and exceedingly high capital requirements, have totally blocked foreign suppliers from accessing China's basic services market.

In the Services Schedule accompanying its WTO accession agreement, China committed to permit foreign suppliers to provide a broad range of telecommunications services through joint ventures with Chinese companies, including domestic and international wired services, mobile voice and data services, value-added services (such as electronic mail, voice mail and on-line information and database retrieval) and paging services. The foreign equity stake permitted in the joint ventures was to increase over time, reaching a maximum of 49 percent for basic telecommunications services and 50 percent for value-added services. In addition, all geographical restrictions were to be eliminated within two to six years after China's WTO accession, depending on the particular services sector.

Importantly, China also accepted key principles from the WTO Reference Paper on regulatory principles. As a result, China became obligated to separate the regulatory and operating functions of the telecommunications regulatory agency in China (now known as MIIT), which was the operator of China Telecom at the time of China's accession to the WTO. China also became obligated to adopt pro-competitive regulatory principles, such as cost-based pricing and the right of interconnection, which are necessary for foreign-invested joint ventures to compete with incumbent suppliers such as China Telecom, China Unicom and China Mobile.

Even though China appears to have nominally implemented its WTO commitments on schedule, no meaningful market-opening progress has taken place in the telecommunications services sector through

2016. As previously reported, with regard to basic services, MIIT's imposition of informal bans on new entry, limitations on foreign suppliers' selection of Chinese joint venture partners and high capital requirements, have continued to present formidable barriers to market entry for foreign suppliers. In addition, the approach that China has taken to regulating value-added services, including its insistence on classifying certain value-added services as basic services when provided by foreign suppliers, and other uncertainties presented by China's classification of value-added services, have presented similarly formidable barriers to foreign entry.

In March 2016, China issued a revised Catalogue of Telecommunications Services. Among other things, the catalogue seeks to expand the scope of value-added telecommunications services to include a range of Internet-related services, including cloud computing services, thereby subjecting them to the foreign equity caps that apply to the telecommunications sector, even though these services are not telecommunications services, as discussed in the Internet-related Services section below. In addition, the catalogue continues to maintain for licensing purposes a rigid and overly specific classification of what is understood as value-added telecommunications services instead of adopting a broad, functional definition of these services that better supports innovation.

As China completes its 15th year of WTO membership, the United States is unaware of any domestic or foreign application for a new stand-alone license to provide basic telecommunications services that has completed the MIIT licensing process, even in commercially attractive areas such as the re-sale of basic telecommunications services, leased line services or corporate data services. In fact, at present, the number of suppliers of basic telecommunications services appears to be frozen at three Chinese state-owned enterprises, limiting the opportunities for new joint ventures and reflecting a level of competition that is extraordinarily low given the size of China's market. Meanwhile, with regard

to value-added services, the Chinese regulator – MIIT – had licensed more than 29,000 domestic suppliers as of November 2013, but only 41 foreign suppliers.

In May 2013, China introduced rules establishing a pilot program for the resale of mobile services, which can increase competitive opportunities in China's heavily concentrated market. The United States is very concerned that foreign firms are currently excluded from the pilot program, while China has issued licenses to approximately two dozen Chinese suppliers. It appears that MIIT also may be considering elimination of the pilot program as a whole. To date, the United States has raised its concerns with China through the JCCT process, without success.

With regard to satellite services, such as video transport services for Chinese broadcasters or cable companies, U.S. satellite operators remain severely hampered by Chinese policies that prohibit foreign satellite operators from obtaining licenses to provide these services in China and that instead only allow a foreign satellite operator to use a licensed Chinese satellite operator as an agent to provide these services. These policies have made it difficult for foreign satellite operators to develop their own customer base in China, as Chinese satellite operators essentially have a "first right of refusal" with regard to potential customers.

Many of the difficulties faced by foreign suppliers in accessing China's telecommunications market seem directly attributable to the actions of China's telecommunications regulator. While the regulator, MIIT, is nominally separate from China's telecommunications firms, it maintains extensive influence and control over their operations and continues to use its regulatory authority to disadvantage foreign firms.

Over the years, the United States has raised its many telecommunications concerns with China, using bilateral engagement, particularly the JCCT process, and WTO meetings, including the annual transitional

reviews before the Council for Trade in Services and China's Trade Policy Reviews, where the United States has received support from other WTO members. These efforts, however, achieved virtually no progress.

Throughout 2015 and 2016, principally using the JCCT process, the United States again vigorously engaged China on the range of telecommunications services issues, including priority issues such as removing foreign equity caps to allow for wholly foreign-owned companies, providing market access for foreign suppliers in connection with China's planned pilot projects on the resale of mobile telecommunications services and seeking some means to ameliorate restrictions contained in the revised Catalogue of Telecommunications Services, particularly as applied to value-added telecommunications services and Internet-related services. By the time of the November 2016 JCCT meeting, however, the United States had been unable to persuade China to make any significant changes. In 2017, the United States will continue to engage China vigorously on these and other issues that contribute to the absence of meaningful market-opening in China's telecommunications services sector.

Audio-visual and Related Services

China has taken steps to comply with the rulings in a WTO case brought by the United States with regard to the distribution of DVDs and sound recordings, although more steps are needed. Meanwhile, China's restrictions in the area of theatre services have wholly discouraged investment by foreign suppliers, and China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers. Many Chinese government agencies are now seeking to regulate audio-visual and other media services, and this situation has created a lack of clarity about which laws and regulations apply to these services.

As discussed in the Distribution Services section above, in 2011, China removed various importation

and distribution restrictions affecting books, newspapers, journals, sound recordings and DVDs in response to a successful WTO case brought by the United States. China also entered into an MOU with the United States in 2012 providing increased and improved market access for imported theatrical films. At the same time, China's regulation of other audiovisual and related services, including services associated with theatres (where China made a WTO commitment to allow 49 percent foreign ownership) as well as television and radio stations, production and programming (for which China made no commitments), has remained highly restricted.

With regard to theatres, China's ownership restrictions have made it unattractive for foreign companies to enter into Chinese-foreign joint ventures. Currently, no U.S. company is involved in the ownership or operation of a Chinese theatre.

The restrictions applicable to China's television and radio sectors are myriad. China does not permit private capital, whether domestic or foreign, to be used to establish or operate a television station or a radio station. It similarly closes private capital out of radio and television signal broadcasting and relay stations, satellite networks and backbone networks. For television production, Chinese-foreign joint ventures must have a minimum capital requirement of RMB 2 million (approximately \$330,000), foreign ownership is capped at 49 percent, and two-thirds of the programs of the joint venture must have Chinese themes.

With regard to television programming generally, China imposes highly restrictive quotas. The *Administrative Measures on the Import and Broadcast of Extraterritorial Television Programs*, effective since 2004, restricts foreign television drama and film programming to no more than 25 percent of total air time, and other foreign programming to no more than 15 percent of total air time. Foreign programming, including animated programs, is banned between 7:00 p.m. and 10:00 p.m. on terrestrial stations, which are Chinese-owned. In addition, Chinese cable operators are

effectively prohibited from carrying foreign channels, as these channels only can be accessed in hotels and other areas inhabited by foreigners. A newer concern arose in October 2014, when China started restricting foreign content on Chinese streaming sites, which is the fastest growing means for Chinese consumers to access television shows. U.S. industry estimates that, as of October 2015, U.S. content is limited to 12 percent of all content on Chinese streaming sites. In a related restriction, China now requires an entire season of a TV series to be submitted for content approval before a single episode can be made available. This restriction encourages the pirating of individual episodes as they are aired during the season.

Internet-related Services

China's Internet regulatory regime is restrictive and non-transparent and impacts a broad range of commercial services activities conducted via the Internet. In addition, China's treatment of foreign companies seeking to participate in the development of cloud computing services, including computer data and storage services provided over the Internet, raises concerns in light of China's GATS commitments.

China's Internet regulatory regime is restrictive and non-transparent and impacts a broad range of commercial services activities conducted via the Internet. While China is experiencing rapid development in online businesses such as retail websites, search engines, network education, online advertisements, audio-video services, paid electronic mail, short messages, online job searches, Internet consulting, mapping services, applications, web domain registration, electronic trading and online gaming, Chinese companies dominate the China market, due primarily to restrictions imposed on foreign companies by the Chinese government.

Foreign companies seeking to participate in the development of cloud computing, including computer data and storage services provided over

the Internet, are not permitted to obtain Internet service provider (ISP) or Internet Data Center (IDC) licenses in China. Instead, a foreign company can only partner with a Chinese company holding an ISP or IDC license. In addition, China has generated WTO concerns by seeking to impose value-added telecommunications licensing requirements on this sector, including a 50 percent equity cap on investments by foreign companies, even though the services at issue are not telecommunications services. Throughout 2016, using the JCCT process, the United States continued to press China to cease requiring value-added telecommunications services licenses for companies that use the Internet as a platform for providing these and other services to Chinese businesses or consumers, where the supplier neither owns nor controls the telecommunications transmission capacity used to supply the services. The United States also pressed China to allow wholly foreign-owned enterprises to supply these services. To date, however, the United States has been unable to persuade China to make any significant changes in this area. In 2017, the United States will continue to engage China vigorously on these issues.

In a development of concern relative to China's GATS commitments, China issued draft *Network Publishing Service Management Regulations* in December 2012. This draft measure would prohibit Chinese-foreign contractual joint ventures, Chinese-foreign cooperative joint ventures and wholly foreign-owned enterprises from engaging in "network publishing services," which China appears to have defined broadly to cover a wide range of Internet-based distribution services. The United States submitted written comments on the draft measure in January 2013, and to date China has not issued a final measure.

In February 2016, SAPPRFT and MIIT issued new online publishing rules. The United States has become very concerned about the impact of these new rules, and related measures, on the ability of foreign companies to engage in the online distribution of videos and entertainment software.

Overall, while the Chinese government recognizes the potential of electronic commerce to promote exports and increase competitiveness, a variety of Chinese government policies and practices impede progress toward establishing a viable commercial environment, adversely affecting both Chinese companies and foreign companies. For example, several Chinese ministries have jurisdiction over electronic commerce and impose a range of burdensome restrictions on Internet use (such as registration requirements for web pages and arbitrary and nontransparent content controls), stifling the free flow of information and the consumer privacy needed for electronic commerce to flourish. Encryption is also regulated, and the frequent blocking of websites (including those of a commercial nature) inhibits the predictability and reliability of using electronic networks as a medium of commerce. Other impediments to businesses and consumers conducting online transactions in China include the paucity of credit card payment processing systems (exacerbated by state-owned CUP's continuing monopoly over the processing of domestic currency transactions), consumer reluctance to trust online merchants, lack of secure online payment systems, and inefficient delivery systems.

China also has yet to develop a legal framework conducive to the rapid growth of electronic commerce. Laws recognizing the validity of "electronic contracting" tools and stressing the importance of online privacy and security have been proposed but not yet issued. A number of technical problems also inhibit the growth of electronic commerce in China, such as the rates charged by Chinese government-approved ISPs, slow connection speeds and relatively low Internet penetration in China.

With regard to content control, Chinese government officials from as many as 12 separate agencies, led by CAC, closely monitor and routinely filter Internet traffic entering China, focusing primarily on the content that they deem objectionable on political, social, religious or other grounds. During politically

sensitive periods, such as surrounding meetings of the National Party Congress or the National People's Congress, the restrictions typically increase significantly; specific foreign websites can be completely blocked, while overall Internet access can be extremely limited, and Virtual Private Networks, on which many foreign firms rely to conduct their online functions, can be largely blocked. While the purpose of the Internet restrictions purportedly is to address public interest concerns enumerated in Chinese law, China's regulatory authorities frequently take actions that appear to be arbitrary, rarely issue lists of banned search terms or banned sites and provide little or no justification or means of appeal when they block access to all or part of a website, putting providers of Internet-enabled services in a precarious position, as they attempt to comply with Chinese law that can seem arbitrary.

This extensive regulatory regime for content control directly or indirectly affects the range of foreign suppliers seeking to deliver online services. It also squarely affects foreign news agencies, which operate in a services sector in which China made no GATS commitments. China actively restricts who may report news and places limits on what exactly may constitute reportable news. In addition to interfering with news reporting in the traditional sense, these restrictions in some circumstances can interfere with the normal business reporting operations of non-news organizations, such as multinational corporations, if they use the Internet to keep clients, members, their headquarters or others informed about events in China.

