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# **2021 Report to Congress On China's WTO Compliance**



**United States Trade Representative  
February 2022**

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## 2021 USTR Report to Congress on China's WTO Compliance

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### ABBREVIATIONS

ACFTU	All China Federation of Trade Unions
APEC	Asia-Pacific Economic Cooperation
BOFT	Bureau of Fair Trade for Imports and Exports
CAC	Cyberspace Administration of China
CBIRC	China Banking and Insurance Regulatory Commission
CED	U.S.-China Comprehensive Economic Dialogue
CFDA	China Food and Drug Administration
CNCA	National Certification and Accreditation 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
MOH	Ministry of Health
MOST	Ministry of Science and Technology
MPS	Ministry of Public Security
NBC	National Biosafety Committee
NCISP	National Credit Information Sharing Platform
NDRC	National Development and Reform Commission
NMPA	National Medical Products Administration
OIE	World Organization for Animal Health
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
SPB	State Postal Bureau
SPC	Supreme People's Court
SPP	Supreme People's Procuratorate
WTO	World Trade Organization

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## FOREWORD

This is the 20th 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 2021. 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 Commerce, State, Agriculture and Treasury 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, 2021. The notice asked interested parties to submit written comments. A number of written comments were received from interested parties. In lieu of a public hearing, the TPSC then posed written questions to certain of the interested parties, and the interested parties subsequently responded to those questions in writing. All of these written materials are available at [www.regulations.gov](http://www.regulations.gov) under docket no. USTR-2021-0015.

## EXECUTIVE SUMMARY

In Part One of this report, we provide an assessment of China's WTO membership, including the unique and very serious challenges that China's state-led, non-market approach to the economy and trade continue to pose for the multilateral trading system. In Part Two, we review the effectiveness of the various strategies that have been pursued over the years to address the unique problems posed by China. In Part Three, we emphasize the critical need for new and more effective strategies – including taking actions outside the WTO where necessary – to address those problems. Finally, in Part Four, we catalogue the numerous problematic policies and practices that currently stem from China's state-led, non-market approach to the economy and trade.

### PART ONE

Part One explains that when China acceded to the WTO, it voluntarily agreed to embrace the WTO's open, market-oriented approach and to embed it in China's 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.

After 20 years 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 policies 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 time, and the mercantilism that it generates has harmed and disadvantaged U.S. companies and workers, often severely.

China also has a long record of violating, disregarding and evading WTO rules to achieve its industrial policy objectives. In this report, as in our prior reports, we identify and explain numerous unfair, non-market and distortive trade policies and practices used by China in pursuit of its industrial policy objectives. We also describe how China has sought to frustrate WTO oversight mechanisms, such as through its poor record of adhering to its WTO transparency obligations.

### PART TWO

As we explain below in Part Two, for nearly two decades 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.

For many years, the United States pursued a dual track approach in an effort to resolve the many concerns that have arisen 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 norms and making other 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 these commitments were unenforceable and China repeatedly failed to follow through on them. Over time, moreover, 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. We secured victories in every case that was decided. Still, even when China changed the specific practices that we had challenged, it did not typically change the underlying policies, and meaningful reforms by China remained elusive.

In 2017, the previous Administration 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 led to 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 calculation, as it saw them as appeasing U.S. priorities of the prior Administration, 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. China has also fallen 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 a wide array of interventionist industrial policies and supporting measures, which provide substantial government guidance, massive financial resources and favorable regulatory support to Chinese industries across the economy, often in pursuit of specific targets for capacity and production levels and market shares. In furtherance of its industrial policy objectives, China 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 that are attempting to move up the economic value chain in industries across the economy. The benefits that Chinese industries receive largely come at the expense of China's trading partners and their workers and businesses. As a result, markets all over the world are less efficient than they should be, 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 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 Chinese Communist Party powerfully intervene in these sectors on behalf of Chinese companies. Companies in economies disciplined by the market cannot effectively compete with both Chinese companies and the Chinese state.

### **PART THREE**

In Part Three, we explain that, in recent years, it became evident to the United States – and to an increasing number of U.S. trading partners – that new strategies were needed to deal with the many problems posed by China's state-led, non-market approach to the economy and trade, including solutions independent of the WTO. We also emphasize that these strategies needed to be based on a realistic assessment of China's economic and trade regime and need to be calibrated not only for the near-term but also for the longer term. Accordingly, as explained below, the United States is now pursuing a multi-faceted strategic approach that accounts for the current realities in the U.S.-China trade relationship and the many challenges that China poses for the United States and other trading partners, both now and likely in the future.

The U.S. Trade Representative announced the initial steps of the United States' strategic approach in October 2021. This approach includes several components, which we have begun to implement.

First, the United States is continuing to pursue bilateral engagement with China and is seeking to find areas where some progress can be achieved. China is an important trading partner, and every avenue for obtaining real change in its economic and trade regime must be utilized. Currently, we are engaging China on the United States' most fundamental concerns with China's state-led, non-market approach to the economy and trade, which includes China's industrial policies. At the same time, the United States is working to hold China accountable for its existing commitments, including under the Phase One Agreement. If China fully implements the Phase One Agreement, it will help establish a more solid foundation for bilateral engagement on more significant outstanding issues.

Second, 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 therefore is exploring how best to use and improve domestic trade tools to achieve that end.

Finally, it is equally critical for the United States to work more 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 system. This work is taking place in bilateral, regional and multilateral fora, including the WTO.

### **PART FOUR**

Part Four discusses specific problematic Chinese policies and practices in more detail. These policies and practices are grouped into sections on non-tariff measures, intellectual property rights, agriculture, services and transparency.

## PART ONE: ASSESSMENT OF CHINA'S WTO MEMBERSHIP

### 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](http://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 clearly 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 designed to achieve more efficient outcomes. The pursuit of open, market-oriented policies means not only strictly 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. 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 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 policy objectives. In addition, and of more 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 WTO disciplines and cause serious harm to markets, industries and workers 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. 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 industrial policy objectives. Indeed, the state's 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 Chinese industries. 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 principal beneficiaries of China's policies and practices are China's state-owned enterprises and numerous other significant domestic companies, sometimes referred to as "national champions," that are attempting to move up the economic value chain.

