
2014 Report to Congress On China's WTO Compliance



**United States Trade Representative
December 2014**

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TABLE OF CONTENTS

FOREWORD 1

EXECUTIVE SUMMARY 2

OVERVIEW 2

CHINA'S FIRST 13 YEARS AS WTO MEMBER 3

2014 DEVELOPMENTS 5

CONCLUSIONS REGARDING CHINA'S WTO COMPLIANCE EFFORTS 8

PRIORITY ISSUES 8

 Intellectual Property Rights 8

 Industrial Policies 10

 Services 14

 Agriculture 17

 Transparency 18

 Legal Framework 19

NEXT STEPS 19

Table 1: Summary Conclusions regarding China's WTO Compliance Efforts 21

INTRODUCTION 27

CHINA'S WTO ACCESSION NEGOTIATIONS 27

CHINA'S WTO COMMITMENTS 27

OVERVIEW OF U.S. ENGAGEMENT 29

DIALOGUE 29

 Bilateral Engagement 29

 Multilateral Meetings 32

ENFORCEMENT 32

Table 2: Active U.S. WTO Disputes against China 36

CHINA'S WTO COMPLIANCE 38

TRADING RIGHTS 38

IMPORT REGULATION 39

 Tariffs 39

 Customs and Trade Administration 40

 CUSTOMS VALUATION 40

 RULES OF ORIGIN 42

 IMPORT LICENSING 42

 Non-tariff Measures 44

 Tariff-rate Quotas on Industrial Products 44

 Other Import Regulation 45

 ANTIDUMPING 45

 COUNTERVAILING DUTIES 48

TABLE OF CONTENTS

CHINA'S WTO COMPLIANCE (cont'd)

IMPORT REGULATION (cont'd)	
Other Import Regulation (cont'd)	
SAFEGUARDS	50
EXPORT REGULATION	50
INTERNAL POLICIES AFFECTING TRADE	54
Non-discrimination	54
Taxation	56
Subsidies	57
Price Controls	61
Standards, Technical Regulations and Conformity Assessment Procedures	63
RESTRUCTURING OF REGULATORS	64
STANDARDS AND TECHNICAL REGULATIONS	64
CONFORMITY ASSESSMENT PROCEDURES	72
TRANSPARENCY	78
Other Internal Policies	78
STATE-OWNED AND STATE-INVESTED ENTERPRISES	78
STATE TRADING ENTERPRISES	81
GOVERNMENT PROCUREMENT	81
INVESTMENT	86
AGRICULTURE	97
Tariffs	99
Tariff-rate Quotas on Bulk Agricultural Commodities	100
China's Biotechnology Regulations	101
Sanitary and Phytosanitary Issues	103
Inspection-related Requirements	109
Domestic Support	110
Export Subsidies	111
INTELLECTUAL PROPERTY RIGHTS	111
Legal Framework	112
Enforcement	117
SERVICES	122
Distribution Services	124
WHOLESALING SERVICES	124
RETAILING SERVICES	126
FRANCHISING SERVICES	127
DIRECT SELLING SERVICES	127
Financial Services	128
BANKING	128
MOTOR VEHICLE FINANCING	130
INSURANCE	131
FINANCIAL INFORMATION	133
ELECTRONIC PAYMENT SERVICES	133

TABLE OF CONTENTS

CHINA'S WTO COMPLIANCE (cont'd)

SERVICES (cont'd)	
Legal Services	134
Telecommunications	136
Audiovisual and Related Services	137
Internet-related Services	138
Construction and Related Engineering Services	140
Education Services	141
Express Delivery Services	142
Logistics Services	143
Aviation Services	143
Maritime Services	144
Tourism and Travel-related Services	144
LEGAL FRAMEWORK	144
Transparency	145
OFFICIAL JOURNAL	145
TRANSLATIONS	146
PUBLIC COMMENT	146
ENQUIRY POINTS	148
Uniform Application of Laws	148
Judicial Review	149
Other Legal Framework Issues	149
ADMINISTRATIVE LICENSING	149
COMPETITION POLICY	150
COMMERCIAL DISPUTE RESOLUTION	152
LABOR LAWS	153
LAND LAWS	154
CORRUPTION	154

APPENDICES

- Appendix 1:* List of Written Submissions Commenting on China's WTO Compliance
September 17, 2014
- Appendix 2:* List of Witnesses Testifying on China's WTO Compliance
October 1, 2014
- Appendix 3:* U.S. Fact Sheet for 25th U.S.-China Joint Commission on Commerce and Trade Meeting
December 18, 2014
- Appendix 4:* Excerpts from Joint Fact Sheet for 6th U.S.-China Strategic and Economic Dialogue
July 11, 2014
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2014 USTR Report to Congress on China's WTO Compliance

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
CFDA	China Food and Drug Administration
CIRC	China Insurance Regulatory Commission
CNCA	National Certification and Accreditation Administration
CNIS	China National Institute for Standards
Codex	Codex Alimentarius
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
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 thirteenth 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 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.

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 Market Access and Compliance officers 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, 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 15, 2014, asking for written comments and testimony from the public and scheduling a public hearing before the TPSC, which took place on October 1, 2014. A list of the written submissions received from interested parties is set forth in Appendix 1, and the persons who testified before the TPSC are identified in Appendix 2.

EXECUTIVE SUMMARY

OVERVIEW

Thirteen 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 \$122 billion in 2013, representing an increase of 535 percent since 2001 and positioning China as the United States' largest goods export market outside of North America.
- U.S. services exports reached \$38 billion in 2013, representing an increase of 603 percent since 2001. Services supplied through majority U.S.-invested companies in China also have been increasing dramatically, totaling an additional \$39 billion in 2012, the latest year for which data is available.

Despite these results, however, the overall picture currently presented by China's WTO membership remains complex, largely due 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.

In 2014, as in past years, when trade frictions have arisen, 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 15 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, holding China fully accountable as a mature participant in, and a major beneficiary of, the WTO's global trading system.

The United States recognizes the tremendous potential of the U.S.-China trade relationship for both the United States and China, and it therefore has sought to underscore the importance of China's economic reform. The United States views economic reform in China as a win-win for the United States and China. If China is going to deal successfully with its economic challenges at home, it must allow market forces to operate, which requires altering the role of the state in planning the economy. It likewise must reform state-owned enterprises, eliminate preferences for domestic national champions and remove market access barriers currently confronting foreign goods and services. Economic reform in China is also strongly in the United States' interest, not only because the Chinese government's interventionist policies and practices and the large role of state-owned enterprises in China's economy are principal drivers of trade frictions, but also because a sustainable Chinese economy will lead to increased U.S. exports and a more balanced U.S.-China trade and investment relationship will help drive global economic growth.

China's first 13 years as a WTO member are described below, followed by a review of key developments in 2014. Then, USTR describes its conclusions regarding China's WTO compliance efforts to date, which are subsequently summarized in Table 1 (beginning on page 21).

CHINA'S FIRST 13 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 the United States began reporting on Chinese government policies and practices that demonstrated a stronger embrace of state capitalism, a trend that continued into 2012. The United States 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 USTR reported previously, and as remains true today, 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 and countervailing duty 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. More

recently, U.S. industry has 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 emerged suggesting a strong commitment among China's new leaders to further economic reform. As USTR noted in last year's report, a series of developments in 2013 seemed to confirm a re-focusing of China's energies and a high-level determination to accelerate needed economic reform, which, if realized, would provide tremendous benefits not only to China but also to its trading partners.

The new Chinese leadership's focus on economic reform in China 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. Although these important pronouncements have yet to be fully translated into actions that would significantly change China's trade regime, much of the broad policy direction that they potentially indicate is encouraging.

Another notable development took place in July 2013, when China announced that it was prepared to negotiate a high-standard Bilateral Investment Treaty (BIT) with the United States. This announcement was followed a few months later by the creation of the Shanghai Free Trade Zone, which was intended to serve as a pilot project for significant trade and investment liberalization and

financial reform. While little material reduction of trade and investment restrictions has occurred to date, the BIT negotiations have proceeded with China's full engagement.

Despite this re-focusing on economic reform, however, a wide range of Chinese policies and practices continued to generate significant concerns among U.S. stakeholders in 2014. The Chinese government's provision of preferences and financial support to state-owned enterprises and domestic national champions continued to skew the commercial playing field in many sectors, both in China's market and abroad. In addition, major areas of specific concern continued to include: serious problems with intellectual property rights enforcement, including in the area of trade secrets; indigenous innovation policies; technology transfer initiatives; export restraints; government subsidization; the development of unique national standards; investment restrictions; troubling agricultural policies directly blocking U.S. market access; inappropriate use of anti-monopoly and trade remedy laws; transparency; and China's slow movement toward accession to the WTO Government Procurement Agreement (GPA).

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. China's new leaders seem to have embraced many elements of this approach, and the United States will continue to work with China going forward to help make it a reality.

2014 DEVELOPMENTS

In 2014, 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 over the past year, including working groups and high-level meetings under the auspices of the U.S.-China Strategic and Economic Dialogue (S&ED) and the U.S.-China Joint Commission on Commerce and Trade (JCCT). The United States and China held their sixth S&ED meeting in July 2014 and the 25th meeting of the JCCT in December 2014. Constructive dialogue also took place when President Xi hosted President Obama in Beijing following the APEC Leaders Meeting in November 2014. The United States used all of these avenues to engage China's leadership on trade and economic matters and to seek resolutions to a number of pressing trade issues.

The two sides were able to make significant progress on the following key trade issues through their bilateral engagement in 2014:

- While both the United States and China acknowledged that the government properly can take measures to encourage innovation, 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 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.

- China committed to take several specific steps to streamline and speed up its regulatory review and approval system for new pharmaceuticals.
- China committed to take several specific steps to streamline and speed up its regulatory review and approval system for new medical devices.
- China recognized 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. China agreed 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.
- China committed that, in *Anti-monopoly Law* enforcement proceedings, the Chinese authorities would treat domestic and foreign companies equally and normally would permit an investigated foreign company to have foreign counsel present, to advise it and to provide information on its behalf.
- China agreed to hold an annual, multi-ministerial dialogue with the United States at the Vice Minister level to carry out balanced, mutually beneficial discussions addressing science-based agricultural innovation and the increased use of innovative technologies in agriculture.
- In the area of geographical indications (GIs), China agreed that a term is not eligible for protection as a GI in its territory where the term is generic in its territory, such as trademarks or common names like "parmesan" and "feta" cheese.

2014 USTR Report to Congress on China's WTO Compliance

- China committed to pursue criminal and other actions to deter the misappropriation of trade secrets, to ensure that criminal and civil cases are tried and the resulting judgments are published, and to protect trade secrets contained in materials submitted by companies as part of regulatory, administrative and other proceedings.
- 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.
- China committed to protect the legal rights of inventors in respect of their inventions and creations, and to respect the legitimate rules and regulations developed by employers and the legitimate contracts between employers and inventors concerning inventor remuneration and awards.
- China committed to strengthen 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 committed to classify products with significant impacts on public health and safety as priorities, and to carry out enhanced enforcement actions.
- 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.
- China 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 committed 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.
- 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.
- 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.
- China committed to continue to improve procedures for foreign investment approval and record-filing.
- China committed to revise regulations to further open the construction and engineering design sectors to foreign suppliers.

2014 USTR Report to Congress on China's WTO Compliance

- China confirmed that it welcomes foreign insurance companies to submit applications for approval of new internal branches and that it will review and issue decisions on these applications within the timeframes set forth in Chinese law.
- China committed that it will translate into English not only trade-related laws and administrative regulations but also trade-related departmental rules.
- China agreed to work with the United States to combat illegal, unreported or unregulated fishing, including by developing and sharing improved data on trade in fish and fish products.
- The United States and China committed to intensify their negotiations toward a BIT.

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 investment restrictions, intellectual property rights enforcement, technology localization, indigenous innovation, market access for U.S. beef, biotechnology product approvals, export restraints, strategic emerging industries, state-owned enterprises, government subsidization, excess capacity, administrative licensing, government procurement, taxation, standards development, pharmaceuticals, medical devices, cosmetics, legal services, financial services, Internet-related services, telecommunications services, express delivery services and transparency, among others.

On the enforcement side, the United States continued to pursue a robust agenda in 2014. The United States worked on seven separate WTO cases against China during the course of the past year.

The United States won a WTO case against China this past year in which it challenged antidumping and countervailing duties that China had imposed on

imports of U.S. automobiles. In 2012 and 2013, the United States won similar cases involving antidumping and countervailing duties on imports of U.S. chicken products known as “broiler products” and antidumping and countervailing duties on imports of U.S. grain-oriented electrical steel (GOES), a product used by the power generating industry. In each of these three cases, the United States has been determined to hold China fully accountable for adherence to WTO rules, given serious concerns shared by the U.S. government and U.S. stakeholders that China’s Ministry of Commerce (MOFCOM) may have imposed the duties in question in response to the United States having legitimately exercised its rights under WTO trade remedy rules against China.

In the WTO case involving U.S. GOES, China had agreed to come into compliance with the WTO’s rulings by July 2013. However, the redetermination that MOFCOM issued appears to be inconsistent with the WTO’s rulings. In January 2014, the United States therefore launched a challenge to China’s redetermination in a proceeding under Article 21.5 of the DSU. A decision from the panel hearing the case is expected to be issued in 2015.

Similarly, in the WTO case involving U.S. chicken broiler products, China had agreed to come into compliance with the WTO’s rulings by July 2014. Again, however, MOFCOM’s redetermination left the challenged duties in place. As of December 2014, the United States was evaluating next steps to take in this dispute.

The United States won a WTO case in 2014 challenging highly trade-distortive export quotas, export duties and other restraints maintained by China on the export of rare earths, tungsten and molybdenum, which are key inputs in a multitude of U.S. manufacturing sectors and U.S.-made products, including hybrid car batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum and chemicals. This win follows a win in a similar case in 2012 involving several raw materials of key importance to U.S.

steel, aluminum and chemicals industries. China previously took steps to comply with the WTO's rulings in the first case, and it has agreed to comply with the WTO's rulings in the second case by May 2015.

Meanwhile, in another WTO case, in which the United States successfully challenged restrictions that China had 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, China missed its July 2013 deadline for complying with the WTO's rulings. In October 2014, China's State Council announced that China would be opening its market to foreign suppliers of electronic payment services, but as of December 2014 it still had not taken any steps to do so, and U.S. suppliers therefore remain blocked from entering the market. Accordingly, the United States was considering its further options at the WTO while continuing to press China to comply with the WTO's rulings.

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 2015, 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

Since its accession to the WTO, China has undertaken a wide-ranging revision of its framework of laws and regulations aimed at protecting the intellectual property rights (IPR) of domestic and foreign right holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). However, inadequacies in China's IPR protection and enforcement regime continued to present serious barriers to U.S. exports and investment. China was again placed on the Priority Watch List in USTR's 2014 Special 301 report. In addition, in 2014, USTR announced the results of its 2013 Out-of-Cycle Review of Notorious Markets, which identifies Internet 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 that has attained a higher profile in recent years. Thefts of trade secrets that benefit Chinese companies have occurred both within China and outside of China. Offenders in many cases continue to operate with impunity, while the Chinese government too frequently has failed to recognize serious infringements of IPRs that violate Chinese law. 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. In order to help address these challenges, the United

States has urged China to update and amend its trade secrets laws and regulations, particularly the *Anti-unfair Competition Law*. 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.

At the December 2013 JCCT meeting, China committed to adopt and publish an action plan to address trade secrets protection and enforcement for 2014, as well as to work with the United States on proposals to amend China's trade secrets laws and regulations. Six months later, at the July 2014 S&ED meeting, China pledged to pursue criminal and other actions to deter the misappropriation of trade secrets, to ensure that criminal and civil cases are tried and the resulting judgments are published, and to protect trade secrets contained in materials submitted by companies as part of regulatory, administrative and other proceedings. Most recently, 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. China further confirmed that government officials shall only disclose trade secrets 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 also 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.

Pharmaceutical Patents

The United States continues to engage China on a range of patent and technology transfer concerns relating to pharmaceuticals. One year ago, China committed to permit supplemental data supporting pharmaceutical patent applications. However, it appears that China has not yet fully implemented that commitment. In addition, 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.

Software Piracy

Due to the serious obstacles in China to the effective protection and enforcement of IPR in all forms, sales of legitimate IP-intensive goods and services, including software and audiovisual products, remain disproportionately low compared to similar markets with stronger IPR protection and enforcement. The United States continues to work with China on a series of JCCT and S&ED commitments to foster a better IP environment that will facilitate increased sales of legitimate IP-intensive goods and services. For example, sales of legitimate software to the Chinese government by U.S. companies have seen only a modest increase, while losses to U.S. software companies from the use of pirated software by Chinese state-owned enterprises and other enterprises remain very high. The United States continues to call on China to fulfill its existing commitments with regard to software legalization and to urge all levels of the Chinese government, state-owned enterprises and state-owned banks to take necessary steps to ensure the use of legitimate software.