In 2011, following up on concerns that China's arbitrary blocking of commercial websites may undercut U.S. rights under the GATS, the United States invoked procedures available pursuant to the GATS to pose a series of questions to China regarding China's regulation of the Internet. In 2012, after China had provided an initial response to those questions, the United States met with China to

obtain more details. Since then, the United States has continued its outreach to China to discuss these issues in more detail and to seek more transparency and predictability in China's regulatory regime.

Construction and Related Engineering Services

China has issued measures intended to implement its construction and related engineering services commitments, although these measures are problematic because they also impose high capital requirements and other constraints that limit market access.

Upon its WTO accession, China committed to permit foreign enterprises to supply construction and related engineering services through joint ventures with foreign majority ownership, subject to the requirement that those services only be undertaken in connection with foreign-invested construction projects and subject to registered capital requirements that were slightly different from those of Chinese enterprises. China agreed to remove those conditions within three years of accession, and it also agreed to allow wholly foreign-owned enterprises to supply construction and related engineering services for four specified types of construction projects, including construction projects wholly financed by foreign investment.

As previously reported, in 2002, the Ministry of Construction (MOC), re-named the Ministry of Housing and Urban-Rural Development in 2008, and MOFTEC jointly issued the *Rules on the Administration of Foreign-invested Construction Enterprises* (known as Decree 113) and the *Rules on the Administration of Foreign-invested Construction Engineering Design Enterprises* (known as Decree 114). These decrees provide schedules for the opening up of construction services and related construction engineering design services to joint ventures with majority foreign ownership and wholly foreign-owned enterprises. Implementing rules for

Decree 113 were issued in 2003, but Decree 114 implementing rules were delayed until 2007.

Decrees 113 and 114 created concerns for U.S. firms by imposing new and more restrictive conditions than existed prior to China's accession to the WTO, when U.S. firms were permitted to work in China on a project-by-project basis pursuant to MOC rules. In particular, these decrees for the first time require foreign firms to obtain qualification certificates. In addition, the decrees for the first time require foreign-invested enterprises to incorporate in China. The decrees also impose high minimum registered capital requirements as well as technical personnel staff requirements that are difficult for many foreign-invested enterprises to satisfy.

With regard to the Decree 113 regulatory regime for construction enterprises, the United States has actively engaged China, both bilaterally and at the annual transitional reviews before the Council for Trade in Services, in an effort to obtain needed improvements. In particular, the United States has urged China to maintain non-discriminatory procedures under Decree 113 to enable foreign-invested enterprises to carry out the same kinds of projects that domestic companies can provide. The United States also has sought a reduction in the registered minimum capital requirements under Decree 113 or the use of other arrangements, such as bonds or guarantees in lieu of the capital requirements. In practice, China restricts wholly owned foreign-invested enterprises to undertaking foreign-funded construction projects, except in cases where Chinese enterprises are not able to provide the necessary construction services. The United States and U.S. industry continue to urge China to end this discrimination.

With regard to the Decree 114 regulatory regime for construction engineering design enterprises, the United States generally welcomed the implementing rules issued by MOC in 2007, as they temporarily lifted foreign personnel residency and staffing requirements imposed by Decree 114, and recognized the foreign qualifications of technical

experts when considering initial licensing. The United States has since continued to press China to make these improvements permanent, using both the March 2008 U.S.-China Best Practices Exchange on Architecture, Construction and Engineering and the transitional reviews before the Council for Trade in Services in 2007, 2008 and 2009. Separately, the United States has also urged China to give foreign construction engineering design companies the right to immediately apply for a comprehensive, "Grade A" license, like domestic design companies can do. Under existing rules, set forth in Circular 202, the *Implementation of the Administrative Provisions on the Qualification of Construction and Engineering Supervision and Design*, issued by MOC in August 2007, foreign companies are subjected to more restrictive licensing procedures than domestic companies, although foreign companies have begun to have more success with regard to their licensing requests in 2009.

Meanwhile, in the area of project management services, inconsistent regulations have allowed market entry barriers for foreign-invested enterprises to persist. In 2004, MOC issued the *Provisional Measures for Construction Project Management*. Known as Decree 200, this measure requires, among other things, local establishment and the possession of separate qualifications in the area of construction, engineering or design. In contrast, a measure issued by MOC and MOFCOM in 2007 – the *Regulations on the Administration of Foreign-invested Construction and Engineering Service Enterprises* – appears to allow foreign-invested enterprises to provide project management services without possessing separate construction, engineering or design qualifications, but the absence of implementing rules has resulted in inconsistent interpretations of this measure. The United States and U.S. industry has been urging China to clarify this situation and ease the entry barriers currently facing foreign-invested enterprises.

In 2017, as in prior years, the United States will continue to engage China bilaterally in an attempt to achieve improved market access for U.S. firms.

Educational Services

China made only limited GATS commitments in the educational services sector, and it has not sought to go beyond those commitments.

In its accession agreement, China made limited GATS commitments relating to educational services and specifically excluded educational services provided in connection with national compulsory education from the scope of those commitments. Currently, China only permits foreign educators and trainers to engage in nonprofit educational activities that do not compete with the Ministry of Education-supervised nine years of compulsory education, thereby inhibiting much-needed foreign investment in this part of the education sector. Foreign universities may set up nonprofit operations, but must have a Chinese university host and partner to ensure that programs bar subversive content and that imported informational material is adapted to suit local conditions. In addition, China bans foreign organizations and companies from offering educational services via satellite networks.

Express Delivery Services

China has allowed foreign express delivery companies to operate in the express delivery sector and has implemented its commitment to allow wholly foreign-owned subsidiaries by December 11, 2004. However, China has blocked foreign companies' access to the document segment of China's domestic express delivery market.

The specific commitments that China made in the area of express delivery services did not require China to take implementation action upon its accession to the WTO. Basically, China agreed to increase the stake allowed by foreign express delivery companies in joint ventures over a period of years, with wholly foreign-owned subsidiaries allowed within four years of accession.

Since its WTO accession, foreign express delivery companies have continued to operate in China's

express delivery sector, and China has implemented its commitment to allow wholly foreign-owned subsidiaries. However, China still needs to expand the scope of access for foreign-invested companies for domestic express delivery to include the delivery of documents.

In addition, over the years, China has issued a variety of measures that have appeared to undermine market access for foreign companies and have raised questions in light of China's WTO obligations. As previously reported, through sustained and high-level engagement, the United States was able to persuade China to forego a series of restrictive measures.

In August 2006, the State Council finalized its Postal Reform Plan, which called for the separation of China's postal operations from the administrative function of regulating China's postal system, with the State Postal Bureau (SPB) to serve as the regulator and a new state-owned enterprise – the China Post Group Corporation – to be set up to conduct postal business. China promptly put this plan into effect, and since then the United States has been monitoring how SPB has been exercising its new authority to license and regulate the express delivery sector.

In August 2008, the draft of a problematic new *Postal Law* went before the National People's Congress. This draft excluded foreign suppliers from the document segment of China's domestic express delivery market and also contained other troubling provisions. Despite extensive engagement by the United States, the National People's Congress approved this law, effective October 2009, without significant changes.

Since then, the United States has worked intensively with China to alleviate problems that foreign companies have encountered when trying to obtain permits under a new permitting system that SPB imposed for all suppliers of domestic express package delivery services in China. In May 2012, China committed that it would take specific steps to

provide fair access to its market for foreign suppliers of these services and that it would protect existing operations as that process unfolded. Since then, the Chinese regulator, SPB, has moved forward with the issuance of more permits. The United States has pressed SPB to quickly review and approve any new permits that U.S. companies request, and the United States will continue to do so for as long as is needed.

At the same time, in other ways, SPB's regulation of the express delivery sector in China has been problematic. China's new *Postal Law*, along with related regulatory measures, such as express delivery services regulations, seem overly burdensome in some respects and not in accordance with State Council mandates to simplify and streamline administrative approval processes. As in 2016, the United States will continue to engage China vigorously on these issues going forward.

Logistics Services

China has generally allowed foreign companies to supply logistics services, but foreign companies can face restrictions that are not applied to domestic companies.

Logistics services include a number of the services sectors listed in China's GATS Schedule, including road transport services, rail transport services and freight forwarding agency services, among others. Generally, at this time, foreign suppliers should be permitted to supply these services in China without geographic limitations or restrictions on the percentage of foreign ownership.

Over the years, the Ministry of Transport has been slow to approve applications by foreign companies seeking to supply road transport and related logistics services and has been unwilling to issue nationwide trucking licenses, which has limited the ability of foreign companies to build economies of scale. In addition, while regulations issued by almost all major Chinese cities restrict daytime access by trucks, enforcement of these restrictions is often

discriminatory. Local regulatory authorities often target their enforcement efforts at foreign companies, while permitting local companies to operate freely.

Separately, the Chinese government has directed that support be provided to the domestic logistics industry as part of various industry revitalization plans. Foreign companies invested in China have raised concerns about inadequate transparency with regard to implementing measures, inequitable treatment of foreign companies and unnecessary industry standardization efforts.

Aviation Services

China has provided additional market access to U.S. providers of air transport services through a bilateral agreement with the United States, although China has not yet fully implemented its commitments under that agreement.

As previously reported, China took a significant step in July 2004 to increase market access for U.S. providers of air transport services. At that time, China signed a landmark bilateral aviation agreement with the United States that would more than double the number of U.S. airlines allowed to serve points in China and increase by five times the number of flights allowed for passenger and cargo services. Bilateral engagement with China to improve the existing aviation agreement resumed in April 2006 and yielded an amended agreement in May 2007, which allows for expanded passenger and all-cargo air services and has further facilitated trade, investment, tourism and cultural exchanges between the United States and China. U.S. passenger and cargo carriers have since obtained additional routes and increased flight frequencies, as envisioned by the 2007 agreement. The 2007 agreement also committed the United States and China to launch negotiations in 2010, which they did.

Nevertheless, China's increasingly constrained aviation sector and a lack of clarity in China's airport

slot allocation process have prevented U.S. airlines from fully exercising rights granted in the existing agreement. In addition, China's interpretation of cargo hub provisions in the agreement has resulted in U.S. cargo carriers experiencing difficulties in getting their operating schedules approved by the Civil Aviation Administration of China. Negotiations held in 2011 and 2015 have not led to any new agreement between the United States and China or otherwise led to a resolution of these issues.

In 2016, in order to reflect the importance of a vibrant and transparent aviation sector to both economies, the United States moved to elevate its concerns about these and other issues by including them in the S&ED process. Although no resolution has been reached to date, the United States has made clear that the current operational impediments need to be fixed and that any future expansion of rights would need to be based on mutual benefit.

Maritime Services

Even though China made only limited WTO commitments relating to its maritime services sector, it has increased market access for U.S. service providers through a bilateral agreement.

As previously reported, even though China made only limited WTO commitments relating to its maritime services sector, it took a significant step in December 2003 to increase market access for U.S. service providers. The United States and China signed a far-reaching, five-year bilateral agreement, with automatic one-year extensions, which gives U.S.-registered companies the legal flexibility to perform an extensive range of additional shipping and logistics activities in China. U.S. shipping and container transport services companies, along with their subsidiaries, affiliates and joint ventures, are also able to establish branch offices in China without geographic limitation.

Tourism and Travel-related Services

China treats foreign travel agencies less favorably than domestic travel agencies in some respects, while China's regulation of foreign suppliers of global distribution system services has generated concerns in light of China's GATS commitments.

In order to obtain a license, foreign travel agencies doing business in China must register with the China National Travel Administration (CNTA) and must submit an initial feasibility study and annual reports on future investment and possible expansion to CNTA and MOFCOM. In addition, China continues to impose an annual sales requirement on foreign travel agencies, even though it does not impose the same requirement on domestic travel agencies.

In December 2007, the United States and China signed an MOU to facilitate Chinese group leisure travel to the United States. The MOU permitted marketing and sales activities in a limited number of Chinese provinces to promote U.S. destinations and U.S. travel-related businesses. Subsequent engagement, including at the December 2010 JCCT meeting and the November 2011 JCCT meeting, led to China's agreement to expand the MOU to cover 27 of China's 31 provinces. Most recently, at the December 2013 JCCT meeting, China announced that it is broadening the scope of access under the MOU to include two of the four remaining provinces.

Meanwhile, U.S. and European companies have expressed GATS and other concerns regarding China's regulation of foreign suppliers of global distribution system services. Although China issued new regulations addressing global distribution system services dated August 2012, these regulations provide only a modest opening to foreign suppliers, as they allow foreign suppliers to handle domestic segments of an international flight but not the most lucrative part of China's market, which is purely domestic travel within China. The United States has been using the JCCT process to

urge China to remove the significant restrictions facing foreign companies in this sector.