The benefits that Chinese industries realize largely come at the expense of China's trading partners and their companies and workers. As a result of China's

non-market policies and practices, markets all over the world are less efficient than they should be, 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 in recent years. Since new leaders assumed power in China in 2013, the state's role in the economy – effectuated by the Chinese government and, increasingly, the Chinese Communist Party – 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 principles. For China, “economic reform” appears to mean perfecting the management of the economy by the government and the Party and strengthening the state sector, particularly state-owned enterprises. Meanwhile, as the state's role in the economy has increased in recent years, the depth and breadth of concerns 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 Chinese Communist Party leaves 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 the objectives of national economic and industrial policies. When there is conflict between market outcomes and state 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 both state-owned enterprises and private companies, including foreign-invested enterprises. This influence appears to be growing, 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 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 enterprises. Among other things, they appoint and control key executives through the Chinese Communist Party Organization Department. They also provide state-owned enterprises with preferential access to important inputs (such as land and capital) and other competitive advantages unavailable to private Chinese companies. State-owned enterprises, in turn, play an outsized role in China's economy. For example, state-owned 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 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 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 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 will increasingly be 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 *Social Credit System*, among other things, to ensure that economic actors 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. 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 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 local 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 fundamentally different. 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 support of China's industrial plans is significantly larger than in other countries, and it is not limited to funding for research and development (R&D). The state also provides massive, market-distorting financial support to the ongoing operations of China's domestic industries. This 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. This assault on global markets can cause serious harm to other WTO members' industries and workers. The WTO does not provide effective mechanisms for addressing this problem. Third, China actively seeks to help its domestic producers through myriad additional policies and practices that impede, disadvantage and harm the foreign competition and skew the playing field against imported goods and services and foreign manufacturers and services suppliers.

When combined with China's large size and 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 problem 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. New mechanisms to maintain and enhance the state's control over the economy in China continue to emerge.

### 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) local content 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 abusive 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 has routinely prevailed in these WTO disputes, as have other WTO members 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.

As explained in prior reports, China has been a particularly bad actor when it comes to trade remedies. While the use of trade remedies in a manner consistent with WTO rules is an important tool for protecting domestic industries from unfair and injurious trade practices, China has made a practice of launching antidumping (AD) and countervailing duty (CVD) investigations that appear designed to discourage its trading partners from the legitimate exercise of their rights under WTO rules. This type of retaliatory conduct is not typical of WTO members, nor is it a legitimate basis for seeking AD and CVD relief. Moreover, when China has pursued AD and CVD investigations under these circumstances, it appears that its regulatory authorities have tended to move forward with the imposition of duties regardless of the strength of the underlying legal claims and evidence. The United States' three successful WTO cases challenging the duties imposed by China on imports of U.S. grain-oriented electrical steel, U.S. chicken broiler products and U.S. automobiles offer telling examples of this problem. Indeed, China's poor behavior does not always stop after an adverse WTO ruling. In two of the three WTO cases brought by the United States on trade remedies, China did not implement the WTO's recommendations, and the United States was forced to bring Article 21.5 compliance proceedings to secure China's compliance.

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, for 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. Today, China continues to shield massive sub-central government subsidies from the scrutiny of other WTO members. Together with other non-market practices, these subsidies contribute to the serious excess capacity problems that plague industries like steel, aluminum,

solar panels and fishing and devastate global markets and foreign competitors.

As has become clear, the WTO's dispute settlement mechanism is not 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 has been able to reinforce its state-led, non-market policies and practices, which WTO rules and the dispute settlement mechanism have so far proven unable to discipline effectively.

## PART TWO: PAST STRATEGIES

### China's Initial Years of WTO Membership

As explained above, when China joined the WTO two decades ago, many of China's trading partners expected that over time China would adhere to global trade rules and other international norms and fully embrace open, market-oriented policies. The United States was certainly one of them. In anticipation of the fundamental changes that China would be making following its accession to the WTO, many foreign businesses began to flock to China, eager to take advantage of China's low labor costs or to position themselves to supply their goods and services to China's growing middle class. China itself encouraged this foreign investment, seeing foreign companies as useful tools to help develop and grow its economy.

For the first five years of China's WTO membership, the terms of China's accession agreement allowed China to phase in compliance with many of its obligations. During this initial five-year period, the United States and other WTO members essentially granted China a grace period because they were reluctant to challenge China when it acted contrary to an obligation under a WTO agreement or failed to timely implement a China-specific commitment.

Once this initial five-year period of China's WTO membership concluded, the United States decided that it was time to hold China fully accountable as a responsible member of the international trading system. With its decision in 2006 to begin holding China accountable at the WTO, the United States began to pursue a dual-track approach to China, using high-level bilateral dialogues in an attempt to resolve concerns relating to problematic policies and practices emanating from China's continued embrace of a state-led, non-market approach to the economy and trade, while also pursuing enforcement of China's WTO obligations through dispute settlement and other efforts where bilateral dialogue did not resolve U.S. concerns.

### Bilateral Dialogues

For nearly 15 years, the United States held numerous high-level meetings under the U.S.-China Joint Commission on Commerce and Trade (JCCT), the U.S.-China Strategic Economic Dialogue (SED), the U.S.-China Strategic and Economic Dialogue (S&ED) and the U.S.-China Comprehensive Economic Dialogue (CED). These dialogues were intended to push China toward complying with and internalizing WTO rules and norms and making other market-oriented changes. While the United States approached these dialogues in good faith and put great effort into them, they only achieved isolated, incremental progress. At times, the United States secured commitments from China for fundamental shifts in the direction of Chinese policies and practices, but China repeatedly failed to follow through on those commitments. In more recent years, it became more difficult for the United States to secure commitments from China, while China's follow-through remained inconsistent and impossible to enforce.

For example, at the 2010 S&ED meeting, the 2012 S&ED meeting, the 2012 summit meeting between President Obama and President Xi and the 2014 JCCT meeting, China committed that foreign companies are free to base technology transfer decisions on business and market considerations and to independently negotiate and decide whether and under what circumstances to assign or license intellectual property rights to affiliated or unaffiliated enterprises. But China did not follow through on these commitments. China's regulatory authorities did not begin allowing U.S. companies to make their own decisions about technology transfer and the assignment or licensing of intellectual property rights. Instead, they continued to require or pressure foreign companies to transfer technology as a condition for securing investment or other approvals. Years later, these same practices became a focus of USTR's Section 301 investigation of China's acts, policies and practices related to technology transfer, intellectual property and innovation.

### WTO Enforcement

Over time, the United States became the most frequent – and most successful – user of the WTO's dispute settlement mechanism to challenge Chinese policies and practices. As discussed above, the United States has brought 27 WTO disputes against China and has prevailed in every dispute that has been adjudicated. However, even when China changed the specific practices that we had challenged, it typically did not 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.

### Other WTO Efforts

In addition to pursuing WTO dispute settlement cases, the United States 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. 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, and continues

to raise, China-related issues at regular meetings of WTO committees and councils, including the WTO's General Council. 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 have raised awareness among WTO members, they have not led to meaningful changes in China's approach to 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 current 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. In 2001, when China acceded to the WTO, China's economy was the sixth largest in the world. China's economy is now four times larger than it was in 2001, and it is the second largest economy in the world. China also has risen to become the largest goods trader 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 non-market economic system.

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 and trade regime. The WTO system was designed for countries that are truly committed to market principles, not for an economically powerful country determined to maintain a state-led, non-market system, and China has demonstrated no willingness to change its approach in any meaningful way.