Online Piracy

Online piracy in China is widespread and continues on a large scale, affecting industries distributing legitimate music, motion pictures, books and journals, software and video games. Increased enforcement activities have yet to slow online sales of pirated goods. At the December 2014 JCCT meeting, China committed to strengthen enforcement against copyright piracy activities in the online environment and to deter the occurrence of copyright piracy through criminal, civil and administrative remedies and penalties.

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, in a positive development, 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. China further committed to hold a multi-ministerial meeting by the end of 2014 for the purpose of developing a possible framework for regulatory oversight of bulk chemicals.

Industrial Policies

Overview

China continued to pursue industrial policies in 2014 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 policies are state-owned enterprises, as well as other favored domestic companies attempting to move up the economic value chain.

Indigenous Innovation

In 2014, 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. Since then, the principal challenge has been to address a range of discriminatory indigenous innovation preferences proliferating outside of the government procurement context. Using the U.S.-China Innovation Dialogue, the United States was able to persuade China to take an important step in this direction 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.

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 (discussed above), 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 has agreed to comply with the WTO's rulings in this second case by May 2015.

Export Subsidies

China has continued to provide a range of injurious subsidies to its domestic industries, some of which appear to be prohibited under WTO rules. The United States has addressed these subsidies both through countervailing duty proceedings conducted by the Commerce Department and through dispute settlement proceedings at the WTO. The United States and other WTO members also have continued to press China to notify its subsidies to the WTO in accordance with its WTO obligations. Since joining the WTO 13 years ago, China has yet to submit to

the WTO a complete notification of subsidies maintained by central and sub-central governments.

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. For example, from 2000 to 2013, 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 for steelmaking, yet China's capacity has continued to grow exponentially and is estimated to have exceeded one billion metric tons (MT) in 2013, despite weakening demand domestically and abroad. Yet, China's steel exports have grown to be the largest in the world, at 62 million MT in 2013, an 11 percent increase over 2012 levels, despite sluggish steel demand abroad. Excess capacity in China – whether in the steel industry or other industries like aluminum – 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 2014, the Chinese government attempted to manage the export of many primary, intermediate and downstream products by raising or lowering the value-added tax 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 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.

Aircraft Tariffs

In August 2013, China increased the import tariff on narrow body aircraft with an empty weight of between 25 tons and 45 tons from 1 percent to the bound rate of 5 percent. Because the tariff for narrow body aircraft weighing more than 45 tons remains at 1 percent, and many comparable narrow body aircraft have an empty weight of between 40 tons and 50 tons, this change is having the consequence of encouraging Chinese airlines to purchase heavier, less fuel-efficient aircraft in order to fall within the 1 percent tariff category and thereby save millions of dollars on the purchase price. As a result, this change could adversely affect U.S.-manufactured narrow body aircraft in particular, as they tend to be lighter and more fuel-efficient than competing aircraft. The United States has been encouraging China to revise its tariff policy.

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.

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 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 maintains a program that conditions 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 has been pressing China to repeal or modify these measures.

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 2014. As previously reported, these policies have generated serious concerns about discrimination based on the country of origin of intellectual property, 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.

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 and Technology

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. To date, bilateral engagement has yielded minimal progress in resolving these matters.

Government Procurement

The United States continues to press China to take concrete steps toward fulfilling its commitment to accede to the WTO's Government Procurement Agreement (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 fourth revised offer in December 2013. This offer showed some progress in areas consistent with a commitment that China had made at the July

2013 S&ED meeting, including by lowering thresholds and increasing sub-central entities coverage and other coverage, but it fell short of U.S. expectations and remains far from acceptable to the United States and 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. China submitted a revised offer near the end of December 2014.

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, such as financial services, telecommunications services, Internet-related services, legal services and express delivery services, as well as in certain manufacturing industries and the agricultural sector. In addition to prohibitions

and restrictions on market access imposed through China's foreign investment catalogue or other means, China can readily impose additional constraints on investment through its foreign investment approval processes, where Chinese government officials can use vaguely defined powers on an ad hoc basis to delay or restrict market entry. For example, foreign enterprises report that Chinese government officials may condition investment approval on a requirement that a foreign enterprise conduct research and development in China, transfer technology, 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. However, China is starting to take steps to reform its investment approval system.

As a separate matter, China has started to implement the Third Plenum's call to unify domestic and foreign investment laws and regulations by revoking many registered capital requirements and by imposing the remaining registered capital requirements on a non-discriminatory basis. However, much work remains in this area. In addition, the United States has been urging, and will continue to urge, China to eliminate its system of separate investment laws for domestic and foreign investors and to instead apply one law to both domestic and foreign investors.

Meanwhile, the United States continues to pursue negotiations with China for a BIT. These negotiations intensified after China committed at the July 2013 S&ED meeting to negotiate a high-standard BIT that will embrace the principles of openness, non-discrimination and transparency,

provide national treatment at all phases of investment, including market access (i.e., the "pre-establishment" phase of investment), and employ a "negative list" approach in identifying exceptions (meaning that all investments are permitted except for those explicitly excluded). At the 2014 S&ED meeting, China built on this commitment by agreeing to provide its first negative list offer by early 2015.

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 – the most recent of which was issued in May 2014 – 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 \$38 billion in 2013. In addition, services supplied through majority U.S.-invested companies in China totaled \$39 billion in 2012, 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 2014, 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 efforts of U.S. suppliers of banking, insurance, telecommunications, Internet-related, audiovisual, express delivery, legal 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, concrete steps have not yet 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 Film Distribution

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 a critical commitment to open up film distribution opportunities for imported films that are distributed in China on a flat-fee basis rather than a revenue-sharing basis. As a result, the United States has been pressing China for full implementation.

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 less than 4 percent. For the health insurance sector, 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 1 percent. China also limits foreign insurance brokers from providing a full scope of services, and its market for political risk insurance is completely closed to foreign participation. In addition, some U.S. insurance companies established in China continue to 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, 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 continue to be excluded from the pilot program, while China has issued licenses to more than a dozen Chinese suppliers.

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, including computer data and storage services provided over the Internet, raises concerns. For example, China has sought 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.

Audio-visual Services

China's restrictions in the area of theater 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.

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 has threatened troubling restrictions on foreign companies' access to the package segment of China's domestic express delivery market, including discriminatory treatment in approving their business permits.

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 and impose lengthy delays for the establishment of new offices.

Agriculture

Overview

China is the largest agricultural export market for the United States, with nearly \$26 billion in U.S. agricultural exports in 2013. 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. As in past years, seemingly capricious practices by Chinese customs and quarantine agencies delay or halt shipments of agricultural products into China. In addition, SPS measures with questionable scientific bases and a generally opaque regulatory regime frequently create difficulties and uncertainty for traders in agricultural commodities, who require as much certainty and transparency as possible.

Beef, Poultry and Pork

In 2014, 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 seven 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 some unwarranted state-level Avian Influenza import suspensions on poultry. Additionally, China continued to maintain overly restrictive pathogen and residue standards for raw meat and poultry. Consequently, anticipated growth in U.S. exports of these products was again not realized.

Biotechnology Approvals

In 2014, delays in China's approvals of agricultural products derived from biotechnology worsened, creating increased uncertainty among traders and also resulting in trade disruptions, particularly for U.S. exports of corn and dried distillers' grains (DDGs). In early December 2014, shortly before the JCCT meeting, 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. In addition, while China still needs to improve its regulatory process and begin reviewing biotechnology products in a transparent and predictable manner, China did agree at the December 2014 JCCT meeting to hold an annual, multi-ministry dialogue with the United States at the Vice Minister level to discuss science-based agricultural innovation and the increased use of innovative technologies in agriculture.

Agricultural Support

Over the past 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. China also has begun several new support schemes for hogs and pork, along with a purchasing reserve system for pork. China has not submitted a notification concerning domestic support measures since October 2011, and that notification covered only the period 2005-2008. This notification documents an increase in China's support levels, but the United States is 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.

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, no noticeable improvement in the publication of departmental rules for public comment appears to have taken place, even though China recently 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. To date, however, China has focused only on translations of trade-related laws and administrative regulations, and China is years behind in translating these measures. At the July 2014 S&ED meeting, China committed that it will extend its translation efforts to include not only trade-related laws and administrative regulations but also trade-related departmental rules. The United States is pressing China to ensure that a translation normally is made available before a measure's 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, 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.

Anti-monopoly Law

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, but

concerns remain that enforcement against state-owned enterprises will be more limited.

Another serious concern relates to the procedural fairness of *Anti-monopoly Law* investigations. U.S. industry has expressed concern 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. U.S. industry also has reported pressure from NDRC against seeking outside counsel, in particular foreign counsel, or having counsel present at meetings. At the July 2014 S&ED meeting, China recognized 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. China also committed 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. More recently, at the December 2014 JCCT meeting, China committed that, in *Anti-monopoly Law* enforcement proceedings, the Chinese authorities would treat domestic and foreign companies equally and normally would permit an investigated foreign company to have foreign counsel present, to advise it and to provide information on its behalf.

NEXT STEPS

In 2015, as in prior years, the Administration will 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 Administration will 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, the United States will continue to pursue robust engagement with China at all levels of government focused on producing practical and meaningful outcomes. The United States will also take full advantage of multilateral venues such as the WTO to engage China. Key goals of this engagement will 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 will not hesitate to invoke the dispute settlement mechanism at the WTO where appropriate. Similarly, the United States will 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.

As part of this upcoming engagement, the United States will continue to focus on China's implementation of the Third Plenum Decision. While this initiative has not yet evolved to the point where concrete changes have been made, it does signal a high-level determination by China to accelerate needed economic reform, which, if realized, would provide tremendous benefits not only to China but also to its trading partners and the global economy.

The United States shares the Third Plenum Decision's goals of 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. The United States therefore will urge China to speedily implement these promising Third Plenum Decision economic reform elements, which have many similarities with the U.S. trade agenda with China.

In addition, the United States looks forward to intensified negotiations with China in order to reach agreement on a BIT that embraces the principles of openness, non-discrimination and transparency, provides pre-establishment national treatment and employs a negative list approach in identifying exceptions. A high-standard BIT between two of the world's largest economies would not only provide significant benefits to U.S. and Chinese investors but also would have broad significance for the global economy.

Going forward, the Administration will continue to consult closely with the Congress and U.S. stakeholders in order to ensure that the actions being pursued by the United States address their concerns. The Administration remains dedicated to maximizing U.S. stakeholders' opportunities to compete in China and the global marketplace.

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</p> <p>China has timely implemented its tariff commitments for industrial goods each year.</p>
<p>Customs and Trade Administration</p> <p><u>Customs Valuation</u></p> <p>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></p> <p>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></p> <p>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.</p>
<p>Non-Tariff Measures</p> <p>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</p> <p>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></p> <p>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></p> <p>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></p> <p>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>

2014 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 violated 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 MFN 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, raising 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 filed a long-overdue WTO subsidies notification in 2011, this notification only covered subsidies provided during the period from 2005 to 2008 and was far from complete. In addition, China has 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 conformity assessment 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.

Table 1 (cont'd)

Summary Conclusions regarding China's WTO Compliance Efforts

Other Industrial Policies (cont'd)

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 reporting requirements for state trading enterprises.

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, and it appears that Chinese government officials at times continue to use the foreign investment approval process to pressure foreign companies to accept one or more of these requirements or other conditions. China has also 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.

Tariffs

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

Tariff-rate Quotas on Bulk Agricultural Commodities

China's administration of TRQs on bulk agricultural commodities does not seem to be functioning entirely as envisioned in China's WTO accession agreement, due to opaque management practices and low quota fill despite reports of unmet demand for imported products.

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 Avian Influenza-related import suspensions on poultry products from several states. 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 inspection-related requirements in a seemingly arbitrary manner.

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.

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 secrets. 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.

2014 USTR Report to Congress on China's WTO Compliance

Table 1 (cont'd)

Summary Conclusions regarding China's WTO Compliance Efforts

SERVICES (cont'd)

Financial Services (cont'd)

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.

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.

Telecommunications

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.

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.

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, including computer data and storage services provided over the Internet, raises concerns in light of China's GATS commitments.

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.

Educational Services

China made only limited GATS commitments in the educational services sector, and it has not sought to go beyond those commitments.

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, and it has threatened restrictions on foreign companies' access to the package segment of China's domestic express delivery market, which raises questions in light of China's WTO obligations.

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.

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.</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.</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 2014, 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 numerous working groups and dialogues under the auspices of the U.S.-China Joint Commission on Commerce and Trade (see Box 1), the U.S.-China Strategic and Economic Dialogue (see Box 2) and a Presidential summit.

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 meets annually and 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. In December 2014, following several months of preparatory meetings, the JCCT met for the 25th time (see Appendix 3).

Box 1: 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 some key areas, including (1) commitments in which 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 and 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, (2) a commitment to take several specific steps to streamline and speed up its regulatory review and approval system for new pharmaceuticals, (3) a commitment to take several specific steps to streamline and speed up its regulatory review and approval system for new medical devices, (4) a commitment that, in *Anti-Monopoly Law* enforcement proceedings, the Chinese authorities would treat domestic and foreign companies equally and normally would permit an investigated foreign company to have foreign counsel present, to advise it and to provide information on its behalf, (5) an agreement to hold an annual, multi-ministerial dialogue with the United States at the Vice Minister-level to carry out balanced, mutually beneficial discussions addressing science-based agricultural innovation and the increased use of innovative technologies in agriculture, (6) confirmation that a term is not eligible for protection as a GI where the term is generic in its territory, such as trademarks or common names like "parmesan" and "feta" cheese, (7) a commitment to pursue criminal and other actions to deter the misappropriation of trade secrets, to ensure that criminal and civil cases are tried and the resulting judgments are published, and to protect trade secrets contained in materials submitted by companies as part of regulatory, administrative and other proceedings, (8) a commitment 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, (9) commitments to protect the legal rights of inventors in respect of their inventions and creations and to respect the legitimate rules and regulations developed by employers and the legitimate contracts between employers and inventors concerning inventor remuneration and awards, (10) a commitment to strengthen 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 and (11) an agreement to work with the United States to combat illegal, unreported or unregulated fishing, including by developing and sharing improved data on trade in fish and fish products. In addition, China agreed to engage in further serious discussions with the United States on outstanding issues related to government procurement, trade secrets, GIs, sales of IP-intensive goods and services, online infringement, pharmaceutical patents, bad faith trademark filings, market access for pharmaceuticals and medical devices, the protection of IP in the standards-setting process, fisheries trade, food and drug safety, legal services, administrative licensing and judicial best practices.

The sixth meeting of the S&ED, which included a Strategic Track and an Economic Track, took place in July 2014 (see Appendix 4). 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, including (1) a commitment 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, (2) commitments recognizing that the objective of competition policy is to promote consumer welfare and economic efficiency rather than promote individual competitors or industries, that enforcement of China's competition laws should be fair, objective, transparent and non-discriminatory, and that it would 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, (3) commitments to pursue criminal and other actions to deter the misappropriation of trade secrets, to ensure that criminal and civil cases are tried and the resulting judgments are published, and

Box 2: 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.

to protect trade secrets contained in materials submitted by companies as part of regulatory, administrative and other proceedings, (4) a commitment to improve China's 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, (5) a commitment 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, (6) a commitment 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, (7) a commitment 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, together with a commitment to hold a multi-ministerial meeting by the end of 2014 for the purpose of developing a possible framework for regulatory oversight of bulk chemicals, (8) commitments 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, (9) a commitment to continue to improve procedures for foreign investment approval and record-filing, (10) commitments to promote the orderly opening-up of the finance, education, cultural and medical services sectors, and to remove foreign investment access restrictions in the architectural design, construction and engineering design, accounting and auditing, child and old-age care, commerce and logistics, and electronic commerce services sectors, (11) a commitment confirming that China welcomes foreign insurance companies to submit applications for approval of new internal branches and will review and issue decisions on these applications within the timeframes set forth in Chinese law, (12) commitments to continue the opening-up of the securities and futures sectors and to actively study policies concerning the further expansion of the business scope of newly established securities joint

ventures and the further opening-up of the banking sector and securities sector and (13) a commitment confirming that China will publish English translations of trade-related laws, administrative regulations and departmental rules.

The United States and China also committed to intensify their negotiations toward a BIT with high standards, including non-discrimination, fairness, openness, and transparency, to narrow differences and to reach agreement on core issues and major articles of the treaty text by the end of 2014, and to initiate the “negative list” negotiation early in 2015 based on each side’s “negative list” offers.

The United States and China further announced their support for the ongoing international negotiations on official export financing to actively pursue and complete work on guidelines for two sectors as soon as possible and reaffirmed their shared commitment to develop a set of new horizontal international guidelines on official export credit support that promote international trade and that, taking into account varying national interests and situations, are consistent with international best practices.