LEGAL FRAMEWORK

In order to address major concerns raised by WTO members during its lengthy WTO accession negotiations, China committed to broad legal reforms in the areas of transparency, uniform application of laws and judicial review. Each of these reforms, if fully implemented, will strengthen the rule of law in China's economy and help to address pre-WTO accession practices that made it difficult for U.S. and other foreign companies to do business and invest in China.

Transparency

OFFICIAL JOURNAL

China has re-confirmed its commitment to use a single official journal for the publication of all trade-related laws, regulations and other measures. To date, it appears that some but not all central government entities publish their trade-related measures in this journal, although they take a narrow view of the types of trade-related measures that need to be published.

In its WTO accession agreement, China committed to establish or designate an official journal dedicated to the publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange. China also agreed to publish the journal regularly and to make copies of all issues of the journal readily available to enterprises and individuals.

Following its accession to the WTO, China did not establish or designate an official journal. Rather, China relied on multiple channels, including ministry websites, newspapers and a variety of journals, to provide information on trade-related measures.

As previously reported, following sustained U.S. engagement, the State Council issued a notice in March 2006 directing all central, provincial and local government entities to begin sending copies of all of their trade-related measures to MOFCOM for immediate publication in the *MOFCOM Gazette*. The United States subsequently monitored the effectiveness of this notice, both to assess whether all government entities regularly publish their trade-related measures in the *MOFCOM Gazette* and whether all types of measures are being published. It appeared that adherence to the State Council's notice was far from complete. As a result, the United States continued to engage China bilaterally on the need for a fully compliant single official journal, and at the December 2007 SED meeting China re-confirmed its WTO commitment to publish all final trade-related measures in a designated official journal before implementation.

The United States has been closely monitoring the effectiveness of China's official journal commitment since the December 2007 SED meeting. To date, it appears that some but not all central government entities publish trade-related measures in this journal. At the same time, these government entities tend to take a narrow view of the types of trade-related measures that need to be published in the official journal. As a result, while trade-related regulations and departmental rules are often published in the journal, it is less common for other central government measures such as opinions, circulars, orders, directives and notices to be published, even though they are all binding legal measures. Meanwhile, sub-central government measures are rarely published in the official journal.

In the September 2012 WTO case challenging numerous subsidies provided by the central government and various sub-central governments in China to automobile and automobile-parts enterprises located in regions in China known as "export bases," the United States included claims alleging that China had failed to abide by various WTO transparency obligations, including China's

obligation to publish the measures at issue in an official journal. Following consultations in this case, the two sides engaged in further discussions as China began to take steps to address U.S. concerns.

In the December 2015 WTO case challenging discriminatory Chinese government measures exempting sales of certain aircraft produced in China, including general aviation aircraft, agricultural aircraft and regional jets, from the VAT while imposing that same tax on sales of imported aircraft, the United States included claims alleging that China had failed to publish the measures at issue as required by China's WTO transparency obligations. Consultations took place in January 2016. In October 2016, the United States announced that it had confirmed that China had terminated the discriminatory tax measures at issue. The United States also made the relevant measures publicly available.

In 2015 and 2016, the United States continued to use the S&ED process, including meetings of the U.S.-China Transparency Dialogue, to press China for further progress in implementing the official journal commitment that it made in its WTO accession agreement. The United States will continue to pursue these efforts in 2017.

TRANSLATIONS

China has not yet established an appropriate infrastructure to undertake the agreed upon translations of its trade-related measures into one or more of the WTO languages in a timely manner.

Another important transparency commitment that China made in its WTO accession agreement involves translations. China agreed to make available translations of all of its laws, regulations and other measures affecting trade in goods, services, TRIPS or the control of foreign exchange into one or more of the WTO languages (English, French and Spanish). China further agreed that, to the maximum extent

possible, it would make translations of these laws, regulations and other measures available before implementation or enforcement, but in no case later than 90 days afterwards.

China has a poor record of compliance with its translation commitment. Indeed, after 15 years of WTO membership, China still has not established an appropriate infrastructure to undertake the agreed-upon translations of its trade-related measures in a timely manner. Although China has complained that it is too difficult for it to live up to this commitment, this excuse lacks credulity. As the United States has pointed out, other WTO members translate all of their legal measures. Indeed, one of these members – the EU – publishes its measures in 24 official languages.

Prior to 2015, China had only compiled translations of trade-related laws and administrative regulations (into English), but not other types of measures. In addition, China has remained years behind in actually publishing translations of trade-related laws and administrative regulations.

The United States has raised this issue at the WTO during the annual transitional reviews, including during final transitional reviews before several committees and councils that took place in 2011. In addition, the United States has raised this issue in WTO cases against China. In the December 2010 WTO case challenging what appeared to be prohibited import substitution subsidies being provided by the Chinese government to support the production of wind turbine systems in China, the United States included a claim alleging that China had breached its WTO accession agreement by not translating the measures at issue into a WTO language. China repealed those measures following consultations. In the September 2012 WTO case challenging export base subsidies, the United States included a claim alleging that China had failed to make available translations of the measures at issue into one or more WTO languages. The United States also included a similar claim in the December 2015

WTO case challenging China's discriminatory tax treatment of imported aircraft.

Bilaterally, the United States has used the S&ED and JCCT processes to press China to begin implementing its translations commitment.

At the July 2014 S&ED meeting, China committed that it would translate trade-related departmental rules into English within a reasonable period of time. Subsequently, in March 2015, China issued a measure requiring trade-related departmental rules to be translated into English. This measure also provides that the translation of a departmental rule normally must be published before implementation. Following the issuance of this measure, the United States pressed China to ensure that it similarly publishes translations of trade-related laws and administrative regulations before implementation, as required by China's WTO accession agreement. At the June 2015 S&ED meeting, China confirmed that it was actively studying this matter.

In 2016, the United States used the JCCT process to continue to press China to begin translating trade-related laws and administrative regulations before implementation. China indicated that it is working to develop a single website where translated administrative regulations and departmental rules could be found.

In 2017, the United States will closely monitor the implementation of China's March 2015 measure relating to departmental rules. The United States also will continue to press China for timely translations of laws and administrative regulations.

PUBLIC COMMENT

China has adopted notice-and-comment procedures for proposed laws and committed to use notice-and-comment procedures for proposed trade- and economic-related regulations and departmental rules, subject to specified exceptions. However, in

practice, many of these types of measures are not made public prior to implementation.

One of the most important of the transparency commitments that China made in its WTO accession agreement concerned the procedures for adopting or revising laws, regulations and other measures affecting trade in goods, services, TRIPS or the control of foreign exchange. China agreed to provide a reasonable period for public comment on these new or modified laws, regulations and other measures before implementing them, except in certain specific instances, enumerated in China's accession agreement.

As previously reported, in the first few years after China acceded to the WTO, China's ministries and agencies had a poor record of providing an opportunity for public comment *before* new or modified laws, regulations and other measures were implemented. Although the State Council issued regulations in December 2001 addressing the procedures for the formulation of administrative regulations and rules and expressly allowing public comment, many of China's ministries and agencies in 2002 continued to follow the practice prior to China's WTO accession, and no notable progress took place in 2003. Typically, the ministry or agency drafting a new or revised measure consulted with and submitted drafts to other ministries and agencies, as well as Chinese experts and affected Chinese companies. At times, it also consulted with select foreign companies, although it would not necessarily share drafts with them. As a result, only a small proportion of new or revised measures were issued after a period for public comment, and even in those cases the amount of time provided for public comment was generally too short.

In 2004, some improvements took place, particularly on the part of MOFCOM, which began following the rules set forth in its *Provisional Regulations on Administrative Transparency*, issued in November 2003. Nevertheless, basic compliance with China's notice-and-comment commitment continued to be

uneven in the ensuing years, as numerous major trade-related laws and regulations were finalized and implemented without the NPC or the responsible ministry circulating advance drafts for public comment.

In numerous bilateral meetings with the State Council, MOFCOM and other Chinese ministries since China's WTO accession, including high-level meetings such as JCCT meetings and SED meetings, the United States emphasized the importance of China's adherence to the notice-and-comment commitment in China's accession agreement, both in terms of fairness to WTO members and the benefits that would accrue to China. Together with other WTO members, the United States also raised this issue repeatedly during regular WTO meetings and as part of the annual transitional reviews conducted before various WTO councils and committees.

At the SED meeting in December 2006, the United States and China agreed to make transparency, including notice-and-comment procedures and other rulemaking issues, a topic for discussion in future SED meetings. These discussions began at the May 2007 SED meeting, while the United States continued to provide technical assistance to facilitate Chinese government officials' understanding of the workings, and benefits, of an open and transparent rulemaking process. At the December 2007 SED meeting, China specifically committed to publish, when possible, proposed trade-related measures and provide interested parties a reasonable opportunity for comment. China also agreed that it would publish these proposed measures either in its designated official journal or on an official website. At the June 2008 SED meeting, China then committed to publish all proposed trade- and economic-related regulations and departmental rules for public comment, subject to specified exceptions, and to provide a comment period of no less than 30 days. China indicated that it would publish these proposed measures on the Legislative Information Website maintained by the SCLAO.

Two months earlier, in April 2008, the NPC's Standing Committee had instituted notice-and-comment procedures for draft laws. Comments on the draft laws are to be submitted to the NPC's Legislative Affairs Commission, and a new dedicated website provides information about the comments that have been submitted.

The United States subsequently monitored the effectiveness of these changes. While the NPC began regularly publishing draft laws for public comment, and the State Council began regularly publishing draft regulations for public comment, it appeared that China was having more difficulty implementing China's new policy regarding trade- and economic-related departmental rules. After 2008, China did increase the number of proposed departmental rules published for public comment on the SCLAO website. However, a significant number of departmental rules were still issued without first having been published for public comment on the SCLAO website. While some ministries published departmental rules on their own websites, they often allowed less than 30 days for public comment, making it difficult for foreign interested parties to submit timely and complete comments.

In October 2010, the State Council issued the *Opinions on Strengthening the Building of a Government Ruling by Law*. This measure directs ministries and agencies at the central and provincial levels of government to solicit public comment when developing their rules, subject to certain exceptions. However, the measure does not dictate the procedures or time periods to be used.

At the May 2011 S&ED meeting, the United States was able to persuade China to commit that it would issue a measure in 2011 to implement the requirement to publish all proposed trade- and economic-related administrative regulations and departmental rules on the SCLAO website for a public comment period of not less than 30 days from the date of publication, subject to certain exceptions. In April 2012, shortly before the May

2012 S&ED meeting, the SCLAO published two measures, the *Interim Measures on Solicitation of Public Comment on Draft Laws and Regulations* and the *Notice on Related Issues Regarding Solicitation of Public Comments on Draft Departmental Rules*, on its website. These two measures provide that administrative regulations and departmental rules have to be posted on the Legislative Information Website of the SCLAO.

Since the issuance of the two SCLAO measures in 2012, no noticeable improvement in the publishing of departmental rules for public comment appears to have taken place. At the July 2014 S&ED meeting, China confirmed that these two measures are binding on central government ministries, but it remains clear that China needs to make more progress in this area.

In 2016, as in prior years, the United States also pressed China to improve its handling of so-called “normative documents,” which are regulatory documents that do not fall into the category of administrative regulations or departmental rules but nevertheless impose binding obligations on enterprises and individuals. In particular, the United States has used the S&ED process, including meetings of the U.S.-China Transparency Dialogue, to press China to regularize the use of notice-and-comment procedures for normative documents. To date, while China continues to consider reforms relating to the handling of normative documents, it has not been willing to commit to publish them for public comment.

ENQUIRY POINTS

China has complied with its obligation to establish enquiry points.

Another important transparency commitment in its WTO accession agreement requires China to establish enquiry points, where any WTO member or foreign company or individual may obtain information. As previously reported, China complied with this obligation by establishing a WTO Enquiry

and Notification Center, now operated by MOFCOM's Department of WTO Affairs, in January 2002. Other ministries and agencies have also established formal or informal, subject-specific enquiry points. Since the creation of these various enquiry points, U.S. companies have generally found these various enquiry points to be responsive and helpful, and they have generally received timely replies. In addition, some ministries and agencies have created websites to provide answers to frequently asked questions, as well as further guidance and information.

Uniform Application of Laws

Some problems with the uniform application of China's laws and regulations persist.