### Domestic Trade Tools

In August 2017, USTR launched 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. USTR invited written comments and information from interested parties and scheduled a public hearing, which was held in October 2017. 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. firms.

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, beginning in March 2018 with the initiation 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. Consultations took place in August 2018, and a panel was established to hear the case at the United States' request in November 2018. In March 2019, China announced the withdrawal of certain measures that the United States had challenged in its panel request. After China's announcement, the WTO panel suspended its work in light of ongoing consultations between the United States and China to resolve their dispute.

As a further response to the Section 301 findings, the Secretary of the Treasury began examining possible means for better addressing concerns about investment in the United States directed or facilitated by China in industries or technologies deemed important to the United States. Not long thereafter, however, the U.S. Congress passed the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which was designed to strengthen and modernize the existing mechanism for reviewing foreign investment in the United States for national security purposes through the Committee on Foreign Investment in the United States, also known as CFIUS. Among other things, FIRRMA expanded CFIUS's authority to review transactions involving foreign investment into U.S. businesses with critical technologies. At the same time that it passed FIRRMA, Congress passed the Export Control Reform Act, which, among other things, created a process for identifying emerging and foundational technologies that should be added to existing U.S. export controls.

Finally, shortly after issuing its Section 301 report in March 2018, USTR commenced Section 301 procedures for imposing additional tariffs on imports of Chinese goods. Subsequently, the United States imposed an additional duty of 25 percent on approximately \$50 billion worth of Chinese imports containing industrially significant technologies, including those related to *Made in China 2025*, a Chinese industrial plan that seeks to create dominant Chinese companies in 10 strategic sectors, including by replacing foreign technologies, products and services with Chinese technologies, products and services over time. These additional tariffs were imposed in two tranches, with \$34 billion becoming effective in July 2018 and a further \$16 billion becoming effective in August 2018. Over time, faced with retaliatory tariffs imposed by China and a lack of progress in high-level bilateral discussions in which the United States proposed specific structural changes for China to become more open and market-oriented, the United States imposed further additional tariffs in two more tranches. By

September 2019, the United States had imposed 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. China had also imposed further retaliatory tariffs on 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 issues in areas such as industrial plans, subsidies, state-owned enterprises, excess capacity, state-sponsored cyber-enabled 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 Section 301 tariffs. The United States decided to suspend indefinitely 15 percent tariffs scheduled to be imposed on an additional \$160 billion of Chinese imports on December 15, 2019, and not to move forward with plans to raise the tariff rate on \$250 billion of Chinese goods from 25 percent to 30 percent. In addition, the United States decided to reduce from 15 percent to 7.5 percent the tariffs that it had previously imposed on \$120 billion of Chinese goods. Otherwise, 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.

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 fully utilizing the consultation arrangements set forth in the agreement for ensuring that China adheres to its obligations, including regular meetings required by the agreement between the two sides at the working level, the Deputy level and the Principal level. The two sides have also held numerous technical-level meetings. 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 year 2020 and that China is similarly not on track to implement its commitments to purchase U.S. goods and services in calendar year 2021. Serious concerns with China's implementation efforts have also arisen in the area of agriculture, particularly with regard to China's commitments relating to agricultural biotechnology and the required risk assessment that China is to

conduct relating to the use of ractopamine in cattle and swine.

### Fundamental Problems Persist

Despite the United States' extensive efforts, both bilaterally and at the WTO and through the use of domestic tools like Section 301 of the Trade Act of 1974, a long list of problems with China's economic and trade regime persist. Because China is the largest trader among WTO members, the harm caused by these problems is significantly magnified.

Most importantly, fundamental structural issues remain unaddressed. These include, for example, China's heavy reliance on market-distorting industrial policies covering virtually every sector of the economy, preferential treatment of state enterprises, massive 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), forced technology transfer, state-sponsored theft of intellectual property and severe and persistent non-market excess capacity in key industries.

A host of other serious issues also remain outstanding. Key examples include market access restrictions, unjustified non-tariff barriers, import substitution, unfair labor practices (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), continued gaps in intellectual property protection and enforcement, overly broad and protectionist cybersecurity regulation, 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 subsidies practices, and inadequate regulatory transparency.

Overlaying all of these problematic policies and practices is China's economic system. Unlike the U.S. system, China's economic system is state-led, and it facilitates control and direction of all aspects of the economy by the Chinese government and the Chinese Communist Party, along with a reliance on rule *by* law rather than rule *of* law. The very fact that decisions in the marketplace are made based on the goals of the state, rather than based on commercial considerations, distorts the global economy in ways that can weaken and damage trading partners' economies.

One significant result of China's non-market economic system is the creation of excess capacity – that is, capacity that would not have been created and would not persist if market forces were operating properly. Excess capacity is a sign that resources are not being allocated in an efficient manner.

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 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.

Another example of the harm that can be caused by China's non-market economic system involves forced technology transfer. In USTR's Section 301 investigation, 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 state 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 excess capacity, China's unfair policies and practices relating to forced technology transfer also affect other WTO members whose companies have developed or are developing advanced technologies.

In addition to severe and persistent excess capacity and forced technology transfer, China's non-market economic system causes other serious harm to industries and workers in the United States and other WTO members. This harm occurs because Chinese companies use the artificial competitive advantages provided to them by the interventionist policies and practices of the Chinese state to

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undersell their foreign competition around the world. The extent of this 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.

## PART THREE: NEW STRATEGIES

### Current Realities

As a starting point, any new U.S. trade policy toward China must account for current realities in the U.S.-China trade relationship and the many challenges that China poses for the United States and other trading partners, both now and in the future. Given that China's approach to the economy and trade 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 — China's many harmful, non-market practices. Those practices directly harm American workers, farmers and businesses and threaten our technological edge, weaken the resiliency of our supply chains and undermine our national interest.

For many years, the core objective of U.S. trade policy toward China was to make China a more responsible stakeholder at the WTO. Currently, however, it has become widely accepted in the United States that 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," which has severely harmed U.S. workers and businesses. It has also become widely accepted in the United States that WTO rules do not, and cannot, effectively discipline many of China's most harmful policies and practices. It is also evident 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. As a result, 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 considered necessary, including solutions through bilateral engagement and the use of domestic trade tools. It was in large

part from that perspective that, in August 2017, the prior Administration launched an investigation under Section 301 of the Trade Act of 1974 and then, in March 2018, began the process of imposing tariffs on imports from China and pursued a bilateral negotiation with China that resulted in the Phase One Agreement, which was signed in January 2020.

At the same time, we cannot build a wall between the United States and China and assume that it will address the problems posed by China. That would ignore China's importance to, and integration in, the world economy and would only change the mode of its impact on the United States, but not the ultimate result. We therefore must work 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.

### Changing Global Perspectives

Over the last few years, as changes have taken place in how the United States and U.S. stakeholders view the United States' trade relationship with China, it has become apparent that the views of other countries have also been evolving toward the U.S. view. More and more trading partners appear to accept that China's state-led, non-market approach to the economy and trade has been severely harming their workers and businesses. While each trading partner is impacted differently by China, there is also a growing consensus that this situation will not change unless new strategies are pursued.