Constructive discussions also took place when President Xi hosted President Obama in Beijing following the APEC Leaders Meeting in November 2014. This summit produced important results in the economic sphere, including a joint commitment to accelerate the U.S.-China BIT negotiations and a breakthrough leading to the resumption of plurilateral negotiations to update and expand the coverage of the Information Technology Agreement (ITA). According to U.S. industry estimates, a successful expansion of the ITA’s coverage would eliminate tariffs on approximately \$1 trillion in annual global sales of information and communications technology 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 an expanded ITA will support up to 60,000 additional U.S. jobs.

Despite the progress made through this year's 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 2015, the United States will continue to use the JCCT and S&ED 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 2014, 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

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.

raised China-related issues at regular meetings of WTO committees and councils. The United States also played an active role in the WTO's fourth Trade Policy Review of China (see Box 3), held in July 2014, presenting a critical evaluation of China's conduct as a WTO member and submitting more than 180 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. The United States continued to pursue seven WTO cases against China during the past year, as set out in Table 2 below, 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 WTO case initiated in September 2012, the United States is 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 appear 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. In addition, the United States is challenging 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 WTO Committee on Subsidies and Countervailing Measures. Consultations took place in November 2012. Since then, the two sides have been engaging in further discussions exploring the steps that China could take to address U.S. concerns.

In a WTO case initiated in July 2012, the United States challenged China's imposition of antidumping and countervailing duties on imports of certain U.S. automobiles. As in certain other recent antidumping (AD) and countervailing duty (CVD) investigations, China's regulatory authorities appear 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 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement) and the Subsidies Agreement. Consultations took place in August 2012. A WTO panel was established to hear this case at the United States' request 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.

In March 2012, the United States, joined by the European Union (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, which are key inputs in a multitude of U.S.-made products, including hybrid car batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum and chemicals. China is a leading world producer of these materials, and its 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 April 2012. A WTO panel was established to hear the case at the complaining parties' request in July 2012, and 18 other WTO members joined the case as third parties. Hearings before the panel took place in February and June 2013. The panel issued its decision in March 2014. The panel rejected China's defenses, which had attempted to portray China's export restraints as conservation measures or environmental protection measures, 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 appealed certain aspects of the panel's decision in April 2014, and the WTO's Appellate Body rejected China's appeal in August 2014, confirming 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.

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. As of December 2014, the United States was evaluating next steps to take in this dispute.

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 UnionPay (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 as of

December 2014 it still had not taken any steps to do so, and U.S. suppliers therefore remain blocked from entering the market. Accordingly, the United States was considering its further options at the WTO while continuing to press China to comply with the WTO's rulings.

In another WTO case initiated in September 2010, the United States successfully challenged China's imposition of antidumping and countervailing duties on imports of grain-oriented electrical steel (GOES) – a soft magnetic material used by the power generating industry in transformers, rectifiers, reactors and large electric machines – from the United States. 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 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, and 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 appears 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 WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). A hearing before the panel took place in October 2014, and the panel is expected to issue its decision in 2015.

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 a Memorandum of Understanding (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. 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 a critical commitment to open up film distribution opportunities for imported films that are distributed in China on a flat-fee basis rather than a revenue-sharing basis. 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 and will continue to do so in 2015.

2014 USTR Report to Congress on China's WTO Compliance

Table 2

Active U.S. WTO Disputes against China in 2014

China – Subsidies for Automobile and Automobile-Parts Export Base Enterprises	
<u>Initiation:</u>	September 2012
<u>Dispute:</u>	The United States is challenging China's provision of what appear to be export subsidies to automobile and automobile-parts enterprises in China.
<u>Third Parties:</u>	It is not yet clear whether other WTO members will join in as third parties.
<u>Status:</u>	Consultations took place in November 2012. Currently, the two sides are engaging in further discussions exploring the steps that China could take to address U.S. concerns.
China – Antidumping and Countervailing Duties on Automobiles	
<u>Initiation:</u>	July 2012
<u>Dispute:</u>	The United States is challenging China's imposition of antidumping and countervailing duties on imports of automobiles from the United States.
<u>Third Parties:</u>	Colombia, the EU, India, Japan, Korea, Oman, Saudi Arabia and Turkey
<u>Status:</u>	Hearings before a WTO panel took place in June and October 2013. China terminated the duties at issue in December 2013. The panel issued its decision in May 2014, finding in favor of the United States on all significant claims.
China – Export Restraints on Raw Materials II	
<u>Initiation:</u>	March 2012
<u>Dispute:</u>	The United States, the EU and Japan are challenging China's export restraints on rare earths, tungsten and molybdenum.
<u>Third Parties:</u>	Argentina, Australia, Brazil, Canada, Colombia, India, Indonesia, Korea, Norway, Oman, Peru, Russian Federation, Saudi Arabia, Chinese Taipei, Turkey and Vietnam
<u>Status:</u>	Hearings before a WTO panel took place in February and June 2013. The panel issued its decision in March 2014, rejecting China's defenses and finding in favor of the United States and its co-complainants on all significant claims. China appealed certain aspects of the panel's decision in April 2014, and the WTO's Appellate Body rejected China's appeal in August 2014.
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. As of December 2014, the United States was evaluating next steps to take in this dispute.
China – Antidumping and Countervailing Duties on Grain-Oriented Electrical Steel	
<u>Initiation:</u>	September 2010
<u>Dispute:</u>	The United States challenged China's imposition of antidumping and countervailing duties on imports of grain-oriented electrical steel from the United States.
<u>Third Parties:</u>	Argentina, the EU, Honduras, India, Japan, Korea, Saudi Arabia and Vietnam

2014 USTR Report to Congress on China's WTO Compliance

Table 2 (cont'd)

Active U.S. WTO Disputes against China in 2014

China – Antidumping and Countervailing Duties on Grain-Oriented Electrical Steel (cont'd)	
<u>Status:</u>	Hearings before a WTO 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 appears 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. A hearing before the panel took place in October 2014, and the panel is expected to issue its decision in 2015.
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. However, China has not yet taken the critical step of issuing regulations establishing a needed licensing process for foreign suppliers so that they can provide electronic payment services for payment card transactions denominated in RMB through commercial presence in China as contemplated by the WTO's rulings. As of December 2014, the United States was considering its further options at the WTO while continuing to press China to comply 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 a critical commitment to open up film distribution opportunities for imported films that are distributed in China on a flat-fee basis rather than a revenue-sharing basis.

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 2014. 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 National Development and Reform Commission (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 and substantial additional revenue for foreign film producers. 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 a critical commitment to open up film distribution opportunities for imported films that are distributed in China on a flat-fee basis rather than a revenue-sharing basis. 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 and will continue to do so in 2015.

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, which requires

the elimination of tariffs on computers, semiconductors and other information technology 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. exports to China continued to increase in 2014, rising approximately four percent from January through October 2014, when compared to the same time period in 2013.

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, should lead to significant additional benefits for U.S. manufacturers and exporters in the future. According to U.S. industry estimates, a successful expansion of the ITA's coverage would eliminate tariffs on approximately \$1 trillion in annual global sales of information and communications technology 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 an expanded ITA will support up to 60,000 additional U.S. jobs.

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.

In August 2013, China increased the tariff on narrow body aircraft weighing between 25 and 45 tons from one percent to the bound rate of five percent. Because the tariff for narrow body aircraft weighing more than 45 tons is one percent, and many comparable narrow body aircraft weigh between 40 and 50 tons, this change is having the unintended consequence of encouraging Chinese airlines to

purchase heavier, less fuel-efficient aircraft in order to fall within the one percent tariff category and thereby save millions of dollars on the purchase price. This change also adversely affects U.S.-manufactured narrow body aircraft in particular, as they tend to be lighter and more fuel-efficient than competing European aircraft. The United States has discussed this issue with China and is hopeful that a more rational tariff policy will be put in place soon.

Customs and Trade Administration

Like other acceding WTO members, China agreed to take on the WTO obligations 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.

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 have also 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.

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 2014. 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 2014, as in prior years, the United States continued to monitor MOFCOM's implementation of these regulations.

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.

The WTO's Import Licensing Agreement calls for import licensing procedures that do not have a restrictive effect on trade. However, procedures that direct iron ore imports toward certain producers significantly distort trade, particularly because China is by far the largest iron ore importer in the world, and global prices for iron ore have reached historically high levels, led by Chinese demand. China's procedures also set a troubling precedent for the handling of imports of other raw materials. Indeed, when viewed in light of Chinese measures to restrict exports of other steelmaking raw materials and Chinese government involvement in iron ore contract negotiations, the licensing system for iron ore appears to be part of a program to control raw material prices to provide an unfair advantage to Chinese steel producers.

In the years after 2005, China further reduced the number of licensed importers. China also issued a stimulus plan to revitalize its steel industry which provided that the Chinese government would regulate iron ore imports to ensure market order

and that Chinese steel producers and iron ore suppliers would establish a mutually beneficial import pricing mechanism and long-term cooperation relationship. In addition, 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.

In response, 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.

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 will be administered. Currently, it appears that the number of iron ore importers is increasing.

In 2015, 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 2014, 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 cotton (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 new 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, since 2011, 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 tariff-rate quotas (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. Meanwhile, U.S. fertilizer exports to China have declined sharply since 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 103 AD measures, some of which pre-date China's membership in the WTO, affecting imports from 16 countries or regions. China also has 7 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. 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 2014, 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 the results of on-site verification, dumping margin calculations and 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 appears 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. A hearing before the panel took place in October 2014, and the panel is expected to issue its decision in 2015.

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. As of December 2014, the United States was evaluating next steps to take in this dispute.

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.

Throughout 2014, as in prior years, the United States continued to work closely with U.S. companies subject to Chinese AD investigations in an effort to help them better understand the Chinese system. The United States also 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 a meeting in November 2014. 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 13 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 2015, 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.

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, 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 2015.

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 a fourth one involving imports of U.S. polysilicon initiated in July 2012, 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, as previously reported, China has conducted 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.

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 violated 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 that appear to violate WTO rules, including specific commitments that China made in its accession agreement. These export restraints distort

trade in raw materials as well as intermediate and downstream products.

Export Restraints on Raw Materials

Since its accession to the WTO, China has 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 have continued to guide the development of downstream industries. These export restraints are widespread. For example, China maintains some or all of these types of export restraints on antimony, bauxite, coke, fluorspar, 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 appear to 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.

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 metric tons (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.

The WTO panel established to hear the export restraints case issued its decision in July 2011. The panel 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 appealed certain aspects of the panel's decision in August 2011, and the WTO's Appellate Body rejected China's appeal in January 2012, confirming 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 timely took 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.

In 2010, 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 July 2010, China sharply reduced its export quotas, causing world prices for some of the rare earths to rise dramatically higher than China's domestic prices and further hindering efforts in other countries to develop expertise in the increasingly important downstream manufacturing of green technology products. Then, in September 2010, China reportedly imposed a de facto ban on all exports of

rare earths to Japan, causing even more concern among China's trading partners.

The United States pressed China during the run-up to the December 2010 JCCT meeting to eliminate its export restraints on rare earths and also used the November 2010 G-20 meeting, as did Japan, the EU and other trading partners, to try to persuade China to pursue more responsible policies on raw materials. However, China refused to abandon its use of export restraints.

In 2011, China expanded the scope of products covered by the rare earths export quota to include more processed rare earths products, making the quota even more restrictive than it had been in 2010. In addition, according to several reports, China's customs authorities began imposing minimum export prices on rare earth exports. It appeared that this practice disrupted the export quota process and contributed to rapidly increasing prices outside China.

The United States continued to press China and seek its agreement to eliminate its export restraints on rare earths, using both bilateral engagement through the JCCT process and multilateral engagement at the WTO during the final transitional reviews before the Market Access Committee, the Council for Trade in Goods and the General Council. Japan, the EU and other trading partners made similar efforts. However, China continued to refuse to abandon its use of export restraints.

In March 2012, 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 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 April 2012. A WTO panel was established to hear the case at the complaining parties' request in July 2012, and 18 other WTO members joined the case as third parties. Hearings before the panel took place in February and June 2013, and the panel issued its decision in March 2014. It rejected China's defenses, which had attempted to portray China's export restraints as conservation or environmental protection measures, 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 appealed certain aspects of the panel's decision in April 2014, and the WTO's Appellate Body rejected China's appeal in August 2014, confirming that the export restraints at issue violated China's WTO obligations. China subsequently agreed to come into compliance with the WTO's rulings by May 2015.

Border Tax Policies

China's economic planners attempt to manage the export of many primary, intermediate and downstream products by raising or lowering the value-added tax (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 raised broad concerns about the trade-distortive effects of China's VAT export rebate and export duty practices the annual transitional reviews before the Committee on Market Access and the Council for Trade in Goods. The United States and other WTO members also have used the Trade Policy Reviews of China at the WTO, held in April 2006, May 2008, May 2010, June 2012 and July 2014, to raise their concerns. Bilaterally, the United States also raised broad concerns about the trade-distortive effects of China's variable VAT export rebate practices in connection with the July 2009, May 2010, May 2011 and July 2014 S&ED meetings and the October 2009, December 2010, November 2011, December 2012 and December 2013 JCCT 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 been unwilling to commit to abandon its use of trade-distortive VAT export rebates. However, 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.

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 MFN 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 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, as discussed below in the Subsidies section.

The United States also has pressed China to repeal or modify several problematic 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, the United States will continue to monitor developments closely. The United States also will continue to raise concerns over any policies that appear to run counter to China's WTO 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 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 2014, both bilaterally and in WTO meetings. The United States will continue to pursue these issues vigorously in 2015.

Taxation

China has used its taxation system to discriminate against imports in certain sectors, raising 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.

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 filed a long-overdue WTO subsidies notification in 2011, this notification only covered subsidies provided during the period from 2005 to 2008 and was far from complete. In addition, China has a poor record of responding to other WTO members' questions about its subsidies before the WTO's Subsidies Committee.

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). This commitment expressly extends throughout China's customs territory, including in special economic zones and other special economic areas.

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 significant 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 sought to make progress on this issue through the filing of a counter notification under Article 25.10 of the Subsidies Agreement in October 2011. In its counter notification, the United States identified 200 unreported subsidy measures that China has maintained since 2004, 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, 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 and 2013, 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 has 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 more evidence of central government and sub-central government subsidies that China has not yet notified. In April 2014, the United States submitted an additional request for information pursuant to

Article 25.8 regarding extensive subsidies provided by China in support of its so-called “strategic emerging industries.” To date, China has not responded to either of these requests for information, nor has China submitted an updated subsidy notification. Indeed, China also has failed to accept multiple requests for bilateral meetings focused on the more than 200 unreported subsidy measures identified in the United States’ Article 25.8 and Article 25.10 submissions.

In October 2014, the United States submitted another counter notification under Article 25.10 of the Subsidies Agreement. This counter notification addresses the same Chinese subsidies that were the subject of the United States’ written request for information pursuant to Article 25.8 of the Subsidies Agreement in 2012, and it provides English translations of the 110 subsidy measures at issue for the benefit of other WTO members and the public.

In 2015, 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 sector, the green technology sector, the textiles and apparel sectors, and the fisheries sector, among other sectors, and assess whether this support 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 a complete and up-to-date subsidies notification.

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 appear 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 is challenging 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. Since then, the two sides have been engaging in further discussions exploring the steps that China could take to address U.S. concerns.

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, 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 and grain-oriented electrical steel. 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 Chia’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 2014, 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

and July 2014. The United States will continue to use that mechanism 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.

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. The United States and U.S. industry have been concerned about the proposals' limits on price mark-ups, which would reduce competition as well as patient and physician choice, and the proposals' collection of sensitive pricing data, the publication of which could be very damaging to U.S. companies' operations in China.

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 September 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, 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. U.S. industry reports that 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 tendering plans also impose controls on imported products, and limit certain procurements to only domestically produced products. 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 authorities to develop sound payment systems that adequately reward research and development.

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.

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.

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 it is to

determine if standards and technical regulations are being observed. 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 2015 to determine if U.S. industry is being adversely affected.

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. 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 2006, the U.S. Trade and Development Agency (TDA) launched the U.S.-China Standards and Conformity Assessment Cooperation Project. This project, with funding from TDA and U.S. industry, provides education and training to Chinese policy makers and regulators with regard to U.S. standards and conformity assessment procedures. In addition, the American National Standards Institute, with

funding and participation from the U.S. Department of Commerce, announced the launching of 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.

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 2015.

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 Group, 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. The United States will continue to press China in 2015 to ensure that its regulators adhere to China's JCCT commitments in this area.

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 (SEMB), 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. In 2014, the United States closely monitored developments in this area to ensure China followed through on this JCCT commitment, and will continue to do so in 2015.

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 2015, the United States will 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 the Standardization Administration of China. 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. Going forward, the United States continued to emphasize that, in contrast to China's proposed approach, standards organizations around the world normally require enterprises that contribute patented technology to a standard to license their patents on "reasonable and non-discriminatory" terms, which entitles them to set reasonable limits on the use of their technology and to receive reasonable compensation.

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.