In its WTO accession agreement, China committed, at all levels of government, to apply, implement and administer its laws, regulations and other measures relating to trade in goods and services in a uniform and impartial manner throughout China, including in special economic areas. In support of this commitment, China further committed to establish an internal review mechanism to investigate and address cases of non-uniform application of laws based on information provided by companies or individuals.

As previously reported, in China's first year of WTO membership, the central government launched an extensive campaign to inform and educate both central and local government officials and state-owned enterprise managers about WTO rules and their benefits. In addition, several provinces and municipalities established their own WTO centers, designed to supplement the central government's efforts and to position themselves so that they would be able to take full advantage of the benefits of China's WTO membership. In 2002, China also established an internal review mechanism, now overseen by MOFCOM's Department of WTO Affairs, to handle cases of non-uniform application of laws, although the actual workings of this mechanism remain unclear.

During 2016, as in prior years, some problems with uniformity persisted. These problems are discussed above in the sections on Customs and Trade Administration, Taxation, Investment and Intellectual Property Rights.

Judicial Review

China has established courts to review administrative actions involving trade-related matters, but few U.S. or other foreign companies have had experience with these courts.

In its WTO accession agreement, China agreed to establish tribunals for the review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings on trade-related matters. These tribunals must be impartial and independent of the government authorities entrusted with the administrative enforcement in question, and their review procedures must include the right of appeal.

Beginning before China's accession to the WTO, China had taken steps to improve the quality of its judges. For example, in 1999, the Supreme People's Court began requiring judges to be appointed based on merit, educational background and experience, rather than as a result of politics or favoritism. However, existing judges, many of whom had no legal training, were grandfathered in.

Many U.S. companies in 2016 continued to express serious concerns about the independence of China's judiciary. In their experience and observation, Chinese judges continue to be influenced by political, government or business pressures, particularly outside of China's big cities.

In addition, in 2016, the United States continued to monitor how the courts designated by the Supreme People's Court's *Rules on Certain Issues Related to Hearings of International Trade Administrative Cases*, which went into effect in October 2002, have handled cases involving administrative agency

decisions relating to trade in goods or services. So far, however, there continues to be little data, as few U.S. or other foreign companies have had experience with these courts.

In August 2016, the United States and China held the first meeting of the U.S.-China Judicial Dialogue, which arose out of a commitment made at the September 2015 summit meeting between President Obama and President Xi, where the two sides agreed to conduct high-level and expert discussions commencing in 2016 to provide a forum to support and exchange views on judicial reform and to identify and evaluate the challenges and strategies in implementing the rule of law so as to improve the transparency and predictability of the business environment. A second meeting of the U.S.-China Judicial Dialogue is expected to take place in 2017.

Other Legal Framework Issues

Various other areas of China's legal framework can adversely affect the ability of the United States and U.S. exporters and investors to enjoy fully the rights to which they are entitled under the WTO agreements.

Other areas of China's legal framework can adversely affect the ability of the United States and U.S. exporters and investors to enjoy fully the rights to which they are entitled under the WTO agreements. Key areas include administrative licensing, competition policy, commercial dispute resolution, labor laws and laws governing land use. Corruption among Chinese government officials, enabled in part by China's incomplete adoption of the rule of law, is also a key concern.

ADMINISTRATIVE LICENSING

As discussed above in the Investment section, since China's WTO accession in December 2001, U.S. and other foreign companies have expressed serious concerns about the administrative licensing process in China, both in the context of foreign investment approvals and in myriad other contexts. According to

U.S. industry, many Chinese government bodies at the central, provincial and municipal government levels do not comply with the procedures mandated by the *Administrative Licensing Law* for acceptance review and approval of administrative licenses. This situation creates opportunities for corruption, and sometimes leads to foreign enterprises and foreign products being treated less favorably than their domestic counterparts.

In response to a 2013 directive from Premier Li to streamline administrative licensing processes, central government authorities eliminated, or delegated to lower levels of government, more than 300 administrative approval requirements in 2013. Additional streamlining took place in 2014. China also announced reductions in administrative approval requirements in the Shanghai Free Trade Zone in 2014. In addition, at the July 2014 S&ED meeting, China committed to treat applicants for administrative licenses and approvals under the same rules and standards as the United States with regard to the resources available to accept and process applications and the number of applications permitted at one time from an applicant, and to strictly implement existing laws and regulations to adequately protect any trade secret or sensitive commercial information provided by the applicant during the administrative licensing or approval process, as required by law.

Nevertheless, despite these changes and continued reform efforts in 2015 and 2016, U.S. companies continue to encounter significant problems with a variety of administrative licensing processes in China, including processes to secure product approvals, investment approvals, business expansion approvals, business license renewals and even approvals for routine business activities. While U.S. companies are encouraged by the overall reduction in license approval requirements and the focus on decentralizing licensing approval processes, U.S. companies report that these efforts have only had a marginal impact on their licensing experiences so far. According to U.S. companies, problems continue to be most prevalent at the central government level

and generally involve foreign companies encountering more significant delays and receiving less favorable treatment vis-à-vis domestic companies, raising concerns in light of the WTO rules relating to national treatment.

COMPETITION POLICY

In August 2007, after several years of development, China enacted its *Anti-monopoly Law*, which became effective in August 2008. Pursuant to this law, the State Council has established an anti-monopoly commission with oversight and coordinating responsibilities, drawing its members from several Chinese ministries and agencies. Enforcement responsibilities have been divided among three agencies. MOFCOM has assumed responsibility for reviewing mergers. NDRC has assumed responsibility for reviewing monopoly activities, abuse of dominance and abuse of administrative power when they involve pricing, while SAIC reviews these same types of activities when they are not price-related.

After the *Anti-monopoly Law* was enacted, MOFCOM, NDRC, SAIC and other Chinese government ministries and agencies began to formulate implementing regulations, departmental rules and other measures. Throughout this process, the United States has urged China to implement the *Anti-monopoly Law* in a manner consistent with global best practices and with a focus on consumer welfare and the protection of the competitive process, rather than consideration of industrial policy or other non-competition objectives. The United States has also specifically pressed China to ensure that its implementation of the *Anti-monopoly Law* does not create disguised or unreasonable barriers to trade and does not provide less favorable treatment to foreign goods and services or foreign investors and their investments.

The United States also launched an *Anti-monopoly Law* technical assistance program in 2008, funded by the U.S. Trade and Development Agency and led by a multi-agency team of U.S. experts. Since then,

numerous workshops have taken place under this program in China on important substantive issues, such as merger review, unilateral conduct by firms with a dominant market position, cartel enforcement, non-discrimination in interstate commerce, merger remedies, competition law and policy as it relates to the Internet, and the interface between intellectual property, antitrust and trade laws and policies. Chinese government officials from MOFCOM, SAIC, NDRC, SCLAO and the NPC have also traveled to Washington as part of this program.

The Chinese government's interventionist economic policies and practices and the large role of state-owned enterprises in China's economy have created some possible tensions with the *Anti-monopoly Law*. One provision in the *Anti-monopoly Law* "protects the lawful operations" of state-owned enterprises and government monopolies in industries deemed nationally important, although the meaning of this provision remains unclear. Indeed, China has enforced the *Anti-monopoly Law* against state-owned enterprises. For example, MOFCOM has imposed conditions on at least one state-owned company forming a joint venture, NDRC has conducted an investigation into anti-competitive price discrimination by two large state-owned telecommunications companies and has imposed fines for *Anti-monopoly Law* violations on two state-owned liquor companies, and SAIC has undertaken enforcement against provincial state-owned enterprises. However, some U.S. companies have expressed concerns that enforcement against state-owned enterprises is more limited than against private enterprises.

Provisions on the abuse of administrative (i.e., government) power included in the *Anti-monopoly Law*, which also appear in NDRC's and SAIC's implementing regulations, are important instruments for reducing the government's interference in markets and promoting the establishment and maintenance of increasingly competitive markets in China. In recent years, NDRC and SAIC have taken a number of enforcement actions in this area to reduce government restraints

on competition. Notably, in June 2016, the State Council issued the *Opinions on Establishing a Fair Competition Review System* to further a unified, competitive market by preventing "excessive or inappropriate government intervention in market[s]." All three Chinese anti-monopoly enforcement agencies have committed to apply this new Fair Competition Review System. The United States welcomes China's efforts to widen Chinese anti-monopoly enforcement agencies' oversight over undue government restraints on competition and anti-competitive regulation of competition. Undue government restraints and regulation that benefit certain parties' interests over others can have a greater adverse effect on competition than the anti-competitive conduct of private firms. For example, government actors could harm competition by excluding new rivals or maverick incumbents through limiting licenses for providers, without regard to demand, or through geographic restrictions. Given the state-led nature of China's economy, the State Council's call for scrutinizing anti-competitive government restraints and regulation is an important step.

Another tension in China's organizational structure involves trade associations, which in China frequently appear to have strong government ties. The United States has encouraged the Chinese agencies charged with enforcing the *Anti-monopoly Law* to work with Chinese regulatory agencies with sectoral responsibilities to emphasize the importance of trade associations refraining from engaging in conduct that would violate the *Anti-monopoly Law*.

The treatment of intellectual property rights by China's anti-monopoly enforcement agencies has generated concerns among U.S. and other foreign stakeholders. Article 55 of the *Anti-monopoly Law*, which relates to conduct associated with intellectual property rights that eliminates or restricts competition, has raised questions for U.S. industry about the scope of enforcement since its initial inclusion in the law. In April 2015, SAIC adopted a measure, the *Rules on the Prohibition of Conduct*

Eliminating or Restricting Competition by Abusing Intellectual Property Rights, which contains provisions relating to essential facilities and standards-essential patents on which stakeholders have submitted comments. Subsequently, in late 2015, draft versions of *Anti-monopoly Guidelines on Abuse of Intellectual Property Rights* separately prepared by the NDRC and by SAIC became public. China has stated that these drafts, as others, will form the basis for the State Council's Anti-monopoly Commission to adopt guidelines addressing the treatment of conduct involving intellectual property rights under the *Anti-monopoly Law*. U.S. government agencies are following these developments closely and working with China's anti-monopoly enforcement agencies.

Some U.S. stakeholders have expressed concern about delays by MOFCOM, for example, in accepting merger filings and the overall length of review of transactions without anticompetitive effect. In a positive development, in 2014, MOFCOM introduced rules on "simple transactions," which allow transactions meeting certain criteria to be reviewed and cleared within 30 days from acceptance of the merger notification. Since then, well over 70% of mergers notified have qualified for simple transaction status, with nearly all cleared within 30 days. This new approach has significantly reduced the review time in the sizable majority of mergers, particularly those that do not pose a meaningful competition problem.

While initially MOFCOM's merger decisions were quite brief, MOFCOM now releases more detailed merger decisions. This development is helpful, as in the past some U.S. companies have criticized certain MOFCOM decisions for lack of adequate bases to find that a merger has or may have the effect of eliminating or restricting competition. In addition, some U.S. companies have raised concerns with the remedies that MOFCOM has adopted in granting conditional merger approvals.

Although MOFCOM's merger enforcement has tended to focus more on transactions involving

foreign enterprises, MOFCOM has in recent years cleared over 95 percent of mergers notified to it without any conditions. Reports indicate that the percentage of merger notifications in which all parties are Chinese has risen from around 15 percent to around 30 percent in recent years, suggesting increased domestic compliance with the filing requirements of the Antimonopoly Law. While to date every transaction that MOFCOM imposed conditions on or blocked has involved at least one foreign party, MOFCOM has been imposing conditions on fewer transactions in recent years and has made clear, both through public statements and enforcement actions, that the law applies to domestic enterprises, including state-owned enterprises, equally. In particular, MOFCOM has imposed penalties for failure to file on more domestic transactions than transactions involving foreign parties.

Starting in 2013, NDRC increased its *Anti-monopoly Law* enforcement activity noticeably. While both domestic companies and foreign companies have been targets of these NDRC investigations, U.S. industry asserts that foreign companies appear to have come under increased scrutiny by China's enforcement agencies. In addition, U.S. industry has expressed serious concerns about insufficient predictability, fairness and transparency in NDRC's investigative processes, including NDRC pressure to "cooperate" in the face of unspecified allegations or face steep fines. In some cases, U.S. industry also has complained about continuing difficulties in achieving representation before the Anti-monopoly enforcement agencies by their counsel of choice.