While the WTO remains a strong focus for many of the United States' trading partners, there is a growing awareness that it may be necessary to pursue some solutions outside the WTO in order to avoid the severe harm that will likely continue to result from China's state-led, non-market economic and trade regime. For example, some of the United States' trading partners are now exploring 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, including China's increasing use of economic coercion. At the same time, still other trading partners appear to be replicating certain of China's unfair trade practices, or at least accepting them as a result of China's tactics to coerce or entice countries to acquiesce to its practices. Consequently, addressing these practices in China could have the additional benefit of dissuading these countries from following China's example.

Meanwhile, many of China's trading partners are 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. Based on the world's past experiences with industries like steel, aluminum, solar panels and fisheries, 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.

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 demonstrates confidence in its ability to quiet

dissenting voices, as if China's continued rise is inevitable and cannot be held back. Indeed, it has become increasingly evident that China's leadership is seeking to establish new global norms that better reflect and support China's interests, providing an attractive alternative for other authoritarian regimes around the world.

China has also regularly used its economic clout in a coercive way if it perceives that a foreign company or a foreign country has spoken or acted in a way that undermines China's economic and trade interests. This economic coercion can mute international objections to China's non-market policies and practices, even when China flouts the WTO's rules-based international trading system. In recent years, China has increasingly expanded its use of economic coercion to take on foreign governments whose policies or practices are perceived to undermine not only China's economic and trade interests but also China's political interests. China's coercive economic measures 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 subjected to this economic coercion. One prominent example currently involves Australia, where China has taken formal and informal measures restricting imports of Australian products like meat, barley, wine, coal, cotton, logs and lobster, apparently because of various legitimate actions taken by the Australian government, such as calling for an independent investigation of the origins of the coronavirus pandemic and enacting a law that prohibits political contributions from foreign sources.

In sum, the reality confronting the United States and other market economies — especially the democratic market economies — is not simply that China has a different economic system from ours. China plainly does not hold the same core values that we hold, and its state-led, non-market approach to the economy and trade conflicts in significant and

harmful ways with our market-oriented approaches, to the detriment of our workers and businesses.

### U.S. Strategic Approach

The United States expects, and is seeking 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, nearly two decades after its accession to the WTO, it has still not embraced market-oriented policies. The state remains in control of China's economy, and it heavily intervenes in the market to achieve national industrial policy objectives. It subsidizes industries that would not otherwise form or thrive, funds acquisitions for the purpose of accessing technologies and directs activities that a private business would not choose to undertake. The evidence is clear, moreover, that when a trading partner with China's size – China is the largest goods trader among WTO members and the second largest economy in the world – pursues 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 impacts, but their effects on markets push U.S. and international companies out of sectors, like 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. Markets all over the world are less fair and efficient 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.

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. Looking back over the first 20 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 posed by China will be with us for some time, rather than 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. Effective strategies for dealing with China also need to be flexible. The United States must be prepared to adapt and adjust its strategic approach over time as China's non-market practices evolve and as global trade patterns shift and alliances and interests change.

Accordingly, in the spirit of this Administration's worker-centered trade policy, the United States is now pursuing a multi-faceted strategic approach as it seeks to address the unique challenges posed by China and its state-led, non-market approach to the economy and trade. While doing so, the United States is also working to ensure that we are taking the steps domestically to invest in, and build policies supportive of, the industries of today and tomorrow.

As one part of this strategic approach, the United States is continuing to pursue bilateral engagement with China and is seeking to find areas where some progress can be achieved. China is an important trading partner, and every avenue for obtaining real change in its trade regime must be utilized.

As an initial step, the United States is working to ensure that China lives up to its existing trade commitments, including the ones that China made in the Phase One Agreement. It is important for the bilateral relationship to demonstrate that commitments matter, and resolving outstanding compliance issues under the Phase One Agreement would provide a solid foundation for future bilateral engagement.

At the same time, the United States is engaging China on issues that are a priority for the Biden-

Harris Administration. In this regard, it is clear that prior U.S. efforts have not led to fundamental changes in China's trade regime, and many serious challenges remain, including in the wake of the Phase One Agreement. Priority concerns include China's problematic industrial policies and the wide array of measures that support them, massive subsidization, the non-market activities of state enterprises, severe and persistent excess capacity, forced technology transfer, state-sponsored theft of intellectual property, forced labor and economic coercion. 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 concerns.

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 update our trade tools to counter them.

However, the United States cannot do it alone. There are limits to bilateral engagement and the impact of domestic trade tools. That is why the United States is working more intensely and broadly with allies and like-minded partners. Just as we are reassessing our domestic trade tools, we are also re-thinking how the United States engages with its trading partners to address the challenges that China poses for the global economy. As more and more U.S. allies and like-minded partners come to understand the need for new approaches to China, the United States is working more intensely and broadly with them, both in existing international

trade fora and initiatives and in new ones. The coronavirus pandemic, and its impacts on supply chains and global economic conditions, have laid bare the vulnerabilities and interdependencies of global economies and have underscored the need for new coalitions to build up economic security and resiliency. There is a strong need for new thinking and new coalitions of allies and like-minded 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.

As part of this effort, the United States is continuing to work directly with like-minded trading partners outside of a multilateral organization context in pursuit of new initiatives to explore strategies for addressing the unique problems posed by non-market policies and practices. 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. The United States, the EU and Japan have also re-started their trilateral work, agreeing to focus on three initial objectives: (1) identification of problems due to non-market practices; (2) identification of gaps in existing enforcement tools, and where further work is needed to develop new tools to address such practices, as well as discussing cooperation in utilizing existing tools; and (3) identification of areas where further work is needed to develop rules to address such practices. The three trading partners 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 unfair, non-market and distortive policies and practices that have eroded critical supply chains.

At the same time, the United States is continuing to pursue initiatives at the WTO as well as in fora such as the G7, the G20 and the Organization for Economic Cooperation and Development. For example, at the WTO, the U.S. agenda includes pushing for and building support for meaningful WTO reforms to update the organization and respond to the experiences since its inception,

including China's accession to the WTO. 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, proposals to respond to certain practices of China and other non-market economies. They include a proposal intended to increase consequences for WTO members who fail to adequately notify industrial subsidies. Additionally, together with like-minded partners, the United States has proposed that the WTO adopt a joint statement on the importance of market-oriented conditions for fair trade, thereby drawing a contrast to non-market economic practices, with the aim of shaping future WTO reform discussions. Although many other WTO members agree with the goals of these proposals, other concerns, including wanting to avoid confronting China and incurring China's economic retaliation, appear to have limited public support among WTO members. Although WTO members may not adopt meaningful reforms in these areas in the near-term, it is vital for the United States to take a leadership role in putting these challenges on the agenda.