China's State Administration for Industry and Commerce (SAIC) also 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*. Article 13 of the draft rules would prohibit a dominant firm from either refusing to disclose information on its standard-essential patent to a standards-setting organization or asserting its patent rights after its standard has been incorporated into a compulsory standard if it previously had waived those rights.

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.

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.

The United States has also grown increasingly concerned that China may finalize several proposed voluntary standards related to information security

and integrate them into certification or accreditation schemes, making the voluntary standards *de facto* mandatory. These proposed voluntary standards include the UHT/EUHT standard discussed above as well as a series of six information security voluntary standards released for public comment in July 2011 by the China National Information Security Technical Standards Committee. Another one, relating to information security requirements for office equipment, was released in September 2011 for a public comment period of 30 days by a standardization institute under MIIT's jurisdiction, known as the China Electronics Standardization Institute, in conjunction with the China National Information Security Technical Standards Committee. It appears to be an office equipment information security standard designed as an alternative to IEEE 2600, an international information security standard. As in the case of the UHT/EUHT standard, the United States has made clear to China that, if voluntary standards such as its proposed office equipment standard are integrated 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.

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 conformity assessment 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 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 2015 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 China Compulsory Certification Mark (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 new 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 2015, the United States will monitor developments in this area closely and will continue to 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 2014 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. As of December 2014, no details of CNCA's application decisions were available. In 2015, the United States will monitor developments in this area and 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 U.S. 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, the China Food and Drug Administration (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 proposed 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. In addition, the ways through which foreign manufacturers can demonstrate safety and effectiveness to obtain an exemption are severely limited. The United States has urged CFDA to expand the ways that foreign companies can demonstrate eligibilities for these exemptions.

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 2015, the United States will continue to monitor developments in this area to ensure that China's regulatory approach is consistent with China's JCCT commitment.

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 is concerned about several provisions in this draft measure, including provisions that appear to contain unfair requirements for foreign products. The draft measure also contains the

certificate of free sale requirement of imported cosmetics, as well as pre-approval requirements for new cosmetics ingredients.

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 begun engaging with CFDA in order to highlight U.S. industry's concerns regarding the two November 2014 draft measures. The United States will closely monitor developments in this area in 2015.

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.

The United States will carefully monitor developments in this area in 2015.

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 2014, 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 recent Chinese government statement, 82 percent of central state-owned enterprises' assets are concentrated in the petrochemicals, 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, by December 2014, the Third Plenum Decision had not yet led to significant reform of state-owned enterprises, as new policies were still being formulated. In 2015, 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 compete and invest in China. The United States also will 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 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.

In addition, it appears that China has not been fulfilling its obligation 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. China has not submitted a notification since 2003, despite the emergence of new state trade 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.

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 42 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. China submitted a revised offer near the end of December 2014.

In 2015, the United States will continue to use the new 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. As of December 2012, neither one of the draft measures had been issued in final form.

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 1, 2011.

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.

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 Products*. 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. The United States expects the *Implementation Rules of the Government Procurement Law* to be issued in final soon. 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 2015, 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, and it appears that Chinese government officials at times continue to use the foreign investment approval process to pressure foreign companies to accept one or more of these requirements or other conditions. China has also 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 violate 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.

In the past, although China has repeatedly affirmed its plans to further open China to foreign investment, including recently in the November 2013 Third Plenum Decision, China has not followed through on these promises, except in limited instances. China also has pursued other actions that discriminate against or otherwise disadvantage foreign investors. For example, China's investment restrictions are often accompanied by other problematic industrial policies, such as the development of China-specific standards 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.

In the face of these challenges, the value of the stock of U.S. foreign direct investment in China totaled \$51.4 billion in 2012. This total makes the United States the 15th-largest foreign investor in China (not including indirect foreign direct investment), and it also represents a 7.1 percent decline from the 2011 level. As these data suggest, and as U.S. investors report, the many serious challenges posed by problematic Chinese government policies and practices play a role in U.S. investors' decisions about potential investments in China.

As discussed below, the United States has raised its concerns about China's investment restrictions and related policies in bilateral fora, such as the JCCT, the S&ED and the U.S.-China Investment Forum, as well as multilaterally in WTO meetings. In one positive development, at the July 2013 S&ED meeting, China reinvigorated ongoing U.S.-China BIT negotiations by committing 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 employ a "negative list" approach in identifying exceptions (meaning that all investments are permitted except for those explicitly excluded). Consistent with this commitment, the Chinese Communist Party's November 2013 Third Plenum Decision directs the government to broaden foreign investment access in China and to explore the possibility of a model for allowing foreign investment that would provide pre-establishment national treatment and would employ a "negative list" approach in identifying exceptions. Subsequently, at the July 2014 S&ED meeting, the United States and China committed to intensify their negotiations toward a BIT with high standards, including non-discrimination, fairness, openness, and transparency, to narrow differences and to reach agreement on core issues and major articles of the

treaty text by the end of 2014, and to initiate the “negative list” negotiation early in 2015 based on each side’s “negative list” offers.

Administrative Licensing

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 foreign investment approvals and in myriad other contexts. While China took 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 approval 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 foreign investment approval process, which lacks transparency and is governed by vaguely written and apparently unpublished rules, is a particular problem area. 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 the foreign investment approval process on an ad hoc basis 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 approval practices, because they fear retaliation from Chinese government officials. The 2012 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 2014.

On the bilateral front, the United States has pressed its concerns with the foreign investment approval process 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.

Since the Third Plenum Decision in November 2013, the Chinese government has made numerous

changes to a variety of administrative licensing processes in China, including processes to secure investment approvals. 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. With regard to investment in particular, China committed to continue to improve procedures for foreign investment approval and record-filing by unifying domestic and foreign investment laws and regulations.

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.

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 calls for China to establish a review process to screen inward investment for national security implications. In February 2011, the State Council issued a notice establishing a “security review system” for mergers and acquisitions of Chinese domestic enterprises by foreign investors. Shortly thereafter, in March 2011, MOFCOM issued interim implementing rules for this system. Final rules were issued in August 2011.

The new security review system allows the central government to review transactions where a foreign company invests in any company involved in China's defense industry, or where a foreign company invests in, and obtains actual control over, any Chinese enterprise that is related to national security or is involved in important agriculture products, important energy and resource products, critical infrastructure, critical transportation systems or key technology or equipment. Under the rules, “national security” could include the impact on national defense, economic stability, social stability or the research and development capabilities of key national security technologies. Transactions found

to have a significant impact on national security will be denied or approved only subject to conditions.

The United States has a broad range of concerns about China's security review system and how it will be enforced. These concerns relate to China's application of the broad scope of review allowed for under the system, the determination of “actual control” under the system, the criteria for determining risks to national security, the relationship between this review process and other existing reviews of foreign investment, and the ability of non-government entities, including competitors, to call for reviews of transactions in which they are not directly involved.

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 August 2012, NDRC circulated for public comment a draft measure entitled the *Administrative Measures for the Examination and Approval of Foreign and Overseas Investment Projects*. This draft measure seemed to consolidate many of NDRC's existing policies and practices relating to foreign investment approvals, but also appeared to introduce new ones. In December 2013, NDRC issued this measure in final form. The final measure only applies to investments in fixed assets, a subset

of the types of investment of interest to foreign investors. In addition, other foreign investment reviews, such as the reviews conducted by MOFCOM, will continue to apply to this type and other types of foreign investment.

In 2014, 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, including the Trade Policy Review of China at the WTO, which took place in July 2014.

The United States and China also continue to pursue BIT negotiations. Successful BIT negotiations would secure important legal protections for U.S. investors in China, including rights to non-discriminatory treatment and to submit investment disputes against the Chinese government to international arbitral tribunals. In a particularly positive development at the July 2013 S&ED meeting, China acknowledged that the negotiation of a high-standard BIT would require it to embrace the principles of openness, non-discrimination and transparency, and China committed to provide national treatment at all phases of investment, including market access (i.e., the "pre-establishment" phase of investment), and employ a "negative list" approach in identifying exceptions (meaning that all investments are permitted except for those explicitly excluded).

Foreign Investment Catalogue

In 2002 and 2005, the State Council issued revised versions of the *Catalogue Guiding Foreign Investment in Industry*. 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, as previously reported, the State Council issued a revised Foreign Investment Catalogue without having provided an opportunity for public comment. The revised Foreign Investment Catalogue 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.

Using both the JCCT process and the S&ED process, the United States pressed China to increase the transparency of its revisions to the Catalogue. At the May 2010 S&ED meeting, China committed to publish proposed future revisions of the Foreign Investment Catalogue in advance for public comment.

This commitment was fulfilled in April 2011, when NDRC and MOFCOM jointly issued a draft of the newly revised Foreign Investment Catalogue for a 30-day public comment period. The United States submitted comments on the draft revised Foreign Investment Catalogue, noting that the proposed revisions fail to make substantial progress in opening China's market to greater foreign investment, and in some cases impose new limitations on foreign investment in sectors that previously had been more open. The draft revised Foreign Investment Catalogue places new sectors into the restricted and

prohibited categories, including the processing of certain types of edible oil seeds, the mining of certain minerals, and the research and production of genetically modified seeds, among others. Even some sectors listed in the encouraged category are subject to new investment limitations, including, for example, the manufacture of new energy vehicle components, which is now subject to a 50 percent equity cap for foreign investment. The United States also noted that the draft revised Foreign Investment Catalogue fails to provide foreign investors with clear and consistent guidance about their ability to invest in China's market.

In December 2011, China published the final version of the revised Catalogue, which entered into force in January 2012. Although the revised Foreign Investment Catalogue makes minor improvements, including by allowing wholly foreign-owned medical establishments and by removing the retailing of over-the-counter medicines from the "restricted" category, it is generally not responsive to the requests that the United States has made to lift investment restrictions in particular sectors.

In 2012, the United States continued to engage China vigorously through the S&ED process, the JCCT process and other bilateral channels in order to encourage China to make further on-the-ground improvements in its investment regime. At the May 2012 S&ED meeting, China committed to implement a more proactive opening-up strategy and to expand the areas open to foreign investment, and the degree of openness, during the 12th Five-year Plan period.

In November 2013, following the Third Plenum of the 18th Party Congress, the Chinese Communist Party issued a report, labeled the "Decision," which purports to present one of the largest and most ambitious economic reform programs since Deng Xiaoping's pioneering market-oriented reforms in 1978. Among other things, the Decision directs China to broaden foreign investment access in China, to explore the possibility of a model for allowing foreign investment that would provide national

treatment at all phases of investment, including market access (i.e., the "pre-establishment" phase of investment), and would employ a "negative list" approach in identifying exceptions (meaning that all investments are permitted except for those explicitly excluded), and to set up more free trade zones like the Shanghai Free Trade Zone, which, at the time, was newly established and still evolving.

Although little meaningful investment liberalization has taken place in the Shanghai Free Trade Zone to date, China did issue a draft of a revised *Catalogue Guiding Foreign Investment in Industry* for public comment in November 2014. In its written comments on the draft catalogue, the United States welcomed China's affirmation in the Third Plenum Decision that China intends to further open up to foreign investment as part of its domestic reforms and that its future foreign investment regime will be based on a "negative list." The United States further urged China to consider eliminating, rather than revising, its 2011 *Catalogue Guiding Foreign Investment in Industry*, given China's plans to move to a "negative list" to guide its foreign investment regime. In addition, the United States noted its concerns with the substance of the draft catalogue, explaining that while China proposes to remove certain investment restrictions from its 2011 *Catalogue Guiding Foreign Investment in Industry*, many significant investment restrictions remain in areas such as services, manufacturing and agriculture.

Auto Policy

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 requirements appeared to be inconsistent with commitments that China made in its WTO accession agreement, where 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.

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. The United States therefore will continue to press China in this area in 2015.

Steel Policy

In July 2005, five years into its WTO membership, China issued a 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, apparently in contravention of the commitment in China's 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 twelfth 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 in 2012 to 718 million MT and is expected to exceed 785 million MT in 2013, which would account for approximately 49 percent of global steel production.

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. China's exports of steel products reached 47 million MT in 2011 and 53 million MT in 2012, making China the largest exporter of steel in the world for both years. China is on track to export 60 million MT in 2013, despite slow steel demand in global markets. In addition, the OECD projected Chinese steelmaking capacity to reach 950 million MT in 2013 and to continue growing significantly through 2014, reaching 975 million MT, even in the face of a very weak domestic and global demand outlook. These data have 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.

There are a number of concerns raised by China's twelfth five-year plan for the steel industry. 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 provide 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.

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 Organization for Economic Cooperation and Development (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.

In 2015, 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 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.

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.

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 basic 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 strong 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 2014, serious problems have 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 2014, 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. Overall, products most affected in 2014 included corn, DDGs, poultry, pork and beef.

On the positive side, U.S. agricultural products continued to experience strong sales to China. China is now the United States' largest agricultural export market, as U.S. exports to China exceeded \$25 billion in 2013, more than 12 times the level in 2002, with U.S. exports remaining stable through the first ten months of 2014, when compared to the same period in 2013.

In 2015, as in prior years, the United States will continue to pursue vigorous engagement with China in order to obtain progress on outstanding concerns. Using the new multi-ministerial dialogue announced at the December 2014 JCCT meeting, the United States will discuss science-based agricultural innovation with China, including the benefits of increased use of innovative technologies in agriculture. In addition, the United States will continue to use the high-level U.S.-China Agriculture Working Group, created at the April 2004 JCCT meeting, as well as JCCT plenary meetings to make progress on the range of other issues in the agriculture area. At the same time, the United States will not hesitate to take further actions, including WTO dispute settlement, if appropriate, to address U.S. concerns.

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 2014, 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. exports to China in 2014. 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 forest products totaled \$2.3 billion in 2013 and increased by 18 percent during the first ten months of 2014, compared to the same period in 2013. Fish and seafood exports totaled \$1.1 billion in 2013, the same level as in 2012, and remained steady during

the first ten months of 2014, compared to the same period in 2013. Meanwhile, exports of consumer-oriented agricultural products totaled \$3.0 billion in 2013, but decreased by 16 percent during the first ten months of 2014, compared to the same period in 2013.

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 administration of TRQs on bulk agricultural commodities does not seem to be functioning entirely as envisioned in China's WTO accession agreement, due to opaque management practices and low quota fill despite reports of unmet demand for imported products.

Another 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 cotton. 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. Although progress has been made on some of these issues, low fill rates and 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 the most part, these increases have continued for the last several years.

In particular, despite some continuing problems with NDRC's handling of the cotton TRQs, U.S. cotton exports to China totaled a then-record \$1.4 billion in 2004 and subsequently rose to \$3.4 billion by 2012 before declining to \$2.2 billion in 2013. This decline continued in 2014, with a 52 percent drop in the first ten months of the year, compared to the same period in 2013. Similarly, U.S. exports of corn to China increased in recent years, growing from \$1.5 million in 2007 to \$1.3 billion in 2012, before declining to \$975 million in 2013. In 2014, due to China's biotechnology policies, corn tumbled to \$77 million in exports for the first 10 months of the year. 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 \$77 million for the first ten months of the year.

In 2014, the United States continued to raise transparency and other concerns about NDRC's TRQ administration, both bilaterally and at the WTO. In 2015, the United States will continue to work to ensure that NDRC administers TRQs transparently and in a manner that is consistent with China's commitments and that does not impede market access or commercial decisions. The way in which China administers its TRQ policies will be especially critical in 2015, given China's massive cotton reserves – now calculated to total about one-half of global cotton supply – and their impact on demand for imported cotton in 2015 and beyond. In addition, the TRQs for corn and wheat are priority concerns because U.S. exports are price competitive in China, but U.S. exporters have not been able to use China's TRQ system to market to customers on China.

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 190 percent over 2002. In subsequent years, U.S. soybean exports continued to increase dramatically, as China remained the leading export destination for U.S. soybeans. In 2013, U.S. soybean exports totaled \$13.3 billion.

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 not approving them, citing public opinion and other non-scientific reasons. U.S. exports of corn and dried distillers' grains, 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 \$77 million for the first ten months of 2014.

The Chinese regulatory authorities had notified the United States in July 2013 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. By the time this new stamp requirement went into effect, the United States had exported \$1.25 billion in DDGs to China in 2013, but since then the new stamp requirement has disrupted some U.S. exports of DDGs to China, because they contain 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, which should resolve the ongoing 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, which is intended to implement the agreement reached between President Obama and President Xi. This new dialogue will bring together a diverse set of Chinese ministries and U.S. agencies at the Vice Minister level and will focus on science-based agricultural innovation and the increased use of innovative technologies in agriculture.

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 Avian Influenza-related import suspensions on poultry products from several states. Meanwhile, China has made progress but still does not appear to notify all proposed SPS measures as required by WTO rules.

In 2014, 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. In addition, the United States continued to provide extensive training to China's regulatory authorities while also urging them to ensure China's full compliance with SPS Agreement transparency obligations.