Throughout 2013 and 2014, the United States raised serious concerns with China regarding its enforcement of the *Anti-monopoly Law*. While this engagement has continued, the United States did secure some progress regarding its concerns in this area in 2014 and 2015.

Specifically, at the July 2014 S&ED meeting, the United States obtained China's recognition that the objective of competition policy is to promote

consumer welfare and economic efficiency, rather than promote individual competitors or industries, and that enforcement of China's competition laws should be fair, objective, transparent and non-discriminatory. The United States also obtained China's express commitment to provide any party under an *Anti-monopoly Law* investigation with information about the enforcement agency's concerns and an effective opportunity for the party to present evidence in its defense. In addition, at the December 2014 JCCT meeting, China committed that the Chinese authorities would treat domestic and foreign companies equally in *Anti-monopoly Law* enforcement proceedings. China further committed that the Chinese authorities' normal practice would be to permit an investigated foreign company to have foreign counsel present, to advise it and to provide information on its behalf during the proceedings.

At the June 2015 S&ED meeting, China clarified which courts have jurisdiction to review *Anti-monopoly Law* decisions, including when the decisions involve intellectual property rights. China also committed that the MOFCOM, SAIC and NDRC officials who conduct administrative reconsideration of *Anti-monopoly Law* decisions would meet with the United States to discuss their procedures. Subsequently, at the November 2015 JCCT meeting, China committed that agencies without *Anti-monopoly Law* enforcement authority will not intervene in the enforcement decisions of MOFCOM, SAIC and NDRC. China also clarified that its anti-monopoly enforcement agencies will not disclose confidential business information to other agencies or third parties, except pursuant to a waiver from the submitting party or under circumstances defined by law. China further attached great importance to maintaining coherent rules relating to intellectual property in the *Anti-monopoly Law* context, taking into account the pro-competitive effects of intellectual property licensing. Finally, China clarified that any State Council Anti-monopoly Commission guideline will apply to China's three anti-monopoly enforcement agencies.

At the November 2016 JCCT meeting, the United States sought improved transparency from China, among other things. China clarified that it has provided on the websites of the anti-monopoly enforcement agencies, and will update in a timely fashion, its laws, rules, regulations and guidelines, as well as enforcement decisions.

FOREIGN NGO MANAGEMENT LAW

In 2015, China's National People's Congress published a draft *Foreign NGO Management Law* that laid out a series of provisions regulating organizations operating within its borders. Numerous governments and stakeholders around the world expressed serious concerns about the draft law. If passed in its draft form, the law would have a significant impact on commercial activities, academic exchanges, cooperation on global health matters, rule of law exchanges and shared environmental concerns, as well as serious implications for investment in China by U.S. NGOs and, indirectly, U.S. for-profit companies.

In 2015 and 2016, the United States raised its serious concerns with the Chinese government at high levels. The United States requested that China not implement the draft law as currently written and that China take into account the concerns of the international community as it considers potential revisions to the draft law.

In April 2016, the National People's Congress passed the final version of the *Foreign NGO Management Law*, which goes into effect on January 1, 2017. The new law does not materially differ from the earlier draft, and it therefore continues to generate serious concerns.

COMMERCIAL DISPUTE RESOLUTION

Both domestic and foreign companies often avoid seeking resolution of commercial disputes through the Chinese courts, due to deep skepticism about the independence and professionalism of China's

court system and the enforceability of court judgments and awards. There is a widespread perception that judges, particularly outside big cities, are subject to influence by local political or business interests. In addition, many judges are not trained in the law or lack higher education, although this problem decreases at the higher levels of the judiciary. At the same time, the Chinese government is moving to establish consistent and reliable mechanisms for dispute resolution through the adoption of improved codes of ethics for judges and lawyers and increased emphasis on the consistent and predictable application of laws. For example, Supreme People's Court rules provide that when there is more than one reasonable interpretation of a law or regulation, the courts should choose an interpretation that is consistent with the provisions of international agreements to which China has committed, such as the WTO rules.

Despite initial enthusiasm, there is increasing skepticism of the China International Economic and Trade Arbitration Commission (CIETAC) as a forum for the arbitration of commercial disputes. Some foreign companies have obtained satisfactory rulings from CIETAC, but others have raised concerns about restrictions on the selection of arbitrators and inadequacies in procedural rules necessary to ensure thorough, orderly and fair management of cases.

A further problem for commercial dispute resolution in China is that obtaining enforcement has often been difficult in cases where the courts or arbitration panels have issued judgments in favor of foreign-invested enterprises. Chinese government officials responsible for enforcement are often beholden to local interests and unwilling to enforce judgments against locally powerful companies or individuals.

LABOR LAWS

China does not effectively enforce its labor laws and regulations concerning issues such as minimum wages, hours of work, occupational safety and health, bans on child labor, forced prison labor, and

participation in social insurance programs. Many foreign-invested enterprises have expressed concerns about their domestic competitors' lack of compliance with labor and social welfare laws due to lax enforcement. Lax enforcement recently has led to a significant increase in labor unrest in China as well as the arrest and detention of worker rights leaders.

In addition, skilled workers are in relatively short supply in China. Restrictions on labor mobility continue to distort labor costs. China is gradually easing restrictions under the country's household registration system, which has traditionally limited the movement of workers within the country, in part due to the recognition that labor mobility is essential to the continued growth of the economy.

At present, registered subsidiaries of foreign corporations have two options when hiring workers in China. They can either hire full-time employees directly, or they can hire employees indirectly on contract from temporary placement agencies. These temporary workers are known as "dispatch workers." In the past, these companies often hired dispatch workers as a means to lower labor costs. However, amendments to the *Labor Contract Law* that went into effect in July 2013 add restrictions intended to discourage these companies from using dispatch workers instead of hiring long-term employees. The *Labor Contract Law* amendments limit the use of dispatch workers to periods of less than six months in auxiliary, or non-core, business operations or for the purpose of replacing a permanent employee away on leave. In response to concerns raised by the foreign business community, the Ministry of Human Resources and Social Security agreed to allow dispatch workers under contract prior to December 28, 2012, to continue working until the expiration of their contracts. Although the use of dispatch workers offers businesses some employment flexibility in China, it also permits employers to circumvent direct employment relationships and therefore employer liabilities to workers. In addition, overuse of arrangements involving workers from temporary placement

agencies can lead to a fragmentation and weakening of labor regulation and protection. Further clarifications and final implementation details for the *Labor Contract Law* amendments are expected to be released soon.

China does not adhere to certain internationally recognized labor standards, including the freedom of association and the right to bargain collectively. Chinese law provides for the right to associate and form a union, but does not allow workers to form or join an independent union of their own choosing. Unions must affiliate with the official All-China Federation of Trade Unions (ACFTU), which is under the direction of the Communist Party of China. The workers at enterprises in China are required to accept the ACFTU as their representative; they cannot instead select another union or decide not to have any union representation.

Once an ACFTU union chapter is established at an enterprise in China, the enterprise is required to pay fees to the ACFTU, often through the local tax bureau, equaling two percent of total payroll, regardless of the number of union members in the enterprise. While China's laws on union formation apply equally to domestic enterprises and foreign-invested enterprises, the ACFTU has engaged in a campaign since 2006 to organize ACFTU chapters in foreign-invested enterprises, particularly large multinational corporations. In 2008, an ACFTU official publicly stated that ACFTU would continue to push multinational corporations, including Fortune 500 companies, to set up trade unions in China, and affirmed ACFTU's goal of unionizing all foreign-invested enterprises in 2009. By the end of 2009, ACFTU statistics indicated that 79 percent of foreign-invested enterprises had set up trade unions. In 2010, the ACFTU announced a new goal of establishing trade unions in 90 percent of foreign-invested enterprises by 2012.

The ACFTU campaign may be discriminatory, both because it does not appear to be directed at private Chinese companies and because it appears to specifically target Fortune 500 companies, to the

disproportionate impact of U.S.-invested companies. The United States continues to monitor this situation and is attempting to assess its effects on U.S.-invested companies and their workers.

LAND LAWS

China's Constitution specifies that all land is owned in common by all the people. In practice, provincial and municipal governments distribute state-owned urban land for industrial and residential use under a variety of terms depending on the type of land, its intended use and the status of the land-use rights "purchaser," while agricultural collectives, under the control of local Communist Party chairmen, distribute collectively owned agricultural land to rural residents in the form of 30-year renewable contracts. Governments and agricultural collectives can transfer or lease land-use rights to enterprises in return for the payment of fees, or other forms of compensation, such as profit-sharing. A major problem for foreign investors is the array of regulations that govern their ability to acquire land-use rights, which are limited to 50 years for industrial purposes in the case of foreign investors. Local implementation of these regulations may vary from central government standards, and prohibited practices may be tolerated in one locality while the regulations are enforced in another. Most wholly foreign-owned enterprises seek land-use rights to state-owned urban land as the most reliable protection for their operations. Chinese-foreign joint ventures usually attempt to acquire land-use rights through lease or contribution arrangements with the Chinese partner.

Chinese law does not currently define standards for compensation when eminent domain supersedes land-use rights. This situation creates considerable uncertainty when foreign-invested enterprises are ordered to vacate premises in the public interest. Moreover, the absence of public hearings on planned public projects can give affected parties, including foreign-invested enterprises, little advance warning. China is aware of this problem, however, and is reportedly revising its laws to address it, but it

remains unclear how extensive or effective the revisions will be.

Given the scarcity of land resources in China, the price of land-use rights and land allocation are important considerations for purposes of investment, production and trade. It is therefore of some concern to the United States that the Chinese government continues to exercise a strong hand in land-use markets in China, with the objective, in part, to ensure that land use-rights are allocated in accordance with a compulsory national land-use plan aimed at boosting grain production, and state industrial development policies aimed at sustaining urbanization and growth.

CORRUPTION

While WTO membership has increased China's exposure to international best practices and resulted in some overall improvements in transparency, corruption remains prevalent. Chinese officials admit that corruption is one of the most serious problems the country faces, stating that corruption poses a threat to the survival of the Communist Party and the state. China's leadership has called for

an acceleration of the country's anti-corruption drive, with a focus on closer monitoring of provincial-level officials.

In the area of government procurement, China has pledged in recent years to begin awarding contracts solely on the basis of commercial criteria. However, it is unclear how quickly, and to what extent, the Chinese government will be able to follow through on this commitment. U.S. companies complain that the widespread existence of unfair bidding practices in China puts them at a competitive disadvantage. It also undermines the long-term competitiveness of both domestic and foreign enterprises operating in China.

China criminalized the payment of bribes to officials of foreign governments and international public organizations, effective in 2011, as required by the United Nations Convention against Corruption, which China ratified in 2006. Although criminalizing foreign bribery represents an important milestone, China has provided little information about how the law is being interpreted and enforced. Accordingly, the United States will continue to monitor China's anti-corruption efforts and encourage China to vigorously enforce its laws.

APPENDICES

- Appendix 1* List of Written Submissions Commenting on China's WTO Compliance (September 21, 2016)
- Appendix 2* List of Witnesses Testifying at Hearing on China's WTO Compliance (October 5, 2016)
- Appendix 3* Excerpts from Joint Fact Sheet for 8th U.S.-China Strategic and Economic Dialogue (June 7, 2016)
- Appendix 4* Excerpts from Fact Sheet on U.S.-China Economic Relations for Meeting of President Obama and President Xi in Hangzhou, China (September 4, 2016)
- Appendix 5* U.S. Fact Sheet for 27th U.S.-China Joint Commission on Commerce and Trade Meeting (November 23, 2016)
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2016 USTR Report to Congress on China's WTO Compliance

Appendix 1

List of Written Submissions Commenting on China's WTO Compliance September 21, 2016

1. U.S.-China Business Council
 2. U.S. Chamber of Commerce
 3. U.S. Council for International Business
 4. National Association of Manufacturers
 5. American Insurance Association
 6. American Iron and Steel Institute
 7. American Wire Producers Association
 8. United States Information Technology Office
 9. Semiconductor Industry Association
 10. Information Technology Industry Council
 11. Software & Information Industry Association
 12. Telecommunications Industry Association
 13. American Chemistry Council
 14. National Milk Producers Federation
 15. U.S. Dairy Export Council
 16. U.S. Wheat Associates
 17. Animal Health Institute
 18. International Intellectual Property Alliance
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2016 USTR Report to Congress on China's WTO Compliance

Appendix 2

List of Witnesses Testifying at Public Hearing on China's WTO Compliance October 5, 2016

1. Erin Ennis
U.S-China Business Council
 2. Jeremie Waterman
U.S. Chamber of Commerce
 3. Eva Hampl
U.S. Council for International Business
 4. Alan Tracy
U.S. Wheat Associates
 5. Jimmy Goodrich
Semiconductor Industry Association
 6. John Lenhart
Information Technology Industry Council
 7. Carl Schonander
Software & Information Industry Association
 8. K.C. Swanson
Telecommunications Industry Association
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Appendix 3

8th U.S.-China Strategic and Economic Dialogue

June 7, 2016

Excerpts from Joint Fact Sheet

On June 6-7, 2016, U.S. Treasury Secretary Jacob J. Lew and Chinese Vice Premier Wang Yang led the eighth meeting of the Economic Track of the U.S.-China Strategic and Economic Dialogue (S&ED VIII) in Beijing, China. As the Special Representatives of President Barack Obama and President Xi Jinping, Secretary Lew and Vice Premier Wang led discussions with a high-level delegation of Cabinet members, ministers, agency heads, and senior officials from both countries.