## PART FOUR: KEY 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, grouped into sections on non-tariff measures, intellectual property rights, agriculture, services and transparency.

### NON-TARIFF MEASURES

#### Industrial Plans

China continues to pursue a wide array of industrial plans and related policies that seek to limit market access for imported goods, foreign manufacturers and foreign services suppliers, while offering substantial government guidance, resources and regulatory support to Chinese industries. The beneficiaries of these constantly evolving policies are not only state-owned enterprises but also other domestic companies attempting to move up the economic value chain.

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 ostensibly 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. Their 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* 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 goal of *Made in China 2025* is to ensure, through various means, that Chinese companies develop, extract or acquire their own technology, intellectual property and know-how and their own brands. The next goal 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 goal of *Made in China 2025* is to capture much larger worldwide market shares in the 10 targeted, strategic sectors.

In pursuit of these goals, 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 Strategic Advisory Committee on Building a Powerful Manufacturing Nation published the *Made in China 2025 Key Area Technology Roadmap*, and since then it has updated this document twice. 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)*, which updates and replaces the 2015 document. Like its predecessor, the updated document sets explicit market share and other targets to be attained by Chinese producers, both domestically and globally in dozens of high-technology industries. 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" by 2020, up from a 70 percent target set in the 2015 document. In December 2020, the 2017 document was updated with the issuance of the *Made in China Key Area Technology Innovation Greenbook (2019)*.

Many of the policy tools being used by the Chinese government to achieve the goals of *Made in China 2025* raise serious concerns. These tools are largely unprecedented and include a wide array of state intervention and support 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 by its level of ambition and, perhaps more importantly, by the scale of resources the government is investing in the pursuit of its industrial policy 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 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 industrial policy goals set forth in *Made in China 2025*, it is still likely to create or exacerbate market distortions and create severe excess capacity in many of the targeted sectors. It is also likely to do long-lasting damage to U.S. interests, as China-backed companies increase their market share at the expense of U.S. companies operating in these sectors.

As discussed above, USTR's Section 301 investigation and resulting tariff and other actions seek to address China's forced technology transfer regime. This regime is one of the instruments through which China intends to meet its *Made in China 2025* targets.

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 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" and, among other things, 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.

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 industrial policy 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. In addition, other longer-ranging industrial plans, such as the *New Energy Vehicle Industry Development Plan (2021-2035)* and *China Standards 2035*, continue to demonstrate China's 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 WTO rules. China also affirmatively agreed that state-owned and state-invested enterprises would have to make purchases and sales based solely on commercial considerations, such as price, quality, marketability and availability, and that the government would not influence the commercial decisions of state-owned and state-invested enterprises.

In 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 instead established the State-owned Asset Supervision and Administration Commission (SASAC) and adopted the *Law on State-owned Assets of Enterprises* as well as numerous other measures mandating state ownership and control of many important industrial sectors. The Chinese Communist Party 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 is 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 industrial plans. Over the past few years, Party leadership in state-owned 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.

Separately, the Chinese government also has issued a number of measures that restrict the ability of

state-owned and state-invested enterprises to accept foreign investment, particularly in key sectors. Some of these measures are discussed below in the Investment section and include restrictions on foreign investment in state-owned and state-invested enterprises operating not only in the public sector but also in China's private sector.

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 enterprises.

However, later statements by China's President Xi made clear that China continues to view the rule of law very differently from the United States and other democratic market economies. In February 2019, in an article in a Chinese Communist Party journal, he 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, resource, 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.

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 consolidate and to strengthen state-owned and state-invested enterprises and to place them on a more competitive footing, both in China and globally, through the continued provision of preferential access to capital, goods and services and the use of other policies and practices designed to give them artificial advantages over their private competitors.

This unfair situation is made worse for foreign companies, as China's state-owned and state-invested enterprises and China's private companies also benefit from a wide array of other state intervention and support designed to promote the development of domestic industries. These interventions and support are deployed in concert with other policies and practices that restrict, take

advantage of, discriminate against or otherwise create disadvantages for foreign companies and their technologies, products and services.

### Industrial Subsidies

China continues to provide substantial subsidies to its domestic industries, which have caused injury to U.S. industries. Some of these subsidies also appear to be prohibited under WTO rules. To date, the United States has been able to address some of 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. China's WTO subsidy notifications have marginally improved over the years in terms of timeliness and completeness. Nevertheless, since joining the WTO 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.

The United States began working with the EU and Japan in 2018 to identify further effective action and potential rules that could address problematic 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) outright 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) putting some teeth into 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.

### Fisheries Subsidies

It is estimated that China is the world's largest provider of harmful fisheries subsidies, with support exceeding \$4 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 other top producers in terms of marine capture. 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 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 these questions, the United States was compelled to submit an Article 25.10 counter notification covering these same measures. More recent subsidy notifications by China have been more fulsome, but still incomplete.

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 WTO subsidy notification obligations. The United States also will seek to prohibit harmful fisheries subsidies as part of the ongoing WTO negotiations.

### Excess Capacity

Because of its state-led approach to the economy, China is the world's leading offender in creating non-economic 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. manufacturers and workers in both the U.S. market and third country markets, where U.S. exports compete with exports from China. While China has publicly acknowledged excess capacity in these industries, among others, it

has yet to take meaningful steps to address the root causes of this problem in a sustainable way.

From 2000 to 2020, China accounted for 69 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 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, despite a significant contraction in global steel demand caused by the coronavirus pandemic. This sustained ballooning of steel production, combined with weakening economic growth and a slowdown in the Chinese construction sector, threatens to flood the global market with excess steel supply at a time when the steel sector outside of China is still recovering from the severe demand shock brought on by the coronavirus pandemic. Indeed, in 2020, China exported more steel than the world's second and third largest steel producers, India and Japan, combined. Today, China remains by far the world's largest exporter of steel.

Similarly, primary aluminum production capacity in China increased by more than 1,500 percent between 2000 and 2020, with China accounting for more than 80 percent of global capacity growth during that period. Much of this capacity addition has been built with government support, and many of the capacity additions have taken place during periods of decline in global aluminum prices. China's primary aluminum capacity now accounts for more than 57 percent of global capacity and is more than double the capacity of the next ten 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. industries and workers not only through direct exports from China to the United States, but also through its impact on global prices and supply, 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 taken action under Section 232 of the Trade Expansion Act of 1962 to increase duties or impose import quotas on steel and aluminum products after finding that excessive imports are a threat to U.S. national security.

### Technology Transfer

For years, longstanding and serious U.S. concerns regarding 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 of the Trade Act of 1974 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, including but not limited to: (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 as well as the imposition of 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. 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. The United States has engaged China as issues arise and will continue to monitor developments closely.

### Indigenous Innovation

Policies aimed at promoting "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 S&ED meeting, 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 2012 JCCT process 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 the same 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. Accordingly, USTR has been using mechanisms like Section 301 of the Trade Act of 1974 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.