In 2014, market access for U.S. soybeans and grain has continued. However, little progress was made in addressing SPS barriers for beef and poultry products, while concerns about SPS barriers for some pork products remain and market entry requirements for processed foods and horticultural products continue to be burdensome. China also continued to maintain several state-level import suspensions on poultry products tied to Avian Influenza (AI).

In many instances, progress was made difficult by China's inability to provide relevant risk assessments or its 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 products and some U.S. poultry and 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. The United States will continue to press for resolution of these and other outstanding issues in 2015.

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, the United States has repeatedly 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 acronym OIE) as effective and appropriate, for both food safety and animal health. China still has not provided any scientific justification for continuing to maintain its ban.

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, subsequent negotiations made it clear that China was only contemplating a limited market opening, still without any science-based support. In July 2006, China's food safety regulators unilaterally announced a limited market opening, restricted to the entry of U.S. deboned beef thirty months of age or less, accompanied by 22 onerous entry conditions. Several of these conditions were not commercially feasible, and others did not even relate to BSE.

In May 2007, the United States received a risk classification as a "controlled risk" country by the OIE, indicating that all U.S. beef and beef products are safe to trade, provided that so-called "specified risk materials" (i.e., materials posing a BSE risk) are removed during processing. Later that month, while in Washington for the May 2007 SED meeting, Vice Premier Wu offered to open China's market to both deboned and bone-in beef, although still with the age restriction of 30 months or less. The United States rejected this offer because the applicable OIE classification has no such age restrictions.

Subsequent to May 2007, U.S. and Chinese officials met repeatedly at all levels. However, China did not indicate any willingness to begin accepting U.S. beef and beef products into its market in a manner consistent with the OIE's classification, and negotiations stalled.

At the same time that it banned U.S. cattle, beef and processed beef products, China also banned bovine-origin products (i.e., bovine semen, bovine embryos, and protein-free tallow) that are listed in OIE guidelines as safe to trade regardless of a country's BSE status. Additionally, China banned imports of U.S.-origin non-ruminant feeds and fats (such as pet food, rendered products and porcine proteins and skins) even though these products were of non-bovine-origin and presented absolutely no BSE-related risk. As previously reported, after numerous bilateral meetings, technical discussions and facility certifications, China allowed the resumption of trade in bovine semen and bovine embryos in early 2006. In addition, by early 2006, trade in the full range U.S.-origin non-ruminant feed and fat products had also resumed, after negotiation and resolution of a series of onerous, detailed and unnecessary non-BSE related information requirements proposed by China that appear to be inconsistent with OIE guidelines and contrast sharply with U.S. requirements. To date, however, U.S. and Chinese officials continue to be unable to reach agreement on provisions of a protocol for protein-free tallow, a product listed by the OIE as safe to trade regardless of a country's BSE status. As a result, trade in protein-free tallow has still not resumed.

At the December 2010 JCCT meeting, the United States and China agreed to resume talks on U.S. beef market access. The two sides held a series of meetings in January 2011. The meetings did not produce agreement on market access terms, but did help to clarify the conditions both sides seek for trade to resume. In October 2011 meetings of the JCCT Agriculture and SPS Working Groups, the United States continued to press for a science-based beef market opening by China. Subsequently, at the November 2011 JCCT meeting, the two sides endorsed a commitment to increased technical engagement on this issue. Subsequently, technical meetings between the two sides took place in September and December 2012. Further discussions took place at the December 2012 JCCT meeting, where the United States expressed disappointment with the lack of progress on this issue.

In May 2013, the United States received the lowest risk status for BSE from the OIE, i.e., negligible risk. When the JCCT Agriculture and SPS Working Groups convened in November 2013, the United States again pressed for a science-based market opening by China for U.S. beef, and both sides agreed to a round of technical engagement in December 2013. Subsequent technical discussions and further engagement leading up to and during the December 2013 JCCT meeting did not lead to a resolution. The two sides therefore agreed to continue their discussions, with the shared goal of achieving a resumption in market access for U.S. beef products by July 2014.

Throughout 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, and U.S. beef remains blocked from China's market. Going forward, the United States will continue to press China at high levels until it agrees to an OIE-consistent market opening for U.S. beef.

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. Despite positive results from USDA investigations of the plants, and extensive follow-up efforts by USDA, these plants have not been re-listed as approved to ship product 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 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. The United States has been trying to work with China to resolve these issues, and will continue to do so in 2015.

Meanwhile, China continues to maintain maximum limits for certain heavy metals, MRLs for veterinary drugs and regulatory action levels other residues that are inconsistent with Codex Alimentarius (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 2015, the United States will continue to press China to revise these problematic standards.

Avian Influenza Import Suspensions

In February 2004, as previously reported, China imposed a nationwide import suspension on U.S. poultry in response to cases of low-pathogenic AI found in Delaware. Throughout 2004, the U.S. provided technical information to China on the U.S. AI situation, and in August a high-level Chinese

delegation conducted a review of the status of AI eradication efforts in the United States. In December 2004, China lifted its nationwide import suspension on U.S. poultry, leaving in place an import suspension only for the states of Connecticut and Rhode Island.

In early 2005, following the announcement of low-pathogenic AI found in the state of New York, China did not impose a nationwide import suspension. Instead, demonstrating progress in following OIE guidelines, China imposed an import suspension limited to poultry from the state of New York.

In 2006, China imposed an import suspension for poultry and poultry products originating from the state of Pennsylvania, based on incidents of low-pathogenic AI. China also suspended the importation of heat-treated and cooked poultry and poultry products at the same time, even though the OIE's AI chapter makes clear that products that have been heat-treated in a manner to inactivate the virus should not be subject to an AI-related import suspension. In 2007, China also suspended imports of poultry and poultry products from West Virginia, Virginia and Nebraska because of low-pathogenic AI.

Following the eradication of AI in Connecticut, Rhode Island, New York, Pennsylvania, West Virginia, Virginia and Nebraska, the United States asked China to re-open trade in poultry and poultry products from these states, consistent with OIE guidelines. In response to U.S. engagement, at the September 2008 JCCT meeting, China announced the lifting of the state-level import suspensions covering Connecticut, Rhode Island, New York, Pennsylvania, West Virginia and Nebraska. However, China's state-level import suspension on Virginia remained in place, and China imposed new state-level import suspensions on poultry from Arkansas in August 2008, Idaho in September 2008 and Kentucky in April 2009. China also re-imposed a state-level import suspension on Pennsylvania and imposed a new state-level import suspension on Texas in January 2010. The Texas import suspension was especially egregious, given that no AI was actually detected.

In bilateral meetings in 2009 and 2010, including JCCT working group meetings, the United States pressed for removal of the current state-level import suspensions and for China's adoption of OIE-consistent policies governing the import of poultry and poultry products. At the December 2010 JCCT meeting, China announced the lifting of the state-level import suspensions covering Idaho and Kentucky, but not Virginia, Arkansas, Pennsylvania or Texas.

The Virginia import suspension, which dates from 2007, is also extremely problematic. Even though it is based on a single detection of low-pathogenic AI, China has been attempting to draw parallels between this one incident and a broad outbreak of high-pathogenic AI in Virginia more than 25 years earlier. At the same time, China has repeatedly refused the invitation of U.S. regulatory officials to visit their laboratory and jointly sequence the low-pathogenic AI virus isolated from the one Virginia incident.

In 2011, in addition to maintaining its state-level import suspensions covering Pennsylvania, Texas, Arkansas and Virginia, China imposed a new import suspension on poultry and poultry products originating from the state of Minnesota based on detections of low-pathogenic AI. In bilateral meetings throughout the year, including at the November 2011 JCCT meeting, the United States pressed China to remove these import suspensions. In December 2011, China lifted its AI-related import suspensions on poultry and poultry products originating from Pennsylvania and Texas. Throughout 2012, the United States pressed China to lift its remaining AI-related import suspensions, which applied to the states of Arkansas, Minnesota and Virginia. The United States also continued to express its broader concerns about China's misinterpretation of the OIE's guidelines on Avian Influenza.

During the December 2012 JCCT meeting, the United States reiterated the need for China to follow OIE guidelines and lift the import suspensions applicable

to Arkansas, Minnesota and Virginia, but China insisted that additional information was needed to lift the three import suspensions. Later that month, China lifted the Minnesota import suspension.

The United States continued to press China to follow OIE guidelines throughout 2013 and 2014, principally using the JCCT process. However, in February 2013, China imposed an import suspension on poultry and poultry products originating from New York based on a detection of low-pathogenic AI. In June 2013, China lifted the Arkansas import suspension, but re-imposed it when a detection of low-pathogenic AI was made several weeks later. Similarly, in June 2013, a detection of low-pathogenic AI in commercial pheasants led China to impose an import suspension on poultry from Wisconsin. In May 2014, a detection of H5 low-pathogenic AI in a commercial Japanese quail layer flock in California led China to impose an import suspension on poultry from California. In that same month, China lifted its ban on poultry from Virginia. In September 2014, China imposed an import suspension on poultry from New Jersey in response to a detection of low-pathogenic AI in a pheasant at a hunting preserve. Even though the preserve was lifted from quarantine shortly thereafter when follow-up tests came back negative, and even though no poultry farms are located within a 10-mile radius of the preserve, China has kept the import suspension in place. Consequently, as of December 2014, China had in place state-level import suspensions applicable to five states, i.e., Arkansas, New York, Wisconsin, California and New Jersey.

In 2015, the United States will continue to urge China to begin following the OIE's guidelines relating to low-pathogenic AI. The United States also will press China to lift the state-level import suspensions that remain in place.

H1N1-Related Import Bans

In April 2009, China imposed import bans on U.S. pork and pork products and live swine, ostensibly related to its concern about the transmission of the

H1N1 influenza A virus. Import bans based on this type of concern are not consistent with international guidelines to control the spread of the H1N1 influenza A virus. International scientific bodies, including the Food and Agricultural Organization of the United Nations, the World Health Organization and the OIE, have repeatedly explained that the H1N1 influenza A virus is not transmitted by food products. Furthermore, the OIE has stated that “the imposition of ban measures related to the import of pigs and pig products does not comply with international standards published by the OIE and all other competent standard setting international bodies for animal health and food safety.” However, China still banned imports of pork, pork products and live swine from any states in which human cases of the H1N1 influenza A virus are present, and further imposed overly restrictive disinfection requirements, effectively blocking all imports from the United States because the virus is present in all 50 states.

Throughout 2009, the United States pressed China to remove its H1N1-related bans on imports of U.S. pork, pork products and live swine, using high-level bilateral meetings as well as JCCT working group meetings and the transitional review before the WTO's SPS Committee. At the October 2009 JCCT meeting, China announced its intent to reopen the China market to U.S. pork, pork products and live swine. In December 2009, MOA and AQSIQ issued a measure removing the bans on imports of U.S. pork and pork products, but not live swine. However, this measure required the negotiation of a mutually agreed export certificate, and China insisted that certain H1N1-related statements be included in the export certificate. Several months later, in May 2010, China and the United States reached agreement on export certificate language referencing the H1N1 influenza A virus. Nevertheless, the United States continues to believe that specific H1N1 references in a U.S. export certificate are unacceptable and inappropriate for inclusion in export certificates, given the international consensus that the H1N1 influenza A virus is not transmitted by food 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, since 2003, the United States has identified more than 250 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, a variety of processed products and alcoholic beverages.

In 2014, 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 2015.

Inspection-related Requirements

China's regulatory authorities continue to administer inspection-related requirements in a seemingly arbitrary manner.

Through two measures issued in 2002, the *Administrative Measures for the Entry-Exit Inspection and Quarantine for Grains and Feed Stuff* and the *Administrative Measures for Entry Animal and Plant Quarantine*, AQSIQ requires importers to obtain a Quarantine Inspection Permit (QIP), prior to signing purchase contracts for nearly all traded agricultural commodities. QIPs are one of the most important trade policy issues affecting the United States and China's other agricultural trading partners.

After AQSIQ began implementing these measures, traders complained that AQSIQ may intentionally slow down or even suspend issuance of QIPs at its discretion, without notifying traders in advance or explaining its reasons, resulting in significant commercial uncertainty. Because of the commercial necessity to contract for commodity shipments when prices are low, combined with the inherent delays in having QIPs issued, many cargoes of products such as soybeans, meat and poultry arrive in Chinese ports without QIPs, resulting in delays in discharge and additional demurrage bills for Chinese purchasers. In addition, traders report that shipment quantities are often closely scrutinized and are at risk for disapproval if considered too large.

Some improvements were made to the QIP system in 2004 following repeated U.S. bilateral engagement of China and through interventions made by the United States and other WTO members during the transitional reviews before the SPS

Committee and the Committee on Import Licensing in 2002 and 2003. In June 2004, fulfilling a Chinese commitment made in connection with the April 2004 JCCT meeting, AQSIQ issued Decree 73, the *Items on Handling the Review and Approval for Entry Animal and Plant Quarantine*, which extended the period of validity for QIPs from three months to six months. AQSIQ also began issuing QIPs more frequently within the established time lines. Nevertheless, a great deal of uncertainty remains even with the extended period of validity, because a QIP still locks purchasers into a very narrow period to purchase, transport and discharge cargoes or containers before the QIP's expiration, and because AQSIQ continues to administer the QIP system in a seemingly arbitrary manner.

Traders continue to be hesitant to press AQSIQ for change because they would risk falling out of favor. Many traders would at least like AQSIQ to eliminate the quantity requirements that it unofficially places on QIPs. These quantity requirements have been used often by AQSIQ during peak harvest periods to limit the flow of commodity imports. In 2006, traders reported that MOFCOM not only limited QIP quantities, but also required some companies to use up the majority of a QIP before being issued another one and required other companies to use up their QIPs or risk being "de-listed." Eliminating these requirements would make the QIP system more dependent on market forecast.

Little improvement in the QIP system has taken place since 2004, despite U.S. engagement. AQSIQ officials continue to insist that the QIP system ensures that an adequate number of examiners are on duty at ports when shipments arrive to certify and inspect them for quality and quantity, while the United States and other WTO members argue that there does not appear to be any scientific basis for the QIP system and that it serves as an unjust and overly restrictive barrier to trade. The United States will continue to press China on this issue in 2015.

Separately, 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, extending this registration process 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 is creating 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 new requirements.

Meanwhile, MOFCOM has been administering an additional import permit system for poultry products. Through its issuance of Automatic Registration Forms (ARFs) to importers, MOFCOM has allocated a volume amount to an importer for imports of particular commodities each year. However, problems periodically have arisen with MOFCOM's ARF administration. In July 2009, for example, U.S. poultry industry representatives reported that MOFCOM's issuance of ARFs to importers of U.S. but not other foreign poultry products slowed dramatically for a short period of time. Subsequently, in January 2010, MOFCOM expanded the ARF system to include imports of soybeans, pork and dairy. The United States will continue to urge MOFCOM to eliminate the ARF system entirely in 2015.

Domestic Support

In recent years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector.

As previously reported, over the past 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. 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 documents an increase in China's support levels, the United States is concerned that the methodologies used by China to calculate support levels, particularly with regard to China's price support policies and direct payments, result in underestimates of those support levels. Indeed, since China's accession to the WTO, it appears that China's agriculture system has transformed from a system focused on generating tax revenues from agricultural producers into a system that provides 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 2014, the United States grew increasingly concerned about the effects of domestic support measures that China has pursued since 2008, such as the cotton reserves purchasing system. This purchasing system has led to a massive cotton stockpile in China, totaling one-half of global cotton supply as of December 2014. In addition, China

announced new cotton target price programs in 2014, which may seriously reduce future demand for imported cotton.

In 2015, the United States will continue to monitor China's use of domestic subsidies and other support measures in the agricultural sector. The United States will also press China to provide an up-to-date notification.

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 2015, 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 secrets. 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, 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. IPR enforcement is hampered by lack of coordination among Chinese government ministries and agencies, lack of training, resource constraints, lack of transparency in the enforcement process and its outcomes, procedural obstacles to civil enforcement, 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, including those relating to patents, trademarks and copyrights. 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. Encouragingly, 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.

In 2011, China announced an updated Action Plan for revising its laws and regulations in order to better protect intellectual property rights. Among other things, this Action Plan set out China's intentions for revising various laws and other measures, including rules to implement the revised *Patent Law*, revisions to the *Trademark Law*, the *Copyright Law* and related measures. These efforts are ongoing, and the United States and U.S. right holders regularly have provided written comments to China on proposed measures and have engaged intensively with China's regulatory authorities to encourage the adoption of proposed U.S. revisions. Currently, one particular area of focus in the United States' bilateral engagement with China involves the outdated and ineffective laws and regulations governing trade secrets enforcement in China, which have gone unchanged since 1993.

In addition, the United States has repeatedly 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 focus of the United States' efforts is to persuade China to improve its laws and regulations in certain critical areas, such as 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 consider a variety of improvements to its administrative and civil enforcement regimes. While not all of these issues raise specific WTO concerns, all of them will continue to detract from China's enforcement efforts until addressed.

