2023 Report to Congress on China's WTO Compliance



United States Trade Representative

February 2024

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ABBREVIATIONS

ACFTU	All China Federation of Trade Unions
CBIRC	China Banking and Insurance Regulatory Commission
CED	U.S.-China Comprehensive Economic Dialogue
CFDA	China Food and Drug Administration
CNIPA	China's National Intellectual Property Administration
GACC	General Administration of Customs of China
ISO	International Organization for Standardization
JCCT	U.S.-China Joint Commission on Commerce and Trade
MIIT	Ministry of Industry and Information Technology
MARA	Ministry of Agriculture and Rural Affairs
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOST	Ministry of Science and Technology
NBC	National Biosafety Committee
NDRC	National Development and Reform Commission
NMPA	National Medical Products Administration
PBOC	People's Bank of China
SAC	Standardization Administration of China
SAIC	State Administration for Industry and Commerce
SAMR	State Administration for Market Regulation
SASAC	State-owned Assets Supervision and Administration Commission
SAT	State Administration of Taxation
SCLAO	State Council's Legislative Affairs Office
SED	U.S.-China Strategic Economic Dialogue
S&ED	U.S.-China Strategic and Economic Dialogue
WTO	World Trade Organization

FOREWORD

This is the 22nd report prepared pursuant to section 421 of the U.S.-China Relations Act of 2000 (P.L. 106-286), 22 U.S.C. § 6951 (the Act), which requires the United States Trade Representative (USTR) to report annually to Congress on compliance by the People's Republic of China (China) with commitments made in connection with its accession to the World Trade Organization (WTO), including both multilateral commitments and any bilateral commitments made to the United States. The report covers calendar year 2022. It also incorporates the findings of the Overseas Compliance Program, as required by section 413(b)(2) of the Act, 22 U.S.C. § 6943(b)(2).

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 Agriculture, Commerce, Labor, Justice, State and Treasury, the Environmental Protection Agency, the Federal Trade Commission and the U.S. Patent and Trademark Office, among other agencies. Members of the TPSC subcommittee work closely with State Department economic officers, Foreign Commercial Service officers, Enforcement and Compliance officers and Intellectual Property Attachés from the Commerce Department, Foreign Agricultural Service officers, Customs and Border Protection attachés and Immigration and Customs Enforcement attachés at the U.S. Embassy and Consulates General in China, who are active in gathering and analyzing information, maintaining regular contacts with U.S. industries operating in China and maintaining a regular dialogue with Chinese government officials at key ministries and agencies. The TPSC subcommittee meets in order to evaluate and coordinate U.S. engagement with China in the trade context.

To aid in its preparation of this report, USTR as chair of the TPSC published a notice in the Federal Register on August 17, 2023. The notice asked interested parties to submit written comments. A number of written comments were received from interested parties. These written comments are available at *www.regulations.gov* under docket no. USTR-2023-0008.

EXECUTIVE SUMMARY

In this report, we provide an updated assessment of China's WTO membership. This assessment reveals the unique and very serious challenge that China's state-led, non-market approach to the economy and trade continues to pose for the global trading community. While the United States and other like-minded WTO Members have pursued various WTO-focused strategies over the years to address the many problems created by China, it remains clear that new and more effective strategies – including strategies that involve taking actions outside the WTO where necessary – are critically needed to address those problems.

When China acceded to the WTO in 2001, it voluntarily agreed to embrace the WTO's open, market-oriented approach and to embed it in China's economic and trading system and institutions. China also agreed to take on the obligations set forth in existing WTO rules, while also making numerous China-specific commitments. As we previously documented, and as remains true today, China's record of compliance with these terms has been poor.

As has been previously documented, China has a long record of violating, disregarding and evading existing WTO rules. China has also sought to frustrate WTO oversight and accountability mechanisms, such as through its poor record of adhering to its WTO transparency obligations. In addition, and more critically, after more than two decades of WTO membership, China still embraces a state-led, non-market approach to the economy and trade, despite other WTO Members' expectations – and China's own representations – that China would transform its economy and pursue the open, market-oriented approach endorsed by the WTO. In fact, China's embrace of a state-led, non-market approach to the economy and trade has increased rather than decreased over the past decade, and the mercantilism that it generates has harmed and disadvantaged U.S. companies and workers, as well as companies and workers of other WTO Members, often severely.

The vast majority of the harm that China inflicts upon other WTO Members is attributable not to China's periodic non-compliance with existing WTO rules, but rather to the daily impact of China's state-led, non-market approach to the economy and trade, which relies heavily on interventions in the market by the Chinese government and, increasingly in recent years, the Chinese Communist Party (CCP or the Party). As is well-documented, the Chinese government and the CCP routinely intervene in the market using a wide array of non-market policies and practices, both to provide artificial competitive advantages to Chinese industries and enterprises and to actively disadvantage foreign industries, enterprises and workers.

China's decision to continue pursuing a state-led, non-market approach to the economy and trade after acceding to the WTO takes on significantly added importance because China is the second largest economy in the world and the largest trader among WTO Members. As a result, as time has borne out, the policies and practices that it pursues can have a tremendous impact on bilateral and global trade.

As is now more than clear, China's approach to the economy and trade, which is characterized by a routine reliance on non-market policies and practices, undermines fair, market-oriented decisions made by foreign enterprises and distorts market outcomes in significant ways. Observers have coined various terms to describe China's economic system, from "state capitalism" to "China, Inc.," and, more recently, "CCP, Inc." Whatever terminology is used in an attempt to capture the essence of China's economic system, the unique challenge posed for the global trading community is clear. Foreign enterprises are competing not only against Chinese enterprises but also the Chinese state. As a result, the playing field is simply not level. It is heavily skewed against foreign enterprises

wherever they seek to compete against Chinese enterprises, whether it is in China's market or in other markets around the world.

It is important to highlight, moreover, that China has not simply continued to pursue what it termed a "socialist market economy" when it joined the WTO. China's so-called "socialist market economy" has turned decidedly predatory. In other words, China no longer relies on central planning simply to direct and guide the business decisions of Chinese industries and enterprises. Rather, China is now using its state-led, non-market approach to the economy and trade in ways designed to secure the dominance of Chinese enterprises, both in the China market and in global markets. As part of this pursuit of international dominance, China is targeting both traditional industries and emerging industries, not only by providing its own industries with unprecedented financial and regulatory support but also by actively pursuing policies and practices that are calculated to disadvantage and ultimately displace foreign competitors.

Over the years, the non-market policies and practices that China has deployed as it seeks to achieve and maintain the dominance of Chinese industries and enterprises are myriad. They are also constantly evolving. While the particular combination of non-market policies and practices that China deploys in pursuit of securing dominant market shares for Chinese businesses domestically and globally can vary from industry to industry, any list of the most common non-market policies and practices that the Chinese state currently deploys is long and includes:

- adopting and pursuing industrial plans that target specific industries for domination by Chinese enterprises, including by establishing capacity, production and export levels or market share targets;
- directing, pressuring or otherwise acting to ensure that Chinese enterprises adhere to the objectives set forth in the state's industrial plans;
- placing CCP officials in state-owned enterprises and private Chinese enterprises in management positions in order to monitor, direct, pressure or otherwise influence commercial decision making;
- deploying massive and frequently non-transparent subsidies relentlessly in pursuit of industrial plan objectives, including via policy banks, state-owned commercial banks and government investment and guidance funds at all levels of government;
- transferring risk to the state through loan guarantees and loan rollovers for Chinese enterprises in targeted industries;
- failing to publish final central level and provincial level measures that provide subsidies or other financial support to Chinese enterprises;
- directing, pressuring or otherwise acting to ensure that foreign enterprises operating in China not make business decisions that conflict with the objectives of the state's industrial plans, including in some cases by embedding CCP officials in those enterprises;
- according special regulatory and other preferences and competitive advantages to state-owned enterprises;
- directing or allowing government regulatory authorities to exercise their authority in a discriminatory manner, including by treating Chinese enterprises more favorably than foreign or foreign-invested enterprises;
- directing or sponsoring the theft of intellectual property rights, trade secrets and confidential business information for commercial use;

- engaging in forced or pressured technology transfer;
- directing, pressuring or otherwise acting to ensure that Chinese enterprises pursue acquisitions of foreign enterprises whose technologies are needed to achieve the state's industrial plan objectives;
- directing, pressuring or otherwise acting to ensure that Chinese enterprises purchase Chinese-made products over imported products in accordance with the state's industrial plan objectives;
- directing, pressuring or otherwise acting to ensure that Chinese enterprises invest in and secure access to raw materials outside of China for the sole use of Chinese enterprises producing downstream products in accordance with the state's industrial plan objectives;
- retaliating against foreign enterprises when they offend the Chinese state or otherwise act in a manner that displeases the Chinese state, thereby creating a chilling business environment for all foreign enterprises, especially ones with business operations located in China;
- using selective or arbitrary application or enforcement of intellectual property law to achieve the state's industrial plan objectives;
- using selective or arbitrary application or enforcement of competition law to achieve the state's industrial plan objectives;
- pursuing unique national standards when international standards already exist in order to leverage the economic power of China's market to promote or compel the adoption of those standards in global markets;
- using unfair labor practices, such as forced labor, restrictions on labor mobility, institutional constraints on the extent to which wage rates are determined through free bargaining between labor and management, the denial of the rights of workers to associate and to organize and collectively bargain, and a prohibition on the formation of independent trade unions to represent workers, which artificially lower labor costs for Chinese enterprises, especially in industrial sectors;
- condoning lax enforcement of environmental laws and regulations, which artificially lowers labor costs for Chinese enterprises, especially in industrial sectors;
- creating or maintaining persistent non-market excess capacity in industries through state-owned enterprises and private Chinese enterprises, to the detriment of competing foreign enterprises in the China market and in global markets around the world;
- directing the judiciary to render decisions that serve the state's industrial plan objectives; and
- failing to publish all central level and provincial level laws, regulations and other measures that impact the rights and obligations of enterprises and individuals.

It is evident that China does not deploy these non-market policies and practices in isolation or only in a few industries. China resorts to some combination of these non-market policies and practices in many industries. China's efforts are also relentless. China has shown every indication that it will continue to intervene in the market in any way that it deems necessary to achieve the state's industrial plan objectives. China does not act with moderation.

An example of the magnitude of China's efforts can be seen in a review of how China pursues one type of non-market policy or practice, namely, China's practice of directing or sponsoring the theft of intellectual property rights, trade secrets and

confidential business information for commercial use. In recent public remarks, intelligence and law enforcement officials from the Five Eyes countries – Australia, Canada, New Zealand, the United Kingdom and the United States – characterized the scale of the Chinese state's pursuit and sponsorship of this type of theft as unprecedented in human history. They added that it is the biggest of any country in the world and, indeed, bigger than every other country in the world combined. In the United States alone, in 2023, there were approximately 2,000 active investigations into apparent state-sponsored theft by China covering a diverse array of industries, from aviation to biotechnology to robotics, among many others. The Five Eyes officials noted that while all countries engage in clandestine activities for national security purposes, China is different in that the Chinese state steals information and then uses it for commercial advantage.

Plainly, China's approach is far different from the open, market-oriented approach envisioned by the WTO membership and pursued by the United States and almost all other WTO Members. China routinely deploys economic and trade policies and practices that promote unfair competition and state-directed outcomes rather than fair competition and market-based outcomes. China often does not enable or allow enterprises to make their own commercial decisions, nor does it treat all enterprises engaged in commercial activities equally or allow private actors to determine the allocation of resources. China also does not require its regulatory authorities to administer in a fair, transparent, impartial and reasonable manner all laws, regulations and other measures pertaining to or affecting trade in goods, trade in services, investment and trade-related aspects of intellectual property rights. In addition, China does not maintain an independent judiciary, nor does it publish all laws, regulations and other measures that impact the rights and obligations of enterprises and individuals.

At present, moreover, there are no indications that China is considering taking meaningful steps toward the adoption of the open, market-oriented economic system that the WTO membership has endorsed and expects of all WTO Members. In fact, China continues to take steps designed to increase, not decrease, the role of the Chinese state in the market.

Critically, the WTO has been unable to effectively address China's continued pursuit of a state-led, non-market approach to the economy and trade. While some of the non-market policies and practices pursued by China are disciplined by existing WTO rules, resort to WTO dispute settlement has proven ineffective in changing or discouraging China's behavior in any fundamental way. For the most part, however, it has become clear that China's non-market policies and practices are not effectively disciplined by existing WTO rules. Indeed, when WTO Members developed and agreed on the existing WTO rules, they simply did not contemplate that a WTO Member would ever pursue many of the policies and practices that now emanate from China's state-led, non-market approach to the economy and trade. In short, China's approach is fundamentally at odds with the multilateral trading system.

It is now more than two decades since China joined the WTO, and it is clear that China has not lived up to the bargain that it struck with WTO Members when it acceded to the WTO, as recounted above. With existing WTO disciplines having proved to be ineffective, or simply not designed to discipline many of the types of harmful non-market policies and practices deployed by the Chinese state, it is also clear – and has been clear for some time – that solutions independent of the WTO are needed.

While the WTO can still play a role in addressing certain aspects of the unique challenge that China poses for the global trading community, the United States believes, realistically, that other strategies are needed. For that reason, the United States has been pursuing a multi-faceted approach that accounts for the current realities in the U.S.-China trade relationship and the many problems that China generates for the United States and other trading

partners, both now and likely in the future. As the U.S. Trade Representative previously announced, the U.S. approach includes four principal components.

First, it is critical that the United States take steps domestically to invest in, and build policies supportive of, the industries of today and tomorrow. Important steps taken to date include the passage of the CHIPS and Science Act, the Inflation Reduction Act and the Infrastructure Investment and Jobs Act, as well as the many subsequent efforts to implement those Acts.

Second, the United States is continuing to pursue bilateral engagement with China. China is an important trading partner, and every avenue for obtaining real change in its economic and trade regime must be utilized. We are focused on the United States' most fundamental concerns with China's state-led, non-market approach to the economy and trade, enumerated above, rather than on resuming dialogues focused on isolated issues that leave the core China challenge unaddressed. At the same time, the United States will continue to work to hold China accountable for its existing commitments.

Third, it is clear that domestic trade tools – including updated or new domestic trade tools reflecting today's realities – will be necessary to secure a more level playing field for U.S. workers and businesses. The United States continues to explore how best to use and improve domestic trade tools to achieve that end.

Finally, it is equally critical for the United States to work intensely and broadly with allies and like-minded partners in order to build support for solutions to the many significant problems that China's state-led, non-market approach to the economy and trade has created for the global trading community. The United States recognizes that each trading partner may be impacted differently by the many types of non-market policies and practices that China pursues, but we all must work together if we are to be able to find viable solutions. This work is ongoing and is taking place in bilateral, regional and multilateral fora, including the WTO.

Importantly, among U.S. trading partners, there is a growing convergence about the need to approach trade relations with China with more realism, like the United States has been doing. China's increased use of economic coercion in recent years has certainly played a role in this convergence. As its economic power has grown, the Chinese government more and more has resorted to the threat or use of measures affecting trade and investment in an abusive, arbitrary or pretextual manner to pressure, induce or influence a foreign government into taking, or not taking, a decision or action in order to achieve a strategic political or policy objective, or to prevent or interfere with the foreign government's exercise of its legitimate sovereign rights or choices. It is particularly troubling to witness an authoritarian government using economic coercion to influence the policies being pursued by democratic countries. However, even so, the more significant factor in this convergence of thinking is the incontrovertible evidence of the significant harm being caused by China's state-led, non-market – and predatory – approach to the economy and trade. Indeed, this harm is not confined to the advanced market economies, as emerging and developing economies tend to be particularly adversely impacted by China's non-market policies and practices.

At the same time, despite China's rhetoric, the United States does not view "decoupling" from China as the solution to the many problems posed by China's state-led, non-market approach to the economy and trade. Indeed, if the United States were to decouple from China, it would not address those problems.

The United States has taken targeted actions, including on export controls and outbound investment, to protect our national security, consistent with our approach to the U.S.-China economic and trade relationship, which is more

appropriately characterized as one of de-risking and diversifying, not decoupling. Because the Chinese government continually intervenes in the market and actively seeks to advantage Chinese enterprises and disadvantage foreign enterprises, the United States is not in a position to rely on the good will of the Chinese state when it comes to supply chains, especially for critical minerals. Similarly, U.S. companies with operations in China are not able to have confidence that they will be treated fairly by the Chinese state, and they increasingly are re-evaluating the degree of their dependence on the China market.

Nevertheless, the United States still seeks to trade with China, just as the United States seeks to do with other countries. But the terms of competition must be fair. U.S. companies and workers need to be able to compete on a level playing field with Chinese companies and workers, whether in the U.S. market, China's market or other markets around the world.

For two-way trade to expand, both the United States and China need to be committed to it. But questions remain about China's commitment, as China itself appears to be pursuing a decoupling strategy – and not just from the United States.

China's "dual circulation" strategy, in place since 2020, touts the importance of China continuing to participate in international trade, while simultaneously seeking to become self-sufficient domestically. What this means in reality is that, for now, China will continue to export to the world (often at predatory prices), including the negative externalities from its industrial policies, and China will continue to welcome foreign companies operating in China and continue to import products needed by Chinese companies, especially in technology products. However, once Chinese companies are capable of displacing the foreign competition in any particular industry in the China market, the Chinese state will no longer welcome foreign companies and their products.

Another by-product of China's drive for domestic self-sufficiency, of course, is the non-market excess capacity that it inevitably creates, to the detriment of foreign producers and efficient investment around the world. Indeed, in 2022, China accounted for the largest global trade surplus in the history of the world, totaling $877.6 billion, which was more than three times the total for the country with the next largest global trade surplus, Russia.

Whatever term might best describe China's "dual circulation" strategy, it is plainly not a strategy ever envisioned by, or condoned by, the WTO membership. The autarky that this strategy envisions runs counter to the WTO's goal of developing an integrated, more viable and durable multilateral trading system. In other words, this strategy is best viewed as further evidence of China's broader intent to re-shape the international order and move the world away from rules-based engagement premised on market-based competition.

The United States, in contrast, remains committed to the WTO and the shared values upon which it is based, including openness, fair competition, non-discrimination, reciprocity and transparency as well as adherence to the rule of law. But serious challenges threaten those core values, most notably the challenge posed by the policies and practices that emanate from China's state-led, non-market – and predatory – approach to the economy and trade.

INTRODUCTION

In this report, we first provide a broad assessment of China's WTO membership to date. Next, we discuss past strategies that have been used, without success, in an attempt to address the many problems that China's state-led, non-market approach to the economy and trade creates for the United States and other WTO Members. We then describe the nature of the China challenge as it exists today and explain how the United States' trade policy is dealing with it. Lastly, we catalogue, on a topic-by-topic basis, the many specific trade concerns generated by China's outlier behavior.

ASSESSMENT OF CHINA'S WTO MEMBERSHIP

In assessing China's WTO membership below, we first recall the terms of China's accession to the WTO. As explained below, these terms included commitments to adhere to the rules and principles set forth in the WTO agreements as well as an unprecedented number of China-specific commitments intended to facilitate China's intended transition to a market economy. These terms also included an expectation that China would pursue an open and market-oriented approach to the economy and trade, like other WTO Members. After reviewing the terms of China's accession to the WTO, we then review China's record of compliance, which has been poor.

CHINA'S WTO ACCESSION

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).

To accede to the WTO, China agreed 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. Areas of principal concern to the United States and China's other trading partners, as evidenced by the accession negotiations, included core principles of the WTO, such as 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, sanitary and phytosanitary 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, China was allowed minimal transition periods, where it was considered necessary.

Through its membership in the WTO, China also became subject to the same expectations as other WTO Members, as set forth in the Marrakesh Declaration issued in April 1994 at the conclusion of the Uruguay Round negotiations. There, among other things, WTO Members expressly affirmed their view that the WTO Member economies would participate in the international trading system based on "open, market-oriented policies."

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 designed to address issues related to any injury that U.S. or other WTO Members' industries and workers might experience based on import surges or unfair trade practices, particularly during what was envisioned to be a time of transition for China from a non-market economy to a market economy. These mechanisms include: (1) a special textile safeguard mechanism (which expired on December 11, 2008, seven years after China's WTO accession); (2) a unique, China-specific safeguard mechanism allowing a WTO Member to take action against increasing Chinese imports that disrupt its market (which expired on December 11, 2013, 12 years after China's WTO accession); (3) an expression of the ability of WTO Members to use an antidumping methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product; and (4) an expression of the ability to use methodologies for identifying and measuring subsidy benefits to Chinese enterprises that are not based on terms and conditions prevailing in China.

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 eight years after China's accession. A final review, looking back over the first 10 years of China's WTO membership, took place in 2011.

EXPECTATIONS OF WTO MEMBERSHIP

For all WTO Members, the expectations of WTO membership are clearly set forth in the Marrakesh Declaration issued in April 1994 at the conclusion of the Uruguay Round negotiations. There, WTO Members expressly affirmed their view that the establishment of the WTO ushers in a "new era of global economic cooperation" that "reflect[s] the widespread desire to operate in a fairer and more open multilateral trading system." WTO Members

further made clear their determination that their economies would participate in the international trading system, based on both "open, market-oriented policies" and "the commitments set out in the Uruguay Round Agreements and Decisions."

As this language makes clear, it was not contemplated that any WTO Member would reject market-based policies in favor of a state-led trade regime. It also was not contemplated that any WTO Member would pursue mercantilist outcomes instead of policies promoting a fairer and more open multilateral trading system. Rather, it was expected that each WTO Member would pursue open, market-oriented policies. The pursuit of open, market-oriented policies means not only adhering to the agreed rules but also observing in good faith the fundamental principles that run throughout the many WTO agreements, which include non-discrimination, openness, reciprocity, fairness and transparency.

When China acceded to the WTO in 2001, it agreed to embrace the WTO's open, market-oriented approach and embed it in its trading system and institutions. Through China's commitments and representations, WTO Members understood that China intended to dismantle existing state-led, mercantilist policies and practices, and they expected China to continue on its then-existing path of economic reform and successfully complete a transformation to a market-oriented economy and trade regime.

China's protocol of accession to the WTO sets out China's obligations under the WTO agreements as well as numerous additional China-specific commitments made necessary because of the need for China to transform its approach to the economy and trade. China itself acknowledged "the evolving nature of its economy," and it confirmed that "a socialist market economy system was applied" in China. Similarly, WTO Members highlighted that "China was continuing the process of transition towards a full market economy." WTO Members noted, for example, that "the special features of China's economy, in its present state of reform, still created the potential for a certain level of trade-distorting subsidization."

For these reasons, it was agreed that special safeguard-like provisions would be included among the terms of China's protocol of accession as protective measures while China completed its transformation into a market economy. As noted above, for example, China's protocol of accession included a China-specific safeguard mechanism, special antidumping rules and special methodologies for identifying and measuring subsidy benefits. It also created a unique, 10-year review mechanism designed to monitor China's progress in implementing its many WTO commitments and to secure updated information on the use of industrial plans by China.

CHINA'S WTO COMPLIANCE RECORD

As has been catalogued in prior reports, China has a poor record when it comes to complying with WTO rules and observing the fundamental principles on which the WTO agreements are based – non-discrimination, openness, reciprocity, fairness and transparency. Too often, China flouts the rules to achieve industrial domination objectives. In addition, and of serious concern to the United States and other WTO Members, China has not made sufficient progress in transitioning toward a market economy. China continues to embrace a state-led, non-market and mercantilist approach to the economy and trade. This approach results in sophisticated and expansive policies and practices that often evade effective WTO disciplines and cause serious harm to markets, workers and industries in the United States and other WTO Members. At the same time, China has used the benefits of WTO membership – including its guarantee of open, non-discriminatory access to the markets of other WTO Members – to become the WTO's largest trader, while resisting calls for further liberalization of its trade regime by claiming to be a "developing" country.