### 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, agriculture, certain extractive industries and certain manufacturing industries. With regard to services sectors in particular, China maintains prohibitions or restrictions in key sectors such as cloud computing services, telecommunications services, film production and film distribution services, and video and entertainment software services.

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 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 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 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.

### 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 top concerns involves China's problematic licensing approval processes.

### Standards

The Chinese government continues to pursue improvements in its standards system, including by moving from a government-led system to one that incorporates both government guidance and "bottom up" input from the market. At the same time, the Chinese government also continues to limit foreign participation in standards setting and, at times, pursue 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 to 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. Foreign companies have reported an inconsistent ability to influence 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 and certain licensing practices in China's standards-setting processes.

### Secure and Controllable ICT Policies

In 2021, implementing measures for China's *Cybersecurity Law* remained 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 information and communications technology (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. U.S. companies are concerned that

measures like this one, which identifies supply chain reliability as a metric, may be used as justification for deciding not to procure American products.

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. 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 multiple ways.

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 local content requirements, 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 the state visit of President Xi in September 2015, 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 cybersecurity implementation measures issued by China from 2017 through 2021 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 written comments on draft measures, 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 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.

### Competition Policy

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), the Ministry of Commerce (MOFCOM) and the State Administration of Industry and Commerce (SAIC) into one of its bureaus. It had been hoped that 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 October 2021, the National People's Congress Standing Committee issued draft revisions to the *Anti-Monopoly Law* for public comment. The United States will monitor developments relating to these draft revisions closely to determine whether the concerns that have persisted are being addressed.

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 Bureau. It is not yet clear how this elevated status will impact anti-monopoly policy enforcement in China.

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. 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 the limited enforcement of this law against state-owned enterprises.

Another concern expressed by U.S. industry is that remedies imposed on foreign-owned companies, including U.S.-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.

Still another concern relates to the procedural fairness of *Anti-monopoly Law* investigations of foreign companies. U.S. industry has expressed concern about insufficient predictability, fairness and transparency in *Anti-monopoly Law* investigative processes. For example, U.S. industry reports that, through the threat of steep fines and other punitive actions, 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 a greater reliance on *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.

In 2021, a local intermediate court in China issued a decision finding that certain intellectual property developed by a foreign company was an "essential facility" and that the foreign company's failure to

license this intellectual property to particular Chinese companies, the plaintiffs in a series of related cases, constituted an abuse of dominance exposing the foreign company to civil liability and mandatory licensing requirements – notwithstanding the foreign company's existing licenses to other Chinese companies. This legal decision, currently on appeal to China's Supreme People's Court, raises concerns that China's regulatory authorities may target foreign patent holders for *Anti-monopoly Law* enforcement, especially in areas of technology being prioritized for indigenous innovation in China.

State-directed mergers of state-owned enterprises are also a concern. SAMR does not provide sufficient information about decisions made regarding these "administrative mergers," so it is not clear how SAMR addresses them. It is possible for these transactions to provide the merged company with excessive market power that can be used anti-competitively in China and in markets around the world.

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 reflects a useful widening of oversight by China's anti-monopoly enforcement agencies over undue government restraints on competition and anti-competitive regulation of competition. However, implementing measures contain a broad list of exemptions, including for national economic security, cultural security, national defense construction, poverty alleviation, disaster relief and general "public interest" considerations. It also remains unclear whether the Fair Competition Review System established by the *Opinions on Establishing a Fair Competition Review System* is

achieving its stated goals in view of the strength of the state in China's economy.

### 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, and the need for an efficient mechanism to resolve patent infringement disputes. Five years ago, at the December 2014 JCCT meeting, China committed to significantly reduce time-to-market for innovative pharmaceutical products through streamlined processes and additional funding and personnel. Nevertheless, time-to-market for innovative pharmaceutical products in China remains a significant concern.

In April 2017, in response to sustained U.S. engagement, China issued amended patent examination guidelines that required patent examiners to take into account supplemental test data submitted during the patent examination process. However, to date, it appears that patent examiners in China have been either unduly restrictive or inconsistent in implementing the amended patent examination guidelines, resulting in rejections of supplemental data and denials of patents or invalidations of existing patents on medicines even when counterpart patents have been granted in other countries.

China's Food and Drug Administration (CFDA) also issued several draft notices in 2017 setting 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. In addition, this proposed framework sought to promote the efficient resolution of patent disputes between right holders and the producers of generic pharmaceuticals. However, in 2018, CFDA's

successor agency, the National Medical Products Administration (NMPA), issued draft *Drug Registration Regulations* and implementing measures on drug trial data that would preclude or condition the duration of regulatory data protection on whether clinical trials and first marketing approval occur in China. Subsequently, in August 2019, China issued a revised *Drug Administration Law*, followed by revised *Drug Registration Regulations* in January 2020. Neither measure contained an effective mechanism for early resolution of potential patent disputes or any form of regulatory data protection.

Since 2018, volume-based procurement has presented a new market access complication for foreign suppliers of pharmaceuticals. 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, which significantly reduced drug prices in provinces across China. According to U.S. industry, the resulting average price reduction reported in 2019 was more than 50 percent, and generic substitution has led to lost market share for foreign-branded drugs.

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 China's National Intellectual Property Administration (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*. Since then, the United States has been closely monitoring China's progress in implementing its commitments, with regard to both patent term extensions for unreasonable patent and marketing approval delays and the patent linkage mechanism.

### Medical Devices

For many years, working closely with U.S. industry, the United States has been engaging China and raising concerns about its pricing and tendering procedures for medical devices and its discriminatory treatment of imported medical devices. At the November 2015 JCCT meeting, China did commit that, in terms of accessing the market, it will give imported medical devices the same treatment as medical devices manufactured or developed domestically. Unfortunately, this promise has not been fulfilled.

In recent years, the United States has continued to press China's regulatory authorities to develop sound payment systems that adequately support research and development. The United States has also urged them not to require foreign companies to transfer their manufacturing activities to China in order to receive preferential benefits.

In 2019, China's State Council launched a volume-based procurement approach for medical devices in a few provinces and municipalities in an attempt to cut healthcare costs. China's volume-based

procurement approach adopts the hospital procurement model that China initially imposed on the pharmaceuticals sector, and it has since also been deployed at the national level. Volume-based procurement has yielded price cuts of 55 to 65 percent at the provincial level for several categories of medical devices, and in more limited use at the national level it has yielded price cuts of over 80 percent. According to U.S. industry, if the provincial and local authorities continue to pursue volume-based procurement without significant changes, it will have the effect of creating a low-cost, low-quality commodity market of “one size” fits all medical devices that could lead to low-quality monopolies, to the disadvantage of innovative medical device companies, many of which are foreign companies, as well as patients in China. Recently, U.S. industry has also expressed concerns about China's new national tendering process for stents, which may serve as a potential pilot for broader adoption. It views the national tendering process being used for stents as reflecting a continued prioritization of cutting costs without sufficient consideration of quality or clinical efficacy.