As the world's two largest economies, the United States and China share a mutual interest in each other's economic prosperity, and recognize that enhanced cooperation on the diverse set of issues encompassed in the S&ED is crucial for the health of the broader global economy. During the eighth meeting of the S&ED, the two sides pledged to implement fully S&ED commitments, including those from the previous seven dialogues. The United States and China announced further concrete measures to support strong domestic and global growth, promote open trade and investment, and enhance and foster financial market stability and reform. The two sides also discussed international economic issues including the G20 financial-track agenda, persistent risks facing their respective domestic economies and the global economy, the necessary policy tools for addressing those risks, and global economic governance.

...

II. Promoting Open Trade and Investment

- The United States and China recognize that the structural problems including excess capacity in some industries, exacerbated by a weak global economic recovery and depressed market demand, have caused a negative impact on trade and workers. Both sides recognize that subsidies and other types of support from governments or government-sponsored institutions can cause market distortions and contribute to global excess capacity and therefore require attention. The two sides commit to enhance communication and cooperation, and are committed to take effective steps to address the challenges so as to enhance market function and encourage adjustment.
 - The United States and China recognize that excess capacity in steel and other industries is a global issue which requires collective responses. The United States and China support ongoing international efforts aimed at identifying effective government policies for addressing global excess capacity and structural adjustment, and achieving greater transparency on industry developments to promote market-driven responses.
 - The United States acknowledges and supports China's continuing efforts to reduce excess capacity and supports China's pursuit of further reforms to foster an environment in which the market plays a decisive role in allocating resources. Both sides recognize that decisive actions to rein in excess capacity would help to lower greenhouse gas emissions and to fulfill climate change commitments.
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2016 USTR Report to Congress on China's WTO Compliance

Appendix 3 (cont'd)

8th U.S.-China Strategic and Economic Dialogue

June 7, 2016

Excerpts from Joint Fact Sheet

- The United States acknowledges China's State Council's recently announced plans to close 100 to 150 million metric tons of steel capacity, and to strictly prohibit the expansion of crude steelmaking capacity over the next five years.
 - In line with China's supply-side structural reform agenda, China is to undertake further steps to ensure market forces are not constrained, so that its steel industry develops a stronger market orientation to enhance efficiency, and, in doing so, progressively reduces excess capacity. China is to give full play to the role of market mechanisms, adopt appropriate policy measures, and resolve excess capacity of challenged industries such as steel through rule of law and market-oriented approaches.
 - The United States and China are to ensure that no central government plans, policies, directives, guidelines, lending or subsidization targets the net expansion of steel capacity. To address unemployment caused by capacity reduction, the Chinese government has decided to establish a 100 billion RMB earmarked funds to provide incentives and grants to local governments and central enterprises for structural adjustment of industrial enterprises, mainly by supporting the resettlement and benefits of laid-off workers. The United States welcomes China's ongoing actions and plans to ensure that central government fiscal incentives for local governments align with its objective of reducing excess steel capacity.
 - China is to adopt measures to strictly contain steel capacity expansion, reduce net steel capacity, eliminate outdated steel capacity, and urge the exit of steel production capacity that fall short of environment, energy consumption, quality or safety requirement standards according to laws and regulations. China is to actively and appropriately dispose of "zombie enterprises" through restructuring, debt restructuring, bankruptcy and liquidation.
 - The United States and China are to participate in the global community's actions to address global excess capacity, including both by participating at the OECD Steel Committee meeting scheduled for September 8-9, 2016, and by discussing the feasibility of forming a global steel forum, which is envisioned to serve as a cooperative platform for dialogue and information-sharing on global capacity developments and on policies and support measures taken by governments.
 - The United States is to share with China, through a JCCT U.S.-China Steel Dialogue meeting, historical experiences and lessons learned in connection with the transformation of U.S. cities and regions that have confronted economic structural adjustment in excess capacity situations.
 - The United States and China are to maintain communication and share information on issues relating to excess capacity.
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2016 USTR Report to Congress on China's WTO Compliance

Appendix 3 (cont'd)

8th U.S.-China Strategic and Economic Dialogue

June 7, 2016

Excerpts from Joint Fact Sheet

- The United States and China commit, in the ongoing Bilateral Investment Treaty (BIT) negotiations, to exchange revised and improved negative list offers by mid-June, reflecting the two sides' shared commitment to the objectives of non-discrimination, transparency, and open and liberalized investment regimes. The two sides are to push the BIT negotiations forward expeditiously with a view toward reaching a mutually beneficial and high-standard treaty that effectively facilitates and enables market access and market operation.
 - . . .
 - Both countries commit that generally applicable measures to enhance information and communication technology cybersecurity in commercial sectors (ICT cybersecurity regulations) should be consistent with WTO agreements, be narrowly tailored, take into account international norms, be nondiscriminatory, and not impose nationality-based conditions or restrictions on the purchase, sale or use of ICT products by commercial enterprises unnecessarily. The two sides commit that ICT cybersecurity measures generally applicable to the commercial sector are not to unnecessarily limit or prevent commercial sales opportunities for foreign suppliers of ICT products or services. Both countries affirm that access to a full range of global technology solutions ordinarily strengthens the cybersecurity of commercial enterprises.
 - China and the United States commit to further improve their approval processes for the products of agricultural biotechnology. China is to revise the Regulations on the Safety Evaluation of Agricultural GMOs (Decree 8) and related measures. China's revisions are to be consistent with the outcomes on the administration of agricultural biotechnology agreed in September 2015 at the U.S.-China Leaders' Meeting. China is to review applications of agricultural biotechnology products in a timely, ongoing and science-based manner, and complete final approvals in line with the relevant laws and regulations upon the completion of assessments by the National Biosafety Committee. The United States commits to prepare a study on the global impact of asynchronous approvals on sustainability, trade and innovation, and present it to the Chinese side by October 2016. The United States and China are to meet to jointly discuss the full range of agricultural biotechnology policy matters by the end of 2016.
 - . . .
 - China and the United States affirm the importance of transparency in development and issuance of regulatory measures to enhance predictability and promote market participation. China commits that its industry development related documents treat all enterprises equally. For legally-binding policies and measures associated with the China Manufacturing 2025 Plan and other industry development plans, China commits to publish them for public comment according to the procedures and time limits of relevant Chinese laws, regulations, and policies, and to enhance policy transparency. China's industry development funds, including national, provincial, and municipal level funds, are to operate in a manner consistent with market-based concepts. China is to publish draft documents governing government-funded industrial development funds in
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2016 USTR Report to Congress on China's WTO Compliance

Appendix 3 (cont'd)

8th U.S.-China Strategic and Economic Dialogue

June 7, 2016

Excerpts from Joint Fact Sheet

compliance with the relevant regulations and measures of the State Council. The United States and China commit to foster a fair, open, and transparent legal and regulatory environment.

...

- In order to support Chinese efforts at greater enterprise transparency and accountability, China commits to enhance transparency of enterprise ownership and governance information. To do so, China commits to further develop databases in the provincial Administrations for Industry and Commerce (AICs), to better guide commercial actors by making publicly available to interested parties easily searchable information for no charge, or for a reasonable fee, on the corporate information of enterprises registered and filed with the local AICs in all provinces in China.

III. Fostering Financial Stability and Reform

...

- Recognizing the importance of fostering a base of institutional investors to support equity market depth and liquidity, China commits to take measures to support capital market development including the following:
 - o Recognizing that foreign participation in securities and fund management services can enhance the competitiveness and international influence of the industry, China commits to gradually raise the permitted equity holding of qualified foreign financial institutions in the securities and fund management companies.
 - o China welcomes qualified wholly foreign-owned enterprises and joint ventures to apply for registration of private fund management entities to engage in private securities fund management business, including secondary market trading of securities, according to domestic regulations. China is to promulgate regulatory and qualification requirements for foreign financial institutions to participate in this business.
 - o The United States welcomes China's issuance of detailed rules to provide qualified foreign institutional investors direct access to the interbank bond market, including trading of interest rate swaps and bond forwards for hedging purposes. To support foreign participation in China's interbank bond market, the United States also welcomes China's decision to issue bond settlement Type A licenses and underwriting licenses to two qualified U.S. financial institutions. China commits to strengthen creditor rights for foreign and domestic investors by clarifying the standards for initiating bankruptcy cases, identifying clear and specific bankruptcy thresholds, and provide automatic stays on proceedings from the date of petition. China commits to simplify the regulation and approval process of QFII and RQFII programs and facilitate cross-border investment.

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2016 USTR Report to Congress on China's WTO Compliance

Appendix 3 (cont'd)

8th U.S.-China Strategic and Economic Dialogue

June 7, 2016

Excerpts from Joint Fact Sheet

- China announced that, as a follow-up to the Decision of the State Council on the Administration of Market Access of Bankcard Clearing Institutions, it published the Administrative Rules on Bankcard Clearing Institutions. The Rules established procedures for licensing domestic and foreign suppliers to provide electronic payment services for payment card transactions in China.

...

- The United States welcomes China's progress to date in streamlining administrative regulations in the securities markets, and China commits to further simplify administrative and approval procedures for financial products and services while strengthening market supervision and investor protection.
- China is to amend regulatory measures to allow foreign futures exchanges to establish representative offices in China.

...

IV. Enhancing Global Cooperation and Economic Governance

...

- The United States and China recognize the progress that has been made by the International Working Group on Export Credits (IWG) in negotiating new international guidelines for official export credit support, and look forward to further discussion on the horizontal guidelines at the 11th IWG meeting in July 2016. Both sides commit to continue their bilateral communication and technical exchanges through calls, emails, etc. to strengthen cooperation, and to explore ways to improve the working mechanism of the IWG, including by seeking IWG support on assigning a secretary general and continue with a rotating chair by the 12th IWG meeting. The United States and China also reaffirm the inclusiveness of the IWG in giving equal attention to the opinions of developed and developing countries, in order to make greater progress towards achieving new international guidelines for official export credit support. The United States and China are committed to commenting on existing horizontal text proposals at the 12th IWG meeting, or suggesting alternative horizontal guideline texts applicable to official export credit support provided by or on behalf of a government. Both sides reaffirm that the new international guidelines should, taking into account and respecting varying national interests and development conditions, and consistent with international best practices, help ensure government support that complements commercial export financing, so as to contribute to global trade and broad-based economic growth.

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2016 USTR Report to Congress on China's WTO Compliance

Appendix 4

Meeting of President Obama and President Xi in Hangzhou, China

September 4, 2016

Excerpts from

FACT SHEET: U.S.-China Economic Relations

...

- The United States and China recognize that structural problems, including excess capacity in some industries, exacerbated by a weak global economic recovery and depressed market demand, have caused a negative impact on trade and workers. Both countries recognize that excess capacity in steel and other industries is a global issue which requires collective responses. Both sides recognize that subsidies and other types of support from governments or government-sponsored institutions can cause market distortions and contribute to global excess capacity and therefore require attention. The two sides commit to enhance communication and cooperation, and are committed to take effective steps to address the challenges so as to enhance market function and encourage adjustments. In this regard, the United States and China welcome the potential establishment of a Global Forum, with active participation of G-20 members and interested OECD members, as a cooperative platform for dialogue and information-sharing on global capacity developments and on policies and support measures taken by governments, to be facilitated by the OECD Secretariat.
- The United States welcomes China's supply-side structural reform program, which has cutting excess capacity as one of its key objectives. The United States and China recognize that due to a weak global economic recovery and depressed market demand, the excess capacity of the electrolytic aluminum industry has increased and become a global issue requiring collective response. Both countries are to work together to address the global electrolytic aluminum excess capacity.
- The United States and China recognize the importance of the establishment and improvement of impartial bankruptcy systems and mechanisms. China attaches great importance to resolving excess capacity through the systems and mechanisms relating to mergers and acquisitions; restructuring; and bankruptcy reorganization, bankruptcy settlement, and bankruptcy liquidation, according to its laws. In the process of addressing excess capacity, China is to implement bankruptcy laws by continuing to establish special bankruptcy tribunals, further improving the bankruptcy administrator systems and using modern information tools. The United States and China commit to, starting as early as 2016, conduct regular and ad hoc communication and exchanges regarding the implementation of our respective bankruptcy laws through forums or mutual visits.