ADOPTION OF MARKET-ORIENTED POLICIES

Since last year's report, our assessment of China's record in terms of transitioning to a market economy has not changed. More than two decades after its accession to the WTO, China has still not embraced open, market-oriented policies. The state remains in control of China's economy, and it heavily intervenes in the market to achieve anticompetitive industrial policy objectives. Indeed, the state's already sizable role continues to grow, not recede.

As we detailed in prior reports, China pursues a wide array of continually evolving interventionist policies and practices. It offers substantial government guidance, resources and regulatory support to domestic industries, including China's state-owned enterprises and numerous other domestic companies. At the same time, it also seeks to limit market access for imported goods and services and restrict the ability of foreign manufacturers and services suppliers to do business in China in various ways. The benefits that China's industries realize from these non-market policies and practices largely come at the expense of China's trading partners and their workers and companies, as markets all over the world are distorted, and the playing field is heavily skewed against foreign companies that seek to compete against Chinese companies, whether in China's market or markets outside of China.

This situation has worsened over the past decade. Since new leaders assumed power in China in 2013, the state's role in the economy – effectuated by the Chinese government and, increasingly, the CCP – has grown. While China has repeatedly signaled in recent years that it is pursuing "economic reform," China's concept of "economic reform" differs from the type of change that a country would be pursuing if it were embracing open, market-oriented policies. For China, "economic reform" appears to mean deepening the management of the economy by the government and the Party and strengthening state-owned and state-invested enterprises. Meanwhile, as the state's role in the economy has increased in recent years, the depth and breadth of challenges facing U.S. and other foreign companies doing business in China – or competing with favored Chinese companies in markets outside of China – have similarly increased.

To fully appreciate the challenges presented by China's non-market economy, it is vital to understand the extent to which the state still maintains control over economic decision-making in China. As we catalogued in prior reports, a thorough examination of China's Constitution, relevant directives and pronouncements by China's leadership, legislative and regulatory measures issued by the Chinese government, China's industrial plans and the actions of the Chinese government and the CCP leave no doubt that the state maintains a tight grip on virtually all economic activity. Indeed, the government and the Party have constitutional mandates to develop a "socialist market economy with Chinese characteristics." To fulfill these mandates, the framework of China's economy is set by the government and the Party, which exercise control directly and indirectly over the allocation of resources through instruments such as government ownership and control of key economic actors and innumerable government directives. The government and the Party also direct and channel economic actors to meet the state's planning targets. The government and the Party permit market forces to operate only to the extent that they accord with China's industrial policy objectives, which typically target industries for domination by Chinese companies. When there is conflict between market outcomes and the state's objectives, the government and the Party intervene to ensure that the state's objectives prevail.

Aside from the role of the government and the Party in managing the economy, there are also serious concerns over how the government and the Party exercise influence over the operations and investment decisions of state-owned and state-invested enterprises and private enterprises, including foreign-invested enterprises. This

influence continues to grow, as the Party is increasing its control over key actors in China's economy and not, as had been hoped, enabling China's transition to a market economy.

China claims that its state-owned and state-invested enterprises make business decisions independently of the state and based on market principles. However, the government and the Party continue to exercise control over state-owned and state-invested enterprises. Among other things, they appoint and control key executives through the Chinese Communist Party Organization Department. They also provide state-owned and state-invested enterprises with preferential access to important inputs (such as land and capital) and other competitive advantages unavailable to private Chinese companies. State-owned and state-invested enterprises, in turn, play an outsized role in China's economy. For example, state-owned and state-invested enterprises outstrip private Chinese companies in terms of their share of total credit, their market dominance in key industries and their share of total market capitalization on China's stock market.

Both state-owned and state-invested enterprises and private Chinese companies also host internal Party committees capable of exercising government and Party influence over their corporate governance and business decisions. This arrangement is codified in Chinese law under Article 19 of the *Company Law*, which applies to both state-owned and state-invested enterprises and private Chinese companies. In recent years, moreover, the Party has taken steps to increase the strength and presence of Party committees within all of these companies. For example, state-owned and state-invested enterprises and private Chinese companies are being pressured to amend their articles of association to ensure Party representation on their boards of directors, usually as the Chairman of the Board, and to ensure that important company decisions are made in consultation with Party cells.

Increasingly in recent years, China has also taken "golden shares" in large private Chinese companies. Under this type of arrangement, the Chinese government via a government guidance fund or other state-backed entity purchases a small stake in the company in exchange for a seat on the board of directors or veto rights. The result is stronger Chinese government oversight and control of the company's operations.

As we explained in prior reports, U.S. industry associations report that the Party is also taking steps to influence the managerial and investment decisions of foreign-invested enterprises in China through the insertion of Party cells. According to these reports, these efforts, in some cases, are beginning to affect the decision-making processes of some Chinese-foreign joint ventures in China.

Further reinforcing the Party's influence over enterprises in China is the *Social Credit System*, a tool endorsed by the Party that the government is increasingly using to monitor, rate and condition not only the conduct of all individuals in China, but also all domestic and foreign companies in China. This system has become operational, but so far there is no fully integrated national system for assigning comprehensive social credit scores for companies, and the social credit system remains highly fragmented, as local governments experiment with their own pilot social credit schemes. In any event, it appears that the government will use the threat of poor ratings and corresponding adverse consequences under the *Social Credit System*, among other things, to ensure that all economic actors in China operate in accordance with China's industrial policy objectives and do not cross political redlines on sensitive matters like human rights.

Separate from these various mechanisms used to control company behavior, the government and the Party continue to control or otherwise influence the prices of key factors of production. The result is that the means of production in China are not allocated

or priced according to market principles. For example, all land in China is property of the state, as either state-owned urban land or collectively owned rural land. The state also exerts a high degree of control over energy and other input prices. In addition, there are significant institutional constraints on the extent to which wage rates are determined through free bargaining between labor and management, contrary to International Labor Organization principles. China denies workers the right of association and the right to organize and collectively bargain. China prohibits the formation of independent trade unions to represent workers, and workers do not have the legal right to strike, which is an important lever in collective action and negotiation with management over wages in market economies. In addition, government restrictions on labor mobility continue to inhibit and guide labor flows, causing distortions on the supply side of the labor market.

The government and the Party also exercise strong control over the financial sector. Five large commercial banks that are majority state-owned entities operate large branch networks on a nationwide basis and account for nearly half of total commercial bank assets. There are also three large state-owned policy banks, as well as scores of city commercial banks and credit unions under local government control. In addition to the ownership of these banks by the government, the state exercises other forms of influence over banking decisions. The Party, through its Organization Department, appoints executives in state-owned banks and other state-owned financial institutions. China's central bank, the People's Bank of China (PBOC), also meets frequently with large banks in China to ensure that their lending decisions align with PBOC and government objectives. In addition, the *Law on Commercial Banks* provides that "commercial banks are to conduct their business of lending in accordance with the needs of national economic and social development and under the guidance of the industrial policies of the state."

Similarly, China's legal system continues to function as an instrument by which the government and the Party can secure discrete economic outcomes, channel broader economic policy and pursue the state's industrial policy objectives. Key legal institutions, such as the courts, are structured to respond to the Party's direction, both broadly and on a case-specific basis. As a general matter, to the extent that companies and individuals seek to act independently of government or Party direction, the legal system does not provide a venue for them to achieve these objectives on a systemic or consistent basis. In addition, companies and individuals continue to face challenges in obtaining impartial outcomes, either because of protectionism or corruption.

The larger issue of China's restrictions on the freedom of information also impacts China's economic system. For example, while China's Internet firewall and the Party's regular censorship of audio-visual and print media have many negative effects outside China's economic system, they also create distortions in China's economy, and these distortions affect the ability of foreign companies to operate and compete effectively in China's market.

In March 2021, China finalized and issued the *14th Five-Year Plan (2021-2025) for National Economic and Social Development*, which runs from 2021 through 2025. Like its predecessor, the *14th Five-year Plan* covers all sectors of China's economy and is not limited to one overarching plan, but instead will include hundreds of sub-plans. In this regard, various institutions participate in plan formulation and execution, including central government bodies with legislative and regulatory authority, thousands of provincial and local government authorities, various organs of the Party and key Chinese companies.

When compared to the industrial plans of other WTO Members, China's industrial plans are not merely more extensive. They are also fundamentally

different in kind. In several significant ways, China's industrial plans go well beyond traditional approaches to guiding and supporting domestic industries:

- First, adherence to the objectives of China's industrial plans is effectively mandatory. Chinese companies have little discretion to ignore them, even when market forces would dictate different commercial behavior.

- Second, the financial support that the state provides to domestic industries in pursuit of China's industrial plan objectives is massive, relentless and highly market-distorting. Indeed, this financial support is provided on a scale never before seen in the world, and much of it is not transparently provided. As previously noted, this financial support often leads to severe excess capacity in China – followed by China's widespread dumping of the inevitable excess production into the markets of other WTO Members, which not only depresses global prices but also distorts investment decisions by market actors in markets around the world. This assault on global markets causes serious harm to other WTO Members' industries, companies and workers, while the WTO does not provide effective mechanisms for addressing this problem.

- Third, China's industrial planning is more comprehensive and complex than in any other country, as it is made up of hundreds of plans across industries and at all levels of government.

- Fourth, in pursuit of its industrial plan objectives, China goes well beyond merely guiding or supporting the development of domestic industries as it actively seeks to impede, disadvantage and harm the foreign competition by skewing the playing field against imported goods and services and foreign manufacturers and services suppliers. Indeed, China actively targets entire industries for domination by Chinese companies, often by explicitly setting market share goals that it pursues through a wide array of non-market policies and practices. In other words, China's approach to industrial planning is fundamentally predatory in nature.

When combined with the large size of China's economy and China's large share of global trade, the policies and practices that China pursues in support of its industrial plans transform China into a unique and pressing challenge for the United States and other market economies as well as for the WTO and the multilateral trading system. Moreover, this troubling situation is not static. China continues to develop and implement new policies and practices to maintain and enhance the state's control over the economy and trade.

COMPLIANCE WITH WTO RULES

Since last year's report, our assessment of China's record in terms of complying with WTO rules and observing the fundamental principles on which the WTO agreements are based has not changed. China's record remains poor.

As we detailed in prior reports, China's economic and trade regime has generated many WTO compliance concerns over the years. Too often, WTO Members have had to resort to the WTO's dispute settlement mechanism to change problematic Chinese policies and practices. The United States, for example, has brought 27 cases against China at the WTO covering a wide range of important policies and practices, such as: (1) discriminatory requirements in the automobile sector; (2) discriminatory taxes in the integrated circuit sector; (3) hundreds of prohibited subsidies in a wide range of manufacturing sectors; (4) inadequate intellectual property rights enforcement in the copyright area; (5) significant market access barriers in copyright-intensive industries; (6) severe restrictions on foreign suppliers of financial information services; (7) export restraints on

numerous raw materials; (8) a denial of market access for foreign suppliers of electronic payment services; (9) repeated improper use of trade remedies; (10) excessive domestic support for key agricultural commodities; (11) the opaque and protectionist administration of tariff-rate quotas for key agricultural commodities; and (12) discriminatory regulations on technology licensing. Even though the United States prevailed in these WTO disputes, as other WTO Members have done in their disputes against China, they take years to litigate, consume significant resources and often require further efforts when China fails to comply with WTO rules.

In addition, China has often taken steps to obscure its actions to make it more difficult for trading partners to even challenge them in the WTO's adjudicative system. The WTO's dispute settlement mechanism was designed to facilitate the resolution of disagreements over whether an action breaches a WTO obligation, but where the action is so obscured that it is difficult to demonstrate it as a factual matter, the dispute settlement mechanism can fail to be an effective disciplinary tool. In this regard, as USTR has explained in prior reports, China disregards many of its WTO transparency obligations, which places its trading partners at a disadvantage and often serves as a cloak for China to conceal unfair, non-market and distortive trade policies and practices from scrutiny.

For example, during the first 15 years of its WTO membership, China failed to notify any sub-central government subsidies to the WTO, despite the fact that most subsidies in China are provided by provincial and local governments. The magnitude and significance of this problem is illustrated by the five WTO cases that the United States has brought challenging prohibited subsidies maintained by China. While those cases involved hundreds of subsidies, most of the subsidies were provided by sub-central governments. The United States was able to bring those cases only because of its own extensive investigatory efforts to uncover China's opaque subsidization practices. Most other WTO Members lack the resources to conduct the same types of investigations.

Despite these efforts, China continued to shield massive sub-central government subsidies from the scrutiny of other WTO Members, while in recent years also obscuring massive central government subsidies provided through a newer vehicle known as "government guidance funds." While China claims that these government guidance funds are wholly private, the facts plainly reveal that the funds are run by government agencies and state-owned enterprises and provide state capital to Chinese companies. Together with other complimentary non-market practices, the massive and relentless subsidization provided by China's central government and sub-central governments distorts global markets and contributes to the serious excess capacity problems that have been plaguing industries like steel, aluminum, solar panels and fishing and have been devastating foreign competitors. Similar results can be expected in other industries now being targeted by China for dominance.

In sum, the WTO's dispute settlement mechanism has not been effective in addressing the serious issues that arise from a WTO Member's state-led, non-market approach to the economy and trade that systematically disadvantages that Member's trading partners and broadly conflicts with the fundamental, market-oriented underpinnings of the WTO system. The value of the dispute settlement mechanism is also undermined where a WTO Member does not operate in good faith. As a result, over time, despite the enforcement efforts of the United States and other WTO Members, China was able to continue to pursue its predatory non-market policies and practices, which WTO rules and the dispute settlement mechanism have proven unable to discipline effectively.

PAST EFFORTS TO ADDRESS THE CHINA CHALLENGE

In the past, the United States has intensively pursued both WTO-focused strategies and strategies outside the WTO in an effort to address the unique challenge posed by China. Other WTO Members have also made similar efforts. Those strategies have been unsuccessful in securing fundamental changes in China's state-led, non-market approach to the economy and trade.

WTO-FOCUSED STRATEGIES

For many years following China's accession to the WTO, a variety of bilateral and multilateral efforts were pursued by the United States and other WTO Members to address the unique challenges presented by China's WTO membership. However, even though these efforts were persistent, they did not result in meaningful changes in China's state-led, non-market approach to the economy and trade.

The United States itself pursued a dual track approach in an effort to resolve the many concerns that arose in our trade relationship with China. One track involved using high-level bilateral dialogues, and the other track focused on enforcement at the WTO.

The United States approached its bilateral dialogues with China in good faith and put a great deal of effort into them. These dialogues were intended to push China toward complying with and internalizing WTO rules and principles and making necessary market-oriented changes. However, they only achieved isolated, incremental progress. At times, the United States did secure broad commitments from China for fundamental shifts in the direction of Chinese policies and practices, but China repeatedly failed to follow through on them. Moreover, over time, commitments from China became more difficult to secure.

Meanwhile, at the WTO, the United States brought 27 cases against China, often in collaboration with like-minded WTO Members. The United States secured victories in every one of its cases that was decided. Other WTO Members were also successful in many cases that they brought against China. Still, even when China changed the specific practices that had been challenged, it did not typically change the underlying policies, and meaningful reforms by China remained elusive.

As has become clear, the WTO's dispute settlement mechanism is of only limited value in addressing a situation where a WTO Member is dedicated to a state-led economic and trade regime that prevails over market forces. The WTO's dispute settlement mechanism is designed to address good faith disputes in which one Member believes that another Member has adopted a measure or taken an action that breaches a WTO obligation. This mechanism is not designed to address a trade regime that broadly conflicts with the fundamental underpinnings of the WTO system. No amount of WTO dispute settlement by other WTO Members would be sufficient to remedy this systemic problem. Indeed, many of the most harmful policies and practices being pursued by China are not even directly disciplined by WTO rules.

Overreaching by the WTO's Appellate Body in deciding WTO dispute settlement cases has also shielded China's non-market policies and practices from discipline and has affirmatively undermined the efforts of the United States and other WTO Members to protect our workers and businesses from the harmful impacts of China's predatory non-market economic system. The Appellate Body's erroneous substantive interpretations have undermined core values, such as the ability to protect workers and businesses from non-market economic harms, to promote democracy and human rights or to protect human health or the environment. At the same time, China has sought to use the WTO dispute settlement system to subject

U.S. national security measures to review, pursuing a strategy that would convert the WTO into a permanent venue for national security disagreements. As a result, the United States has been clear that fundamental reform is needed to ensure a well-functioning WTO dispute settlement system that supports WTO Members in the resolution of their disputes and in doing so limits the needless complexity and interpretive overreach seen in recent years. Among the objectives for reform, the United States has been clear that the dispute settlement system should preserve the policy space in WTO rules for WTO Members to address their critical societal interests and to support, rather than undermine, the WTO's role as a forum for discussion and negotiation. Most critically, fundamental reform must ensure that the WTO respects the essential security interests of WTO Members, including the United States.

Over the years, in addition to pursuing WTO dispute settlement cases, the United States has actively participated in meetings at the WTO addressing China's adherence to its WTO obligations. For example, the United States took on a leading role in the numerous China-specific Transitional Review Mechanism meetings from 2002 through 2011, which involved annual meetings of most WTO committees and councils. However, China consistently approached these meetings in ways that frustrated WTO Members' efforts to secure a meaningful assessment of China's compliance efforts. The United States also raised, as it continues to do, China-related issues at regular meetings of WTO committees and councils, including the WTO's General Council. Among other things, the United States sought to highlight how China's trade-disruptive economic model works, the costs that it exacts from other WTO Members and the benefits that China receives from it. While these efforts raised awareness among WTO Members, they did not lead to meaningful changes in China's approach to the economy and trade.

In theory, the WTO membership could have adopted new rules expressly requiring members like China to abandon non-market economic systems and state-led, mercantilist trade regimes. For two basic reasons, however, Members have not pursued any negotiation of new WTO rules that would change China's problematic approach to the economy and trade in a meaningful way.

First, new WTO rules disciplining China would require agreement among all WTO Members, including China. China has shown no willingness at the WTO to consider fundamental changes to its economic system or trade regime. Given the extent to which China has benefited and continues to benefit from the current state of affairs, it was not realistic to expect that China would agree to effective new WTO disciplines on its behavior. Indeed, China has been using its WTO membership to develop rapidly – albeit largely in an anticompetitive manner that comes at the expense of others. China is now the second largest economy in the world, and it is also the largest goods trader – and the largest exporter – among WTO Members. It is therefore highly unlikely that China would agree to new WTO disciplines targeted at its policies and practices. In fact, in connection with ongoing discussions at the WTO relating to needed WTO reform, China has stated that it would not alter its state-led, non-market approach to the economy and trade.

Second, China has a long record of not pursuing ambitious outcomes at the WTO. Past agreements, even relatively narrow ones, have been difficult to achieve, and even when an agreement is achieved, it is significantly less ambitious because of China's participation.

As these experiences make clear, it is unrealistic to believe that actions at the WTO alone will be sufficient to force or persuade China to make fundamental changes to its economic system or trade regime. The WTO's trading system was designed for countries that are truly committed to fair competition based on market principles, not for an economically powerful country determined to maintain a state-led, non-market approach to the

economy and trade, and China has demonstrated no willingness to change its approach in any meaningful way.

STRATEGIES OUTSIDE THE WTO

In recent years, it became evident to the United States that new strategies were needed to deal with the many problems generated by China's state-led, non-market approach to the economy and trade, including solutions independent of the WTO. For example, in August 2017, the United States launched an investigation into China's acts, policies and practices relating to technology transfer, intellectual property and innovation under Section 301 of the Trade Act of 1974. The findings made in this investigation in March 2018 led to, among other things, substantial U.S. tariffs on imports from China as well as corresponding retaliation by China. Against this backdrop of rising tensions, in January 2020, the two sides signed what is commonly referred to as the "Phase One Agreement." This Agreement included commitments from China to improve market access for the agriculture and financial services sectors, along with commitments relating to intellectual property and technology transfer and a commitment by China to increase its purchases of U.S. goods and services.

Many of the commitments in the Phase One Agreement reflected changes that China had already been planning or pursuing for its own benefit or that otherwise served China's interests, such as the changes involving intellectual property protection and the opening up of more financial services sectors. Other commitments to which China agreed reflected a political calculation, as evidenced by the attention paid to the agriculture sector in the Phase One Agreement and the novel commitments relating to China's purchases of U.S. goods and services ostensibly as a means to reduce the bilateral trade deficit.

Given these dynamics, and given China's interest in a more stable relationship with the United States, China followed through in implementing some provisions of the Phase One Agreement. At the same time, China has not yet implemented some of the more significant commitments that it made in the Phase One Agreement, such as commitments in the area of agricultural biotechnology and the required risk assessment that China is to conduct relating to the use of ractopamine in cattle and swine. Intellectual property is another area where China still must take a number of actions to implement its commitments. In addition, China fell far short of implementing its commitments to purchase U.S. goods and services in 2020 and 2021.

The reality is that this Agreement did not meaningfully address the more fundamental concerns that the United States has with China's state-led, non-market policies and practices and their harmful impact on the U.S. economy and U.S. workers and businesses. China's government continues to employ extensive industrial policies of a kind not found in market economies. It provides substantial government guidance, massive financial resources and favorable regulatory support to domestic industries across the economy, often in pursuit of specific targets for capacity and production levels and dominant market shares. In furtherance of its industrial policy objectives, China's government has also limited market access for imported goods and services and restricted the ability of foreign manufacturers and services suppliers to do business in China. It has also used various, often illicit, means to secure foreign intellectual property and technology to further its industrial policy objectives.

The principal beneficiaries of these non-market policies and practices are China's state-owned and state-invested enterprises and numerous nominally private domestic companies. The benefits that Chinese industries receive largely come at the expense of China's trading partners, including their workers, businesses and consumers. As a result, markets all over the world have faced distorted signals, and the playing field is heavily skewed

against foreign businesses that seek to compete against Chinese enterprises, whether in China, in the United States or globally.

The industrial policies that flow from China's predatory non-market economic system have systematically distorted critical sectors of the global economy such as steel, aluminum, solar and fisheries, devastating markets in the United States and other countries. At the same time, as is their design, China's industrial policies are increasingly responsible for displacing companies in new, emerging sectors of the global economy, as the Chinese government and the CCP powerfully intervene in these sectors on behalf of Chinese companies. Companies in economies disciplined by the market cannot effectively compete with both China's domestic companies and the Chinese state.

TODAY'S CHINA CHALLENGE

Like many other WTO Members, the United States expects, and seeks to ensure, that its trading partners' economic and trade regimes promote fair, market-oriented conditions for competition. Market orientation implies the freedom for enterprises and individuals to pursue their interests and goals on a level playing field. Indeed, in establishing the WTO, members agreed that "open, market-oriented policies" were at the foundation of the multilateral trading system.

In the case of China, more than two decades after its accession to the WTO, it has still not embraced a market-oriented approach to the economy and trade. Instead, unlike the market-oriented approaches found in the United States and other WTO Members, China continues to pursue a state-led, non-market approach to the economy and trade, which is decidedly predatory in nature. China heavily relies on market-distorting industrial plans covering virtually every sector of the economy, and these industrial plans are typically designed to provide substantial competitive advantages to Chinese enterprises and to impose substantial competitive disadvantages on competing foreign enterprises, as China seeks to secure dominant market shares for Chinese companies, both in China and globally.

Under China's approach, control and direction of all aspects of the economy is retained by the Chinese government and the CCP, facilitated by a reliance on rule *by* law rather than rule *of* law. The mere fact that decisions in the marketplace are often made based on the objectives of the state, rather than based on commercial considerations, distorts China's economy and, in turn, the global economy in ways that can damage and weaken the economies of China's trading partners. This damage is exacerbated by the overriding objective of the Chinese state's intervention in the market, which is to secure dominant positions for Chinese enterprises in numerous targeted industries. It is also exacerbated, of course, because China is the second largest economy in the world and the largest trader among WTO Members.