Meanwhile, the Made in China 2025 industrial plan announced by the State Council in 2015 seeks to elevate the competitiveness of China's domestic medical device manufacturing capacity through a series of support policies, including targeted funds and procurement policies, with the goal of significantly increasing the market share of domestically owned and domestically manufactured medical devices by 2025. At the same time, certain provincial government industrial plans impose controls on imported medical devices or limit certain procurements to only domestically manufactured medical devices, and 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.

Going forward, the United States will continue to urge China to provide imported medical devices with fair and equal access to China's market.

### Cosmetics

Over the past several years, the United States and U.S. industry have engaged with CFDA and its successor, 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, as have other WTO members.

While the language in the CSAR suggests that China is seeking to modernize its regulation of cosmetics and reduce the time required for product and ingredient registration and approval, the implementing measures contain provisions that would require the disclosure of much more information than was previously needed to manage product safety and performance claims in China's cosmetics marketplace. The United States has expressed concern to China that Chinese regulators are applying the same approach to general and special cosmetics as is used with drugs and medical devices, which is unnecessary given the lower risk in cosmetics. China's new 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 importers.

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 potentially 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 that this requirement is trade-restrictive, 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 products. 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 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.

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 basic

concerns such as the need to use 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.

### Export Restraints

China continues to deploy a combination of export restraints, including export quotas, export licensing, minimum export prices, export duties and other restrictions, on a number of raw material inputs where it holds the leverage of being among the world's leading producers. Through these export restraints, it appears that China is able to provide substantial economic advantages to a wide range of downstream producers in China at the expense of foreign downstream producers, while creating pressure on foreign downstream producers to move their operations, technologies and jobs to China.

In 2013, China removed its export quotas and duties on several raw material inputs of key interest to the U.S. steel, aluminum and chemicals industries after the United States won a dispute settlement case against China at the WTO. In 2014, the United States won a second WTO case, 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 responsible WTO member would have withdrawn its highly trade-distortive export restraint policies after the first definitive WTO litigation.

A new 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.

### VAT Rebates and Related Policies

As in prior years, in 2021, the Chinese government attempted to manage the export of many primary, intermediate and downstream products by raising or lowering the value-added tax (VAT) rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty and unfairness in the global markets for some products, particularly downstream products where China is a leading world producer or exporter, such as products made by the steel, aluminum and soda ash industries. These practices, together with other policies, such as excessive government subsidization, 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.

### 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.

### Import Ban on Scrap Materials

Currently, China restricts almost all imports of unprocessed scrap materials. China only allows imports of certain processed scrap materials, including "recycled raw materials" such as copper, 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 that may be misaligned with international standards. Notably, China does not universally apply similar restrictions to domestic processors of domestically sourced scrap and recovered materials.

In 2020, China amended the *Law on the Prevention and Control of Environmental Pollution by Solid Waste*. This amended law is designed to "basically realize zero imports of solid waste."

U.S. exports to China of the 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. Currently, U.S. exports of these materials to China are negligible.

In 2021, alongside other WTO members, the United States continued to raise serious concerns with China. In WTO committee meetings throughout the year, the United States and other WTO members urged China to halt the implementation of its regulatory regime for scrap and recovered materials and to consider the adoption of policies in line with international standards and practice.

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. While markets for U.S. scrap and recovered materials have shifted, taking up some of the lost exports to China, significant amounts of U.S. scrap materials have not found new buyers, leading to increased landfilling and incineration and increased demand for virgin materials globally.

### Trade Remedies

As of December 2021, China had in place 126 AD measures, affecting imports from 17 countries or regions. China also had in place seven CVD measures, affecting imports from five countries or regions. In addition, China had two AD and two CVD investigations in progress. The greatest systemic shortcomings in China's AD and CVD practice continue to be in the areas of transparency and procedural fairness. Over the years, China has often utilized AD and CVD 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 AD and CVD proceedings to adhere

strictly to WTO rules in the conduct of its trade remedy investigations.

China's conduct of AD investigations 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 procedural fairness in China's conduct of AD 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 AD practice have been raised with MOFCOM in numerous proceedings.

A review of China's conduct of CVD investigations makes clear that, as in the AD area, China needs to improve its transparency and procedural fairness when conducting these investigations. In addition, the United States has noted procedural concerns specific to China's conduct of CVD investigations. For example, China initiated investigations of alleged subsidies that raised concerns, given the requirements regarding "sufficient evidence" in Article 11.2 of the Subsidies Agreement. The United States is also concerned about China's application of facts available under Article 12.7 of the Subsidies Agreement.

Notably, over the years, the United States has expressed serious concerns about China's pursuit of

AD and CVD 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 AD and CVD rules and the trade remedy provisions of China's accession agreement. More recently, it appears that China has used arbitrary economic and trade measures, including AD and CVD investigations, as a form of economic coercion designed to achieve China's political goals. Obvious examples include MOFCOM's AD and CVD investigations of imports of Australian barley and Australian wine

From 2019 through 2021, China initiated a total of 23 trade remedy investigations, including 18 AD investigations and five CVD investigations. Almost one-half of these investigations targeted products imported from the United States. In addition, in these most recent investigations of U.S. imports, China has determined — without legal or factual support — that costs and prices in certain U.S. markets are distorted, and therefore unusable, because of so-called “non-market situations.” For example, in four final AD determinations on imports of n-propanol, polyphenylene sulfide, ethylene propylene diene monomer and polyvinyl chloride from the United States in 2020 and 2021, China found a “non-market situation” in certain energy sectors in the United States. However, these findings were made without defining the term “non-market situation” or identifying any legal basis in China's law to make these findings. Separately, in the final CVD determination on imports of n-propanol from the United States, China also found that alleged subsidies to the U.S. oil and gas sector automatically passed through to petrochemical products without providing the analysis required under Article 10.1.6 of the Subsidies Agreement.

### 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. To date, however, the United States, the EU and other GPA parties have viewed China's offers 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, services coverage and exclusions. 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.

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. China also has proposed but has not yet adopted clear rules on what constitutes a domestic product. As a result, there are no specific metrics, such as a percentage of value-added within China, for foreign products to qualify for many procurements and tenders, which often works to the disadvantage of foreign companies.

China's *Foreign Investment Law*, which entered into force in January 2020, and a related October 2021 Ministry of Finance measure 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, it is not yet clear how these measures may be impacting government procurement in China.

### Corporate 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 "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. 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.

In principle, 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 "blacklists," while rewarding compliant companies with positive incentives via "redlists." Negative ratings or placement on a government agency's blacklist 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.

The corporate social credit system has been tied to larger policy objectives as well. For example, in May 2021, CNIPA released the *Draft Several Measures on Improper Patent Applications*, which purportedly seeks to strengthen China's intellectual property protection by linking penalties for improper patent applications with the social credit system.