...

- The United States and China affirm that innovation is a critical driver of economic development, job creation, and shared prosperity and that innovation plays a crucial role in developing solutions to domestic, global, and societal challenges. Furthermore, each side recognizes that the ability for the United States and China to trade, do business, and innovate together promotes prosperity for the people of our two nations and contributes to the growth of the global economy. As partners in the pursuit of these common goals and in view of the increasing importance of U.S.-China collaboration to the bilateral relationship, the United States and China recognize the importance of building and supporting the proper legal, regulatory, and policy
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Appendix 4 (cont'd)

Meeting of President Obama and President Xi in Hangzhou, China

September 4, 2016

Excerpts from

FACT SHEET: U.S.-China Economic Relations

frameworks necessary for fostering a healthy innovation ecosystem featuring robust investment in basic science and research and development, strong involvement by enterprises, and transparent policy design and implementation in our respective policies. The United States and China commit that their innovation policies are to be consistent with the principle of non-discrimination. The United States and China affirm the importance of developing and protecting intellectual property, including trade secrets, and commit not to advance generally applicable policies or practices that require the transfer of intellectual property rights or technology as a condition of doing business in their respective markets.

- Both sides recognize the importance of the government's role in promoting a level playing field for foreign and domestic companies, and the importance of open and competitive markets, including in determining pricing of products and services, to drive innovation.
 - The United States and China recognize that the effective and balanced protection of intellectual property rights will be beneficial to promote innovation. Both sides are to continue to communicate and exchange views on relevant policies, such as protecting innovators from bad faith litigations.
 - Both countries affirm that access to a full range of global products, services and technology solutions ordinarily promotes the innovativeness and competitiveness of commercial enterprises.
 - Recognizing the importance of an interconnected global digital infrastructure, the value of innovative technologies, and technology users' security concerns, the two sides, consistent with WTO agreements, commit that their respective generally-applicable information and communication technology (ICT) security-related measures in commercial sectors (1) should treat technology in a non-discriminatory manner, (2) are not to unnecessarily limit or prevent commercial sales opportunities for foreign suppliers of ICT products or services, and (3) should be narrowly tailored, take into account international norms, be nondiscriminatory, and not impose nationality-based conditions or restrictions, on the purchase, sale, or use of ICT products by commercial enterprises unnecessarily.
 - The United States and China recognize the significant progress of the ongoing Bilateral Investment Treaty (BIT) negotiation toward a high-standard treaty reflecting the shared objectives of non-discrimination, transparency, and open and liberalized investment regimes. The two sides have recently exchanged the third revised and significantly improved negative list offers and made further progress in all aspects of the negotiation. The United States and China commit to further intensify the negotiation with a view to concluding a mutually beneficial and high-standard treaty.
 - Both sides highly value the important role the U.S.-China Joint Commission on Commerce and Trade (JCCT) plays in promoting bilateral economic and trade relations and expanding the mutually beneficial cooperation and high-level policy discussion, and commit to continue holding communication and dialogue under the
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Appendix 4 (cont'd)

Meeting of President Obama and President Xi in Hangzhou, China

September 4, 2016

Excerpts from

FACT SHEET: U.S.-China Economic Relations

framework of JCCT on the issues of interest to both governments and our stakeholders, work hard to seek solutions that meet both sides' interests, and work together towards the success of the 27th JCCT.

...

- The United States and China reaffirm the central role of the WTO in today's global economy, and commit to enhance communication and coordination on WTO issues. Both sides remain committed to advance negotiations on the remaining Doha Development Agenda issues as a matter of priority and are determined to work together to further strengthen the multilateral trading system. Both sides also note that a range of issues, such as those addressed in various regional trade agreements and by the B20, may be of common interest and importance to today's global economy, and thus may be legitimate issues for discussions in the WTO, without prejudice to respective positions relating to possible negotiations in the future.

2016 USTR Report to Congress on China's WTO Compliance

Appendix 5

27th U.S.-China Joint Commission on Commerce and Trade Meeting

November 23, 2016

U.S. Fact Sheet

OVERVIEW

As key trading partners and the world's two largest economies, the United States and China share a mutual interest in promoting economic prosperity, both nationally and globally, through cooperative and constructive bilateral engagement under the auspices of the JCCT. During the 27th meeting of the JCCT, the two sides focused on ensuring the fulsome implementation of past JCCT commitments and also announced further concrete commitments to promote open trade and investment. The two sides also announced future dialogues and collaborative and capacity building efforts.

ENSURING FULL IMPLEMENTATION OF PAST COMMITMENTS

The following outcomes were achieved with regard to China's ongoing implementation of commitments secured by the United States during past JCCT and other high-level bilateral meetings:

DE-LINKING INNOVATION POLICY FROM GOVERNMENT PROCUREMENT PREFERENCES

In 2011, after global expressions of concern and intensive U.S. engagement, China ordered subnational governments to abolish government procurement preferences for innovative products developed indigenously. While that action represented a key recognition by China, compliance with the measure proved to be incomplete, and new inconsistent measures continue to come into force. The United States welcomes China's renewed attention to implementation of this critical commitment in 2016 and beyond.

The General Affairs Office of the State Council issued a document recently, requiring all local regions and all agencies to further clean up related measures involving linking the indigenous innovation policy to the provision of government procurement preferences, so as to practically implement the commitment made by the Chinese side. The U.S. side welcomes this development.

PHARMACEUTICALS AND MEDICAL DEVICES

China is the second largest pharmaceutical market in the world, forecasted to grow from \$108 billion in 2015 to \$167 billion by 2020, representing an annual growth rate of 9.1 percent. China is the fourth largest medical device market in the world, with sales forecasted to grow from \$17.8 billion in 2015 to \$27 billion by 2020, representing an annual growth rate of 8.7 percent.

- Policies of the Chinese government in promoting development and application of domestically produced medical devices, are to encourage domestic industrial development, and will not discriminate against or exclude overseas brands or products manufactured overseas. Relevant policies and measures of the central government departments are intended to strengthen advocacy; to establish cooperative platforms for government, industry, academic, research and medical institutions; to improve the quality
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and standard of domestic medical devices; and shall not be linked to procurement practices. In accordance with relevant laws and regulations, China commits to strengthen oversight on government procurement of medical devices and to treat overseas brands and products manufactured overseas in a transparent, fair and equitable manner, and both sides stand ready to further communicate with parties concerned.

- China has issued two batches of Class II Medical Device Clinical Trial Exemption Catalogues and Class III Medical Device Clinical Trial Exemption Catalogues. China will continue to develop and work on the drafting and adjustment of the Medical Device Clinical Trial Exemption Catalogues. During the development process, China will listen to opinions from industry and relevant stakeholders.
- The Chinese side encourages clinical-value-oriented innovative drugs to be registered and marketed in China, and will further improve related policies, regulations and technical requirements to improve the drug registration review and approval process, to allow drug registration applicants, after approval, to conduct clinical trials within and outside of the territory in parallel, and to allow overseas drug manufacturers to supplement the certificate of pharmaceutical product (CPP) when applying for drug marketing license.

NEW COMMITMENTS SECURED IN 2016

The United States secured the following outcomes from China on a wide range of key trade and investment issues impacting U.S. workers, manufacturers, service providers, farmers, ranchers and small businesses:

AVIAN INFLUENZA

The United States and China will collaborate to limit trade restrictions due to avian influenza outbreaks.

As Member countries to the World Organization for Animal Health (OIE), China and the United States recognize that the OIE's Terrestrial Animal Health Code provides the sanitary requirements for the safe trade of poultry commodities related to avian influenza, and commit to limit trade restrictions due to avian influenza outbreaks to those recommendations. China and the United States commit to exchange information and collaborate on the efforts that will lead to the recognition of zones free of high pathogenicity and low pathogenicity (subtypes H5 and H7) avian influenza consistent with the recommendations of the OIE Terrestrial Animal Health Code to minimize unnecessary disruptions of trade.

COMPETITION

China made a number of important and welcome clarifications and commitments regarding enforcement of China's Anti-monopoly Law (AML) during the JCCTs and S&EDs of the past two years. Recognizing the importance transparency provides to help parties, including U.S. companies, and the public understand their procedural rights

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under the AML, China has clarified that it has provided on the websites of the anti-monopoly enforcement agencies, and will update in a timely fashion, its laws, rules, regulations and guidelines, as well as enforcement decisions.

The United States welcomed China's clarifications and commitments made in the 2014 and 2015 JCCTs and S&EDs regarding Anti-Monopoly Law (AML) enforcement. China clarifies that its laws, regulations, rules, and guidelines, as well as decisions on administrative penalties and merger reviews (published pursuant to AML Art. 30), are published on the websites of China's anti-monopoly enforcement agencies and will be updated in a timely manner.

EXCESS CAPACITY

Excess capacity and structural problems in steel and other industries is a global challenge which requires collective responses. Building on prior commitments, including ones made in the September 2016 G20 Leaders Communiqué, in the summit statement for the September 2016 meeting between President Obama and China's President Xi in Hangzhou, China, and during prior JCCTs and U.S.-China Strategic and Economic Dialogues, among other fora, the United States and China agreed to intensify their dialogue relating to excess capacity in the steel, aluminum and soda ash industries.

- Steel: China and the United States agree to jointly promote the expeditious establishment of the Global Forum on Steel Excess Capacity. Upon the establishment of this Global Forum, the United States and China, recognizing the G20 Leaders' commitment to take effective steps to address the challenges of global excess capacity so as to enhance market function and encourage adjustment, commit to actively participate and strengthen information sharing and cooperation. China and the United States will hold an informal China-U.S. JCCT Steel Dialogue in 2017, to fulfill the consensus reached at the G20 Leaders Hangzhou Summit and the 8th U.S.-China Strategic and Economic Dialogue in June, exchange and share global steel development information, review steel capacity and production and the trade situation since the 2016 JCCT Steel Dialogue, and share the experiences and lessons learned with regard to structural adjustment under the circumstances of excess capacity.
- Aluminum: The United States and China are to exchange information in furtherance of their joint commitment at the G20 Leaders Hangzhou Summit, i.e., to work together to address global electrolytic aluminum excess capacity.
- Soda Ash: The United States and China are to exchange information regarding the soda ash industry.

FOOD SAFETY COOPERATION FOR IMPORTED FOODS

Food safety is a key issue of global concern. China and the United States recognize the importance of addressing and resolving food safety issues to protect public health and facilitate trade in safe food. Chinese and U.S. food safety agencies cooperate through existing mechanisms, including the JCCT, to further enhance food safety cooperation.

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Building on the 2015 JCCT commitments to cooperate on food safety matters, China and the United States conducted technical discussions about their respective certificate requirements for imported foods. Both sides agree to further cooperation and discussions regarding import requirements related to food safety.

INNOVATION POLICY

China's passage of the Cybersecurity Law in 2016, and potential implementing measures, could restrict the use of foreign information and communication technology (ICT) products and services in a wide range of commercial sectors. China's "secure and controllable" policy direction, included in both the Cybersecurity Law and numerous other government measures in the past few years, has been of serious concern to global stakeholders. The outcome below extends commitments made by China on information security policy to its "secure and controllable" measures.

The United States and China believe that innovation is a key driver for economic development, job creation, and shared prosperity, and innovation plays a vital role in developing solutions to domestic, international, and social challenges. The two sides further recognize that the ability of China and the United States to carry out trade, business, and joint innovation will help promote the well-being of both peoples and promote global economic growth.

Recognizing the importance of interconnected global digital infrastructures and the value of innovative technologies in effectively managing evolving new risks, the two sides recognize that generally applicable Information and Communications Technology (ICT) security-related measures in their respective countries in commercial sectors do not discriminate unnecessarily or unnecessarily restrict trade or the flow of information in an orderly fashion.