A host of harmful policies and practices currently emanate from China's predatory non-market economic and trade regime. Key examples include: numerous industrial plans that target specific industries for domination by Chinese enterprises; the placement of CCP officials in state-owned enterprises and private Chinese enterprises in order to control commercial decision making; massive and relentless subsidization of domestic industries (including financial support to and through state-owned enterprises and other state entities at multiple levels of government and a banking system dominated by state-owned banks favoring state-owned enterprises and targeted industries); discriminatory regulatory practices; investment and market access restrictions; import substitution; the creation and maintenance of persistent non-market excess capacity in industrial sectors; forced or pressured technology transfer; state-sponsored theft of intellectual property, trade secrets and confidential business information; state-directed acquisitions of foreign companies with valuable technologies; continued gaps in intellectual property

protection and enforcement; violations of internationally recognized labor rights (including forced labor); lax or unenforced environmental standards; increased adoption of unique Chinese national standards (including reportedly through the China Standards 2035 plan, which seeks to set the global standards for next-generation technologies); overly broad cybersecurity regulation designed to favor domestic companies; unwarranted data localization requirements and cross-border data transfer restrictions; the misuse of competition policy for industrial policy objectives; purposeful obfuscation of trade and economic policies, especially with regard to China's subsidization practices; and inadequate regulatory transparency.

As has become evident to the United States and China's other trading partners, one of the more problematic manifestations of China's predatory non-market economic and trade regime is the creation of non-market excess capacity – that is, capacity that would not have been created and would not persist if market forces were operating properly. In the past, China itself has acknowledged excess capacity in several industries, including steel, cement, electrolytic aluminum, flat glass and shipbuilding. Numerous other excess capacity industries have been identified by industry associations in the United States and other countries. Some of the Chinese industries most likely to inflict the disastrous consequences of severe excess capacity on the world in the future can be found in the *Made in China 2025* industrial plan. Through that plan, the Chinese government is seeking to create dominant Chinese companies in 10 broad sectors, including advanced information technology, robotics and automated machine tools, aircraft and aircraft components, maritime vessels and marine engineering equipment, advanced rail equipment, new energy vehicles, electrical generation and transmission equipment, agricultural machinery, new materials and pharmaceuticals and medical devices. By some estimates, the Chinese government is making available more than $500 billion of financial support to these sectors, often using large government guidance funds that China attempts to shield from scrutiny by claiming that they are wholly private. Based on the recent history of the steel and aluminum industries, China's non-market distortions in these newer sectors will likely result in oversupply, leading to loss of jobs and production in market economies and, in some cases, less choice, lower quality, less innovation and higher prices for consumers over time.

Another example of the harm that can be caused by China's predatory non-market economic and trade regime involves forced or pressured technology transfer. In USTR's Section 301 investigation into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation, USTR issued two extensive factual reports that detailed how the Chinese government uses foreign ownership restrictions, such as formal and informal joint venture requirements, to require or pressure technology transfer from U.S. companies to Chinese entities. The reports also explained how China imposes substantial restrictions on, and intervenes in, U.S. companies' investments and activities, including through restrictions on technology licensing terms. In addition, the reports analyzed how the Chinese government directs and unfairly facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese entities to obtain cutting-edge technologies and intellectual property and to generate large-scale technology transfer in industries deemed important by the state's industrial plans. Finally, the reports illustrated how the Chinese government has conducted or supported cyber intrusions into U.S. commercial networks, with the targets being intellectual property and sensitive commercial information held by U.S. firms. While these reports focused on the harm caused to U.S. interests, it is not a problem borne solely by the United States. As in the case of non-market excess capacity, China's unfair policies and practices relating to forced or pressured technology transfer also affect other WTO Members whose companies have developed or are developing advanced technologies.

Closely related to its pursuit of forced or pressured technology transfer, China also sponsors and engages in the theft of intellectual property rights, trade secrets and confidential business information for commercial use. As noted earlier in the report, intelligence and law enforcement officials from the Five Eyes countries – Australia, Canada, New Zealand, the United Kingdom and the United States – have publicly characterized the Chinese state's sponsorship and pursuit of this type of theft as being on a scale unprecedented in human history. In the United States alone, in 2023, there were approximately 2,000 active investigations into apparent Chinese theft covering a diverse array of U.S. industries, from aviation to biotechnology to robotics, among many others.

In addition to non-market excess capacity, forced or pressured technology transfer and state-sponsorship of the theft of intellectual property rights, trade secrets and confidential business information, China's predatory non-market economic and trade regime also causes serious harm to industries, companies and workers in the United States and other WTO Members in other ways. For example, Chinese companies use the artificial competitive advantages provided to them by the extensive interventionist policies and practices of the Chinese state to undersell their foreign competition, both in China and around the world. To some extent, the harm to foreign manufacturers is reflected in the very large number of antidumping and countervailing duty investigations that have been initiated against China by the investigating authorities of WTO Members. Since China joined the WTO in 2001, it has been the number one target for both antidumping and countervailing duty investigations. At the same time, many types of interventionist policies and practices are not capable of being addressed by antidumping and countervailing duty regimes, so the harm caused by China is only partially reflected in those antidumping and countervailing duty investigations.

In sum, China's approach to the economy and trade has not moved toward a stronger embrace of open, market-oriented principles and instead has seen a doubling-down on state capitalism "with Chinese characteristics." The state remains in control of China's economy, and it heavily intervenes in the market to achieve China's industrial policy objectives, which typically target industries for domination by Chinese companies. Along the way, the state subsidizes industries that would not otherwise form or thrive, directs activities that a private business would not choose to undertake and seeks access to foreign technologies often through nefarious ways, among many other problematic policies and practices.

The evidence is clear, moreover, that when a trading partner with China's size – China is the second largest economy in the world and the largest goods trader among WTO Members – routinely pursues these types of non-market policies and practices, the distortions that it creates impose substantial costs on its trading partners. The Chinese state's decisions in the marketplace are not driven by market factors, but their effects on markets push U.S. and international companies out of sectors, such as steel, aluminum, solar panels and fisheries. Once China's dominance is established, barriers to entry can lock-in China's dominance over the long term. As a result, markets all over the world are less fair and well-functioning than they should be, and the playing field is heavily skewed against U.S. and other foreign companies that seek to compete against Chinese companies, whether in China's market or markets outside of China.

In the United States, it is widely accepted that the existing WTO rules do not, and cannot, effectively discipline many of China's most harmful policies and practices. It is similarly evident to us that China has become quite adept at circumventing the existing rules, as well as the attempted enforcement of those rules, by obscuring state involvement in the economy in ways that the WTO rules did not anticipate at the time of their negotiation. These problems are exacerbated by China's long record of flouting the transparency obligations that it undertook when it joined the WTO. At the same

time, there is no expectation that China would agree to new WTO rules disciplining its problematic behavior. As a result, in the United States' view, while the WTO still has a significant role to play, enforcement of WTO rules has become less significant and solutions independent of the WTO are necessary, including solutions pursued through bilateral engagement and the use of domestic trade tools, to counter the harm caused by China's unfair and anticompetitive policies and practices.

In recent years, it has become apparent that the views of other WTO Members have also been evolving toward the United States' view regarding the limits of the WTO when it comes to addressing the China challenge. While the WTO remains a strong focus for the United States and many of the United States' trading partners, there is a growing awareness that it may be necessary to pursue solutions outside the WTO in order to avoid the severe harm that will likely continue to result from China's predatory non-market economic and trade regime. For example, some of the United States' trading partners are now exploring or adopting possible new domestic trade tools to address the challenges posed by China's state-led trade regime. These and other like-minded trading partners have also begun working with the United States — sometimes confidentially — in pursuit of new joint strategies to address China's harmful non-market policies and practices. Many of these same trading partners have also intensified their work on deterring and responding to China's increasing use of economic coercion, including through joint and coordinated strategies.

It is also noteworthy that, in recent years, many of China's trading partners have also become increasingly skeptical of China's rhetoric. For example, China often touts its strong commitment to win-win outcomes in international trade matters, but its actions plainly belie its words. Through state-led industrial plans like *Made in China 2025*, which targets 10 strategic emerging sectors, China pursues a zero-sum approach. It first seeks to develop and dominate its domestic markets. Once China develops, acquires or steals new technologies and Chinese enterprises become capable of producing the same quality products in those industries as the foreign competition, the state suppresses the foreign competition domestically and then supports Chinese enterprises as they "go out" and seek dominant positions in global markets. Countries with industries like steel, aluminum, solar panels and fisheries have experienced this reality, and they know that a new wave of severe and persistent non-market excess capacity can be expected in industries like those targeted by *Made in China 2025*, to the detriment of China's trading partners.

As China's economy grew over the years since its accession to the WTO, every country in the world has witnessed China become a regular user of economic coercion, directed not only against foreign companies but also increasingly foreign governments, including in democratic countries. Indeed, China no longer hesitates to take on foreign governments whose policies or practices are perceived to undermine either China's economic and trade interests or China's political interests. China's coercive economic measures in this context have taken a variety of forms, including, for example, import restrictions, export restrictions, restrictions on bilateral investment, regulatory actions, state-led and state-encouraged boycotts, and travel bans. Many countries have been directly subjected to this economic coercion. At the same time, one intended by-product of this economic coercion is broader in scope, as China seeks to create an environment that mutes international objections to China's non-market policies and practices, even when China blatantly flouts the WTO's rules-based international trading system.

Finally, it has also not gone unnoticed among China's trading partners — particularly the democratic market economies — that China's leadership appears confident in its state-led, non-market approach to the economy and trade and feels no need to conform to global norms. China's leadership also demonstrates confidence in its ability to quiet dissenting voices. Indeed, it has become increasingly

evident that China's leadership is seeking to establish new global norms that better reflect and support not only China's approach to the economy and trade but also China's governance model, providing a potentially attractive alternative for other authoritarian regimes around the world.

In sum, the reality confronting the United States and other WTO Members is not simply that China has chosen to pursue an economic and trade regime that conflicts in significant and harmful ways with the market-oriented approach endorsed by the WTO membership, to the detriment of our workers and businesses. China also does not hold the same core values as other WTO members, especially the democratic market economies. China plainly does not embrace our core values, which, like the fundamental principles of the WTO, include openness, fair competition, non-discrimination, reciprocity and transparency as well as adherence to the rule of law.

U.S. TRADE POLICY TOWARD CHINA

As a starting point, any U.S. trade policy toward China must account for current realities in the U.S.-China trade relationship and the many problems that China's state-led, non-market approach to the economy and trade creates for the United States and other trading partners, both now and likely in the future. Given that China's problematic approach has evolved and become more sophisticated, our strategies also need to evolve and become more sophisticated. We also need to find ways to address — and to protect ourselves against — the many non-market policies and practices routinely generated by China's state-led, non-market approach to the economy and trade. Those policies and practices directly harm American workers, farmers, businesses and consumers, threaten our technological edge, weaken the resiliency of our supply chains and undermine our national interest. They also inflict similar harms on many of our trading partners.

Given these circumstances, it is clear that any strategic approach pursued by the United States must focus not only on the near-term, but also on the longer term, if the United States is to compete effectively with China and build resilience against the harms caused by China's predatory behavior. Any strategic approach should also be pursued in coordination with our many important, like-minded trading partners around the world.

Looking back over the first 22 years of China's WTO membership, and observing China's current leadership and clear policy direction, it would be appropriate to assume that the problems currently created by China will be with us for some time. We cannot expect that China will willingly make fundamental changes to its state-led, non-market approach to the economy and trade in the near-term or even the medium-term.

It is also clear that effective strategies for dealing with China need to be flexible. The United States must be prepared to adapt and adjust its strategic approach over time as China's non-market policies and practices evolve and as global trade patterns shift and alliances and interests change.

For all of these reasons, the United States is now pursuing a multi-faceted strategic approach as it seeks to address the China challenge. This approach involves the pursuit of strategic domestic investment, bilateral engagement of China, enforcement actions, the deployment of domestic trade tools and close coordination with allies and partners.

DOMESTIC INVESTMENT

The United States has been working to ensure that we are taking the steps domestically to invest in, and build policies supportive of, the industries of today and tomorrow. We therefore have been working to strengthen our economy, our supply chains, our infrastructure, our workers, our farmers and our

businesses and to lay a solid foundation for us to continue to innovate and maintain our technological edge. Important steps taken to date include the passage of the CHIPS and Science Act, the Inflation Reduction Act and the Infrastructure Investment and Jobs Act, as well as the many subsequent efforts to implement those Acts.

BILATERAL ENGAGEMENT

The United States continues to pursue bilateral engagement with China. China is an important trading partner, and every avenue for obtaining real change in its approach to the economy and trade must be utilized.

The United States' focus is on addressing the most fundamental problems emanating from China's state-led, non-market approach to the economy and trade, rather than seeking isolated, incremental changes in China's trade policies and practices. Of particular concern are China's industrial plans, which target specific industries for dominance and are pursued through a wide array of non-market policies and practices, such as discriminatory regulation, forced or pressured technology transfer, state-sponsored theft of intellectual property, the non-market activities of state-owned and state-invested enterprises, massive, unrelenting and often non-transparent subsidization, market access restrictions and repression of internationally recognized labor rights, including the use of forced labor, among other harmful policies and practices. China's increasing use of economic coercion is another significant concern.

At the same time, it is clear that prior U.S. efforts have not led to fundamental changes in China's approach to the economy and trade. Ultimately, it will be up to China to decide whether and to what extent it is willing to work constructively with the United States to address these significant concerns.

ENFORCEMENT

It is important for the bilateral relationship to demonstrate that China must honor its promises. We therefore have been working to ensure that China lives up to its existing trade commitments, including its WTO commitments and the ones that China made in the Phase One Agreement.

DOMESTIC TRADE TOOLS

The use of domestic trade tools is also a key focus of U.S. trade policy toward China. To the extent that China's unfair, non-market and distortive policies and practices persist, the United States is prepared to use domestic trade tools strategically as needed in order to achieve a more level playing field with China for U.S. workers and businesses.

It is also apparent that existing trade tools need to be strengthened, and new trade tools need to be forged. China pursues unfair policies and practices that were not contemplated when many of the U.S. trade statutes were drafted decades ago, and we are therefore exploring ways in which to work with the Congress to update our trade tools to counter them.

In one significant action to date, as previously discussed, USTR pursued an investigation under the authority of Section 301 of the Trade Act of 1974 into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation. In March 2018, after a thorough review and analysis of the evidence, USTR issued a detailed report, finding that China had engaged in a range of unfair and harmful conduct:

- First, USTR found that China uses foreign ownership restrictions, including joint venture requirements, equity limitations and other investment restrictions, to require or pressure

technology transfer from U.S. companies to Chinese entities. USTR also found that China uses administrative review and licensing procedures to require or pressure technology transfer, which, *inter alia*, undermines the value of U.S. investments and technology and weakens the global competitiveness of U.S. companies.

- Second, USTR found that China imposes substantial restrictions on, and intervenes in, U.S. companies' investments and activities, including through restrictions on technology licensing terms. These restrictions deprive U.S. technology owners of the ability to bargain and set market-based terms for technology transfer. As a result, U.S. companies seeking to license technologies must do so on terms that unfairly favor Chinese recipients.

- Third, USTR found that China directs and facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and to generate large-scale technology transfer in industries deemed important by Chinese government industrial plans.

- Fourth, USTR found that China conducts and supports unauthorized intrusions into, and theft from, the computer networks of U.S. companies. These actions provide the Chinese government with unauthorized access to intellectual property, trade secrets and confidential business information, such as technical data, negotiating positions and sensitive and proprietary internal business communications. The purpose of these actions is to support China's strategic development goals, including its science and technology advancement, military modernization and economic development.

Based on these findings, the United States took a range of responsive actions. These actions included the successful prosecution of a WTO dispute settlement case challenging Chinese measures that deny foreign patent holders the ability to enforce their patent rights against a Chinese joint venture partner after a technology transfer contract ends and that impose mandatory adverse contract terms that discriminate against and are less favorable for imported foreign technology as compared to Chinese technology, as well as the imposition of substantial additional tariffs on imports of Chinese goods. Over time, as has been previously reported, these tariffs eventually covered $370 billion of Chinese imports, with additional tariffs of 25 percent on $250 billion of Chinese imports and additional tariffs of 15 percent on a further $120 billion of Chinese imports, while China responded through the imposition of retaliatory tariffs on various imports of U.S. goods.

In December 2019, after one year of negotiations, the United States announced that the two sides had finalized the text of an economic and trade agreement, which was later signed in January 2020. This agreement, commonly referred to as the "Phase One Agreement," included commitments from China on intellectual property, technology transfer, agriculture, financial services, currency and foreign exchange, and the purchase of U.S. goods and services. The commitments varied in ambition, and in effectiveness. For example, some commitments related to financial services reflected reforms that China was already contemplating or pursuing, as China had begun easing foreign investment restrictions in some financial services sectors in 2017. In addition, in the area of intellectual property rights, while China committed to make a number of changes to its laws and regulations, China saw many of these changes as now needed by its domestic businesses, given their own increasing efforts at innovation. It also remains unclear how faithfully and fairly China will actually enforce the changes to its laws and regulations. Meanwhile, other

commitments that China made, such as in the area of technology transfer, are difficult to verify given the tactics that China takes to obscure its activities.

Notably, the Phase One Agreement did not address many of the U.S. concerns that the United States had been seeking to address in its negotiations with China. The unresolved issues included critical concerns in areas such as industrial plans, subsidies, state-owned enterprises, excess capacity, state-sponsored theft of intellectual property, standards, cybersecurity, data localization requirements, restrictions on cross-border data transfers, competition law enforcement and regulatory transparency as well as certain issues in the areas of intellectual property, technology transfer and services market access that were not addressed in the Phase One Agreement.

In light of the limited progress represented by the Phase One Agreement, the United States did not make major changes to the existing Section 301 tariffs. After some minor adjustments, the United States kept in place tariffs on $370 billion of Chinese imports, which included 25 percent tariffs on $250 billion of Chinese imports and 7.5 percent tariffs on $120 billion of Chinese imports. The United States also decided not to move forward with plans to raise the tariff rate for some of the existing Section 301 tariffs or to impose new tariffs on additional Chinese imports.

Since the Phase One Agreement entered into force in February 2020, the United States has been closely monitoring China's progress in implementing its commitments. The United States has also been utilizing the consultation arrangements set forth in the agreement, including regular meetings required by the agreement between the two sides. Through these many engagements, the United States has raised various concerns that have arisen regarding China's implementation progress. In addition, official trade data appears to show that China fell far short of implementing its commitments to purchase U.S. goods and services in calendar years 2020 and 2021. Serious concerns with China's implementation efforts have also arisen in other areas, including intellectual property rights, where the implementation of several commitments has been proceeding slowly, and agriculture, particularly with regard to China's commitments relating to agricultural biotechnology, the risk assessment that China is required to conduct relating to the use of ractopamine in cattle and swine, the registration of U.S. food facilities and trade in U.S. poultry products.

In 2024, USTR expects to complete a statutorily mandated four-year review of the tariffs that had been imposed on Chinese imports as a result of the Section 301 investigation into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation. As part of this review, USTR is examining the effectiveness of the tariff actions in achieving the objectives of the original investigation, other actions that could be taken and the effects of those actions on the United States economy, including consumers.

ALLIES AND PARTNERS

Despite the size of the U.S. economy, the United States cannot do it alone. There are limits to bilateral engagement and the impact of enforcement actions and domestic trade tools. That is why the United States is working more intensely and broadly with allies and partners. Just as we are reassessing our domestic trade tools, we are also re-thinking how the United States can coordinate with its trading partners to address the challenges that China poses for the global economy.

As more and more U.S. allies and partners come to understand the need for new approaches for dealing with China and its non-market policies and practices, the United States is working more intensely and broadly with them, both in existing international trade fora and initiatives and in new ones. The COVID-19 pandemic, followed by Russia's full-scale invasion of Ukraine, and their impacts on supply chains and global economic conditions, have laid bare the vulnerabilities and interdependencies of

economies around the world and have underscored the need to build up economic security and resiliency across sectors. The concentration of supply chains in China is a particular problem, especially in light of the many serious risks and potential harms that emanate from China's state-led, non-market approach to the economy and trade. There is a strong need for new thinking and new coalitions of allies and partners, including not only on a bilateral basis — especially with major trading partners — but also regionally and multilaterally, to find global solutions to the many serious problems posed by China's state-led, non-market approach to the economy and trade.

For example, the United States and the European Union (EU) have established a Trade and Technology Council, and the United States and Japan have established a Partnership for Trade. In both venues, one important component of the engagement focuses on better understanding and developing strategies for addressing non-market policies and practices.

Notably, as a result of meetings of the Trade and Technology Council, the United States and the EU have been discussing and exploring possible coordinated actions to address China's non-market policies and practices in the medical devices sector and in the clean energy sector. The two sides have also been exchanging information on China's extensive use of government guidance funds, which provide large amounts of financial support to Chinese companies, and on non-market excess capacity in the legacy semiconductor chips sector. In addition, the two sides have expressed serious concerns regarding China's use of economic coercion, including against allies and partners of the United States and the EU, and resolved to cooperate on strategies for addressing this problem.

Separately, in 2022, the United States and the EU held the first Ministerial Meeting of the Working Group on Large Civil Aircraft. Since then, the two sides have met regularly at the working level to explore strategies for confronting the challenges posed by China's non-market policies and practices in the aviation sector.

Over the past two years, the United States, the EU and Japan have also begun to deepen their trilateral work, focusing on the identification of problems arising from non-market policies and practices, including in sectors such as legacy semiconductor chips. The three trading partners have also sought to identify gaps in existing trade tools and where further work is needed to develop new trade tools to address non-market policies and practices, as well as possible cooperation in utilizing existing tools. The three trading partners have also highlighted the importance of WTO reform in an effort to build a free and fair rules-based multilateral trading system that benefits all its members and helps secure shared prosperity for all.

The United States is also holding discussions with many other like-minded trading partners, including in the Indo-Pacific region, on how to strengthen our existing trade relationships. Given that trade with China poses so many serious risks and potential harms, the United States believes that market economies should enhance their trade with each other.

As part of its discussions with like-minded trading partners, the United States is also working to make critical supply chains less vulnerable and more secure, sustainable and resilient. The United States recognizes the need to cooperate with trading partners to diversify international suppliers and reduce geographic concentration risk, especially in China, and to address vulnerabilities that can result in shortages of key goods. This joint work can also enable more effective responses to non-market policies and practices that have eroded critical supply chains. Reducing geographic concentration also reduces opportunities for economic coercion while contributing to a more stable and secure trading environment.

At the same time, the United States is continuing to pursue initiatives at the WTO. For example, the U.S.

agenda at the WTO includes pushing for and building support for meaningful WTO reforms to update the organization and respond to contemporary challenges, including those posed by China's state-led, non-market approach to the economy and trade. One U.S. proposal relates to "special and differential treatment," where certain WTO Members rely on self-declared developing country status to inappropriately seek "special and differential treatment" to avoid making meaningful commitments in WTO negotiations. The United States has also offered, and will continue to pursue, a proposal intended to increase consequences for WTO Members who fail to adequately notify industrial subsidies. More recently, in connection with the WTO's upcoming 13th Ministerial Conference, the United States has been advocating for the establishment of a work stream broadly focused on state intervention, including an analysis of gaps in existing WTO rules to discipline it.

Similar work is taking place in fora such as the Group of Seven (G7), the Group of Twenty (G20) and the Organization for Economic Cooperation and Development (OECD). For example, at the G7 Leaders Meeting, held in June 2022, the United States and the other members of the G7 discussed the challenges that China's non-market policies and practices pose to the multilateral trading system. They determined to continue to build a shared understanding of this problem and to consult on collective approaches for addressing it. They also specifically committed to work together to develop coordinated actions to ensure a level playing field, to counter economic coercion and to reduce strategic dependencies. Subsequently, in May 2023, the G7 Leaders decided to launch the Coordination Platform on Economic Coercion. In addition, in October 2023, the G7 trade ministers issued a statement reaffirming their shared concerns regarding a wide and evolving range of non-market policies and practices, particularly when they are an integral part of comprehensive strategies to pursue global market dominance. The statement also highlighted the fact that non-market policies and practices distort competition and lead to unfair trade and have a particularly negative impact on industrial development in emerging and developing economies.