With regard to border enforcement, the United States is encouraged by the efforts of China's Customs Administration to pursue enforcement against counterfeit and pirated goods destined for export and the Customs Administration's agreement in 2007 to cooperate with U.S. customs authorities to fight exports of counterfeit and pirated goods. In January 2013, the Customs Administration hosted the first working group meeting under the agreement. Following that meeting, U.S. customs authorities and the Customs Administration 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. At its conclusion, U.S. customs authorities and the Customs Administration committed to continued cooperation, including another joint enforcement operation. Nevertheless, 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. Most recently, at the December 2014 JCCT meeting, the United States secured China's agreement to continue the two countries' effective cooperation in cross-border enforcement efforts against counterfeit and pirated goods, and to conduct exchanges on the effectiveness of enforcement efforts.

China has been working on other measures that can have significant implications for the intellectual property rights of foreign right holders. For

example, China enacted an *Anti-monopoly Law* that became effective in August 2008. Since then, China's enforcement of this law at times has generated concerns, particularly among foreign companies holding patented technologies. China also has issued various proposed regulations and other measures relating to standards that incorporate patents since 2009. The United States has been carefully monitoring these efforts and has raised concerns with particular aspects of these measures, both in bilateral meetings and at the WTO before the TRIPS Council and the TBT Committee. Most recently, SAC and SIPO issued interim rules on national standards involving patents, which became effective in January 2014.

Technology Localization

The United States is seriously concerned about a range of Chinese policies and practices that link the receipt of government benefits or preferences to relevant intellectual property being owned or developed in China. These policies and practices are objectionable not only because of their discriminatory treatment of foreign right 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.

As previously reported, in prior years, China has made JCCT and S&ED commitments not to maintain any measures that provide government procurement preferences for goods or services based on where the 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 has agreed to revise or eliminate various measures that appeared to be inconsistent with this commitment.

More recently, at the December 2013 JCCT meeting, the United States secured China's commitment not to finalize or implement two problematic measures,

the 2011 *Detailed Rules on the Administration of Optional Official Use Vehicle Catalogue for Party and Government Organs* and the draft 2012 *Party and Government Organ Official Use Vehicle Selection Catalogue*. Through the imposition of IP-related eligibility requirements, these measures would have excluded vehicles manufactured by foreign enterprises or foreign-invested enterprises from procurement by the Chinese government and the Chinese Communist Party.

Earlier this year, 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.

Subsequently, 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.

Currently, despite sustained U.S. engagement and the bilateral commitments that China has made to date, Chinese policies and practices discriminating against foreign right holders and pressuring foreign companies to transfer their technologies to enterprises in China remain a serious concern. In 2015, the United States will closely monitor the bilateral commitments that China made in 2014 and will press China to take further steps to address this problem.

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, one early example of a step forward is a 2004 measure issued by the National Copyright Administration (NCA). This measure, entitled *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 right 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 an important Internet-related measure, the *Regulations on the Protection of Copyright over Information Networks*. Although it does not appear to fully implement the WIPO Internet Treaties, this measure represents 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 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.

Trademark Law

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, such as the "squatting" of 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, and false indications of geographic origin of products.

In August 2013, China's National People's Congress enacted important amendments to China's *Trademark Law*, including provisions to combat trademark squatting, 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. 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.

Graphical User Interfaces

In recent years, the United States has urged China to provide design patent protection to graphical user interfaces (GUIs) and has engaged China in a series of technical exchanges on that subject. Effective May 2014, SIPO began implementing revised examination guidelines providing protection for GUIs.

Pharmaceuticals

In the pharmaceuticals sector, a serious concern of the United States has been patent protection and, in particular, SIPO examination guidelines governing information disclosure requirements for pharmaceutical patent applications. As a direct result of a series of amendments making these guidelines more restrictive, applications for pharmaceutical patents were denied in China, even though U.S. and other leading patenting authorities granted patents for the same pharmaceuticals. 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 an 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 harmony with the prevailing practice in the United States and other countries hosting innovative pharmaceutical industries. 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.

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 active pharmaceutical ingredients (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. China further committed to hold a multi-ministerial meeting by the end of 2014 for the purpose of developing a possible framework for regulatory oversight of bulk chemicals.

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 SFDA 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, China has not yet adopted the contemplated definition of "new chemical entity." Going forward, the United States will be working with CFDA and other relevant agencies as it continues to seek resolution of this concern and other outstanding concerns in this area.

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, an important development took place when 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.

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 whose products use trademarks or common names like “parmesan” and “feta” cheese. Going forward, the United States and China also committed to hold dialogues on geographical indications.

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 lack of coordination among Chinese government ministries and agencies, lack of training, resource constraints, lack of transparency in the enforcement process and its outcomes, procedural obstacles to civil enforcement, 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 2014. 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, as new concerns have arisen. The Special 301 Report for 2014 notes positive developments as well as a broad range of ongoing challenges in what remains a complex and uncertain environment for IP right holders.

No longer published concurrently with the Special 301 report, the Notorious Markets Report identifies online and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting. As in prior years, the December 2014 Notorious Markets Report included various notorious physical and online markets located in China, although several markets, including Taobao and Sogou, have been de-listed from the Notorious Markets Report due to their work with right holders to significantly decrease the listing of infringing products for sale via their websites.

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 right 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 right 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 2014, 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. China's share of infringing goods seized at the U.S. border during FY 2013 was approximately \$1.2 billion, or 68 percent of the total estimated Manufacturer's Suggested Retail Price of all goods seized, according to U.S. customs data.

At the same time, China is making genuine efforts to improve IPR enforcement, and cooperation between the United States and China has produced some successful enforcement actions. For example, in October 2010, the State Council announced what was originally to be a six-month campaign, the *Program for Special Campaign on Combating IPR Infringement and Manufacture and Sales of Counterfeit and Shoddy Commodities*, calling for, among other things, the investigation and prosecution of infringements of copyrights, trademarks, patents and new plant varieties. The campaign's enforcement efforts were focused on the manufacturing and sales of counterfeit and inferior commodities in certain key industries, including the press and publication industry, the cultural and recreational industry, the high-tech industry and agriculture, and with regard to certain key products, including books, software, audio-visual products, seeds, bulk export commodities, automobile fittings, mobile phones and medicines. The United States monitored the special campaign's implementation and encouraged China to translate this increased attention to IPR enforcement into permanent, systemic improvements in the legal protections of, and resources and capacity to enforce, IPR in a sustained and effective manner. 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, thereby making permanent the leadership structure under the special campaign.

Since then, the United States has been closely monitoring the implementation and effectiveness of this 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 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. These policies led the United States to resort to the WTO dispute settlement mechanism in April 2007, where it sought needed 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 on the market access side. As the WTO ruled in 2009, 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, again 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, as discussed above. 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. However, China has not yet fully implemented its MOU commitments, including with regard to opening up film distribution opportunities. As a result, the United States has been pressing China for full implementation.

Trade Secrets

The United States remains seriously concerned about a growing number of cases 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.

More recently, 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.

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. The United States hoped that these rules would contribute to significant reductions in industry losses due to software piracy by building on China's ongoing implementation of prior 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.

According to the U.S. software industry, however, China's PC software piracy rate has remained relatively flat over the past six years, only dropping from 82 percent in 2007 to 74 percent in 2013. During the same period, the U.S. software industry reports that the commercial value of this unlicensed PC software grew from \$6.7 billion in 2007 to \$8.8 billion in 2013. Achieving sustained reductions in end user software piracy will require more enforcement by China's authorities, followed by high profile publicity of fines and other remedies imposed. One additional necessary tool – which has been the subject of multiple JCCT and S&ED commitments – is the use of Software Asset Management audits, not only by Chinese government agencies but also by enterprises, including state-owned and state-invested enterprises, to ensure that these agencies and enterprises are not using illegal software.

Accordingly, at the May 2012 S&ED meeting and the December 2012 JCCT meeting, the United States sought to build on China's past 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. China committed to intensify its use of software audits and inspections within the government and to expand its software legalization efforts in the enterprise sector. China also confirmed that it requires state-owned enterprises and state-owned banks under the supervision of the central government to purchase and use legal software.

Most recently, at the July 2013 S&ED meeting, China committed to strengthen supervision of central state-owned enterprises and large state-owned financial institutions by establishing software asset management systems and enforcing requirements for them to purchase and use legitimate software. China also committed to provide budget guarantees and to promote 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 increasing 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, and are remarkably low. For example, in 2012, collections in Hong Kong alone were more than 65 percent greater than collections made by the Music Copyright Society of China for all music copyrights, both domestic and foreign, in China. As a proportion of GDP, total collections for public performances of music in 2012 were 46 times greater in Hong Kong compared to all of China, and 62 times greater in Australia than in China.

In addition, piracy of movies (including during the pre-release phase), television programming and music remains widespread, both via hard copies and online. China's Internet users are increasingly turning to streaming media to watch foreign television programming and movies. While it appears that a number of user-generated content sites have eliminated most of their pirated content, streaming sites have become the preferred method in China to watch illegal content. The United States has urged China to focus on these streaming sites, and to prevent illegal transmission and rebroadcast of movies and television and sports programming.

Piracy associated with libraries in China has been a particular problem. In October 2009, the NCA, the Ministry of Education, the Ministry of Culture and the National Anti-Pornography Office issued the *Notice on Strengthening Library Protection of Copyright*, which directs libraries to strictly adhere to the disciplines of the *Copyright Law*. The United States welcomed this directive and encouraged China to take steps to enforce this notice, including through unannounced spot checks of libraries and promptly investigating and taking action against web-based enterprises that provide pirated journal articles. Subsequently, at the December 2010 JCCT meeting, China committed to take steps to eradicate piracy of online academic journals, including actions against web-based enterprises. At the 2011 JCCT meeting, the United States and China agreed to hold government-industry roundtables, which they have begun to do, for the purpose of discussing online copyright protection and enforcement, including in relation to libraries.

Counterfeiting Issues

China's widespread counterfeiting not only harms the business interests of right 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 right 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.

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.

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.

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, 13 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 2014, 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 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. In addition, although China announced that it was removing registered capital requirements for many sectors (on a nondiscriminatory basis) in 2014, the subsequently issued implementing rules are somewhat vague and the impact on foreign suppliers in many sectors must still be evaluated. 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 2015, 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 and substantial additional revenue for foreign film producers. 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 a critical commitment to open up film distribution opportunities for imported films that are distributed in China on a flat-fee basis rather than a revenue-sharing basis. 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 and will continue to do so in 2015.

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 2015 while urging China to remove unwarranted impediments to market entry.

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* (Foreign Investment Catalogue), 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 and processed 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 2015 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

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 People's Bank of China (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. Subsequently, at the July 2014 S&ED meeting, China committed to actively study policies concerning the further opening-up of the banking sector. In 2015, 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.

MOTOR VEHICLE FINANCING

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

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 (CIRC).

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 limits foreign insurance brokers from providing a full scope of services, while 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.

In addition, 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. The United States has also addressed measures that could further restrict branching, such as the *Administrative Measures on Insurance Companies*, a draft measure circulated by CIRC in August 2009 that included new application procedures for branches and sub-branches. The United States used an Insurance Dialogue meeting in September 2009 and additional engagement during the run-up to the October 2009 JCCT meeting to persuade CIRC to modify the draft measure to avoid over-penalizing companies for minor violations of regulations, which would have inordinately delayed them from seeking new branches. The United States is continuing to work with CIRC to advocate for non-discrimination in its application of the final measure, which entered into force in October 2009.

Meanwhile, 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 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. This year, 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 2015, 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

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 five 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 2015, the United States will continue to press China to re-open this sector on a transparent and non-discriminatory basis.

Mandatory Third Party Liability Auto Insurance

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 have strongly welcomed the opening of this market, and many of them are now selling mandatory third party liability auto insurance in China.

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.

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 as of December 2014 it still had not taken any steps to do so, and U.S. suppliers therefore remain blocked from entering the market. Accordingly, the United States was considering its further options at the WTO while continuing to press China to comply 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 2015 in an attempt to resolve these outstanding concerns, including through the exchange of ideas as contemplated by a commitment that China made at the December 2014 JCCT meeting.

Telecommunications

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 2013. 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 May 2013, China released a draft revision of its Catalogue of Telecommunications Services that seeks to expand the scope of value-added services to include a range of Internet-related services, even though these services are not telecommunications services, as discussed below in the Internet-related Services section below.

As China nears the end of its thirteenth 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. 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.

If China takes the initiative, its planned new *Telecommunications Law* could be a vehicle for addressing some of the key existing market access barriers and other problematic aspects of China's current telecommunications regime. A draft of this long-awaited law has been under consideration for at least 12 years, although, to date, the Chinese government has not made a draft available for public comment, despite repeated requests from the United States and other WTO members. Information obtained through informal channels indicates that although some proposed provisions are helpful, others, including a possible codification

of China's foreign equity caps for basic and value-added telecommunications services, appear to conflict with China's commitment in its GATS Schedule to negotiate further liberalization.

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 little progress.

Throughout 2014, principally using the JCCT process, the United States again vigorously engaged China on the range of telecommunications services issues, including priority issues such as providing market access for foreign suppliers in connection with China's planned pilot projects on the resale of mobile telecommunications services and, as discussed above, not moving forward with a codification of foreign equity caps for basic and value-added telecommunications services that would be inconsistent with China's GATS commitments or with a Catalogue of Telecommunications Services that imposes new restrictions on Internet-enabled services, as discussed above. By the time of the December 2014 JCCT meeting, however, the United States had been unable to persuade China to make any significant changes. In 2015, 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.

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. In addition, 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. In addition, the *Interim Regulation on Digital Cable TV Pay Channels*, a 2003 measure, restricts foreign programming to a maximum of 30 percent of total air time on pay television channels. A newer measure, issued in October 2013, limits satellite stations to the licensing of one foreign program per year, and it prohibits it from being aired during prime time.

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, 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 2013 and 2014, using the JCCT process, the United States pressed 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 2015, 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.

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 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 the State Internet Information Office, 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.

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 2015, as in prior years, the United States will continue to engage China through bilateral channels 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, and it has threatened restrictions on foreign companies' access to the package segment of China's domestic express delivery market, which raises questions in light of China's WTO obligations.

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. Nevertheless, over the years, China has also 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.

For the past three years, 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. Implementation of these commitments has proved challenging. Although the Chinese regulator, SPB, has moved forward with the issuance of more permits, it has done so on a slower pace than had been agreed. The United States has been pressing SPB to quickly review and approve any new permits that U.S. companies request, and it 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 overly burdensome and restrictive. China's new *Postal Law*, along with related regulatory measures, such as express business permitting measures and various standards that China has developed and imposed

relating to services, labor and packaging, seem to impose undue burdens on a sector that normally would not be subject to this type of intrusive regulation. As in 2014, 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.

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 between the two countries over a six-year period. The agreement also expanded opportunities for code sharing and charter operations, granted cargo carriers the right to provide surface transportation in connection with international air services and eliminated government regulation of pricing as of 2008. U.S. passenger and cargo carriers have since obtained additional routes and increased flight frequencies, as envisioned by the agreement.

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 significantly expanded passenger and all-cargo air services and has further facilitated trade, investment, tourism and cultural exchanges between the United States and China. Among other things, the agreement added ten new daily passenger flights that U.S. carriers could operate to the Chinese gateway cities of Beijing, Shanghai and Guangzhou by 2012, allowed unlimited U.S. cargo flights to any point in China and an unlimited number of U.S. cargo carriers to serve the China market as of 2011, increased from six to nine the number of U.S. passenger carriers that could serve the China market by 2011, and expanded

opportunities for U.S. carriers to code-share on other U.S. carriers' flights to China. The agreement also committed the United States and China to launch Open Skies negotiations in 2010, which they did.

Nevertheless, negotiations have not been held since 2011 due to a lack of interest from the Chinese side. 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 General Administration of Civil Aviation in China. U.S. and Chinese negotiators are currently involved in a series of technical discussions to resolve this issue.

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.

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. Consultations in this case took place in November 2012. Since then, the two sides have been engaging in further discussions exploring the steps that China could take to address U.S. concerns.

In 2014, 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 2015.

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.

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 13 years of WTO membership, China still has not established an appropriate infrastructure to undertake the agreed-upon translations of its trade-related measures. 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, and one of these members – the EU – translates its measures into 23 official languages.

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, 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 violated its WTO accession agreement by not translating the measures at issue into a WTO language. China repealed those measures following consultations.

More recently, in the September 2012 WTO case challenging export base subsidies, discussed in the Official Journal section above, 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.

In 2014, the United States used the S&ED process to press China to begin implementing its translations commitment. At the July 2014 S&ED meeting, China confirmed that it will publish English translations of trade-related laws, regulations and departmental rules. The United States urged China to ensure that it provides the translation of a measure before the measure's implementation.

In 2015, the United States will closely monitor the implementation of China's July 2014 S&ED commitment. The United States also will continue to press China for timely translations and for further progress in implementing the broader translations commitment that it made in its WTO accession agreement.

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 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 is

clear that the United States will need to continue to press China for progress in this area.