China explained that its "secure and controllable" policies generally applicable to the commercial sector are not to unnecessarily limit or prevent commercial sales opportunities for foreign suppliers, of ICT products, services, or technologies and will not impose nationality-based conditions and restrictions on the purchase, sale, and use of ICT by commercial enterprises unnecessarily.

In accord with China's obligations under the WTO Technical Barriers to Trade (TBT) Agreement, it will notify relevant technical regulations to the WTO TBT Committee.

INTEGRATED CIRCUITS

In 2015, U.S. semiconductor, or integrated circuit, companies accounted for one-half of the \$335 billion global market. China represents the largest single end-market for U.S. semiconductors, and semiconductors were one of China's top imports in 2015, with U.S.-manufactured semiconductors representing 52 percent of China's total semiconductor imports. To ensure a vibrant global semiconductor innovation ecosystem, it is vital that the industry be guided by the principles of openness, transparency, inclusiveness, non-discrimination and consistency with WTO obligations.

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China and the United States jointly reaffirm their commitment to a strong, vibrant global semiconductor industry that operates in fair, open and transparent legal and regulatory environments. China reaffirms that operation of the integrated circuit investment funds are based on market principles and that the government does not interfere with the normal operation of the funds. China clarifies that the government has never asked the fund to require compulsory technology or IPR transfer as a condition for participation in the Funds' investment projects. The United States welcomes China's clarification and further exchange on this topic.

INTELLECTUAL PROPERTY RIGHTS

The United States is a leader in technology, the creative arts, and strong brands, propelled in part by the effective protection and enforcement of intellectual property rights. In 2014, intellectual property-intensive industries accounted for nearly 40 percent of U.S. gross domestic product, over one-half the value of U.S. merchandise exports, and the direct or indirect employment of over 45 million Americans. Trade secrets protection is important to a broad cross section of U.S. companies, while trademark-, copyright- and patent-intensive industries each contribute millions of jobs to the U.S. economy. China represents major opportunities for U.S. intellectual property-intensive industries, yet the need to strengthen the protection and enforcement of intellectual property rights remains a critical challenge. The JCCT is the primary bilateral venue to address these challenges in China, as reflected in the following outcomes.

Bad Faith Trademarks

Affirming their long-standing cooperation on administrative and judicial trademark issues, the United States and China agree that trademarks obtained and asserted in bad faith hinder legitimate commerce, mislead consumers, and deter investment in building global brands. The United States appreciates the positive efforts China has made under the new Trademark Law. Building upon this, China will take further efforts to combat bad faith trademark filings. Moreover, the United States and China will continue to prioritize the issue of bad faith trademark filings, and both sides will strengthen exchanges and communication through bilateral and multilateral channels.

Licensing

China is actively conducting research on the Technology Import and Export Administration Regulations (2002) (TIER) to address U.S. concerns, to support China's efforts to become an innovative economy, and to better address newly emerging areas of technology transfer. To that end, MOFCOM will convene a joint seminar with the United States in the first quarter of 2017.

Online Infringement of Intellectual Property Rights and Piracy

The United States and China fully recognize the significance that enforcing against infringement and counterfeiting online has in protecting intellectual property rights and consumers, and fostering a fair competitive market.

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The two sides will strengthen cooperation with right holders and e-commerce platforms to actively and jointly promote the training of U.S. and Chinese small and medium-sized enterprises by e-commerce platforms on protecting intellectual property rights, to help them to use these platforms to foster international trade. Both sides will explore the use of big data and other new information technologies to enhance the capability for combating infringement and counterfeiting online.

China will actively promote e-commerce-related legislation, strengthen the supervision over network infringement and counterfeiting. In order to address suspected instances of online criminal piracy and trademark counterfeiting in the United States affecting Chinese right holders, the Joint Liaison Group (JLG) IP Criminal Enforcement Working Group point of contact in the U.S. Beijing Embassy will receive such referrals from China's administrative agencies.

Sports Broadcast Copyright Protection

The United States and China will continue to implement the consensus reached by the China - US Joint Commission on Commerce and Trade (JCCT) in 2015 on sports broadcasts. To facilitate the implementation of the commitments, the United States and China confirm that broadcasts of sporting events, including when transmitted over the Internet, should be protected under their respective laws and regulations. China is committed to further study the feasibility of protecting the broadcasts of sporting events under its Copyright Law. China understands the view of the United States that other forms of protection (the Tort law, the Unfair Competition Law, etc.) provide insufficient protection or legal certainty to facilitate license agreements or the investments made in obtaining the rights to broadcast live sporting events. The United States welcomes further clarification on the circumstances under which copyright is available for live sports broadcasts from the Chinese judiciary at the earliest possible time. The United States and China further agree to deepen their technical discussions on copyright protection for sports broadcasts, including by convening a program on the subject in 2017.

Trade Secrets

China confirmed that it is strengthening China's trade secrets protections, including through planned amendments to the Anti-Unfair Competition Law (AUCL), and related judicial practice. China confirms that, in practice, trade secrets misappropriation may be committed by individuals, including employees, who may not be directly involved in the manufacture or sale of goods and services. China plans to bolster other elements of its trade secrets regime, including with respect to the availability of evidence preservation orders and damages based on market value, consistent with other developments in intellectual property law in China, as well as the issuance of a judicial interpretation on preliminary injunctions and other matters. Both sides confirm that, in those cases in which a judicial or administrative enforcement authority requests the submission of confidential information in conjunction with a trade secret enforcement matter, such requests will be narrowly tailored to avoid putting at risk sensitive business information and will be subject to appropriate protective orders to control additional disclosure and ensure that information is not further misappropriated and that any decision that is made publicly available in conjunction with a trade secret enforcement matter will have all confidential information appropriately redacted. The United States and China confirm that trade secret investigations are conducted in a prudent and cautious manner.

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PHARMACEUTICALS AND MEDICAL DEVICES

The U.S. pharmaceuticals industry directly employs more than 850,000 workers, directly and indirectly supports a total of 4.4 million jobs in the United States, and provides annual compensation to its workers at approximately twice the average for all U.S. workers. China is the second largest pharmaceutical market in the world, with sales estimated at \$109 billion in 2015.

The U.S. medical devices industry directly employs more than 519,000 workers, supports a total of 1.9 million jobs in the United States, and provides annual compensation at nearly twice the national average. It includes over 7,000 companies, most of which have less than 100 employees. China is the fourth largest medical device market in the world, with sales estimated at \$18 billion in 2015. The United States is the leading supplier of medical devices to China in all product areas, with exports valued at \$4.2 billion in 2014.

The outcomes below will facilitate greater exports to China and allow for better patient outcomes.

Company Verification

The Chinese side, while working on case review, sometimes cannot obtain timely information that accurately reflects changes that happened with foreign registrant's registration and due to this lack of accurate information case review is delayed. Therefore, both sides hope to establish a communication channel, and U.S. government will provide appropriate assistance with the verification of relevant information about a foreign registrant according to CFDA's requests, and timely respond to CFDA. Agreement on this work has been reached in the Medical Device Subgroup, and it will begin after both sides clarify the contact point and contact method.

Down Classification

Since April 2015, China has amended the Medical Device Classification Rules, formed the Medical Devices Classification Technical Committee, organized and carried out the work to fully amend the Medical Device Classification Catalogue, and has suggested the reclassification of products such as allergy reagents, IVDs used for flow cytometry reagents and immunohistochemistry. China's work on adjusting medical device classification referenced the commonly recognized and risks based principles, and combined with China's regulatory reality, appropriately downgraded device classes. The revised catalogue will be released after seeking further public comments and research as well as making improvements accordingly.

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Unique Device Identification (UDI)

- China highly values international UDI research and development and implementation experience. During the drafting of China's identification number regulations and implementing plans, China will fully consider the U.S. proposal to rely on international standards and harmonize with globally accredited UDI issuing agencies, and China will offer a phased-in and risk-based implementation approach, with an initial implementation period for phase I to be no less than 2 years from issuance of the final rule, and exempting all devices manufactured or labeled prior to the rule's effective date.
- Based on China's current situation, the Chinese side will study international experience, to further complete the building plan of China's UDI and traceability system and establish medical device identification number regulations. During the drafting of the medical device identification number regulations and implementing plans, China will consider international standards, globally accredited issuing agencies and other international UDI guideline topics.

Pharmaceutical Regulatory Evaluation and Approval

China and the United States support pharmaceutical regulatory policies that foster global innovation and protect public health. As for the implementation of drug pricing commitments, China affirms that drug registration review and approval shall not be linked to pricing commitments and shall not require specific pricing information.

SOCIAL CREDIT SYSTEM

China recently established a comprehensive "Social Credit System" that is intended to address deficiencies in social trust, strengthen access to financial credit instruments, and reduce corruption. As part of the Social Credit System, relevant Chinese agencies will collect and publicize information on market participants. The Social Credit System also includes a blacklist approach for "dishonest market participants." Given the potential impact on U.S. companies doing business in China, the United States welcomes China's commitment to transparency and public participation in rulemaking as relevant agencies develop the Social Credit System.

China attaches importance to guiding public participation during the process of promoting the construction of its Social Credit System. China, in accordance with relevant domestic laws and administrative regulations, will seek public comments on the website Credit China (www.creditchina.gov.cn <<http://www.creditchina.gov.cn/>>) and other relevant websites when it develops laws, administrative regulations and rules relevant to the Social Credit System.

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TBT AND SPS NOTIFICATION PROCESSES

Under the WTO Agreement on Technical Barriers to Trade (TBT Agreement) and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), WTO Members are required to notify other Members through the WTO Secretariat of proposed mandatory standards-related measures, including technical regulations, conformity assessment procedures, and sanitary and phytosanitary measures, before entry into force. Under both agreements, WTO Members are required to notify the proposed measures as early as possible and at a time when amendments to the measures can still be introduced and taken into account. Both TBT and SPS Committees recommend at least a 60-day comment period. This process improves transparency of WTO Members' regulatory processes, helping U.S. firms obtain greater predictability and engagement in a country's rulemaking process.

The United States and China agree to hold an informational exchange on "TBT and SPS Notification Procedures" in China in 2017. The United States commits, subject to applicable law and the availability of necessary resources, to cover all expenses related to the activity, including costs of the venue, and interpreters. To strengthen their common understanding, China and the United States commit to work together to develop the content and agendas for the exchange, send expert speakers, and invite staff in charge of TBT and SPS transparency from both sides to participate.

THEATRICAL FILMS

Since the signing of the U.S.-China MOU on theatrical films in 2012 following a successful WTO dispute challenging certain Chinese market access restrictions, China's film market has been growing exponentially, becoming the second largest in the world in terms of box office revenue. In 2011, the year before the MOU went into effect, box office revenues in China totaled \$2.1 billion. By 2015, box office revenues had surged to \$6.8 billion, representing a quadrupling of the 2011 total, and it has continued to grow in 2016. U.S. industry has shared in much of this increased revenue, in large part because the MOU provided for substantial increases in the number of foreign films imported and distributed in China each year and substantial additional revenue for foreign film producers than prior to the signing of the MOU. The MOU calls for the United States and China to engage in further negotiations in 2017 in order to provide additional compensation to the U.S. side, and China has agreed below that these negotiations can and should address a range of outstanding U.S. concerns relating to policies and practices that may still be impeding the U.S. film industry's access to China's market.

In accordance with the provisions of paragraph 12 of the Memorandum of Understanding between the People's Republic of China and the United States of America Regarding Films for Theatrical Release (MOU) signed on April 25, 2012, China affirms that it will enter into consultations with the United States in calendar year 2017 in order to provide further meaningful compensation to the United States. To this end, the United States and China agree that, as part of the calendar year 2017 consultations, they will seek to increase the number of revenue-sharing films to be imported each year and the share of gross box office receipts received by U.S. enterprises as well as

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seek to address outstanding U.S. concerns relating to other policies and practices that may impede the U.S. film industry's access to China's market such as importation rights, the number of distributors of imported films and the independence of distributors, among other issues.

TRADE POLICY COMPLIANCE

The United States understands that China has begun to take corrective actions to address serious WTO concerns relating to certain Chinese government subsidy programs.

The United States and China affirm their willingness to consider each side's respective concerns relating to the compliance of trade policies with relevant WTO principles and disciplines. The United States welcomes China's confirmation that the Ministry of Commerce has coordinated with relevant departments and local governments regarding U.S. concerns relating to International Well-Known Brand subsidies and farm machinery subsidies and that China is prepared to adjust the measures at issue as necessary. The two sides are to continue to consult regarding these two matters in 2017.