SPECIFIC TRADE CONCERNS

At present, China pursues numerous unfair, non-market and distortive policies and practices that cause particular concern for the United States and U.S. stakeholders. The key concerns are summarized below.

INDUSTRIAL PLANS

China continues to pursue an extensive number of industrial plans and supporting policies and practices that target industries for domination by Chinese companies, both in China and globally. Pursuant to these industrial plans, the Chinese state offers substantial government guidance, resources and regulatory support to Chinese companies while actively seeking to limit market access for imported goods, foreign manufacturers and foreign services suppliers. The beneficiaries of these non-market policies and practices, which are constantly evolving, include not only China's state-owned enterprises but also other domestic Chinese companies.

One of the more far-reaching and harmful industrial plans is *Made in China 2025*. China's State Council released this industrial plan in May 2015. It is a 10-year plan targeting 10 strategic sectors, including advanced information technology, automated machine tools and robotics, aviation and spaceflight equipment, maritime engineering equipment and high-tech vessels, advanced rail transit equipment, new energy vehicles (NEVs), power equipment, farm machinery, new materials, biopharmaceuticals and advanced medical device products. While purportedly intended simply to raise industrial productivity through more advanced and flexible manufacturing techniques, *Made in China 2025* is emblematic of China's evolving and increasingly

sophisticated approach to "indigenous innovation," which is evident in numerous supporting and related industrial plans. Under China's harmful and anticompetitive approach to indigenous innovation, the common, overriding aim is to replace foreign technologies, products and services with Chinese technologies, products and services in the China market through any means possible so as to enable Chinese companies to dominate international markets.

Made in China 2025, which represents the first 10 years of a 30-year strategy known as the "Strong Manufacturing Nation Strategy," seeks to build up Chinese companies in the 10 targeted, strategic sectors at the expense of, and to the detriment of, foreign companies and their technologies, products and services through a multi-step process over 10 years. The initial objective of *Made in China 2025* is to ensure, through various means, that Chinese companies develop, extract or acquire their own "indigenous" technology, intellectual property and know-how and their own brands. The next objective of *Made in China 2025* is to substitute domestic technologies, products and services for foreign technologies, products and services in the China market. The final objective of *Made in China 2025* is to capture much larger worldwide market shares in the 10 targeted, strategic sectors.

In pursuit of these objectives, subsequently released documents set specific targets for capacity and production levels and market shares for the dozens of industries that comprise the 10 broad sectors targeted in *Made in China 2025*. In October 2015, China's National Manufacturing Strategic Advisory Committee published the *Made in China 2025 Key Area Technology Roadmap*, and since then it has published two updated editions of this document. The first update took place in February 2018, with the issuance of the *Made in China 2025 Key Area Technology and Innovation Greenbook – Technology Roadmap (2017)*. Like its predecessor, the updated document sets explicit market share and other targets to be attained by Chinese companies in dozens of high-technology industries, often both in the China market and globally. For example, it calls for "indigenous new energy vehicle annual production" to have a "supplying capacity that can satisfy more than 80 percent of the market" in China by 2020, up from a 70 percent target set in the 2015 document. In November 2020, the 2017 document was updated with the issuance of the *Made in China Key Area Technology Innovation Greenbook – Technology Roadmap (2019)*.

Many of the policy tools being used by the Chinese government to achieve the objectives of *Made in China 2025* raise serious concerns. Several of these tools are unprecedented and include numerous types of state intervention and support that work in concert with one another and are designed to promote the development of Chinese industry in large part by restricting, taking advantage of, discriminating against or otherwise creating disadvantages for foreign enterprises and their technologies, products and services. Indeed, even facially neutral measures can be applied in favor of domestic enterprises, as past experience has shown, especially at sub-central levels of government.

Made in China 2025 also differs from industry support pursued by other WTO Members in its level of ambition and, perhaps more importantly, in the scale and type of resources that the government is investing in the pursuit of its industrial plan goals. Indeed, by some estimates, the Chinese government is making available more than $500 billion of financial support to the *Made in China 2025* sectors, often using, among many other vehicles, large government guidance funds, which China attempts to shield from scrutiny by claiming that they are wholly private. Even if China fails to fully achieve the objectives set forth in *Made in China 2025*, it is still likely to create or exacerbate market distortions, create severe excess capacity in many of the targeted sectors and distort investment decisions by foreign companies. It is also likely to do long-lasting damage to U.S. interests, as well as the interests of the United States' allies and partners, as China-backed companies increase their market share at the expense of foreign companies operating in these

sectors. Developing countries are especially at risk of severe harm from industrial plans like *Made in China 2025*.

While public references to *Made in China 2025* subsided after June 2018 reportedly in response to an order from the central government, it is clear that China remains committed to achieving the underlying goals of *Made in China 2025* and continues to seek dominance for Chinese firms in the sectors that it views as strategic, both in China's market and globally. For example, in September 2020, the central government issued a guiding opinion encouraging investment in "strategic emerging industries," a term used to describe an earlier initiative from which *Made in China 2025* evolved. Among other things, the guiding opinion called for the support and creation of industrial clusters for strategic emerging industries, along with the use of various types of government support and funding. The guiding opinion specifically encouraged provincial and local governments to support industries such as advanced information technology, NEVs and biopharmaceuticals. More recently, the October 2022 Report to the 20th Party Congress also underscored the continuing importance of China's industrial policy objectives, calling for efforts to promote the development of strategic emerging industries and to "cultivate new growth engines such as next-generation information technology, artificial intelligence, biotechnology, new energy, new materials, high-end equipment and green industry."

In March 2021, the National People's Congress passed the *14th Five-Year Plan (2021-2025) for National Economic and Social Development* (the *14th Five-Year Plan*), together with a document titled *Long-Range Objectives Through Year 2035*. The *14th Five-Year Plan* and subsequently issued sector-specific five-year plans, along with five-year plans issued by sub-central governments, make clear that China will continue to pursue its various industrial domination objectives. While industrial plans like *Made in China 2025* were not named in the *14th Five-Year Plan*, there continues to be overlap between the industries identified in China's five-year plans with both *Made in China 2025* industries and strategic emerging industries. More recent plans, including those issued at the sub-central level of government, also make clear that the state will continue to support these key industries. In addition, other longer-ranging plans, such as the *New Energy Vehicle Industry Development Plan (2021-2035)* and *China Standards 2035*, reaffirm China's strong commitment to a state-led, non-market approach to the economy and trade.

STATE-OWNED ENTERPRISES

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 certain specified 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 directly or indirectly influence the commercial decisions of state-owned and state-invested enterprises. In addition, China agreed that enterprises of other WTO Members would have an adequate opportunity to compete for sales to and purchases from state-owned and invested enterprises on non-discriminatory terms and conditions.

In subsequent bilateral dialogues with the United States, China made further commitments. In particular, China committed to develop a market environment of fair competition for enterprises of all kinds of ownership and to provide them with non-discriminatory treatment in terms of credit provision, taxation incentives and regulatory policies.

However, instead of adopting measures giving effect to its commitments, China took steps intended to strengthen the role of state-owned and state-invested enterprises in the economy and to protect them against foreign competition. China established the State-owned Asset Supervision and Administration Commission (SASAC) and adopted the *Law on State-owned Assets of Enterprises* in addition to numerous other measures that mandate state ownership and control of many important industrial sectors. The CCP also ensured itself a decisive role in state-owned and state-invested enterprises' major business decisions, personnel changes, project arrangements and movement of funds. The fundamental premise of these measures was to enable the government and the Party to intervene in the business strategies, management and investments of these enterprises in order to ensure that they play a dominant role in the national economy in line with the overall objective of developing China's "socialist market economy" and China's plans for industrial domination. Over the past few years, Party leadership in state-owned and state-invested enterprises has been strengthened through practices such as appointing a person as both the chairman of the board and the Party secretary for a state-owned enterprise and requiring the establishment of party committees in state-owned enterprises.

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.

In its 2013 *Third Plenum Decision,* China 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 and state-invested enterprises.

However, rather than actually embrace the role of the market, China sought to strengthen the role of the state in the economy. Statements by China's President also made clear that China continues to view the role of the state very differently from the United States and other market economies. In October 2016, he called for strengthening the role of the CCP in state-owned enterprises and emphasized that state-owned enterprises should be "important forces" to implement national strategies and enhance national power. In February 2019, in an article in a CCP journal, China's President further called for the strengthening of the Party's "leadership over the rule of law," and he vowed that China "must never copy the models or practices of other countries" and "we must never follow the path of Western 'constitutionalism,' 'separation of powers' or 'judicial independence.'"

With regard to the reform of China's state-owned enterprises, one example of China's efforts included an announcement that China would classify these enterprises into commercial, strategic or public interest categories and require commercial state-owned and state-invested enterprises to garner reasonable returns on capital. However, this plan also allowed for divergence from commercially driven results to meet broadly construed national security interests, including energy and resource interests and cyber and information security interests. Similarly, in recent years, China has pursued reforms through efforts to realize "mixed ownership." These efforts included pressuring private companies to invest in, or merge with, state-owned and state-invested enterprises as a way to inject innovative practices into and create new opportunities for inefficient state-owned and state-invested enterprises. As should be evident, these various reforms do not strengthen the role of the market. Rather, they are intended to strengthen the role of state-owned enterprises in the economy and to direct state capital toward certain industries,

including those specified in *Made in China 2025*, in pursuit of China's industrial domination objectives.

China has also previously indicated that it would consider adopting the principle of "competitive neutrality" for state-owned enterprises. However, China has continued to pursue policies that further enshrine the dominant role of the state and its industrial plans when it comes to the operation of state-owned and state-invested enterprises. For example, China has adopted rules ensuring that the government continues to have full authority over how state-owned and state-invested enterprises use allocations of state capital and over the projects that state-owned enterprises pursue.

Overall, while China's efforts at times have appeared to signal a high-level determination to accelerate needed economic reforms, those reforms have not materialized. Indeed, the Chinese state's role in the economy has increased rather than decreased. It also seems clear that China's past policy initiatives were not designed to reduce the presence of state-owned and state-invested enterprises in China's economy or to force them to compete on the same terms as private commercial operators. Rather, the reform objectives were to strengthen state-owned and state-invested enterprises through consolidation, increased access to state capital, preferential access to goods and services and the use of other non-market policies and practices designed to give these enterprises unfair competitive advantages, both in China and globally.

This unfair situation is made worse for foreign companies. Like China's state-owned and state-invested enterprises, China's private companies also benefit from a wide array of state intervention and support designed to promote the development of China's domestic industries in accordance with China's industrial domination objectives. These interventions and support are deployed in concert with other non-market policies and practices that restrict, take advantage of, discriminate against or otherwise create disadvantages for foreign companies and their technologies, products and services.

TECHNOLOGY TRANSFER

For years, longstanding and serious U.S. concerns regarding forced or pressured technology transfer remained unresolved, despite repeated, high-level bilateral commitments by China to remove or no longer pursue problematic policies and practices. In August 2017, USTR sought to address these concerns by initiating an investigation under Section 301 focused on policies and practices of the Government of China related to technology transfer, intellectual property and innovation. Specifically, in its initiation notice, USTR identified four categories of reported Chinese government conduct that would be the subject of its inquiry: (1) the use of a variety of tools to require or pressure the transfer of technologies and intellectual property to Chinese companies; (2) depriving U.S. companies of the ability to set market-based terms in technology licensing negotiations with Chinese companies; (3) intervention in markets by directing or unfairly facilitating the acquisition of U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property; and (4) conducting or supporting cyber-enabled theft and unauthorized intrusions into U.S. commercial computer networks for commercial gains. In March 2018, USTR issued a report supporting findings that the four categories of acts, policies and practices covered in the investigation are unreasonable or discriminatory and burden and/or restrict U.S. commerce. In November 2018, USTR issued an updated report that found that China had not taken any steps to change its problematic policies and practices. Based on the findings in USTR's Section 301 investigation, the United States took a range of responsive actions, including the pursuit of a successful WTO case challenging certain discriminatory technology licensing measures maintained by China in addition to the imposition of substantial additional tariffs on Chinese imports.

The Phase One Agreement, signed in January 2020, addresses certain aspects of the unfair trade practices of China that were identified in USTR's Section 301 report. In the agreement, China committed to end its longstanding practice of forcing or pressuring foreign companies to transfer their technology to Chinese companies as a condition for obtaining market access, securing administrative approvals or receiving advantages from the Chinese government. China also committed to provide transparency, fairness and due process in administrative proceedings and to ensure that technology transfer and licensing take place on market terms that are voluntary and reflect mutual agreement. Separately, China committed to refrain from directing or supporting outbound investments aimed at acquiring foreign technology pursuant to its distortive industrial plans.

Since the entry into force of the Phase One Agreement in February 2020, the United States has continually engaged with the U.S. business community, which has expressed concern about China's informal, unwritten actions that force or pressure U.S. companies to transfer their technology to Chinese entities, including as a condition for obtaining market access. The United States has engaged China as issues arise and will continue to monitor developments closely.

In 2024, USTR expects to complete a statutorily mandated four-year review of the tariffs that had been imposed on Chinese imports as a result of the Section 301 investigation into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation. As part of this review, USTR is examining the effectiveness of the tariff actions in achieving the objectives of the original investigation, other actions that could be taken and the effects of those actions on the United States economy, including consumers.

INDIGENOUS INNOVATION

Policies aimed at promoting China's so-called "indigenous innovation" continue to represent an important component of China's industrialization efforts. Through intensive, high-level bilateral engagement with China since 2009, the United States has attempted to address these policies, which provide various preferences when intellectual property is owned or developed in China, both broadly across sectors of China's economy and specifically in the government procurement context. For example, at the May 2012 meeting of the U.S.-China Strategic and Economic Dialogue (S&ED), China committed to treat intellectual property owned or developed in other countries the same as intellectual property owned or developed in China. The United States also used the U.S.-China Joint Commission on Commerce and Trade (JCCT) process in 2012 and subsequent discussions to press China to revise or eliminate specific measures that appeared to be inconsistent with this commitment. At the December 2014 JCCT meeting, China clarified and underscored that it will treat intellectual property owned or developed in other countries in the same manner as domestically owned or developed intellectual property. Once again, however, these commitments were not fulfilled. China continues to pursue myriad policies that require or favor the ownership or development of intellectual property in China.

The United States secured a series of similar commitments from China in the government procurement context, where China agreed to de-link indigenous innovation policies at all levels of the Chinese government from government procurement preferences, including through the issuance of a State Council measure mandating that provincial and local governments eliminate any remaining linkages by December 2011. Many years later, however, this promise had not been fulfilled. At the November 2016 JCCT meeting, in response to U.S. concerns regarding the continued issuance of scores of inconsistent measures, China announced that its State Council had issued a document requiring all agencies and all sub-central governments to "further clean up related measures linking indigenous innovation policy to the provision of government procurement preference."

Over the years, the underlying thrust of China's indigenous innovation policies has remained unchanged, as China's leadership has continued to emphasize the necessity of advancing indigenous innovation capabilities. Through plans such as the *14th Five-Year Plan for the Protection and Utilization of National Intellectual Property Rights*, China has continued to implement discriminatory policies encouraging "indigenous intellectual property rights" and "core technologies" that are owned or developed in China. Accordingly, USTR has been using mechanisms like a Section 301 investigation to seek to address, among other things, China's use of indigenous innovation policies to force or pressure foreigners to own or develop their intellectual property in China.

SUBSIDIZATION

INDUSTRIAL SUBSIDIES

China continues to provide massive subsidies to its domestic industries, which have caused injury to U.S. industries and the industries of other WTO Members. Some of these subsidies also appear to be prohibited under WTO rules. To the extent possible, the United States has sought to address these subsidies through countervailing duty proceedings conducted by the Commerce Department and dispute settlement cases at the WTO.

The United States and other WTO Members also have continued to press China to notify all of its subsidies to the WTO in accordance with its WTO obligations while also submitting counter notifications listing hundreds of subsidy programs that China has failed to notify. Over the years, China's WTO subsidy notifications have marginally improved at times in terms of timeliness and completeness, but not consistently. Nevertheless, since joining the WTO more than 20 years ago, China has not yet submitted to the WTO a complete notification of subsidies maintained by the central government, and it did not notify a single sub-central government subsidy until July 2016, when it provided information largely only on sub-central government subsidies that the United States had challenged as prohibited subsidies in a WTO case. While China has continued to notify some sub-central government subsidies in its more recent subsidy notifications, these notifications are woefully inadequate and do not address the most distortionary sub-central government subsidies, such as the increasingly prolific, and very large, "government guidance funds" that can be found at all levels of government in China.

The United States began working with the EU and Japan in 2018 to identify further effective action and potential rules that could address problematic Chinese subsidies practices not currently covered by existing obligations. In January 2020, the trade ministers of the United States, the EU and Japan issued a statement agreeing to strengthen the WTO subsidy rules by: (1) prohibiting certain egregious types of subsidies; (2) requiring the subsidizing country to demonstrate for other distortive subsidy types that the subsidy provided did not cause adverse effects; (3) building upon the existing "serious prejudice" rules; (4) strengthening the notification rules; and (5) developing a new definition of what constitutes a "public body." In November 2021, the trade ministers of the United States, the EU and Japan renewed their commitment to work together, including with regard to the identification of areas where further work is needed to develop new tools and other measures to address non-market policies and practices. Since then, the United States, the EU and Japan have also been working together at the staff level to uncover China's subsidies practices in specific sectors, such as the semiconductors sector.

Separately, the United States has continued to pursue a series of proposals to reform the functioning of the WTO Committee on Subsidies and Countervailing Measures. These proposals have focused on ensuring that Members timely provide written responses to written questions regarding their subsidy programs.

EXCESS CAPACITY

Because of its state-led approach to the economy, China is the world's leading offender in creating non-market capacity, as evidenced by the severe and persistent excess capacity situations in several industries. China is also well on its way to creating severe excess capacity in other industries through its pursuit of industrial plans such as *Made in China 2025*, pursuant to which the Chinese government is doling out hundreds of billions of dollars to support Chinese companies and requiring them to achieve preset targets for domestic market share – at the expense of imports – and global market share in each of 10 advanced manufacturing industries.

In manufacturing industries such as steel and aluminum, China's economic planners have contributed to massive excess capacity in China through various government support measures. For steel, the resulting over-production has distorted global markets, harming U.S. workers and manufacturers in both the U.S. market and third country markets, where U.S. exports of steel and steel-intensive products compete with exports from China. This over-production has similarly harmed the workers and manufacturers of many of the United States' allies and partners. While China has publicly acknowledged excess capacity in its steel and aluminum industries, it has yet to take meaningful steps to address the root causes of this problem in a sustainable way. Indeed, China continues to replicate these results in other industries.

From 2000 to 2022, China accounted for 72 percent of global steelmaking capacity growth, an increase well in excess of the increase in global and Chinese demand over the same period. Currently, China's capacity represents about one-half of global capacity and more than twice the combined steelmaking capacity of the EU, Japan, the United States, Canada, Mexico and Brazil.

At the same time, China's steel production is continually reaching new highs, eclipsing demand. In 2020, China's steel production climbed above one billion metric tons for the first time, reaching 1,065 million metric tons, a seven percent increase from 2019, and remained high at 1,018 million metric tons in 2022, despite a significant contraction in domestic steel demand. This sustained ballooning of greenhouse gas (GHG) emissions-intensive steel production, combined with weakening economic growth and a slowdown in the Chinese construction sector, has flooded the global market with excess steel and steel-intensive products at a time when steel and other manufacturing sectors outside of China are facing renewed weakness in market conditions, growing global excess capacity, a slowdown in world economic growth and continued disruptions in supply chains. In 2022, China exported more steel than the world's second, third and fourth largest steel producers (India, Japan and the United States) combined. Furthermore, China's exports from January through September 2023 were 36 percent higher than during the same period in 2022. Today, China remains by far the world's largest exporter of steel and steel-intensive products. China's steel production also remains far dirtier than the steel production that it displaces in the United States and most other countries, thereby undermining global efforts to transition to a clean-energy economy.

Similarly, primary aluminum production capacity in China increased by more than 1,400 percent between 2000 and 2022, with China accounting for 80 percent of global capacity growth during that period. China's expansion of production capacity has driven price declines globally, but even with these low prices, China has continued to expand its production capacity. Much of this additional capacity has been built with government support and relies on GHG emissions-intensive sources of electricity. China's primary aluminum capacity now accounts for 57 percent of global capacity and is more than double the capacity of the next eight aluminum-producing countries combined. As in the steel sector, China's aluminum production has also ballooned in recent years, as China's aluminum production has continued to increase despite global

demand shocks. China's capacity and production continue to contribute to major imbalances and price distortions in global markets, harming U.S. aluminum producers and workers.

Excess capacity in China hurts various U.S. workers and industries not only through direct exports from China to the United States, but also through its impact on global prices and supply and through indirect trade of steel and aluminum-intensive products, which makes it difficult for competitive manufacturers throughout the world to remain viable. Indeed, domestic industries in many of China's trading partners continue to petition their governments to impose trade measures to respond to the trade-distortive effects of China's excess capacity. In addition, the United States has acted under Section 232 of the Trade Expansion Act of 1962 to impose additional duties on steel and aluminum products after finding that steel and aluminum products are being imported into the United States in such quantities and under such circumstances as to threaten to impair U.S. national security. In the United States' view, in the absence of efforts to redress China's anticompetitive behavior, the risk is that steel and aluminum producers in the United States and many other countries with market-oriented economies will be forced to close, which would, among other things, create even greater dependencies on China.

AGRICULTURAL DOMESTIC SUPPORT

For several years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector. China maintains direct payment programs, minimum support prices for basic commodities and input subsidies. China has implemented a cotton reserve system, based on minimum purchase prices, and cotton target price programs. In 2016, China established subsidies for starch and ethanol producers to incentivize the purchase of domestic corn, resulting in higher volumes of exports of processed corn products from China in 2017 and 2018. In addition, in 2022, China began encouraging soybean production through various support programs, such as through increased subsidies for crop rotations, awards to counties with high oilseed production, incentives to promote the intercropping of corn and soybeans, and subsidies for "demonstration farming" of soybeans on alkali and salty land.

China submitted a notification concerning domestic support measures to the WTO in May 2015, but it only provided information up to 2010. In December 2018, China notified domestic support measures for the period 2011-2016. This notification showed that China had exceeded its *de minimis* level of domestic support for soybeans (in 2012, 2014 and 2015), cotton (from 2011 to 2016), corn (from 2013 to 2016), rapeseed (from 2011 to 2013) and sugar (2012). The situation was likely even worse, as the methodologies used by China to calculate domestic support levels result in underestimates. Moreover, the support programs notified by China seemingly failed to account for support given at the sub-national level by provincial and local governments and, possibly, support administered through state-owned enterprises.

In September 2016, the United States launched a WTO case challenging China's government support for the production of wheat, corn and rice as being in excess of China's commitments. Like other WTO Members, China committed to limit its support for producers of agricultural commodities. China's market price support programs for wheat, corn and rice appear to provide support far exceeding the agreed levels. This excessive support creates price distortions and skews the playing field against U.S. farmers. In October 2016, consultations took place. In January 2017, a WTO panel was established to hear the case. Hearings before the panel took place in January and April 2018, and the panel issued its decision in February 2019, ruling that China's domestic support for wheat and rice was WTO-inconsistent. China originally agreed to come into compliance with the panel's recommendations by March 31, 2020. The United States subsequently agreed to extend this deadline to June 30, 2020. In July 2020, the United States submitted a request for

authorization to suspend concessions and other obligations pursuant to Article 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) on the ground that China had failed to bring its measures into compliance with its WTO obligations. After China objected to this request, the matter was referred to arbitration in accordance with Article 22 of the DSU. The arbitration is currently suspended, and the United States continues to closely monitor the operation of China's market price support programs for wheat and rice.