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 2014, 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. In part because of this situation, many U.S. companies in 2014 continued to express serious concern 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.

Meanwhile, in 2014, 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.

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, 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. Under this law, an Anti-monopoly Commission with oversight and coordinating responsibilities has been established, 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 issued, 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. At the same time, 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, concerns remain that enforcement against state-owned enterprises will be more limited. The inclusion of provisions on the abuse of administrative (i.e., government) power in the *Anti-monopoly Law*, which also appear in NDRC's and SAIC's implementing regulations, could be important instruments for reducing the government's role in markets and promoting the establishment and maintenance of increasingly competitive markets in China, and both NDRC and SAIC recently have stated that these abuses are among their enforcement priorities. In addition, because trade associations 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*.

Since the *Anti-monopoly Law* went into effect in 2008, China's administrative enforcement of it has been active in the merger area overseen by MOFCOM, largely due to the requirement to pre-notify merger transactions. Some U.S. enterprises 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.

Some U.S. companies also have raised concerns with the remedies that MOFCOM has adopted in granting conditional merger approvals. While initially MOFCOM's merger decisions were quite brief, MOFCOM now releases more detailed explanations of its merger decisions. However, U.S. industry observers have criticized certain decisions for lack of adequate bases to find that a merger has or may have the effect of eliminating or restricting competition.

In addition, MOFCOM's enforcement seems to have focused more on mergers involving foreign enterprises than those involving China's enterprises. Reportedly, approximately 90 percent of the transactions notified to MOFCOM since the *Anti-monopoly Law* went into effect in 2008 have involved at least one multinational corporation, and none of the 24 transactions that MOFCOM approved with conditions has been between Chinese enterprises. MOFCOM has imposed conditions in several transactions in which one party was a Chinese enterprise, including one instance involving a state-owned enterprise. In addition, MOFCOM has

formally blocked only two transactions that involved a foreign enterprise's attempt to acquire a well-known Chinese enterprise.

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 increasing scrutiny by China's enforcement agencies in recent months. 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. U.S. companies also have reported pressure from NDRC against seeking outside counsel, particularly international counsel, or having any counsel present at meetings.

In 2013 and 2014, the United States raised serious concerns with China regarding its enforcement of the *Anti-monopoly Law*. While this engagement is ongoing, the United States did secure some progress regarding its concerns in this area in 2014. 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, through engagement 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.

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, which allows the domestic enterprises to avoid the costs associated with compliance.

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. 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 17, 2014
- Appendix 2* List of Witnesses Testifying at Hearing on China's WTO Compliance
October 1, 2014
- Appendix 3* U.S. Fact Sheet for 25th U.S.-China Joint Commission on Commerce and Trade Meeting
December 18, 2014
- Appendix 4* Excerpts from Joint Fact Sheet for 6th U.S.-China Strategic and Economic Dialogue
July 11, 2014
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2014 USTR Report to Congress on China's WTO Compliance

Appendix 1

List of Written Submissions Commenting on China's WTO Compliance September 17, 2014

1. U.S.-China Business Council
 2. U.S. Chamber of Commerce
 3. International Intellectual Property Alliance
 4. National Cotton Council
 5. American Iron and Steel Institute
 6. Property Casualty Insurers Association of America
 7. United States Information Technology Office
 8. U.S. Council for International Business
 9. American Wire Producers Association
 10. National Milk Producers Federation
 11. U.S. Dairy Export Council
 12. U.S. Grains Council
 13. Pharmaceutical Research and Manufacturers of America
 14. American Chemistry Council
 15. Taiwan-U.S. Democracy Association
 16. American Insurance Association
 17. Brazilian Textile and Apparel Industry Association
 18. U.S. Wheat Associates
 19. Coalition of Services Industries
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2014 USTR Report to Congress on China's WTO Compliance

Appendix 2

List of Witnesses Testifying at Public Hearing on China's WTO Compliance October 1, 2014

1. Erin Ennis
U.S.-China Business Council
 2. Jeremie Waterman
U.S. Chamber of Commerce
 3. Michael Schlesinger
International Intellectual Property Alliance
 4. Wally Darneille
National Cotton Council
 5. Kevin Dempsey
American Iron and Steel Institute
 6. David Snyder
Property Casualty Insurers Association of America
 7. Matt Roberts
United States Information Technology Office
 8. Brian Toohey
Semiconductor Industry Association
 9. Jimmy Goodrich
Information Technology Industry Council
 10. Carl Schonander
Software & Information Industry Association
 11. Eric Holloway
Telecommunications Industry Association
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2014 USTR Report to Congress on China's WTO Compliance

Appendix 3

25th U.S.-China Joint Commission on Commerce and Trade Meeting

December 18, 2014

U.S. Fact Sheet

The following outcomes were achieved:

AGRICULTURAL BIOTECHNOLOGY

China is the largest export market for U.S. soybeans (\$14 billion in 2013) and a major export market for U.S. corn and corn products (\$3.5 billion in 2013). Agricultural biotechnology is important to U.S. farmers of these products, with acreage for biotechnology varieties of soybeans and corn totaling over 90 percent of all varieties of soybeans and corn in 2014, enabling these farmers to increase yield while reducing their environmental footprint. China's announcement of pending import approvals for three new events will lead to further increases in U.S. exports to China. In addition, China's commitment to an intensified, multi-ministerial dialogue at the Vice Ministerial level on science-based innovation in agriculture will provide a forum for the two sides to discuss needed improvements in China's regulatory framework for the review and approval of technology used for agriculture, to the benefit of both the United States and China.

Strategic Agricultural Innovation Dialogue

To implement the consensus reached by the Presidents of both countries at their bilateral meeting in November 2014, where China and the United States reached consensus to intensify science-based agricultural innovation for food security and China and the United States committed to strengthen dialogue to enable increased use of innovative technologies in agriculture, both sides agree to conduct an annual Strategic Agricultural Innovation Dialogue at a Vice-Ministerial level under the leadership of the Agriculture Working Group within the framework of JCCT, including officials from MOA, MOFCOM, USTR, USDA and officials from other relevant authorities of both countries. This dialogue is intended to create a favorable environment where both sides could carry out balanced, mutually beneficial exchange and cooperation on agricultural innovation. Relevant work plans and issues on the agenda will be put forward by the Agriculture Working Group, and this Vice-Ministerial dialogue will hold its first meeting in early 2015.

Biotechnology Approvals

In early December 2014, 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.

TECHNOLOGY LOCALIZATION

Too often, U.S. and other foreign companies operating in China face pressure to transfer valuable intellectual property rights to enterprises in China and to re-locate their research and development activities to China. Foreign companies operating in China must be free to make business decisions without government interference and must be able to compete on a level playing field. China's commitments below should help to promote a more level playing field, although more needs to be done.

Appendix 3 (cont'd)

25th U.S.-China Joint Commission on Commerce and Trade Meeting

December 18, 2014

U.S. Fact Sheet

The United States and China commit to ensure that both countries treat intellectual property rights owned or developed in other countries the same as domestically owned or developed intellectual property rights. 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. Both China and the United States confirm that the government is entitled to take measures to encourage enterprises to engage in research and development and the creation and protection of intellectual property rights.

MEDICAL DEVICES AND PHARMACEUTICALS MARKET ACCESS

Exports of U.S. pharmaceutical products to China exceeded \$1.2 billion in 2013. According to industry data, the U.S. pharmaceuticals industry directly employs more than 810,000 workers, supports a total of 3.4 million jobs in the United States, and provides annual compensation to its workers at approximately twice the average for all U.S. workers. China's commitment below to devote more resources to and streamline China's regulatory processes for pharmaceuticals will speed patient access to new medicines in China and thereby lead to increased U.S. exports to what is now the second largest market for pharmaceuticals in the world.

Exports of U.S. medical devices to China reached \$2.7 billion in 2013. According to industry data, the U.S. medical device industry includes over 7,000 companies, most with less than 100 employees, and supports 1.9 million U.S. jobs overall. Cutting red tape in China's medical device approval process, as China has committed to do below, will allow better patient outcomes in, and more exports to, China, which is the industry's largest growth market.

China and the United States affirm that significantly reducing the time-to-market for innovative pharmaceutical products and medical devices will benefit patients by allowing them to receive better treatment earlier. The United States and China have reached the following consensus:

1. China will accelerate the studying and pushing forward of the reform of the medical device and pharmaceutical regulatory review and approval system, and will make great efforts to eliminate the drug application backlog within 2-3 years. China's efforts will include adding personnel, funds, streamlining relevant mechanisms, and increasing the speed of review.
 2. Applicants who use Multi-Regional Clinical Trial data that includes data from China in order to apply for clinical trial waivers, and whose applications comply with the technical review requirements, can receive clinical trial waivers in China, in order to prevent duplicative testing.
 3. China will implement measures that allow a drug not marketed in foreign countries to conduct clinical trials in China at the same time it is conducting clinical trials in another country. Applicants can submit evidence of marketing approval of a pharmaceutical product in another country (i.e. certificate of pharmaceutical product) when applying for the drug license after completing clinical trials.
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2014 USTR Report to Congress on China's WTO Compliance

Appendix 3 (cont'd)

25th U.S.-China Joint Commission on Commerce and Trade Meeting

December 18, 2014

U.S. Fact Sheet

China and the United States agree that for all draft pharmaceutical and medical device rules and regulations where notifications are required under the relevant WTO rules, a comment period will be provided that will be no less than 60 days.

In accordance with the *Regulations on Supervisory Management of Medical Devices*, China will, to facilitate practical regulatory needs, further accelerate the expansion and adjustment of clinical trial product exemption catalogues; expand the scope of medical devices that can be exempted from conducting clinical trials in China; reduce the number of medical device clinical trials and improve the efficiency of bringing imported medical devices to the Chinese market.

China and the United States agree to engage in 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.

INTELLECTUAL PROPERTY RIGHTS

Protection of Trade Secrets in Government Proceedings and Trade Secrets Legislative Developments

Businesses and other entities in a wide variety of industry sectors rely on the ability to protect their trade secrets and their rights in other proprietary information. This information is often among a company's core assets, and a company's competitiveness may depend on its capacity to protect these assets. Trade secret theft threatens to diminish U.S. competitiveness around the globe, and puts American jobs at risk. This theft may arise in a variety of circumstances, including through the misuse of information submitted to government entities for purposes of complying with regulatory obligations. Through the commitments described below, which build on prior bilateral commitments made by China, China confirms the importance of protecting companies' trade secrets, and agrees to study and exchange information on how to improve its protections, and to take enforcement actions when violations occur.

The United States and China confirm 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 in accordance with law. Each side will further study how to optimize its respective relevant administrative and regulatory procedures within its legal system, where appropriate, including by strengthening confidentiality protection measures, limiting the scope of government personnel having access to trade secrets, limiting the information required from companies to include only information reasonably necessary for satisfying regulatory purposes, and stipulating that any requirements on government agencies to publicly disclose information appropriately allow for the withholding of trade secrets. Government officials who illegally disclose companies' trade secrets are to be subject to administrative or legal liability according to law. The United States and China agree to exchange information on the scope of protection of trade secrets and confidential business information under their respective legal systems. China acknowledges that it is to conduct a legislative study of a revised law on trade secrets. The United States acknowledges that draft

2014 USTR Report to Congress on China's WTO Compliance

Appendix 3 (cont'd)

25th U.S.-China Joint Commission on Commerce and Trade Meeting

December 18, 2014

U.S. Fact Sheet

legislation proposing a Federal civil cause of action for trade secrets misappropriation has been introduced in the U.S. Congress.

Geographical Indications

The United States has engaged extensively with its trading partners to promote and secure access to foreign markets for U.S. exporters whose products use trademarks or common names like "parmesan" and "feta" cheese. The Chinese commitments described below ensure that China's growing market remains open to exports of these U.S. products, which are substantial and increasing. For example, exports of U.S. cheeses to China increased by 600 percent between 2009 and 2013.

China and the United States acknowledge the importance of providing strong intellectual property protections and understand the following:

- 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;
- 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; and
- Where a component of a compound GI is generic in its territory, the GI protection is not to extend to that generic component. In the event a relevant agency does not have a disclaimer practice, the agency may adopt such practice noting that the compound GI registered or recognized is to be protected only in compound form.

China and the United States are to hold dialogues on geographical indications.

Inventor Remuneration

Promoting predictability in the protection and enforcement of intellectual property rights, including by affirming freedom of contract in inventor employment agreements, promotes critical innovation and research, areas in which the United States excels. China's commitment below recognizes the importance of predictability for inventors in respect of their inventions and creations and should help to achieve that objective for inventors who are subject to China's domestic laws.

The United States and China commit to protect the legal rights of inventors in respect of their inventions and creations, in accordance with their respective domestic laws and regulations, and in line with their domestic laws,

2014 USTR Report to Congress on China's WTO Compliance

Appendix 3 (cont'd)

25th U.S.-China Joint Commission on Commerce and Trade Meeting

December 18, 2014

U.S. Fact Sheet

commit to respect the legitimate rules and regulations developed by employers and legitimate contracts between employers and inventors concerning inventor remuneration and awards.

Data Supplementation

Achieving greater consistency in the evaluation of patent application data is critical to ensure that pharmaceutical inventions protected elsewhere in the world are also recognized in China. China's fast-growing pharmaceuticals market is already the world's second-largest, and it represents a major growth opportunity for U.S. exports. Through the continuing engagement with China described below, the United States will strive to ensure that China's patent authorities operate with the consistency found in other markets around the world.

The U.S. and China have been maintaining a useful and informative discussion on the supplementation of data, since the 24th JCCT in 2013, and China has made improvements on the practice pursuant to Chinese laws and regulations. Both sides affirm that continued exchanges and engagement on specific cases are beneficial.

Sales of IP-Intensive Goods and Services

Effective enforcement of intellectual property rights creates an environment in which sales of legitimate intellectual property-intensive goods and services can flourish. China's commitment below will bring new focus to the United States' and China's work together to determine how best to foster a better environment for facilitating increased sales of legitimate intellectual property-intensive goods and services in China.

The United States and China reaffirm their commitments to foster a better environment to facilitate increased sales of legitimate IP intensive goods and services ("legitimate sales"). The United States and China agree to study and exchange information on how to accomplish this objective. Areas of study and exchange are to include, as appropriate: metrics to show the levels of legitimate sales; information on how to analyze the economic impact of IP in each economy, sharing data on IP-intensive imports and exports if available; information on effective IP enforcement actions as well as relevant IP-related legal and regulatory reforms, and information on civil damages. The status of the discussion is to be reflected in the annual report of the U.S.-China Joint Commission on Commerce and Trade IPR working group.

Online Infringement

A rapidly growing share of sales in China occurs in the online environment, making it critical to focus enforcement attention there to combat sales of pirated and counterfeit goods. Through the commitments described below, China has agreed to work together with the United States and to take steps to prioritize its enforcement in this area.

China and the United States are to strengthen 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, according to law. Building on the

2014 USTR Report to Congress on China's WTO Compliance

Appendix 3 (cont'd)

25th U.S.-China Joint Commission on Commerce and Trade Meeting

December 18, 2014

U.S. Fact Sheet

foundation of the June 18, 2014 Leading Group's Work Plan for Fighting Infringement in the Online Environment, China will, in a practical and timely fashion, classify products with significant impacts on public health and safety as priorities, and carry-out enhanced enforcement actions. Both China and the United States are to continue their effective cooperation in cross-border enforcement efforts against counterfeit and pirated goods, and conduct exchanges on the effectiveness of enforcement efforts.

COMPETITION LAW

U.S. industry has asserted that China's competition policy enforcement authorities seem to be targeting foreign companies and at times use Anti-monopoly Law investigations as a tool to protect and promote domestic national champions and domestic industries. U.S. industry also has expressed concern about insufficient predictability, fairness and transparency in China's investigative processes, as well as pressure from the Chinese authorities not to seek outside counsel or have counsel present at meetings. China's commitments below help to address several of these concerns.