FISHERIES SUBSIDIES

It is estimated that China is the world's largest provider of harmful fisheries subsidies, with support exceeding $4.2 billion annually. These subsidies contribute to overfishing and overcapacity that threatens global fish stocks. Indeed, China is the world's largest producer of marine capture fisheries and, in the years since its WTO accession, has continued to support its fishing fleet through subsidies and other market-distorting means. China's annual fisheries harvest is nearly double that of the next largest producer in the world in terms of marine capture and triple that of other top producers, like the United States, India and Japan. At the same time, reports continue to emerge about Chinese-flagged fishing vessels engaging in illegal, unreported and unregulated (IUU) fishing in distant waters, including in areas under the jurisdiction of other WTO Members. While China has made some progress in reducing subsidies to domestic fisheries, it continues to shift its overcapacity to international fisheries by providing a much higher rate of subsidy support to Chinese distant water fishery enterprises.

For several years, the United States has been raising its long-standing concerns over China's fisheries subsidies programs. In 2015, the United States submitted a written request for information pursuant to Article 25.8 of the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). This submission addressed fisheries subsidies provided by China at central and sub-central levels of government. The subsidies at issue were set forth in nearly 40 measures and included a wide range of subsidies, including fishing vessel acquisition and renovation grants, grants for new fishing equipment, subsidies for insurance, subsidized loans for processing facilities, fuel subsidies and the preferential provision of water, electricity and land. When China did not respond to this request, the United States submitted an Article 25.10 counter notification covering these same measures. More recent subsidy notifications by China have been more fulsome, but still incomplete.

In addition, the United States has long been an active and constructive participant in the WTO fisheries subsidies negotiations, pressing for a meaningful outcome to prohibit the most harmful types of fisheries subsidies. The United States and various like-minded WTO Members have put forward several proposals designed to achieve an ambitious outcome for those negotiations. Notably, in June 2022, WTO Members adopted the text of the WTO Agreement on Fisheries Subsidies, which includes several important disciplines, including prohibitions on subsidies to vessels or operators engaged in IUU fishing, subsidies to fishing regarding stocks that are overfished and subsidies to fishing on the unregulated high seas. This agreement also contains robust transparency provisions to strengthen WTO Members' subsidy notifications and to enable effective monitoring of WTO Members' implementation of their obligations. The agreement will enter into force when it has been accepted by two-thirds of WTO Members.

Going forward, the United States will continue to investigate the full extent of China's fisheries subsidies and will continue to press China to fully comply with its relevant WTO subsidy obligations. The United States also will urge WTO Members to support additional, ambitious disciplines on harmful fisheries subsidies as part of the further WTO negotiations on fisheries subsidies.

IMPORT POLICIES

TRADE REMEDIES

As of December 2023, China had in place 117 antidumping measures, affecting imports from 17 countries or regions, with two new antidumping investigations underway. China also had in place five countervailing duty measures, affecting imports from two countries or regions. The greatest systemic shortcomings in China's antidumping and countervailing duty practice continue to be in the areas of transparency and due process. Over the years, China has often utilized antidumping and countervailing duty investigations as more of a retaliatory tool than as a mechanism to nullify the effects of dumping or unfair subsidization within its domestic market. In response, the United States has pressed China bilaterally, in WTO meetings and through written comments submitted in connection with pending antidumping and countervailing duty proceedings to adhere strictly to WTO rules in the conduct of its trade remedy investigations.

The conduct of antidumping investigations by China's Ministry of Commerce (MOFCOM) continues to fall short of full commitment to the fundamental tenets of transparency and procedural fairness embodied in the WTO's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, commonly known as the Antidumping Agreement. The United States and other WTO Members accordingly have expressed concerns about key lapses in transparency and due process in China's conduct of antidumping investigations. The principal areas of concern include: MOFCOM's inadequate disclosure of key documents placed on the record by domestic Chinese producers; insufficient disclosures of the essential facts underlying MOFCOM decisions, such as dumping margin calculations and evidence supporting injury and dumping conclusions; MOFCOM's failure to issue supplemental questionnaires in instances where MOFCOM identifies information deficiencies; the improper rejection of U.S. respondents' reported cost and sales data; the unjustified use of facts available; and MOFCOM's failure to adequately address critical arguments or evidence put forward by interested parties. These aspects of China's antidumping practice have been raised with MOFCOM in numerous proceedings over the past several years.

A review of China's conduct of countervailing duty investigations makes clear that, as in the antidumping area, China needs to improve its transparency and due process when conducting these investigations. In addition, the United States has noted procedural concerns specific to China's conduct of countervailing duty investigations. For example, in recent years, China has 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.

On several occasions in the past, the United States has expressed serious concerns about China's pursuit of antidumping and countervailing duty remedies that appear to be retaliatory and intended to discourage the United States and other trading partners from the legitimate exercise of their rights under WTO antidumping and countervailing duty rules and the trade remedy provisions of China's accession agreement. It also appears that China has used arbitrary economic and trade measures, including antidumping and countervailing duty investigations, as a form of economic coercion designed to achieve China's political goals. The antidumping and countervailing duties that China imposed on imports of Australian barley and imports of Australian wine in 2021 provide two obvious examples of this tactic.

In certain recent investigations of U.S. imports, China has also made determinations without legal or factual support. For example, in the final countervailing duty determination on imports of n-propanol from the United States, China found that

alleged subsidies to the U.S. oil and gas sector automatically passed through to petrochemical products without providing the analysis required by the Subsidies Agreement.

TARIFF-RATE QUOTA ADMINISTRATION FOR AGRICULTURAL COMMODITIES

Market access promised through the tariff-rate quota (TRQ) system set up pursuant to China's WTO accession agreement has yet to be fully realized as of December 2023. Due to China's poorly defined criteria for applicants, unclear procedures for distributing TRQ allocations and failure to announce quota allocation and reallocation results, traders are unsure of available import opportunities and producers worldwide have reduced market access opportunities. As a result, China's TRQs for wheat, corn and rice seldom fill even when they are oversubscribed. For example, from 2020 to 2023, China's corn imports exceeded TRQ levels, but the TRQ issuance, application and allocation processes lacked transparency, and large state-owned enterprises in China appear to have been the primary beneficiaries of the increased imports.

In December 2016, the United States launched a WTO case challenging China's administration of TRQs for wheat, corn and rice. Consultations took place in February 2017. A WTO panel was established to hear the case at the United States' request in September 2017, and 17 other WTO Members joined as third parties. The panel issued its decision in April 2019, ruling that China's administration of tariff-rate quotas for wheat, corn and rice was WTO-inconsistent. In July 2021, the United States submitted a request for authorization to suspend concessions and other obligations pursuant to Article 22 of the DSU on the ground that China had failed to bring its measures into compliance with its WTO obligations. After China objected to this request, the matter was referred to arbitration in accordance with Article 22 of the DSU. The arbitration is currently suspended, and the United States continues to closely monitor China's ongoing administration of the tariff-rate quotas for wheat, corn and rice.

As part of the Phase One Agreement, China agreed that, from December 31, 2019, its administration of TRQs for wheat, corn and rice would conform to its WTO obligations. In addition, China agreed to make specific improvements to its administration of the wheat, corn and rice TRQs, including with regard to the allocation methodology, and to the treatment of non-state trading quota applicants. China also committed to greater transparency. To date, however, China has not demonstrated full implementation of these commitments.

VAT REBATES FOR AGRICULTURAL COMMODITIES

The Chinese government attempted to manage imports of primary agricultural commodities by raising or lowering the value-added tax (VAT) rebate to manage domestic supplies. China sometimes reinforces its domestic objectives by imposing or retracting VATs. These practices have caused tremendous distortion and uncertainty in the global markets for wheat, corn and soybeans, as well as intermediate processed products of these commodities.

ENVIRONMENTAL POLICIES

IMPORT BAN ON SCRAP MATERIALS AND RECYCLABLE MATERIALS

Currently, China restricts almost all imports of unprocessed scrap and recyclable materials. China only allows imports of certain processed materials, including "recycled raw materials" such as copper, steel, aluminum and brass that meet purity standards, pelletized scrap plastic and pulped scrap paper.

Since 2017, China has issued numerous measures that limit or ban imports of most scrap and recovered materials, such as certain types of plastic,

paper and metals. China has also employed import licensing and inspection measures to restrict imports of scrap materials contrary to international standards and practices. Notably, China does not universally apply similar restrictions to domestic processers of domestically sourced scrap and recovered materials.

In 2020, China amended the *Law on the Prevention and Control of Environmental Pollution by Solid Waste*. According to this amended law, the intent is to reduce imports of solid waste essentially to zero.

U.S. exports to China of the unprocessed scrap and recovered materials covered by China's restrictive measures totaled $479 million in 2016, the year before China started to pursue its more restrictive policies. Since then, U.S. exports of these materials to China have been significantly reduced.

In addition to impacting the global market for scrap and recovered materials, the tightened restrictions have raised the costs of recycling in the United States, leading some communities to end recycling programs. Additionally, other countries, particularly in Southeast Asia, have introduced their own regulatory changes that in some ways parallel the changes in China's import regime, such as by setting impossibly high purity standards for recyclable materials, imposing new import licensing requirements and requiring pre-shipment and post-shipment inspections. As a result, significant amounts of U.S. scrap materials and recyclable materials have not found new buyers, leading to increased landfilling, incineration and air pollution and increased demand for virgin materials globally.

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, because companies in these industries are unable to purchase high-quality, lower-cost remanufactured products produced outside of China. Nevertheless, China is apparently prepared to pay this price in order to limit imports of remanufactured goods.

LABOR

The Chinese government represses internationally recognized labor rights and does not adequately enforce existing prohibitions on forced labor. China has been the subject of international attention for its forced labor practices, especially in the Xinjiang Uyghur Autonomous Region (Xinjiang), where China has arbitrarily detained more than one million Uyghurs and other mostly Muslim minorities. Victims, news media and think tanks report that factories, including factories producing cotton and tomato products, frequently engage in coercive recruitment, limit workers' freedom of movement and communication and subject workers to constant surveillance, retribution for religious beliefs, exclusion from community and social life, and isolation. It is currently estimated that hundreds of thousands of Uyghurs, ethnic Kazakhs and members of other Muslim minority groups are being subjected to forced labor in China following detention. Based on the U.S. Government's independent analysis of these sources, the U.S. Government has taken several actions to address forced labor and other human rights abuses in Xinjiang.

U.S. Customs and Border Protection has issued several withhold release orders (WROs) pursuant to section 307 of the Tariff Act of 1930 based on information that reasonably indicates the use of detainee or prison labor and situations of forced labor in Xinjiang, including a region-wide WRO on cotton and tomato products from Xinjiang in January 2021. The scope of this WRO includes cotton and tomatoes and downstream products that incorporate these products as inputs.

In July 2020, the United States issued a Xinjiang Supply Chain Business Advisory for U.S. businesses whose supply chains run through Xinjiang, China. The United States updated this advisory in July 2021. As updated, the advisory calls urgent attention to U.S. businesses' supply chain risks and identifies serious investing and sourcing considerations for businesses and individuals with exposure to entities engaged in forced labor and other human rights abuses linked to Xinjiang. The advisory also describes U.S. government actions taken to date to counter the use of forced labor in Xinjiang and to prohibit the importation of goods produced in whole or in part with forced labor or convict labor. In September 2023, the United States issued an addendum to the updated advisory to further highlight reports on state-sponsored forced labor and human rights abuses in Xinjiang as well as to stress the urgency for businesses to undertake appropriate due diligence measures.

In December 2021, President Biden signed into law the Uyghur Forced Labor Prevention Act (UFLPA), which, among other things, establishes a rebuttable presumption that the importation of goods from Xinjiang is prohibited under section 307 of the Tariff Act of 1930. This rebuttable presumption took effect in June 2022.

The United States also published its UFLPA Enforcement Strategy in June 2022. This Enforcement Strategy took into account input received from private individuals, industry associations, consultancy and risk-management companies, civil society organizations, non-governmental organizations (NGOs), labor unions and others who shared their views on potential measures to prevent the importation of goods mined, produced or manufactured wholly or in part with forced labor in China into the United States. The main components of the Enforcement Strategy include (1) an assessment of the risk of importing goods made with forced labor in China, (2) the development of the UFLPA Entity List and descriptions of forced-labor schemes, (3) the consideration of efforts, initiatives and tools to identify and trace the origin of goods, (4) a description of relevant legal authorities and tools to prevent entry of violative goods, (5) a description of resources, (6) the development of importer guidance and (7) the development of a coordination plan with NGOs and the private sector.

Various U.S. agencies have been working to compile and update the UFLPA Entity List, a consolidated register of four distinct lists, including: (1) a list of entities in Xinjiang that mine, produce or manufacture wholly or in part any goods, wares, articles and merchandise with forced labor; (2) a list of entities that work with the government authorities of Xinjiang to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz or members of other persecuted groups out of Xinjiang; (3) a list of entities that export products mined, produced or manufactured by entities in lists 1 or 2 above from China into the United States; and (4) a list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from Xinjiang or from persons working with the government authorities in Xinjiang or the Xinjiang Production and Construction Corps for purposes of the "poverty alleviation" program or the "pairing assistance" program or any other government labor scheme that uses forced labor. To date, dozens of entities have been designated on the UFLPA Entity List.

Separately, in June 2022, President Biden issued the Memorandum on Combating Illegal, Unreported and Unregulated Fishing and Associated Labor Abuses. This Memorandum notes that, if left unchecked, IUU fishing and associated labor abuses threaten the livelihoods and human rights of fishers around the world and will undermine U.S. economic competitiveness, national security and fishery sustainability. It also notes that this behavior will exacerbate the environmental and socioeconomic effects of climate change. In December 2022, the Treasury Department sanctioned individuals associated with China's distant water fishing vessels for serious human rights abuse, including forced labor, of workers aboard these vessels.

It also remains concerning that China does not adhere to certain other internationally recognized labor standards, including the freedom of association and effective recognition of the right to collective bargaining. 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 CCP. 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. Only collective bargaining through the ACFTU is permitted, and there is no legal obligation for an employer to bargain in good faith. Striking is also prohibited.

SANITARY AND PHYTOSANITARY MEASURES

OVERVIEW

China remains a difficult and unpredictable market for U.S. agricultural exporters, largely because of inconsistent enforcement of regulations and selective intervention in the market by China's regulatory authorities. China's unwillingness to routinely follow science-based, international standards and guidelines and to apply regulatory enforcement in a transparent and rules-based manner further complicates and impedes agricultural trade.

AGRICULTURAL BIOTECHNOLOGY APPROVALS

The Chinese regulatory approval process for agricultural biotechnology products creates significant uncertainty among developers and traders, slowing commercialization of products and creating adverse trade impacts, particularly for U.S. exports of corn, soy, canola and alfalfa. Despite some recent product approvals, the process remains lengthy and opaque and continues to reflect significant asynchrony relative to approvals issued by regulatory authorities in many other countries.

For many years, biotechnology product approvals by China's regulatory authorities mainly materialized only after high-level political intervention. In the Phase One Agreement, the United States was able to secure China's commitment to implement a transparent, predictable, efficient and science- and risk-based system for the review of products of agricultural biotechnology. The agreement also called for China to improve its regulatory authorization process for agricultural biotechnology products, including by completing reviews of products for use as animal feed or further processing within an average of no more than 24 months and by improving the transparency of its review process. China also agreed to work with importers and the U.S. government to address situations involving low-level presence of genetically engineered (GE) materials in shipments. In addition, China agreed to establish a regulatory approval process for all food ingredients derived from genetically modified microorganisms (GMMs), rather than continue to restrict market access to GMM-derived enzymes only.

Since 2021, China's National Biosafety Committee (NBC) has issued biosafety certificates to foreign developers for several new GE products for import for feed or processing, including alfalfa, canola, corn, cotton, soybean, and sugarcane products. Some of these approved products had been under review for more than 10 years. During the same time period, China has issued biosafety certificates to Chinese developers for well over 100 new corn, cotton, and soybean products for domestic cultivation. These approvals continue the recent trend of expanding domestic approvals for GE crops beyond solely cotton.

China's approach to agricultural biotechnology remains among the most significant commitments under the Phase One Agreement for which China has not demonstrated full implementation. Despite the commitments that China made, there remains a significant lack of transparency regarding the procedures for convening meetings of the NBC, including regarding dates and agenda items for these

meetings and the process for notifying applicants of outcomes and for soliciting additional information to support product applications. While the NBC is required to meet at least two times each year, the meetings are not held pursuant to a regular schedule, and information about the meetings is not widely shared with the public in a transparent and predictable manner. In addition, in conducting its approval process, China continues to ask for information that is not relevant to a product's intended use or information that applicants have previously provided. For this and other reasons, China has not reduced the average time for its approval process for agricultural biotechnology products for feed or further processing to no more than 24 months, as it had committed to do, even when taking into account recent approvals.

FOOD SAFETY

China's ongoing implementation of its 2015 *Food Safety Law* has led to the introduction of myriad new measures. These measures include exporter facility and product registration requirements for almost all food and agricultural products. Overall, China's notification of these measures to the WTO Committee on Technical Barriers to Trade (TBT Committee) and the WTO Committee on Sanitary and Phytosanitary Measures (SPS Committee) has been uneven.

In November 2019, China's regulatory authorities issued draft measures for public comment that would require the registration of all foreign food manufacturers. The United States submitted comprehensive written comments on the draft measures to China's regulatory authorities. The United States also raised concerns about them before the WTO TBT Committee and the WTO SPS Committee. More than 15 WTO Members supported the concerns raised by the United States.

In April 2021, China's regulatory authorities issued final versions of these measures, now known as Decrees 248 and 249, with an implementation date of January 1, 2022. In correspondence delivered to foreign missions in Beijing in September 2021, China's regulatory authorities laid out a non-transparent, multi-tier system where producers of certain products are required to be registered by foreign regulatory authorities, while producers of other products are eligible to self-register. Decrees 248 and 249 also establish new labeling and conformity assessment requirements. In July 2023, China implemented additional registration requirements for certain products under Decree 248, expanding the burden on foreign food safety regulators. Moreover, the tasks being required of foreign food safety regulators are fundamentally beyond the traditional roles of regulatory authorities. These various additional requirements have already disrupted trade, especially for new U.S. food manufacturers unable to meet the requirements for first-time registration.

Decree 248 and similar prior measures continue to place excessive strain on food producers, traders and exporting countries' regulatory authorities, with no apparent added benefit to food safety. They instead provide China with a tool to control food imports, as decided by China's state planners, and to retaliate against food producers from countries whose governments challenge Chinese government policies or practices in non-trade areas.

In the Phase One Agreement, China committed that it would not implement food safety regulations that are not science- or risk-based and that it would only apply food safety regulations to the extent necessary to protect human life or health. China also agreed to certain procedures for registering U.S. facilities that produce various food products. Despite repeated U.S. requests for clarification regarding the relationship between the facility registration procedures set forth in the Phase One Agreement and the requirements of Decree 248, China has not provided sufficient information.

POULTRY

In the Phase One Agreement, China agreed to maintain measures consistent with the World

Organization for Animal Health (WOAH) guidelines for future outbreaks of avian influenza. China also agreed to sign a regionalization protocol within 30 days of entry into force of the agreement, which it did, to help avoid unwarranted nationwide animal disease restrictions in the future. This protocol requires that China resume acceptance of poultry imports from states with high pathogenicity avian influenza (HPAI) detections within five days of receiving a U.S. report that the states are HPAI-free.

Starting in February 2022, the United States notified China of detections of HPAI in multiple U.S. states. In the ensuing months, several states recovered from these detections, and they were deemed HPAI-free by the United States. The United States submitted reports to China for these states and requested approval to resume exporting poultry from these states to China. China has yet to confirm the restoration of market access.

PORK

China maintains an approach to U.S. pork that is inconsistent with international standards, limiting the potential of an important export market given China's growing meat consumption and major shortages of domestic pork due to African swine fever. Specifically, China bans the use of certain veterinary drugs and growth promotants instead of accepting the maximum residue levels (MRLs) set by Codex Alimentarius (Codex).

As part of the Phase One Agreement, China agreed to broaden the list of pork products that are eligible for importation, including processed products such as ham and certain types of offal that are inspected by the U.S. Department of Agriculture's Food Safety and Inspection Service for both domestic and international trade. China also agreed to conduct a risk assessment for ractopamine in swine and cattle as soon as possible and to establish a joint working group with the United States to discuss next steps based on the risk assessment. To date, China has not completed the risk assessment and therefore has not yet made any progress on next steps based on the risk assessment, which will need to include the establishment of MRLs or import tolerances.

BEEF

In May 2017, China committed to allow the resumption of U.S. beef shipments into its market consistent with international food safety and animal health standards. However, China back-tracked one month later and insisted that it would retain certain conditions relating to veterinary drugs, growth promotants and animal health that were inconsistent with international food safety and animal health standards. For example, China insisted on maintaining a zero-tolerance ban on the use of beta-agonists and synthetic hormones commonly used by global cattle producers under strict veterinary controls and following Codex guidelines. Beef from only about three percent of U.S. cattle qualified for importation into China under these conditions.

In the Phase One Agreement, in addition to the ractopamine commitment relating to swine and cattle discussed above in the Pork section, China agreed to expand the scope of U.S. beef products allowed to be imported, to eliminate age restrictions on cattle slaughtered for export to China and to recognize the U.S. beef and beef products' traceability system. China also agreed to establish MRLs for three synthetic hormones legally used for decades in the United States consistent with Codex standards and guidelines. Where Codex standards and guidelines do not yet exist, China agreed to use MRLs established by other countries that have performed science-based risk assessments.

While China confirmed to the United States that it had adopted Codex-consistent MRLs for use of the three synthetic hormones in beef, China still has not published the MRLs. The lack of publication contributes to regulatory ambiguity for U.S. beef producers and traders, who remain uncertain regarding which products will be allowed for import into China. China's failure to publish the MRLs is

another example of China's inadequate implementation of the Phase One Agreement.

TECHNICAL BARRIERS TO TRADE

STANDARDS

The Chinese government continues to pursue changes to its standards system, including by moving from a government-led system to one that incorporates both government guidance and outside input. At times, Chinese government officials have also indicated they provide equal treatment to foreign companies in connection with China's standardization work. However, in practice, the Chinese government continues to limit foreign participation in standards setting and, at times, still pursues unique national standards for strategic reasons.

In January 2018, China's revised *Standardization Law* entered into force. Since then, China has issued numerous implementing measures, some of which contain positive references to the ability of foreign-invested enterprises to participate in China's standardization activities and purport to recognize the value of international standards. Unfortunately, many of these implementing measures cause concern for U.S. industry as they appear to focus on the development of Chinese standards without sufficient consideration being given to existing, internationally developed standards. In addition, they do not explicitly provide that all foreign stakeholders may participate on equal terms with domestic competitors in all aspects of the standardization process, and they fall short of explicitly endorsing internationally accepted best practices.

As these implementing measures have been issued, China's existing technical committees have continued to develop standards. U.S. and other foreign companies have reported that they are often not permitted to participate in these domestic standards-setting processes, and even in technical committees where participation has been possible for some foreign stakeholders, it has typically been on terms less favorable than those applicable to their domestic competitors. For example, the technical committee for cybersecurity standards (known as TC-260) allows foreign companies to participate in standards development and setting, with several U.S. and other foreign companies being allowed to participate in some of the TC-260 working groups. However, foreign companies are not universally allowed to participate as voting members, and they report challenges to participating in key aspects of the standardization process, such as drafting. They also remain prohibited from participating in certain TC-260 working groups, such as the working group on encryption standards.

Over the years, U.S. stakeholders have also reported that, in some cases, Chinese government officials have pressured foreign companies seeking to participate in the standards-setting process to license their technology or intellectual property on unfavorable terms. In addition, China has continued to pursue unique national standards in a number of high technology areas where international standards already exist. The United States continues to press China to address these specific concerns, but to date this bilateral engagement has yielded minimal progress.

Notably, U.S. concerns about China's standards regime are not limited to the implications for U.S. companies' access to China's market. China's ongoing efforts to develop unique national standards aims eventually to serve the interests of Chinese companies seeking to compete globally, as the Chinese government's vision is to use the power of its large domestic market to influence the development of international standards. The United States remains very concerned about China's policies with regard to standards and has expressed, and will continue to express, concerns to China bilaterally and multilaterally as China continues to develop and issue implementing measures for its revised *Standardization Law*.

In October 2021, the Central Committee of the Chinese Communist Party and the State Council issued the *Outline for the Development of National Standardization*, which set targets for China's standardization system. It reiterates the desire for China's standardization system to be both guided by the government and driven by the market. It also calls for China's standardization system to refocus from quantity to quality and to shift from a domestic focus to an equal domestic and international focus. In addition, it calls for standards to support not just a particular industry, but also the economy and society as a whole.

The October 2021 *Outline for the Development of National Standardization* is partly based on an initiative that China announced in 2019, known as *China Standards 2035*. A lack of transparency with regard to the initiative's findings is troubling, particularly given longstanding global concerns about inadequate foreign participation in China's standards-setting processes, China's use of standards that differ from international standards without basis and certain licensing practices in China's standards-setting processes.

COSMETICS

Over the past several years, the United States and U.S. industry have engaged with China's Food and Drug Administration (CFDA) and its successor, the National Medical Products Administration (NMPA), to highlight serious concerns with China's regulation of cosmetics. Currently, the regulation of cosmetics in China is governed by the Cosmetics Supervision and Administration Regulation (CSAR), which was issued in June 2020 and entered into effect in January 2021. The United States has repeatedly raised serious concerns with the CSAR and its numerous implementing measures, both bilaterally and in meetings of the WTO TBT Committee and the Council for Trade in Goods, as have several other WTO Members.

The CSAR implementing measures contain provisions that would require companies to disclose full product formulations, ingredient suppliers, manufacturing methods, claims and safety data to both NMPA and local agents in China when products are registered or notified. In addition, these measures require companies to publish claims abstracts that may contain trade secrets and confidential business information on NMPA's website. The United States has expressed concern to China that its regulators are applying an approach that treats cosmetics as having much higher safety risks than is warranted. China's filing and registration requirements for cosmetics also significantly diverge from those in other major markets and do not align with international standards, making compliance very burdensome for exporters.

The United States is particularly concerned that the CSAR implementing measures do not provide adequate assurances as to how undisclosed information, trade secrets and confidential business information will be protected from unauthorized disclosure. China also has not addressed requests from the United States and cosmetics right holders that NMPA provide a legally enforceable mechanism to monitor and protect the trade secrets and confidential business information typically identified by companies in their cosmetics filings.

In addition, China continues to require duplicative in-country testing to assess many product and ingredient safety and performance claims, without considering the applicability of international data or other means of establishing conformity. In response to U.S. concerns, China indicated that it would allow foreign laboratories with facilities in China to conduct its required testing. However, this change does not address the burden of China's requirement, which does not consider the applicability of testing conducted via internationally recognized laboratories outside of China, as well as other means used by foreign regulators and industries to assess

the conformity of product and ingredient safety and performance claims.

The United States also questions China's assertion that its cosmetics good manufacturing practices (GMP) requirements provide equal treatment for imported and domestic general and special cosmetics. If the government of a cosmetics importer does not issue GMP or manufacturing export certificates, the only means that China provides to establish conformity with China's GMP for general cosmetics is animal testing. The United States and other WTO Members have made repeated requests that China consider the many alternative means available to establish GMP conformity, including utilizing second party or third party certificates based upon the ISO 22716 Cosmetics GMP Guidelines. Although China accepts some GMP certificates issued by U.S. state governments, the process remains inconsistent and uncertain for exporters.

In sum, after years of the United States engaging with China bilaterally and via the International Cooperation on Cosmetics Regulation, the WTO and other fora to share views and expertise regarding the regulation of cosmetics, China has not yet addressed key U.S. concerns, including the use of international standards and good regulatory practices to facilitate cosmetics conformity assessment and avoid discriminatory treatment, nor has it provided confidence that U.S. intellectual property will be protected. Until China addresses these concerns, many U.S. companies will be impeded in accessing, or simply unable to access, the China market.

INVESTMENT RESTRICTIONS

China seeks to protect many domestic industries through a restrictive investment regime. Many aspects of China's current investment regime continue to cause serious concerns for foreign investors. For example, China's *Foreign Investment Law* and implementing regulations, both of which entered into force in January 2020, perpetuate separate regimes for domestic investors and investments and foreign investors and investments and invite opportunities for discriminatory treatment.

There has also been a lack of substantial liberalization of China's investment regime, evidenced by the continued application of prohibitions, foreign equity caps and joint venture requirements and other restrictions in certain sectors. China's most recent version of its *Foreign Investment Negative List*, which entered into force in January 2022, leaves in place significant investment restrictions in a number of areas important to foreign investors, such as key services sectors, certain types of agriculture and several extractive industries. With regard to services sectors, China maintains prohibitions or restrictions in key sectors such as cloud computing services and other Internet-related services, telecommunications services, film production and film distribution services, and video and entertainment software services. With regard to agriculture, China maintains prohibitions on the development of agricultural biotechnologies and restrictions on the development of new varieties of corn and wheat. Similarly, China maintains prohibitions on the exploration, mining and processing of all of the 17 types of rare earths as well as tungsten.

China's *Foreign Investment Law*, implementing regulations and other related measures suggest that China is pursuing the objective of replacing its case-by-case administrative approval system for a broad range of investments with a system that would only be applied to "restricted" sectors. However, it currently remains unclear whether China is fully achieving that objective in practice. Moreover, even for sectors that have been liberalized, the potential for discriminatory licensing requirements or the discriminatory application of licensing processes could make it difficult to achieve meaningful market access. In addition, the potential for a new and overly broad national security review mechanism, and the increasingly adverse impact of China's *Cybersecurity Law*, *Data Security Law* and *Personal*

Information Protection Law and related implementing measures, including ones that unduly restrict cross-border data flows and impose data localization requirements, have serious negative implications for foreign investors and investments. Foreign companies also continue to report that Chinese government officials may condition investment approval on a requirement that a foreign company transfer technology, conduct research and development (R&D) in China, satisfy performance requirements relating to exportation or the use of local content or make valuable, deal-specific commercial concessions.

Over the years, the United States has repeatedly raised concerns with China about its restrictive investment regime. Given that China's investment restrictions place pressure on U.S. companies to transfer technology to Chinese companies, they were a focus of USTR's Section 301 investigation. The responsive actions taken by the United States in that investigation are intended in part to address this concern.

More recently, the investment climate has turned unusually negative, in large part because of actions taken by the Chinese government. For example, over the past year, purportedly in implementing China amended its *Counterespionage Law* to broaden the definition of espionage, and Chinese security officials raided and detained staff at several multinational companies operating in China that help investors perform due diligence regarding existing or potential new investments in China. With no effective judicial oversight or other means for challenging these actions, investor confidence in China has been severely damaged.

In August 2023, perhaps in an effort to restore investor confidence, China's State Council released a new measure, titled *Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment*, in the apparent hope of attracting increased levels of foreign investment. Often referred to as Document No. 11, this measure sets forth general guidance to central level ministries and sub-central government authorities on 24 topics related to foreign investment. China has issued similar guidance in the past without meaningfully following through.

COMPETITION POLICIES

In March 2018, as part of a major government reorganization, China announced the creation of the State Administration for Market Regulation (SAMR), a new agency that incorporated the former anti-monopoly enforcement authorities from the National Development and Reform Commission (NDRC), MOFCOM and the State Administration of Industry and Commerce (SAIC) into one of its bureaus. It had been hoped that more centralized anti-monopoly enforcement would lead to policy adjustments that address the serious concerns raised by the United States and other WTO Members in this area, but to date it does not appear to have led to significant policy adjustments.

In November 2021, China elevated the status of SAMR's anti-monopoly bureau, by designating a vice minister as its official-in-charge and re-naming it the National Anti-Monopoly Agency while also separating its functions into three bureaus. The division into three bureaus appears to have allowed SAMR to increase the number of staff responsible for antimonopoly law enforcement. It remains to be seen how the elevated status of the National Anti-Monopoly Agency and its increased staff will impact anti-monopoly policy enforcement in China.

In June 2022, the National People's Congress Standing Committee passed amendments to the *Anti-Monopoly Law*. These amendments gave SAMR expanded authority to investigate potential anti-competitive behavior as well as the authority to impose increased fines for certain conduct and the authority to impose up to a five-times fine multiplier for particularly serious violations.

As previously reported, China's implementation of the *Anti-Monopoly Law* has generated various

concerns. A key concern is the extent to which the *Anti-Monopoly Law* is applied to state-owned enterprises. While Chinese regulatory authorities have clarified that the *Anti-Monopoly Law* does apply to state-owned enterprises, to date they have brought enforcement actions primarily against provincial government-level state-owned enterprises, rather than central government-level state-owned enterprises under the supervision of SASAC. In addition, provisions in the *Anti-Monopoly Law* protect the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. Another key concern relates to how the *Anti-Monopoly Law* is applied to foreign companies. Many U.S. companies have cited selective enforcement of the *Anti-Monopoly Law* against foreign companies seeking to do business in China as a major concern, and they have highlighted in particular the comparatively limited enforcement of this law against state-owned enterprises. In recent years, China has begun to increase the number of actions taken against private Chinese companies and wholly domestic transactions.

Another concern expressed by U.S. industry is that remedies imposed on U.S. and other foreign-owned companies in merger cases do not always appear to be aimed at restoring competition. Instead, these remedies seem to be designed to further China's industrial policy goals, such as when the regulatory authorities seek to require the transfer of technology or a reduction in licensing fees for intellectual property.

U.S. industry has also expressed concern about insufficient predictability, due process and transparency in *Anti-Monopoly Law* investigative processes of foreign companies. For example, U.S. industry reports that, through the threat of steep fines and other penalties, China's regulatory authorities have pressured foreign companies to "cooperate" in the face of unspecified allegations and have discouraged or prevented foreign companies from bringing counsel to meetings. In addition, U.S. companies continue to report that the Chinese regulatory authorities sometimes make "informal" suggestions regarding appropriate company behavior, including how a company is to behave outside China, strongly suggesting that a failure to comply may result in investigations and possible punishment. More recently, high-level policy statements suggest increased *Anti-Monopoly Law* enforcement where technology owned or controlled by foreign companies allegedly implicates national security concerns or implicates technology being prioritized for indigenous innovation in China.

Given the state-led nature of China's economy, the need for careful scrutiny of anti-competitive government restraints and regulation is high. The *Anti-Monopoly Law's* provisions on the abuse of administrative (i.e., government) power are potentially important instruments for reducing the government's interference in markets and for promoting the establishment and maintenance of increasingly competitive markets in China. The State Council's adoption of the *Opinions on Establishing a Fair Competition Review System* in 2016 reflected a useful widening of oversight by China's anti-monopoly enforcement agencies over undue government restraints on competition and anti-competitive regulation of competition. Increased oversight in this area was also reflected in the amendments to the *Anti-Monopoly Law* in 2022, which included a new chapter regarding the abuse of administrative monopoly. SAMR has since issued draft rules regarding the abuse of administrative monopoly, and SAMR has also identified the elimination of administrative monopolies as an enforcement priority. It remains to be seen whether SAMR will have sufficient authority and resources to implement this enforcement priority robustly.

EXPORT POLICIES

EXPORT RESTRAINTS

Over the years, China has deployed 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. In many instances, through these export restraints, it appears that China has been 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, focusing on China's export restraints on rare earths, tungsten and molybdenum, which are key inputs for a multitude of U.S.-made products, including hybrid automobile batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum and chemicals. China removed those export restraints in 2015. In 2016, the United States launched a third WTO case challenging export restraints maintained by China. The challenged export restraints include export quotas and export duties maintained by China on various forms of 11 raw materials, including antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum and tin. These raw materials are key inputs in important U.S. manufacturing industries, including aerospace, automotive, construction and electronics. While China appears to have removed the challenged export restraints, the United States continues to monitor the situation. In the United States' view, it is deeply concerning that the United States was forced to bring multiple cases to address the same obvious WTO compliance issues.

A more recent concern involves China's potential regulation of rare earth exports under its export controls regime. In this regard, the Ministry of Industry and Information Technology issued the draft *Regulations on the Administration of Rare Earths* for public comment in January 2021, and one of the provisions in the draft measure provides that rare earth exporters need to abide by laws and regulations in the area of export controls. More recently, in November 2023, China began requiring exporters to provide detailed reporting on transactions involving rare earths.

In 2023, China also began applying its export control regime to other critical minerals. As of August 2023, China is requiring export licenses for products containing gallium or germanium. Similarly, as of December 2023, China is requiring export licenses for products containing graphite.

In November 2021, China announced an export ban on certain fertilizers. Despite repeated requests from its trading partners to lift this export ban and help address growing international concern over rising commodity prices and disrupted global supply chains, China continues to impose this export ban.

Meanwhile, U.S. companies report that China has also instituted export restrictions on corn starch, apparently in an effort to stabilize domestic prices. To date, however, the Chinese government still has not published an official notice.

VAT REBATES AND RELATED POLICIES

As in prior years, in 2023, the Chinese government attempted to manage the export of many primary, intermediate and downstream products by raising or lowering the VAT rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty and unfairness in the global markets for some products, particularly downstream products for which 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, have also contributed to severe excess capacity in these same industries.

An apparently positive development took place at the July 2014 S&ED meeting, when China committed

to improve its VAT rebate system, including by actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade. Once more, however, this promise remains unfulfilled. To date, China has not made any movement toward the adoption of international best practices.

INTELLECTUAL PROPERTY PROTECTION

OVERVIEW

After its accession to the WTO, China undertook a wide-ranging revision of its framework of laws and regulations aimed at protecting the intellectual property rights of domestic and foreign right holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Despite various plans and directives issued by the State Council, inadequacies in China's intellectual property protection and enforcement regime continue to present serious barriers to U.S. exports and investment. As a result, China was again placed on the Priority Watch List in USTR's 2023 Special 301 Report. In addition, in January 2023, USTR announced the results of its 2022 Review of Notorious Markets for Counterfeiting and Piracy, which identifies online and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting and explains the harm not only to U.S. businesses, but also to U.S. workers. Several markets in China were among those named as notorious markets.

The Phase One Agreement addresses numerous longstanding U.S. concerns relating to China's inadequate intellectual property protection and enforcement. Specifically, the agreement requires China to revise its legal and regulatory regimes in a number of ways in the areas of trade secrets, pharmaceutical-related intellectual property, patents, trademarks and geographical indications. In addition, the agreement requires China to make numerous changes to its judicial procedures and to establish deterrent-level penalties. China must also take a number of steps to strengthen enforcement against pirated and counterfeit goods, including in the online environment, at physical markets and at the border.

China has published a number of draft measures for comment and issued some final measures relating to implementation of the intellectual property chapter of the Phase One Agreement. Notably, China amended the *Patent Law*, the *Copyright Law* and the *Criminal Law*. China has also reported increased enforcement actions against counterfeit medicines and increased customs actions against pirated and counterfeit goods. At the same time, China has outstanding work to finalize the draft measures that it has published and to publish other draft measures in accordance with the Intellectual Property Action Plan that it released in April 2020, such as certain patent, geographical indications and trade secret measures. In addition, China has yet to demonstrate that it has published data online regarding enforcement actions against counterfeit goods with health and safety risks, at physical markets and at the border on a quarterly basis, increased enforcement actions against counterfeits with health and safety risks and at physical markets, increased training of customs personnel or ensured the use of only licensed software in government agencies and state-owned enterprises. The United States continues to monitor China's implementation of the intellectual property chapter of the Phase One Agreement, including the impact of the final measures that have been issued.

TRADE SECRETS

Serious inadequacies in the protection and enforcement of trade secrets in China have been the subject of high-profile engagement between the United States and China in recent years. Several instances of trade secret theft for the benefit of Chinese companies have occurred both within China and outside of China. Offenders in many cases continue to operate with impunity. Particularly 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' proprietary information and intellectual property, for the purpose of providing commercial advantages to Chinese enterprises.

In high-level bilateral dialogues with the United States over the years, China has committed to issue judicial guidance to strengthen its trade secrets regime. China has also committed not to condone state-sponsored misappropriation of trade secrets for commercial use. In addition, the United States has urged China to make certain key amendments to its trade secrets-related laws and regulations, particularly with regard to a draft revision of the *Anti-unfair Competition Law*. The United States has also urged China to take actions to address inadequacies across the range of state-sponsored actors and to promote public awareness of trade secrets disciplines.

At the November 2016 JCCT meeting, China claimed that it was strengthening its trade secrets regime and bolstering several areas of importance, including the availability of evidence preservation orders and damages based on market value as well as the issuance of a judicial interpretation on preliminary injunctions and other matters. China amended the *Anti-Unfair Competition Law*, effective January 2018 and April 2019, as well as the *Administrative Licensing Law*, effective April 2019, and the *Foreign Investment Law*, effective January 2020. Nevertheless, the amendments still do not fully address critical shortcomings in the scope of protections and obstacles to enforcement. In 2022, China published additional draft amendments to the *Anti-Unfair Competition Law*, but they contain few changes to the law's trade secrets provisions.

The Phase One Agreement significantly strengthens protections for trade secrets and enforcement against trade secret theft in China. In particular, the chapter on intellectual property requires China to expand the scope of civil liability for misappropriation beyond entities directly involved in the manufacture or sale of goods and services, to cover acts such as electronic intrusions as prohibited acts of trade secret theft and to shift the burden of proof in civil cases to the defendants when there is a reasonable indication of trade secret theft. It also requires China to make it easier to obtain preliminary injunctions to prevent the use of stolen trade secrets, to allow for initiation of criminal investigations without the need to show actual losses, to ensure that criminal enforcement is available for willful trade secret misappropriation and to prohibit government personnel and third party experts and advisors from engaging in the unauthorized disclosure of undisclosed information, trade secrets and confidential business information submitted to the government.

In 2020, China published various measures relating to civil, criminal and administrative enforcement of trade secrets. In September 2020, the Supreme People's Court issued the *Provisions on Several Issues Concerning the Application of Law in Civil Cases of Trade Secret Infringement* and *the Interpretation III on Several Issues Concerning the Application of Law in Handling Criminal Cases of Infringement of Intellectual Property Rights.* In September 2020, the Supreme People's Procuratorate and the Ministry of Public Security also issued the *Decision on Amendment of Docketing for Prosecution of Criminal Trade Secrets Infringement Cases Standards*. These measures relate to issues such as the scope of liability for trade secret misappropriation, prohibited acts of trade secret theft, preliminary injunctions and thresholds for initiations of criminal investigations for trade secret theft. In December 2020, the National People's Congress passed amendments to the *Criminal Law* that included changes to the thresholds for criminal investigation and prosecution and the scope of criminal acts of trade secret theft. The *Criminal Law* amendments require revisions to certain previously issued judicial interpretations and prosecution standards. However, three years after the passage of the *Criminal Law* amendments, these other measures remain unchanged, and implementation of the *Criminal Law* amendments

therefore remains incomplete. Indeed, China has only published a draft judicial interpretation. The United States will continue to monitor the effectiveness of all of these measures.

BAD FAITH TRADEMARK REGISTRATION

The continuing registration of trademarks in bad faith in China remains a significant concern. For example, so-called "trademark squatters" have attempted to take advantage of the fact that a genuine trademark owner has not yet registered its trademark in China by registering that trademark and then trying to sell it to the genuine trademark owner. Bad faith trademark registration also occurs when trademarks intending to deceive or confuse consumers are registered.

At the November 2016 JCCT meeting, China publicly noted the harm that can be caused by bad faith trademarks and asserted that it was taking further steps to combat bad faith trademark filings. Amendments to the *Trademark Law* made in 2019 and subsequent implementing measures, including SAMR's *Provisions on Standardizing Applications for Registrations of Trademarks* issued in 2019 and the *Trademark Examination and Review Guidelines* updated in 2021 by the China National Intellectual Property Administration (CNIPA), require the disallowance of bad faith trademark applications. In January 2023, China proposed further amendments to the *Trademark Law* regarding bad faith trademarks.

However, implementation in this area by China to date suggests that right holders remain insufficiently protected, as bad faith trademarks remain widespread and problems persist with the large number of inconsistent decisions, low rate of success for oppositions, lack of transparency in opposition proceedings and unavailability of default judgments against applicants who fail to appear in proceedings. Onerous documentation requirements are also on ongoing concern for right holders. China acceded to the Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents (Apostille Convention), effective November 2023. The United States will monitor China's implementation of the obligations under the Apostille Convention and whether it addresses right holders' concerns regarding foreign government document legalization requirements.

As a result of these deficiencies, U.S. companies across industry sectors continue to face Chinese applicants registering their marks and "holding them for ransom" or seeking to establish a business building off of U.S. companies' global reputations. The Phase One Agreement requires China to address longstanding U.S. concerns regarding bad-faith trademark registration, such as by invalidating or refusing bad faith trademark applications. The United States will continue to monitor developments in this area of long-standing concern closely.

ONLINE INFRINGEMENT

Online piracy continues on a large scale in China, affecting a wide range of industries, including those involved in distributing legitimate music, motion pictures, books and journals, software and video games. While increased enforcement activities have helped stem the flow of online sales of some pirated offerings, much more sustained action and attention is needed to make a meaningful difference for content creators and right holders, particularly small and medium-sized enterprises. In response to the COVID-19 pandemic, reports indicate that many infringers have moved online to distribute their pirated and counterfeit goods, which further increases the need for targeted and sustained enforcement measures in the online environment.

The United States has urged China to consider ways to create a broader policy environment to help foster the growth of healthy markets for licensed and legitimate content. The United States has also urged China to revise existing rules that have proven to be counterproductive.

At the November 2016 JCCT meeting, China agreed to actively promote electronic commerce-related

legislation, strengthen supervision over online infringement and counterfeiting, and work with the United States to explore the use of new approaches to enhance online enforcement capacity. In December 2016 and November 2017, China published drafts of a new *E-Commerce Law* for public comment. In written comments, the United States stressed that the final version of this law should not undermine the existing notice-and-takedown system and should promote effective cooperation in deterring online infringement. In August 2018, China adopted its new *E-Commerce Law*, which entered into force in January 2019. This law was an opportunity for China to institute strong provisions on intellectual property protection and enforcement for its electronic commerce market, which is now the largest in the world. However, as finalized, the law instead introduced provisions that weaken the ability of right holders to protect their rights online and that alleviate the liability of China-based electronic commerce platforms for selling counterfeit and other infringing goods.

The Phase One Agreement requires China to provide effective and expeditious action against infringement in the online environment, including by requiring expeditious takedowns and by ensuring the validity of notices and counter-notifications. It also requires China to take effective action against electronic commerce platforms that fail to take necessary measures against infringement.

In May 2020, the National People's Congress issued the *Civil Code*, which included updated notice-and-takedown provisions. In September 2020, the Supreme People's Court issued *Guiding Opinions on Hearing Intellectual Property Disputes Involving E-Commerce Platform* and the *Official Reply on the Application of Law in Network-Related Intellectual Property Infringement Disputes*. These measures relate to issues such as expeditious takedowns and the validity of notices and counter-notifications, but have only recently taken effect. In November 2020, the National People's Congress adopted long-pending amendments to the *Copyright Law*, including provisions relating to increasing civil remedies for copyright infringement, new rights of public performance and broadcasting for producers of sound recordings, and protections against circumvention of technological protection measures. Right holders have welcomed these developments but have noted the need for effective implementation as well as new measures to address online piracy. The United States will closely monitor the impact of these measures going forward.