1. In order to build on the recognition of the United States and China in the Sixth Meeting of the U.S.-China Strategic and Economic Dialogue that the objective of competition policy is to promote consumer welfare and economic efficiency, rather than promote individual competitors or industries, and that the enforcement of their respective competition laws should be fair, transparent, objective, and non-discriminatory, and China's commitment that its three Antimonopoly Enforcement Agencies (AMEAs) are to provide to any party under investigation information about the AMEA's competition concerns with the conduct or transaction, as well as an effective opportunity for the party to present evidence in its defense:
 - a) China clarifies that in enforcing the AML, all business operators shall be treated equally.
 - b) Where AML violations are found, China clarifies that it is to impose enforcement measures that address the harm to competition, and not to impose enforcement measures designed to promote individual competitors or industries.
 2. China clarifies that its AMEAs will, (1) when undertaking administrative actions, strictly follow statutory limits on their authority, procedures, and requirements as laid out in China's relevant laws, regulations and rules; and (2) before imposing penalties, notify the parties of the facts, grounds, and basis according to which the administrative penalties are to be decided, notify the parties of the rights that they enjoy in accordance with the law, and provide the parties with the right to state their cases and to defend themselves.
 3. China clarifies that all administrative decisions that impose liability on a party under the AML will be provided in writing to the party and include the facts, reasons, and evidence on which the decision is based. China clarifies that it will publish the final version of administrative decisions that impose liability on a party under the AML in a timely manner. Administrative decisions made public in accordance with law should not include contents involving what are legally commercial secrets.
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2014 USTR Report to Congress on China's WTO Compliance

Appendix 3 (cont'd)

25th U.S.-China Joint Commission on Commerce and Trade Meeting

December 18, 2014

U.S. Fact Sheet

- China will ensure that, upon request from a party involved, the three AMEAs are to allow Chinese practicing lawyers to attend and participate in meetings with any of the three AMEAs. China will ensure that, upon request from the party involved, and after obtaining approval from the AMEA, which shall be granted as normal practice, the following persons may attend the meetings with any of the three AMEAs: (1) representatives of foreign law firm representative offices established in China, who are permitted to attend and advise on international law and practice and provide information on the impact of the Chinese legal environment, but not permitted to conduct activities that encompass Chinese legal affairs, and (2) foreign legal counsel practicing in other legal jurisdictions, who are permitted to attend and provide information on the subject transaction or conduct and information on the laws or international practices of the legal jurisdiction where they practice.

GOVERNMENT PROCUREMENT REGULATIONS

Chinese government agencies spent almost \$230 billion on purchases of goods and services in 2012. China's commitments below represent a step in the right direction to help ensure that the goods of U.S. companies invested in China and goods imported from the United States can access this important government procurement market, while China and other WTO members continue to negotiate the terms of China's accession to the WTO Government Procurement Agreement.

China confirms that it will publish for public comment the draft Interim 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.

TREATMENT OF INTELLECTUAL PROPERTY IN STANDARDS SETTING

The United States has agreed to conduct a dialogue with China to reduce uncertainties regarding protections for companies contributing patented technology during standards-setting processes in China. Voluntary, consensus-based technological standards promote innovation, competition and consumer welfare and have helped spur investment and advances in a wide range of industries. Companies contributing patented technology during a standards-setting process typically agree to license their patents under certain terms. These terms need to be agreed voluntarily and free of government coercion or involvement.

China and the United States recognize that standards setting can promote innovation, competition and consumer welfare. They also reaffirm that IPR protection and enforcement is critical to promote innovation, including when companies voluntarily agree to incorporate patents protecting technologies into a standard. Both sides recognize that specific concerns may exist relating to the licensing of standard essential patents that are subject to licensing agreements. China and the United States commit to continue engaging in discussion of these issues.

Appendix 3 (cont'd)

25th U.S.-China Joint Commission on Commerce and Trade Meeting

December 18, 2014

U.S. Fact Sheet

FISHERIES

Illegal, unreported or unregulated (IUU) fishing is detrimental to fish stocks and unfair to fisherman catching fish legally, depressing prices and damaging trade. Information sharing to combat IUU fishing is an important step in stopping IUU-caught fish from entering commerce. Current U.S. trade in fisheries products, valued at \$1.2 billion in U.S. exports and \$2.8 billion in U.S. imports, is expected to increase due to increased volumes to be traded as well as increased product value. Increased transparency in trade statistics, to which the United States and China have committed below, will ultimately contribute to the sustainability of fisheries resources and increase the value of legally harvested products.

The United States and China agree to work together to combat illegal, unreported, or unregulated (IUU) fishing, including by developing and sharing improved data on trade in fish and fish products. As a first step, both sides agree to meet in the first half of 2015 to begin sharing information about methodologies on trade statistics for fish and fish products, including greater specificity in the harmonized system, species of interest, and best practices for tracking product.

LEGAL SERVICES

China agrees to conduct research and discussion at an appropriate time in 2015 to introduce the status and process of opening the Chinese legal services market, and to invite advice and suggestions from the foreign legal community. In the pilot work of exploring ways and mechanisms for strengthening business cooperation between Chinese and foreign, Hong Kong, and Macau law firms in the Shanghai Pilot Free Trade Zone, Chinese relevant authorities are in the process of drafting implementation rules. Both sides agree to continue to exchange ideas on this work.

Appendix 4

6th U.S.-China Strategic and Economic Dialogue

July 11, 2014

Excerpts from Joint Fact Sheet

The United States and China welcomed the growth in the breadth and depth of bilateral economic relations since the establishment of official diplomatic relations 35 years ago. The two countries further recognized that there is significant potential for continued progress in U.S.-China economic relations, especially as China fully implements the comprehensive economic agenda announced at the Third Plenum of the 18th CPC Central Committee, and as the U.S. economy continues to strengthen, creating jobs, improving fiscal sustainability, and making investments to support future productivity and growth. These developments are to provide new impetus for economic cooperation between the two countries. As such, the participants discussed new strategies for practical cooperation and for continuing to deliver concrete progress that is to benefit the citizens of both countries, our neighbors, and the world.

During the sixth meeting, the United States and China emphasized the importance of promoting a comprehensive U.S.-China economic relationship based on mutual respect and mutually beneficial cooperation. The two countries reaffirmed the commitments pledged by both countries in previous Dialogues and the importance of full implementation of these outcomes. The United States and China announced further concrete measures to support strong domestic and global growth, promote open trade and investment, enhance international rules and global economic governance, and foster financial market stability and reform. The two countries reached consensus to work expeditiously to implement the new commitments made and, as the Special Representatives of the Economic Track, Secretary Lew and Vice Premier Wang directed their respective economic teams to take concrete action before the next S&ED.

I. Strengthening Economic Policy Cooperation

Since the fifth meeting of the S&ED in July 2013, the United States and China have taken significant actions to strengthen growth and promote job creation in both countries, to continue to support a durable global recovery, and to ensure that their domestic growth supports strong, sustainable, and balanced global growth. The United States and China pledged to make further progress as well as committed to make new progress on the following:

...

- China is to deepen economic system reform by allowing the market to play a decisive role in the allocation of resources. China commits that economic entities under all forms of ownership have equal access to factors of production in accordance with the law and are able to compete on a level playing field. China is to accelerate the process of market-based price reforms in petroleum, electricity, and natural gas, to promote competition in energy markets, and to realize market-based prices in competitive sectors as soon as possible. The United States is to provide technical assistance to China to support China's efforts to promote energy reform.

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Appendix 4 (cont'd)
6th U.S.-China Strategic and Economic Dialogue
July 11, 2014
Excerpts from Joint Fact Sheet

II. Promoting Open Trade and Investment

The United States and China underscored the importance of fostering an open, transparent, and non-discriminatory environment for trade and investment, recognizing that doing so is critical to economic growth and job creation in both countries and in the global economy. The United States and China committed to take the following measures to further enhance our bilateral trade and investment relationship, support an open and fair environment, and create greater opportunities for U.S. and Chinese companies and workers.

- United States and China held constructive discussions regarding the expansion of the Information Technology Agreement. Both sides commit to continue the discussion within the next few weeks, to create conditions to restart plurilateral negotiations.
- The United States and China welcome the progress made to date in the Bilateral Investment Treaty (BIT) negotiations, and affirm their commitment to intensify these negotiations toward a BIT with high standards, including non-discrimination, fairness, openness, and transparency. The two sides are working to narrow differences and to reach agreement on core issues and major articles of the treaty text by the end of 2014, and commit to initiate the “negative list” negotiation early in 2015 based on each other’s “negative list” offers. Recognizing the positive role of investment in creating jobs and boosting economies, and the mutual benefit of open investment environments, the two sides support the expansion of two-way investment and commit, through the BIT negotiation, to ensure that foreign and domestic investors benefit from equal access to and treatment in the market, subject only to negotiated and transparent exceptions.
- China is to further deepen the reform of State Owned Enterprises (SOEs) (including State-Invested Enterprises), improve and standardize modern corporate governance structure, and reasonably increase the proportion of market-based recruitment of management personnel for SOEs. In mixed ownership enterprises, China is to improve the process for nominating and selecting personnel to serve on Boards of Directors in accordance with the Company Law and corporate governance principles. The United States and China commit to establish an exchange mechanism with regard to improving the modern corporate system and corporate governance structure of SOEs.
- The United States and China recognize 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 their respective competition laws should be fair, objective, transparent, and non-discriminatory. China commits that its three Anti-Monopoly Enforcement Agencies (AMEAs) are to provide to any party under investigation information about the AMEA’s competition concerns with the conduct or transaction, as well as effective opportunity for the party to present evidence in its defense.

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2014 USTR Report to Congress on China's WTO Compliance

Appendix 4 (cont'd)

6th U.S.-China Strategic and Economic Dialogue

July 11, 2014

Excerpts from Joint Fact Sheet

- The United States and China affirm that they do not approve of trade secret theft for commercial advantage and that the protection and enforcement of trade secrets is essential to maintain fair competition and to develop an innovative economy. Both sides are to pursue criminal and other actions to deter the misappropriation of trade secrets, and make information available to the public about their actions, to the extent permitted by law. China has incorporated the protection and enforcement of trade secrets into its 2014 Priorities of the Nationwide Crack Down on Intellectual Property Infringement and Production of Counterfeit and Shoddy Products, published by the State Council on April 14, 2014. As its next step, China is to vigorously investigate and prosecute trade secret theft cases; ensure that civil and criminal cases are tried and the judgments are published according to law; and protect trade secrets contained in materials submitted by companies as part of regulatory, administrative, and other proceedings according to Chinese law. China is also to undertake publicity and education activities to improve the awareness of companies and the general public regarding the protection of trade secrets; to undertake studies and research on trade secrets law and related legislative and policy issues; and is to continue engaging in technical exchanges with the United States on these issues. China affirms that it is to continue prioritizing trade secrets protection and enforcement and is to take positive actions that are to be included in upcoming work plans.
 - Building on the prior successful exchanges between the United States and China at the Joint Commission on Commerce and Trade (JCCT) Intellectual Property Rights Working Group and at meetings among relevant agencies, the United States and China are to continue to promote exchanges between respective Intellectual Property (IP) agencies, including judicial and administrative bodies, on topics of mutual interest, such as enforcement, transparency, and specialized IP courts. These discussions and any recommendations are to be reported to the JCCT and other bilateral meetings.
 - China confirms that the Deployment Standards for the Assets of the Office of General Software of Government Agencies is a measure designed to strengthen the administration of spending and implement the CPC Central Committee's call for frugality. This measure was drafted with the intention to not have any purpose or effect of creating obstacles to international trade. The United States and China are to continue to engage on ways to address any obstacles to trade facing companies.
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 - In support of China's commitment to strong, sustainable, and balanced economic growth and the transformation of China's economic development pattern, and in recognition of the importance of fostering a more streamlined, efficient, and market-based business environment in which the market plays a decisive role in allocating resources, China commits to improve its Value Added Tax rebate system, including actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade.
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2014 USTR Report to Congress on China's WTO Compliance

Appendix 4 (cont'd)

6th U.S.-China Strategic and Economic Dialogue

July 11, 2014

Excerpts from Joint Fact Sheet

- In support of China's efforts to rein in excess production capacity in key manufacturing sectors and to foster a business environment in which the market can play a decisive role in allocating resources, China is 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.
 - To advance the shared goal of ensuring access to safe and high-quality medicines for patients and protect supply chain integrity, to affirm the responsibilities of the manufacturers and regulators over the life-cycle of the drug to ensure product quality, and to fight against illegal actions to manufacture, distribute, and export counterfeit and substandard active pharmaceutical ingredients (APIs) and APIs used for counterfeit and substandard products, China commits, during the process of revising the Drug Administration Law (DAL), to develop and seriously consider amendments to the DAL requiring regulatory control of the manufacturers of bulk chemicals that can be used as APIs ("bulk chemicals"), including "export only" producers and distributors. To this end, China commits to hold a multi-ministerial work mechanism on a potential regulatory and enforcement framework to develop the oversight of bulk chemicals, and a roadmap for implementation, by the end of this year. The United States commits to continue to review its authority to exclude from consideration the import of bulk chemicals from firms that are not registered with China Food and Drug Administration (CFDA). In addition, the United States and China commit to deepen technical exchanges, trainings, and regulatory cooperation to enhance the safety of bulk chemicals traded between the United States and China, and to exchange views on the user fee programs at the upcoming pharmaceutical working group meeting of the JCCT.
 - In order to foster the development of the services sector, China is to follow the guidance provided at the Third Plenum of the 18th CPC Central Committee, which is to promote the orderly opening-up of the finance, education, cultural, medical sectors, and other service areas, and to remove foreign investment access restrictions in child and old-age care, architectural design, accounting and auditing, commerce and logistics, electronic commerce, and other such service sectors, including accelerating the revision of the Catalogue Guiding Foreign Investment in Industries to further open up to foreign investment. China is to revise the related regulations on the administration of foreign-invested construction and engineering design enterprises to open these sectors to foreign providers of such services.
 - . . .
 - In any area open to foreign investment, consistent with Chinese law, China is to continue to improve procedures for foreign investment approval and record-filing by unifying domestic and foreign investment laws and regulations. To make it easier to invest, China is shifting from an approach of approval or verification to one based on record filing. The United States welcomes China's further efforts to improve the investment environment and maintain stability, transparency, and predictability of foreign investment policies and procedures. China has authorized the Shanghai Free Trade Pilot Zone to undertake trial work regarding pre-establishment national treatment plus negative list in order to accumulate replicable and expandable experiences for deepening reform.
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2014 USTR Report to Congress on China's WTO Compliance

Appendix 4 (cont'd)

6th U.S.-China Strategic and Economic Dialogue

July 11, 2014

Excerpts from Joint Fact Sheet

- The United States welcomes China's efforts to improve the efficiency and transparency of its administrative licensing and approval processes and China's commitment to strictly implement its Administrative Licensing Law. The United States and China commit to treat applicants for administrative licenses and approvals under the same rules and standards of each side, with regard to the resources available to accept and process applications, and the number of applications permitted at one time from an applicant. Further, the United States and China commit 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, consistent with laws.
- . . . The United States welcomes China's actions to provide legal review of regulatory documents with a direct influence on the rights and obligations of citizens, legal persons, or other organizations, and to limit and reduce the number of regulatory documents in effect at both the central and sub-central levels of government. In support of these actions, the United States and China commit to hold seminars to discuss the types and effect of those documents existing in both countries.
- The United States and China reaffirm their past bilateral commitments on publication of trade- and economic-related administrative regulations and departmental rules. China confirms that the relevant State Council Legislative Affairs Office documents published on April 27, 2012 are legally binding.
- The Legislative Affairs Commission of the Standing Committee of the National People's Congress of the People's Republic of China periodically publishes translations into English of The Laws of the People's Republic of China. The Legislative Affairs Office of the State Council periodically publishes translations into English of The Laws and Regulations of the People's Republic of China Governing Foreign-Related Matters. China is to require all departments of the State Council to make available in a reasonable time, via a website or other cost-effective means, translations into English of trade-related departmental rules.
- The United States and China support efforts to promote infrastructure investment, including by increasing commercial investment in infrastructure through Public-Private Partnerships with domestic and foreign investors, and incorporating best practices and lessons learned from other countries. The United States and China recognize the potential value of having their respective enterprises play a positive role in infrastructure development in each country and commit to explore opportunities for deepening cooperation in this area.

III. Enhancing Global Cooperation and International Rules

The United States and China committed to enhance multilateral cooperation, including under the G-20, Asia Pacific Economic Cooperation (APEC), and other multilateral frameworks. The two sides recognized the importance of international rules governing trade and finance that reflect the evolving global economic system and committed to take the following concrete steps to deepen their cooperation in this area.

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Appendix 4 (cont'd)

6th U.S.-China Strategic and Economic Dialogue

July 11, 2014

Excerpts from Joint Fact Sheet

- The United States and China are committed to strengthening communication and cooperation in the preparation of the “post-Bali” work-program so as to send a positive signal to advance Doha Round negotiations.
- The United States and China welcome 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, including at the fifth meeting of the IWG in May in Washington, D.C. Based on the progress made, the United States and China support the IWG actively pursuing and completing its work on guidelines for the two sectors as soon as possible. The United States and China reaffirm their shared commitment to develop a set of new horizontal international guidelines on official export credit support that promote international trade, and that, taking into account varying national interests and situations, are consistent with international best practices.

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IV. Fostering Financial Stability and Reform

Both sides recognized the importance of strong, stable financial systems to achieve sustainable and balanced growth. Both sides committed to undertake the following measures to support further reforms and enhance supervision in their respective financial sectors, promote bilateral cooperation, and enhance cooperation under the G-20, Financial Stability Board, and other multilateral frameworks, so as to support global financial stability.

- China intends to continue the opening-up of the securities and futures sectors, and to actively study policies concerning the further expansion of the business scope of newly established securities joint ventures. China is actively studying further opening up of the banking sector (including equity participation by foreign investors) and securities sector, based on ongoing assessment and improvement of the prudential regulatory framework.