In August 2021, SAMR issued draft amendments to the *E-Commerce Law* for public comment. These draft amendments further attempt to address concerns that have been raised about procedures and penalties under China's notice-and-takedown system.

COUNTERFEIT GOODS

Counterfeiting in China remains widespread and affects a wide range of goods. In April 2019, China amended its *Trademark Law*, effective November 2019, to require civil courts to order the destruction of counterfeit goods, but these amendments still do not provide the full scope of civil remedies for right holders. One of many areas of particular U.S. concern involves medications. Despite years of sustained engagement by the United States, China still needs to improve its regulation of the manufacture of active pharmaceutical ingredients to prevent their use in counterfeit and substandard medications. At the July 2014 S&ED meeting, China committed to develop and seriously consider amendments to the *Drug Administration Law* that will require regulatory control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients. At the June 2015 S&ED meeting, China further committed to publish revisions to the *Drug Administration Law* in draft form for public comment and to consider the views of the United States and other relevant stakeholders. In October 2017, China published limited draft revisions to the *Drug Administration Law* and stated that future proposed revisions to the

remainder of this law would be forthcoming. Although the final *Drug Administration Law*, issued in August 2019, requires pharmaceuticals products and active pharmaceutical ingredients to meet manufacturing standards, it remains unclear how these requirements will be implemented or enforced.

The Phase One Agreement requires China to take effective enforcement action against counterfeit pharmaceuticals and related products, including active pharmaceutical ingredients, and to significantly increase actions to stop the manufacture and distribution of counterfeits with significant health or safety risks. The agreement also requires China to provide that its judicial authorities shall order the forfeiture and destruction of pirated and counterfeit goods, along with the materials and implements predominantly used in their manufacture. In addition, the agreement requires China to significantly increase the number of enforcement actions at physical markets in China and against goods that are exported or in transit. It further requires China to ensure, through third party audits, that government agencies and state-owned enterprises only use licensed software.

In August 2020, SAMR issued the *Opinions on Strengthening the Destruction of Infringing and Counterfeit Goods*, and the State Council amended the *Provisions on the Transfer of Suspected Criminal Cases by Administrative Organs for Law Enforcement*, which relate to the transfer of intellectual property cases from administrative authorities to criminal authorities. China has reported increased enforcement actions against counterfeit medicines and increased customs actions against pirated and counterfeit goods, but it also needs to show that it has increased enforcement actions against counterfeits with health and safety risks and at physical markets, increased training of customs personnel and ensured the use of only licensed software in government agencies and state-owned enterprises.

PHARMACEUTICALS AND MEDICAL DEVICES

PHARMACEUTICALS

For several years, the United States has pressed China on a range of pharmaceuticals issues. These issues have related to matters such as overly restrictive patent application examination practices, regulatory approvals that are delayed or linked to extraneous criteria, weak protections against the unfair commercial use and unauthorized disclosure of regulatory data, issues with the implementation of an efficient mechanism to resolve patent infringement disputes, requirements to share ownership with a Chinese partner of patent rights arising from research generated by using human genetic resources in China and implementation of patent term extensions for unreasonable marketing approval delays, including limits on the type of protection provided. While China has implemented some helpful reforms, the United States still has many of the same concerns with China's pharmaceutical market, especially as it pertains to treatment of foreign companies.

In its WTO accession agreement, China committed to provide effective protection against unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. To provide this protection, known as regulatory data protection (RDP), China committed to enact laws and regulations to ensure that no person, other than the submitter of the data, could rely on the submitted data in a product approval application without permission from the submitter for six years from the date on which China granted marketing approval to the submitter.

In 2017, CFDA finally issued several draft notices addressing the issue of RDP. These draft notices set out a conceptual framework to protect against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain

marketing approval for pharmaceutical products, and they also sought to promote the efficient resolution of patent disputes between right holders and the producers of generic pharmaceuticals. However, the proposed framework did not provide for a six-year period of RDP despite the commitment that China had made in its WTO accession agreement in 2001.

In 2018, CFDA's successor agency, NMPA, issued draft *Drug Registration Regulations* and draft implementing measures on drug trial data that would preclude or condition the duration of RDP on whether clinical trials occur in China and whether marketing approval is sought first in China. Subsequently, China issued a revised *Drug Administration Law* in 2019, followed by NMPA's revised draft *Drug Registration Regulations* in 2020 and NMPA's revised draft *Drug Administration Law Implementing Regulations* in 2021. Despite the opportunities that these revised draft measures afforded China's regulatory authorities, the concerning limitations on RDP were not removed, and China still has not created a regulatory framework providing for the six-year period of RDP as it had committed to do in 2001.

Since 2018, volume-based procurement has presented a new market access complication for foreign suppliers of pharmaceuticals, largely because of the opaque and unpredictable nature of the bidding processes. In November 2018, a National Drug Centralized Procurement Pilot Scheme was launched. Then, in January 2019, the State Council issued a Pilot Plan for National Centralized Drug Procurement and Use. In January 2023, China's National Healthcare Security Administration (NHSA) published the 2022 edition of its annual National Reimbursement Drug List (NRDL), which became effective on March 1, 2023. U.S. industry also cites the need for increased transparency and greater harmony between national and provincial bidding processes as well as a greater emphasis on a competitive, market-based approach to evaluating a product's value and relevant bids. In December 2022, NHSA and CNIPA jointly issued the *Opinions on Strengthening the Protection of Intellectual Property Rights in the Field of Centralized Pharmaceutical Procurement*, which sets out to establish a coordination mechanism to remove patent-infringing drugs from the NRDL, with further implementing measures to follow.

As part of the Phase One Agreement, the two sides agreed that China would establish a nationwide mechanism for the early resolution of potential pharmaceutical patent disputes that covers both small molecule drugs and biologics, including a cause of action to allow a patent holder to seek expeditious remedies before the marketing of an allegedly infringing product. The United States has been working closely with U.S. industry to monitor developments and to ensure that China's new system works as contemplated. Separately, the agreement also provides for patent term extensions to compensate for unreasonable patent and marketing approval delays that cut into the effective patent term as well as for the use of supplemental data to meet relevant patentability criteria for pharmaceutical patent applications. The United States and China agreed to address data protection for pharmaceuticals in future negotiations.

In October 2020, China amended the *Patent Law* to provide for patent term extensions for unreasonable patent and marketing approval delays, and it also added a mechanism for the early resolution of potential patent disputes, known as patent linkage. Implementing measures for the patent linkage mechanism were issued in July 2021, as NMPA and CNIPA jointly issued the *Trial Implementation Measures for the Mechanism for Early Resolution of Drug Patent Disputes* and the Supreme People's Court issued the *Regulations on Several Issues Concerning the Application of Law in the Trial of Civil Patent Disputes Related to Drug Registration Application*. In 2021 and 2022, CNIPA issued draft implementing rules for the amended *Patent Law* and drafts of amendments to the *Patent Examination Guidelines*. In December 2023, China released the final implementing rules for the amended *Patent Law*.

Among other things, the United States and U.S. industry remain concerned about China's implementation of patent term extensions for unreasonable patent and marketing approval delays, including the limits on the type of protection provided by China's regulatory framework. The United States and U.S. industry also remain concerned about China's patent linkage mechanism.

MEDICAL DEVICES

For many years, working closely with U.S. industry, the United States has raised concerns about China's pricing and tendering procedures for medical devices and its discriminatory treatment of imported medical devices. Notably, at the November 2015 JCCT meeting, China committed that, in terms of accessing the market, it will give imported medical devices the same treatment as medical devices manufactured or developed domestically. Unfortunately, despite this commitment, China continues to pursue a wide range of policies that direct China's purchasing authorities to prioritize the procurement of domestic medical device manufacturers over imported medical device manufacturers.

Separately, the United States has pressed China's regulatory authorities to develop sound payment systems for medical devices that are transparent, predictable and competitive. The United States has also urged China to adequately recognize quality, safety and the costs of R&D in its approach to procurement policy.

In 2019, China's State Council launched a concerning volume-based procurement (VBP) approach for medical devices in a few provinces and municipalities in an attempt to cut healthcare costs. Since then, the VBP approach has become further engrained in China's system, with the formation of multi-province and municipal alliances to conduct joint procurements under VBP. In 2020, China implemented its first national VBP tender, which has been followed by additional national tenders in 2021 and 2022. However, U.S. industry reports that the vast majority of VBP tendering activities are occurring at the sub-national level. In practice, moreover, implementation of China's VBP prioritizes cost over the product's value or quality.

According to U.S. industry, if China continues to pursue VBP without significant changes, it could lead to the creation of a low-cost, low-quality medical devices sector in China, with Chinese medical device companies developing monopolies in the manufacture and sale of various low-quality medical devices in the China market. This outcome would operate to the disadvantage of innovative medical device companies, many of which are foreign companies, and the patients who rely on advanced medical technologies. Currently, medical device companies that are successful at winning bids often have very thin profit margins or even lose money. Reportedly, some medical device companies are reducing training to healthcare providers in order to offer the expected price cuts. In addition, given the size of China's medical device market, monopolies from China could expand and then prioritize exports of their low-quality medical devices to third countries. With the choice between a higher cost but more effective product or a lower cost, lower quality product, countries with greater budget constraints, and greater vulnerability to Chinese influence, may be more inclined to procure China's offerings. Overall, China's VBP approach poses a risk to the medical device sector and the provision of high-quality medical treatment worldwide.

In July 2022, China's Ministry of Finance issued a revised *Government Procurement Law*. While China has a history of distributing unofficial, non-public guidance to give preference to domestic over foreign medical devices companies, China's revisions to the *Government Procurement Law* also officially expands the coverage of products for which domestic alternatives should be given preference.

Meanwhile, the *Made in China 2025* industrial plan announced by the State Council in 2015 seeks to prop up China's domestic medical device sector through a series of support policies, including

targeted funds and procurement policies. The goal of these policies is to significantly increase the market share of domestically owned and domestically manufactured medical devices, and correspondingly decrease market share of foreign medical devices, by 2025. At the same time, some provincial governments directly subsidize the purchase of domestically manufactured medical devices. In addition, some provincial governments have issued guidelines urging medical institutions to prioritize the procurement of local medical equipment over imported equipment. In at least one province, the guidelines suggest that only imported medical devices for which there is not a domestic replacement will be eligible for procurement.

As discussed in more detail in the Government Procurement section below, in August 2023, China's State Council issued the *Opinions on Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment*, known as Document 11. Article 6 of Document 11 offers various suggestions for how central level ministries and sub-central government authorities could work to ensure that foreign-invested enterprises are able to participate fairly in China's government procurement market, consistent with existing Chinese law. One of the suggestions is to provide a definition for "produced in China." To the extent that China follows through on the State Council's suggestions, the United States urges China to make any draft implementing measures public and to provide a reasonable period for the public to submit comments.

U.S. industry also reports that while sub-central governments in China have always provided some financial support to domestic medical devices companies, their support appears to have increased since 2020. U.S. industry notes that this trend could be attributed to the COVID-19 pandemic, China's five-year industrial plan for medical equipment covering the years 2021 to 2025, the *Action Plan to Promote the High-Quality Development of the Medical Equipment Industry (2023-2025)* or perhaps all three of them. The United States will monitor this situation closely and will encourage China to be transparent in its approach.

SERVICES

OVERVIEW

The prospects for U.S. service suppliers in China should be promising, given the size of China's market. Nevertheless, the U.S. share of China's services market remains well below the U.S. share of the global services market, and the OECD continues to rate China's services regime as one of the most restrictive among the world's major economies.

In 2023, numerous challenges persisted in a number of services sectors. As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, case-by-case approvals in some services sectors, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services to achieve their full market potential in China. These policies and practices affect U.S. service suppliers across a wide range of sectors, including cloud computing, telecommunications, film production and distribution, online video and entertainment services, express delivery and legal services. In addition, China's *Cybersecurity Law* and related implementing measures include mandates to purchase domestic information and communications technology (ICT) products and services, while China's *Cybersecurity Law*, *Data Security Law* and *Personal Information Protection Law* and related implementing measures include excessive restrictions on cross-border data flows, and excessive requirements to store and process data locally. These types of data measures undermine U.S. services suppliers' ability to take advantage of market access opportunities in China by prohibiting or severely restricting cross-border transfers of information that are routine in the ordinary course of business and are fundamental to any business activity. China also has failed to fully address U.S.

concerns in areas that have been the subject of WTO dispute settlement, including electronic payment services and theatrical film importation and distribution.

The Phase One Agreement, signed in January 2020, addresses a number of longstanding trade and investment barriers to U.S. providers of a wide range of financial services, including banking, insurance, securities, asset management, credit rating and electronic payment services, among others. The barriers addressed in the agreement include joint venture requirements, foreign equity limitations and various discriminatory regulatory requirements. Removal of these barriers is designed to allow U.S. financial service providers to compete on a more level playing field and expand their services export offerings in the China market. Nevertheless, China's excessive restrictions on cross-border data flows could continue to create significant challenges for U.S. financial service providers in China.

BANKING SERVICES

Although China has opened its banking sector to foreign competition in the form of wholly foreign-owned banks, China has maintained restrictions on market access in other ways that have kept foreign banks from establishing, expanding and obtaining significant market share in China. Recently, however, China has taken some steps to ease or remove market access restrictions.

For example, China has removed a number of long-standing barriers for foreign banks, including the $10 billion minimum asset requirement for establishing a foreign bank in China and the $20 billion minimum asset requirement for setting up a Chinese branch of a foreign bank. China has also removed the cap on the equity interest that a single foreign investor can hold in a Chinese-owned bank.

In the Phase One Agreement, China committed to remove some of these barriers and to expand opportunities for U.S. financial institutions, including bank branches, to supply securities investment fund custody services by considering their global assets when they seek licenses. China also agreed to review and approve qualified applications by U.S. financial institutions for securities investment fund custody licenses on an expeditious basis. In addition, China committed to consider the international qualifications of U.S. financial institutions when evaluating license applications for Type-A lead underwriting services for all types of non-financial debt instruments in China.

SECURITIES, ASSET MANAGEMENT AND FUTURES SERVICES

In the Phase One Agreement, China committed to remove the foreign equity caps in the securities, asset management and futures sectors by no later than April 1, 2020. It also committed to ensure that U.S. suppliers of securities, asset management and futures services are able to access China's market on a non-discriminatory basis, including with regard to the review and approval of license applications.

Consistent with its commitments in the Phase One Agreement, China announced that it would allow wholly foreign-owned companies for the securities and asset (i.e., fund) management sectors as of April 1, 2020, and that it would allow wholly foreign-owned companies for the futures sector as of January 1, 2020. Prior to these announcements, China had maintained a foreign equity cap of 51 percent for these sectors. Over the past four years, some U.S. financial institutions have applied for and received licenses to operate as wholly foreign-owned enterprises in these sectors. The United States is monitoring these and other developments as U.S. companies continue to seek to obtain licenses and undertake operations in these sectors.

INSURANCE SERVICES

In the Phase One Agreement, China committed to accelerate the removal of the foreign equity caps for life, pension and health insurance so that they are removed no later than April 1, 2020. In addition, it confirmed the removal of the 30-year operating

requirement, known as a "seasoning" requirement, which had been applied to foreign insurers seeking to establish operations in China in all insurance sectors. China also committed to remove all other discriminatory regulatory requirements and processes and to expeditiously review and approve license applications.

Consistent with China's commitments in the Phase One Agreement, the China Banking and Insurance Regulatory Commission (CBIRC) announced that China would allow wholly foreign-owned companies for the life, pension and health insurance sectors as of January 1, 2020. Prior to this announcement, China had maintained foreign equity caps and only permitted foreign companies to establish as Chinese-foreign joint ventures in these sectors. In December 2020, CBIRC issued a measure that provided further transparency regarding its intention to allow foreign-invested companies to take advantage of this opening.

In other insurance sectors, the United States continues to encourage China to establish more transparent procedures so as to better enable foreign participation in China's market. Sectors in need of more transparency include export credit insurance and political risk insurance.

Finally, some U.S. insurance companies established in China have encountered difficulties in getting CBIRC, replaced by the National Administration of Financial Regulation (NAFR) in March 2023, to issue timely approvals of their requests to open up new internal branches to expand their operations. The United States continues to urge NAFR to issue timely approvals when U.S. insurance companies seek to expand their branch networks in China.

ELECTRONIC PAYMENT SERVICES

In a WTO case that it launched in 2010, the United States challenged China's restrictions on foreign companies, including major U.S. credit and debit card processing companies, which had been seeking to supply electronic payment services to banks and other businesses that issue or accept credit and debit cards in China. The United States argued that China had committed in its WTO accession agreement to open up this sector in 2006, and a WTO panel agreed with the United States in a decision issued in 2012. China subsequently agreed to comply with the WTO panel's rulings in 2013, but China did not allow foreign suppliers to apply for licenses until June 2017, when China's regulator – PBOC – finalized the establishment of a two-step licensing process in which a supplier must first complete one year of preparatory work before being able to apply for a license.

As of January 2020, when the United States and China entered into the Phase One Agreement, no foreign supplier of electronic payment services had been able to secure the license needed to operate in China's market due largely to delays caused by PBOC. At times, PBOC had refused even to accept applications to begin preparatory work from U.S. suppliers, the first of two required steps in the licensing process. Meanwhile, throughout the years that China actively delayed opening up its market to foreign suppliers, China's national champion, China Union Pay, has used its exclusive access to domestic currency transactions in the China market, and the revenues that come with it, to support its efforts to build out its electronic payment services network abroad, including in the United States. In other words, China consciously decided to maintain market-distorting practices that benefit its own companies, even in the face of adverse rulings at the WTO.

In the Phase One Agreement, China committed to ensure that PBOC operates an improved and timely licensing process for U.S. suppliers of electronic payment services so as to facilitate their access to China's market. In June 2020, four months after the entry into force of the Phase One Agreement, American Express became the first foreign supplier of electronic payment services to secure a license from PBOC to operate in China's market. In November 2023, after years of delays, Mastercard was finally able to secure a license to operate in the

China market. Meanwhile, PBOC has been delaying action for even longer periods of time on the licensing application submitted by another U.S. supplier, Visa. The United States continues to closely monitor this situation with concern.

INTERNET-ENABLED PAYMENT SERVICES

PBOC first issued regulations for non-bank suppliers of online payment services in 2010, and it subsequently began processing applications for licensees. Regulations were further strengthened in 2015, with additional provisions aimed at increasing security and traceability of transactions. According to a U.S. industry report, of more than 200 licenses issued as of June 2014, only two had been issued to foreign-invested suppliers, and those two were for very limited services. This report provided clear evidence supporting stakeholder concerns about the difficulties they faced entering China's market and the slow process foreign firms face in getting licensed. In 2018, PBOC announced that it would allow foreign suppliers, on a nondiscriminatory basis, to supply Internet-enabled payment services. At the same time, as in many other sectors, PBOC requires suppliers to localize their data and facilities in China. In January 2021, PayPal became the first foreign company to obtain full ownership of a payment platform in China, along with a license to supply payment services. The United States will continue to closely monitor developments in this area.

TELECOMMUNICATIONS SERVICES

China's restrictions on basic telecommunications services, such as informal bans on new entry, a 49-percent foreign equity cap, 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 telecommunications services market. Since China acceded to the WTO almost two decades ago, not a single foreign firm has succeeded in establishing a new joint venture to enter this sector.

Restrictions maintained by China on less highly regulated value-added telecommunications services also have created serious barriers to market entry for foreign suppliers seeking to enter this sector. These restrictions include opaque and arbitrary licensing procedures, foreign equity caps and periodic, unjustified moratoria on the issuance of new licenses. As a result, only a few dozen foreign-invested suppliers have secured licenses to provide value-added telecommunications services, while there are thousands of licensed domestic suppliers.

INTERNET REGULATORY REGIME

China's Internet regulatory regime is restrictive and non-transparent, affecting a broad range of commercial services activities conducted via the Internet, and is overseen by multiple agencies without clear lines of jurisdiction. China's Internet economy has boomed over the past decade and is second in size only to that of the United States. Growth in China has been marked in service sectors similar to those found in the United States, including retail websites, search engines, vocational and adult online education, travel, advertising, audio-visual and computer gaming services, electronic mail and text, online job searches, Internet consulting, mapping services, applications, web domain registration and electronic trading. However, in the China market, Chinese companies dominate due in large part to restrictions imposed on foreign companies by the Chinese government. At the same time, foreign companies continue to encounter major difficulties in attempting to offer these and other Internet-based services on a cross-border basis.

China continues to engage in extensive blocking of legitimate websites, imposing significant costs on both suppliers and users of web-based services and products. According to the latest data, China currently blocks most of the largest global sites, and

U.S. industry research has calculated that more than 10,000 sites are blocked, affecting billions of dollars in business, including communications, networking, app stores, news and other sites. Even when sites are not permanently blocked, the often arbitrary implementation of blocking, and the performance-degrading effect of filtering all traffic into and outside of China, significantly impair the supply of many cross-border services, often to the point of making them unviable.

VOICE-OVER-INTERNET PROTOCOL SERVICES

While computer-to-computer voice-over-Internet (VOIP) services are permitted in China, China's regulatory authorities have restricted the ability to offer VOIP services interconnected to the public switched telecommunications network (i.e., to call a traditional phone number) to basic telecommunications service licensees. There is no obvious rationale for such a restriction, which deprives consumers of a useful communication option, and the United States continues to advocate for eliminating it.

CLOUD COMPUTING SERVICES

Especially troubling is China's treatment of foreign companies seeking to participate in the development of cloud computing services, including computer data processing and storage services and software application services provided over the Internet. China prohibits foreign companies established in China from directly providing any of these services. Given the difficulty in providing these services on a cross-border basis (largely due to restrictive Chinese policies), the only option that a foreign company has to access the China market is to establish a contractual partnership with a Chinese company, which is the holder of the necessary Internet data center license, and turn over its valuable technology, intellectual property, know-how and branding as part of this arrangement. While the foreign service supplier earns a licensing fee from the arrangement, it has no direct relationship with customers in China and no ability to independently develop its business. It has essentially handed over its business to a Chinese company that may well become a global competitor. This treatment has generated serious concerns in the United States and among other WTO Members as well as U.S. and other foreign companies.

In major markets, including China, cloud computing services are typically offered through commercial presence in one of two ways. They are offered as an integrated service in which the owner and operator of a telecommunication network also offers computing services, including data storage and processing function, over that network, or they are offered as a stand-alone computer service, with connectivity to the computing service site provided separately by a telecommunications service supplier. Although China's commitments under the WTO's General Agreement on Trade in Services (GATS) include services relevant to both of these approaches, neither one is currently open to foreign-invested companies in China.

AUDIO-VISUAL AND RELATED SERVICES

China prohibits foreign companies from providing film production and distribution services in China. In addition, China's restrictions in the area of theater services have wholly discouraged investment by foreign companies in cinemas in China.

China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers. For example, China prohibits retransmission of foreign TV channels, foreign investment in TV production and foreign investment in TV stations and channels. China also imposes quotas on the amount of foreign programming that can be shown on a Chinese TV channel each day. In addition, in September 2018, the National Radio and Television Administration's (NRTA) issued a problematic draft measure that would impose new restrictions in China's already highly restricted market for foreign creative content. It would require that spending on foreign content account for no more than 30 percent of available total programs in

each of several categories, including foreign movies, TV shows, cartoons, documentaries and other foreign TV programs, made available for display via broadcasting institutions and online audio-visual content platforms. It also would prohibit foreign TV shows in prime time. Although this measure has not yet been issued in final form, it continues to raise serious concerns, as it appears that, as a matter of practice, it has been implemented in China since 2021, including by online audio-visual content platforms.

THEATRICAL FILMS

In February 2012, the United States and China reached an alternative resolution 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 U.S. film producers. However, China has not yet fully implemented its MOU commitments, including with regard to critical commitments to open up film distribution opportunities for imported films. As a result, the United States has been pressing China for full implementation of the MOU.

In 2017, in accordance with the terms of the MOU, the two sides began discussions regarding the provision of further meaningful compensation to the United States in an updated MOU. These discussions continued until March 2018, before stalling when China embarked on a major government reorganization that involved significant changes for China's Film Bureau. Discussions resumed in 2019 as part of the broader U.S.-China trade negotiations that began following a meeting between the two countries' Presidents on the margins of the Group of 20 Heads of State and Government Summit in Buenos Aires in December 2018. To date, no agreement has been reached on the further meaningful compensation that China owes to the United States. The United States will continue pressing China to fulfill its obligations.

ONLINE VIDEO AND ENTERTAINMENT SERVICES

China restricts the online supply of foreign video and entertainment services through measures affecting both content and distribution platforms. China requires foreign companies to license their content to Chinese companies and also imposes burdensome restrictions on content, which are implemented through exhaustive content review requirements that are based on vague and otherwise non-transparent criteria. With respect to distribution platforms, NRTA has required Chinese online platform suppliers to spend no more than 30 percent of their acquisition budget on foreign content. NRTA has also instituted numerous measures that prevent foreign suppliers from qualifying for a license, such as requirements that video platforms all be Chinese-owned. NRTA and other Chinese regulatory authorities have also taken actions to prevent the cross-border supply of online video services, which may implicate China's GATS commitments relating to video distribution.

LEGAL SERVICES

China restricts the types of legal services that can be provided by foreign law firms, including through a prohibition on foreign law firms hiring lawyers qualified to practice Chinese law. It also restricts the ability of foreign law firms to represent their clients before Chinese government agencies and imposes lengthy delays on foreign law firms seeking to establish new offices. In addition, beginning with the version of China's *Foreign Investment Negative List* that entered into force in July 2020, China has added an explicit prohibition on the ability of a foreign lawyer to become a partner in a domestic law firm. Reportedly, China is also considering draft regulatory measures that would even further restrict the ability of foreign law firms to operate in China.

EXPRESS DELIVERY SERVICES

The United States continues to have concerns regarding China's implementation of the 2009 *Postal Law* and related regulations through which China prevents foreign service suppliers from participating in the document segment of its domestic express delivery market. Meanwhile, in the package segment, China applies overly burdensome and inconsistent regulatory approaches and reportedly has provided more favorable treatment to Chinese service suppliers when awarding business permits. China also does not always allow foreign service suppliers to participate on an equal basis in the development of laws, regulations and other measures, including standards, for the express delivery services sector, nor does China always publicly announce the requirements for obtaining a business license.

DIGITAL TRADE AND ELECTRONIC COMMERCE POLICIES

DATA RESTRICTIONS

In 2023, China continued to build out its expansive state control over the collection, storage, processing and sharing of data. China's *Data Security Law* entered into force in September 2021, and China's *Personal Information Protection Law* entered into force in November 2021. These laws operate together with the *Cybersecurity Law*, which took effect in June 2017, the *National Security Law*, which has been in effect since 2015, and various implementing measures, including the *Security Assessment Measures for Outbound Transfers of Data*, which took effect in September 2022, to prohibit or severely restrict cross-border transfers of "important data," a broadly and vaguely defined term, and, in certain cases, personal information collected by companies through their operations in China. These laws and implementing measures also impose local data storage and processing requirements on companies operating in China that collect "important data" and, in certain cases, personal information.

It has been reported that, as a result of China's implementation of the *Security Assessment Measures for Outbound Transfers of Data*, China now has a backlog of thousands of applications from companies seeking to export data. In addition, in September 2023, China released a draft of revisions to the *Security Assessment Measures for Outbound Transfers of Data*, while allowing only a two-week public comment period. Many aspects of the draft revisions are troubling.

Cross-border transfers of data are routine in the ordinary course of business in many sectors and are fundamental to business activity in those sectors. Given the wide range of businesses and business activities that are dependent on cross-border transfers of data and flexible access to global computing facilities, these developments continue to generate serious concerns in the United States and many other countries.

SECURE AND CONTROLLABLE ICT POLICIES

Implementing measures for China's *Cybersecurity Law* remain a continued source of serious concern for U.S. companies since the law's enactment in 2016. Of particular concern are the *Measures for Cybersecurity Review*, first issued in 2016 and later updated in 2020 and 2021. This measure implements one element of the cybersecurity regime created by the *Cybersecurity Law*. Specifically, the measure puts in place a review process to regulate the purchase of ICT products and services by critical information infrastructure operators and online platform operators in China. The review process is to consider, among other things, potential national security risks related to interruption of service, data leakage and reliability of supply chains. In addition, in September 2022, China published a draft revision of the *Cybersecurity Law* with a 15-day public comment period. The draft revision would introduce penalties on operators of critical information infrastructure who use products or services that have not undergone the required security review, and it would also raise fines for certain violations of the *Cybersecurity Law*.

As demonstrated in implementing measures for the *Cybersecurity Law*, China's approach is to impose severe restrictions on a wide range of U.S. and other foreign ICT products and services with an apparent goal of supporting China's technology localization policies by encouraging the replacement of foreign ICT products and services with domestic ones. U.S. and other foreign stakeholders and governments around the world expressed serious concerns about requirements that ICT equipment and other ICT products and services in critical sectors be "secure and controllable," as these requirements are used by the Chinese government to disadvantage non-Chinese firms.

In addition to the *Cybersecurity Law*, China has referenced its "secure and controllable" requirements in a variety of measures dating back to 2013. Through these measures, China has mandated that Chinese information technology users purchase Chinese products and favor Chinese service suppliers, imposed domestic R&D requirements, considered the location of R&D as a cybersecurity risk factor and required the transfer or disclosure of source code or other intellectual property. In the 2019 update of the *Measures for Cybersecurity Review*, China added political, diplomatic and other "non-market" developments as potential risk factors to be considered.

In addition, in 2015, China enacted a *National Security Law* and a *Counterterrorism Law*, which include provisions citing not only national security and counterterrorism objectives but also economic and industrial policies. The State Council also published a plan in 2015 that sets a timetable for adopting "secure and controllable" products and services in critical government ministries by 2020.

Meanwhile, sector-specific policies under this broad framework continue to be proposed and deployed across China's economy. A high-profile example from December 2014 was a proposed measure drafted by the China Banking Regulatory Commission that called for 75 percent of ICT products used in the banking system to be "secure and controllable" by 2019 and that would have imposed a series of criteria that would shut out foreign ICT providers from China's banking sector. Not long afterwards, a similar measure was proposed for the insurance sector.

In 2015, the United States, in concert with other governments and stakeholders around the world, raised serious concerns about China's "secure and controllable" regime at the highest levels of government within China. During a state visit in September 2015 in Washington, D.C., the U.S. and Chinese Presidents committed to a set of principles for trade in information technologies. The issue also was raised in connection with the June 2015 S&ED meeting and the November 2015 JCCT meeting, with China making a series of additional important commitments with regard to technology policy. China reiterated many of these commitments at the November 2016 JCCT meeting, where it affirmed that its "secure and controllable" policies are not to unnecessarily limit or prevent commercial sales opportunities for foreign ICT suppliers or unnecessarily impose nationality-based conditions and restrictions on commercial ICT purchases, sales or uses. China also agreed that it would notify relevant technical regulations to the WTO Committee on Technical Barriers to Trade (TBT Committee).

Again, however, China has not honored its promises. The numerous draft and final implementation measures issued by China since 2017 in the area of cybersecurity raise serious questions about China's approach to cybersecurity regulation. China's measures do not appear to be in line with the non-discriminatory, non-trade restrictive approach to which China has committed, and global stakeholders have grown even more concerned about the implications of China's ICT security measures across the many economic sectors that employ digital technologies. Accordingly, throughout the past year, the United States conveyed its serious concerns about China's approach to cybersecurity regulation

through bilateral engagement and multilateral engagement, including at WTO committee and council meetings, in an effort to persuade China to revise its policies in this area in light of its WTO obligations and bilateral commitments. These efforts are currently ongoing.

ENCRYPTION

Use of ICT products and services is increasingly dependent on robust encryption, an essential functionality for protecting privacy and safeguarding sensitive commercial information. Onerous requirements on the use of encryption, including intrusive approval processes and, in many cases, mandatory use of indigenous encryption algorithms (e.g., for WiFi and 4G cellular products), continue to be cited by stakeholders as a significant trade barrier.

In October 2019, China adopted a *Cryptography Law* that includes restrictive requirements for commercial encryption products that "involve national security, the national economy and people's lives, and public interest," which must undergo a security assessment. This broad definition of commercial encryption products that must undergo a security assessment raises concerns that the new *Cryptography Law* will lead to unnecessary restrictions on foreign ICT products and services. In August 2020, the State Cryptography Administration issued the draft *Commercial Cryptography Administrative Regulations* to implement the *Cryptography Law*. This draft measure did not address the concerns that the United States and numerous other stakeholders had raised regarding the *Cryptography Law*.

Going forward, the United States will continue to monitor implementation of the *Cryptography Law* and related measures. The United States will remain vigilant toward the introduction of any new requirements hindering technologically neutral use of robust, internationally standardized encryption.

GOVERNMENT PROCUREMENT

In its WTO accession agreement, China made a commitment to accede to the WTO Agreement on Government Procurement (GPA) and to open up its vast government procurement market to the United States and other GPA parties. More than two decades later, this commitment remains unfulfilled, while China's government procurement has continued to grow. Indeed, government procurement at the central level of government alone now totals approximately $500 billion, even without considering procurement by state-owned enterprises.

The United States, the EU and other GPA parties have viewed China's GPA offers over the years as highly disappointing in scope and coverage. China submitted its sixth revised offer in October 2019. This offer showed progress in a number of areas, including thresholds, coverage at the sub-central level of government, entity coverage and services coverage. Nonetheless, it fell short of U.S. expectations and remains far from acceptable to the United States and other GPA parties as significant deficiencies remain in a number of critical areas, including thresholds, entity coverage, coverage of state-owned enterprises, services coverage and broad exclusions that would require offsets, domestic content requirements and technology transfer for covered procurement. Although China has since stated that it will "speed up the process of joining" the GPA, it has not submitted a new offer since October 2019. China's most recent submission, made in June 2021, was only an update of its checklist of issues, which informs GPA parties of changes to China's existing government procurement regime since its last update.

China's current government procurement regime is governed by two important laws. The *Government Procurement Law*, 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, but does not apply to procurements by state-owned enterprises. The *Tendering and Bidding Law* falls under the jurisdiction of NDRC 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 (e.g., a government agency or a state-owned enterprise) that conducts the procurement. Both laws cover important procurements that GPA parties would consider to be government procurement eligible for coverage under the GPA.

China's *Foreign Investment Law*, which entered into force in January 2020, and the related October 2021 Ministry of Finance Notice 35 state that China will provide equal treatment to foreign companies invested in China and to domestic Chinese companies with regard to government procurement opportunities. However, foreign companies report a marked increase in preference for domestic Chinese companies over foreign companies invested in China.

In July 2022, the Ministry of Finance issued draft amendments to the *Government Procurement Law*. Among other changes, these draft amendments would codify the requirement that officials at all levels of government refrain from purchasing non-domestic products whenever domestic products are available. The draft amendments, which have not yet been finalized, do not define the term "domestic product."

In August 2023, China's State Council issued the *Opinions on Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment*, known as Document 11. One of the 24 topics addressed in Document 11 is government procurement. Specifically, Article 6 of Document 11 offers various suggestions for how central level ministries and sub-central government authorities could work to ensure that foreign-invested enterprises can participate in China's government procurement market, consistent with existing Chinese law. In this article, the State Council recommends clarifying the meaning of "produced in China" as it relates to China's government procurement laws and regulations and providing unspecified support for foreign-invested enterprises to encourage them to develop their cutting-edge products in China. It also recommends accelerating amendments to the *Government Procurement Law*. While China's leadership has been touting Document 11 to the foreign business community as a demonstration of China's sincerity about fostering a more welcoming environment for foreign companies in China, Document 11 provides little clarity as to how its suggestions would be implemented, nor does it identify timelines for acting on them. Moreover, many of the suggestions fail to demonstrate a willingness to make meaningful changes, as they either restate outcomes that China previously achieved or offer outcomes that would fall short of China's WTO commitments. Going forward, the United States expects China to make any forthcoming draft implementing measures accessible to the public, including the foreign business community, and to provide a reasonable period of time to submit comments on them.

Under both its government procurement regime and its tendering and bidding regime, China continues to implement policies favoring products, services and technologies made or developed by Chinese-owned and Chinese-controlled companies through explicit and implicit requirements that hamper foreign companies from fairly competing in China. For example, notwithstanding China's commitment to equal treatment, foreign companies continue to report cases in which "domestic brands" and "indigenous designs" are required in tendering documents. Since China has not yet adopted clear rules on what constitutes a "domestic product," procurement officials often prefer to err on the side of caution and purchase products from domestic Chinese companies.

ADMINISTRATIVE PROCESS

ADMINISTRATIVE LICENSING

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 there has been an overall reduction in license approval requirements and a focus on decentralizing licensing approval processes, U.S. companies continue to report that one of their key concerns involves China's problematic licensing approval processes.

TRANSPARENCY

OVERVIEW

One of the core principles reflected throughout China's WTO accession agreement is transparency. Unfortunately, after more than 20 years of WTO membership, China still has a poor record when it comes to adherence to its transparency obligations.

PUBLICATION OF TRADE-RELATED 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. China adopted a single official journal, to be administered by MOFCOM, in 2006. However, it appears that China only publishes trade-related measures from some, but not all, central-government entities in this journal. It also appears that China rarely publishes trade-related measures from sub-central governments in the journal.

At the central government level, moreover, China tends to take a narrow view of the types of trade-related measures that need to be published in the official journal. For those government entities whose trade-related measures are published in the official journal, China more commonly (but still not regularly) publishes trade-related administrative regulations and departmental rules in the journal, but it is rare for China to publish other measures such as opinions, circulars, orders, directives and notices, which are known as "normative documents" in China's legal system. Normative documents are regulatory documents that do not fall into the category of administrative regulations or departmental rules, but still impose binding obligations on enterprises and individuals. Although the State Council introduced a definition for "administrative normative documents" in 2014, this definition is narrow and does not appear to encompass all normative documents, nor has it resulted in their regular publication as required by China's WTO commitments. Among other things, publication of all normative documents would facilitate compliance by enterprises and individuals with the obligations addressed in them.

Meanwhile, China rarely publishes certain types of trade-related measures from either the central level or the sub-central level of government in the official journal. As discussed above in the Industrial Subsidies section, an important example involves subsidy measures.

NOTICE-AND-COMMENT PROCEDURES

In its WTO accession agreement, China committed to provide a reasonable time period for public comment before implementing new trade-related laws, regulations and other measures. While little progress has been made in implementing this commitment at the sub-central government level, the National People's Congress instituted notice-and-comment procedures for draft laws in 2008, 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 National People's Congress began regularly publishing draft laws for public comment. China's State Council often (but not regularly) published draft administrative regulations for public comment, but many of China's ministries were not consistent in

publishing draft departmental rules or normative documents 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.

In the Phase One Agreement, China committed to provide no less than 45 days for public comment on all proposed laws, regulations and other measures implementing the Phase One Agreement. Since the entry into force of this commitment in February 2020, China has generally been providing the required 45-day public comment period and working constructively with the United States whenever it has raised questions or concerns regarding provisions in proposed implementing measures.

Currently, outside the context of Phase One Agreement implementing measures, the process for issuing new measures in China can be opaque and unpredictable and implemented without adequate notice. China still needs to improve its practices relating to the publication of administrative regulations and departmental rules for public comment. China also needs to formalize its use of notice-and-comment procedures for all normative documents. In addition, even when China provides for a notice-and-comment period, too often it issues the final measure immediately after the end of the comment period, suggesting that it did not give serious consideration to the comments received.

China also needs to implement consistently the notice-and-comment obligations applicable to all WTO Members. Most notably, China needs to adhere consistently to the notice-and-comment periods required by the TBT Agreement and the SPS Agreement.

TRANSLATIONS

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

Notably, however, even if China were to fully implement its existing measures requiring translations, they would not be sufficient to bring China into full WTO compliance in this area. China does not consistently publish translations of trade-related laws, administrative regulations and departmental rules in a timely manner (i.e., before implementation), nor does it publish any translations of trade-related normative documents or trade-related measures issued by sub-central governments.

INQUIRY POINT

In its WTO accession agreement, China committed to establish an inquiry point that would respond to requests for information relating to legal measures required to be published in its official journal. At times, however, China has refused to provide copies of legal measures in response to legitimate requests directed to its inquiry point.

In April 2020, for example, the United States submitted a request concerning five Chinese legal measures covering semiconductors and fisheries subsidy programs that had not been published in China's official journal and were not otherwise available online, nor had they been notified to the WTO. Despite the obligation in its WTO accession agreement to either provide the documents or respond in writing within 45 days, China did not meet this deadline. The United States made repeated follow-up requests, to no avail. Five months after the United States submitted its request to China's inquiry point, MOFCOM orally informed the U.S. Embassy in Beijing that it would not be providing any of the requested legal measures because two of the measures would soon be replaced and the other three measures, in China's view, were not relevant to China's WTO obligations. USTR promptly responded to MOFCOM in writing, countering its assertions and urging it to provide the requested documents. Since then, China has continued to refuse to provide a written response to the United States' request or to provide any of the requested legal measures, even though the United States and other WTO Members have repeatedly raised this matter in the WTO's Subsidies Committee and Council for Trade in Goods.

SOCIAL CREDIT SYSTEM

Since 2014, China has been working to implement a national "social credit" system for both individuals and companies. The implementation of this system is at a more advanced stage for companies versus individuals, as 18-digit "unified social credit codes" are assigned to every domestic and foreign company in China. These 18-digit codes will provide a way for the Chinese government to track a company's record of administrative and regulatory compliance and generate public credit information. In his report to the 20th National Party Congress in October 2022, Xi Jinping in his capacity as the General Secretary of the Chinese Communist Party emphasized the need to refine the social credit system. Since then, the Chinese government has continued to take steps to make the social credit system fully operational.

Under the corporate social credit system, government records and market-generated corporate compliance data are collected on every legal entity in China. The collected information contains regulatory and administrative records contributed by at least 44 state agencies and their branch offices across every province in China. Previously disparate information relating to a company's financial records, regulatory compliance, inspection results and other administrative enforcement activities is being consolidated under a company's unified social credit code. All of this data will be aggregated and shared between regulatory agencies via the National Credit Information Sharing Platform. Reportedly, approximately 75 percent of the records collected on companies is intended to be designated as "open to the public," while the remaining 25 percent that is intended to be withheld will include potentially sensitive information, such as approval records related to national development projects and details of any criminal cases.

Nationwide data collection under the corporate social credit system provides mechanisms to penalize companies with poor corporate and legal compliance records by, among other things, subjecting them to public censure via what China calls "blacklists," while rewarding compliant companies with positive incentives via so-called "redlists." Negative ratings or placement on a government agency's censure list can lead to various restrictions on a company's business activities. A company could face increased inspections, reduced access to loans and tax incentives, restrictions on government procurement, reduced land-use rights, monetary fines or permit denials, among other possible penalties.

However, currently, there is no fully integrated national system for assigning comprehensive social credit scores for companies, and the social credit system remains highly fragmented. Certain central

government agencies and sub-central government agencies maintain their own rating systems, with each agency making its own decisions about the types of transgressions that warrant negative ratings or placing a company on a censure list.

In November 2022, NDRC and PBOC jointly published a draft *Social Credit Construction Law* that would give the social credit system a legal basis, further embedding it into China's regulatory network. The draft law seeks to establish NDRC and PBOC as the main government agencies for construction of the social credit system. Their responsibilities would include overall coordination, supervision and guidance of the construction of the social credit system and taking the lead in organizing the formulation and implementation of relevant policies and standards. The draft law also seeks to provide formal legal definitions for certain terms used in implementing the social credit system, such as "untrustworthy," "credit supervision" and "credit information." In addition, the draft law seeks to codify the protection of certain rights, as it calls for the establishment of a social credit system that maintains the security of social credit information and strictly protects state secrets, business secrets and personal privacy, while also protecting the lawful rights and interests of natural persons, legal persons and unincorporated organizations. To date, the draft law has not been issued in final form.

Earlier in 2022, prior to the publication of the draft law, NDRC issued a draft update of the 2021 *National Basic Catalogue of Public Credit Information* and a draft update of the 2021 *National Basic List of Disciplinary Measures against Dishonest Acts*. The draft *Catalogue of Public Credit Information* compiles the scope and types of credit information that can be collected by government agencies. It also stipulates that certain categories of information are exempt from collection, including state secrets and trade secrets. The draft *List of Disciplinary Measures* includes a range of punitive actions that may be applied to violators of trust, such as duties, fees, restrictions on market activity, prohibitions or limitations on occupations and bans from government procurement bidding. Like the draft law, neither the draft *Catalogue of Public Credit Information* nor the draft *List of Disciplinary Measures* has been issued in formal form.

The social credit system has been tied to larger policy objectives as well. For example, the General Office of the State Council and the General Office of the Chinese Communist Party issued a joint opinion on promoting a high-quality credit system in order to further China's "dual circulation" objectives. In addition, in November 2022, the Ministry of Science and Technology (MOST) announced a new pilot project for evaluating science, technology, engineering and mathematics talent. Under MOST's new pilot project, evaluation of scientists' performance is to incorporate metrics related to their moral character, which includes their social credit record, in order to ensure that scientific researchers have no history of plagiarism or academic fraud. This pilot project appears to reflect China's struggle to improve the quality of its scientific research talent.

Foreign companies have numerous concerns with China's social credit system, which is becoming increasingly complex and expansive. They are concerned that the Chinese government will use it to disadvantage foreign companies or provide favorable treatment to domestic companies. They are concerned that the Chinese government will use the social credit system to pressure them to act in furtherance of China's industrial policies or other state priorities or otherwise to make investments or conduct their business operations in ways that run counter to market principles or their own business strategies. In addition, foreign companies are concerned about the opaque nature of the social credit system. Currently, for example, a company sometimes only learns about its negative ratings when, for example, it requests a permit and receives a denial, even though the *Measures for Administration of the List of Serious Violators of Trust and Law* includes a requirement that companies be informed of their being censured in advance. Other times, a company learns for the first

time that it has been censured when a Chinese government agency posts its name on the agency's website, even though the censuring of a company can cause severe harm to the company's reputation and adversely impact its efforts to attract customers, secure needed financing or make new investments. When Chinese government agencies begin to pursue joint punishment in the way that NDRC envisions, it will mean that an infraction in one regulatory context could have wider consequences across the company's entire business operations.

Foreign companies are also concerned about the links between corporate social credit and individual social credit. They can foresee the Chinese government using the social credit system as another tool to ensure that foreign companies and those who work for them do not cross political redlines on sensitive matters like human rights. Foreign companies can also foresee the Chinese government potentially using corporate social credit in the future to exert extraterritorial influence by threatening the social credit standing of foreign companies or their officials for behavior or speech outside of China. Similarly, foreign companies are concerned that China will abuse its legion of laws regulating how data is stored and transferred to access information to use against them.

OTHER NON-TARIFF MEASURES

A number of other non-tariff measures can adversely affect the ability of U.S. industry to access or invest in China's market. Key areas of concern include laws governing land use in China, commercial dispute resolution and the treatment of NGOs. Corruption among Chinese government officials, enabled in part by China's incomplete adoption of the rule of law, is also a key area of concern.