Currently, 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. Instead, certain central government agencies, such as CNIPA, the Cyberspace Administration of China (CAC) and the General Administration of Customs, and subnational government agencies maintain their own rating systems at the central and subnational levels of

government, with each agency making its own decisions about the types of transgressions that warrant negative ratings or placing a company on a blacklist.

In September 2019, in a broad effort focused on rating financial creditworthiness, NDRC announced that 33 million companies had been included in the first batch of comprehensive public credit appraisals. These companies were reportedly assigned one of four grades — excellent, good, fair or poor — depending on their creditworthiness and whether they appeared on any government agency blacklists. NDRC has indicated that all companies operating in China will eventually be subject to comprehensive public credit appraisals and will receive differing levels of regulatory scrutiny depending on their grades. With a few exceptions, the comprehensive scores are still not made public, and the formula used to calculate the rankings is unknown. In July 2020, NDRC and PBOC jointly issued the draft *Guiding Opinions for Further Standardizing the Input Scope of Public Credit Information, Penalty for Bad Credit and Credit Repairs in Building a Long-term Mechanism for Credit Regime Construction*, which again called on government agencies to standardize procedures for evaluating credit violations and for sharing credit information sharing between government agencies to better implement joint punishments.

In a further effort to provide a set of unified national standards, NDRC published draft guidelines in July 2021 defining data that is collectable data under China's corporate social credit system and potential punishments for companies and individuals with low credit scores. NDRC is also attempting to further clarify the procedures necessary to restore credit, such as through the *Draft (Trial) Measures for Administration of Credit Repair*.

It appears that SAMR, which manages the *National Credit Information Sharing Platform* (NCISP), is closely involved with coordinating these disparate blacklisting systems for sectors in which SAMR has oversight, such as food and drug production,

pharmaceuticals and medical devices, although NDRC remains the lead agency coordinating Chinese data standardization nationally. The goal is for the NCISP to serve as a single, national platform for sharing corporate social credit information throughout the Chinese government and to enable relevant agencies to pursue joint punishment for repeat or egregious offenders. In July 2019, SAMR issued the draft *Measures for Administration of the List of Serious Violators of Trust and Law* for public comment. In this draft measure, SAMR outlines a lengthy series of circumstances that would warrant a company being included in SAMR's centrally managed blacklist, which the draft measure refers to as a list of companies that have committed "serious violations of law and trust." It appears that this blacklist would include companies that have committed the types of violations that currently warrant inclusion on individual agencies' blacklists as well as other types of violations of law or trust. The blacklist would set forth the name of the company and the reasons for its inclusion and would be publicly available through the NCISP website. In the draft measure, SAMR also calls for agencies to share the underlying information that led to a company's blacklisting with each other and with industry associations in order to facilitate joint punishment of blacklisted companies. In the final version of this measure, which SAMR issued in August 2021, it added specific violations related to illegal production or sale of drugs (including vaccines) and sale and production of unregistered medical devices, among other offenses. The updates in the final measure reflect how SAMR is evolving the corporate social credit system to adapt to present-day regulatory enforcement challenges.

Foreign companies are concerned that the corporate social credit system will be used by the Chinese government to pressure them to act in accordance with relevant Chinese industrial policies or otherwise to make investments or conduct their business operations in ways that run counter to market principles or their own business strategies. Foreign companies are also concerned that the Chinese government will use the corporate social credit

system as another tool to ensure that they do not cross political redlines on sensitive matters like human rights. In addition, foreign companies are concerned about the opaque nature of the corporate 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 blacklisting in advance. Other times, a company learns for the first time that it has been blacklisted when a Chinese government agency posts its name on the agency's website, even though the blacklisting 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.

Another key concern regarding the corporate social credit system involves its links to individual social credit. For example, the executives of a company with poor corporate social credit standing may also find that their individual social credit ratings are impacted by their employer's corporate malfeasance. In addition, the Chinese government could also potentially use corporate social credit in the future to exert extraterritorial influence by threatening the social credit standing of foreign multinationals or citizens for behavior or speech outside of China.

To date, the corporate social credit system does not appear to explicitly disadvantage U.S. or other foreign companies or provide favorable treatment to domestic companies. Nevertheless, concerns remain regarding how this system will be applied in practice, and the need to comply with an increasingly complex and expansive social credit system may impose barriers to entry into China's market for foreign companies that are unfamiliar

with the legal and regulatory requirements associated with corporate social credit compliance and reporting.

### Labor Practices

The United States has long recognized that China does not adequately enforce its laws and regulations relating to forced labor, prison labor, child labor, minimum wages, hours of work, occupational safety and health, and participation in social insurance programs. Many foreign enterprises operating in China have also expressed concerns about their domestic competitors' lack of compliance with certain labor and social welfare laws due to lax enforcement.

China maintains several laws and regulations prohibiting forced labor, including the *Labor Law*, enacted in 1994. Although forced labor is prohibited by law in China, it is apparent that the Chinese government does not adequately enforce this prohibition. More recently, China has been the subject of international attention for its forced labor practices, especially in the Xinjiang Uyghur Autonomous Region, where China has arbitrarily detained more than one million Uyghurs and other mostly Muslim minorities. It is currently estimated that hundreds of thousands of Uyghurs, ethnic Kazakhs and other Muslim minorities are being subjected to forced labor in China following detention.

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 on January 13, 2021. The scope of this WRO includes cotton and tomatoes and their downstream products produced in whole or in part in Xinjiang as well as downstream products produced outside Xinjiang that incorporate these products as inputs. 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.

On January 19, 2021, the State Department issued the *Determination of the Secretary of State on Atrocities in Xinjiang*. In that determination, the State Department found that China's actions in Xinjiang constituted crimes against humanity and genocide. These findings were subsequently confirmed in the State Department's *2020 Human Rights Report*, issued on March 30, 2021.

On July 13, 2021, the United States issued an updated Xinjiang Supply Chain Business Advisory for U.S. businesses whose supply chains run through Xinjiang, China. 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.

On December 23, 2021, President Biden signed into law the Uyghur Forced Labor Prevention Act, 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.

It also remains concerning that China does not adhere to certain internationally recognized labor standards, including the freedom of association and the right to bargain collectively. Chinese law provides for the right to associate and form a union, but does not allow workers to form or join an independent union of their own choosing. Unions must affiliate with the official All-China Federation of

Trade Unions (ACFTU), which is under the direction of the Communist Party of China. The workers at enterprises in China are required to accept the ACFTU as their representative. They cannot instead select another union or decide not to have any union representation.

China's restrictions on labor mobility contribute to shortages of skilled workers for foreign companies operating in China. In part due to the recognition that labor mobility is essential to the continued growth of the economy, China is gradually easing restrictions under the country's *hukou* (i.e., household registration) system, which has traditionally limited the movement of workers within the country.

### 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. The process for issuing new regulatory measures can be opaque and unpredictable and implemented without adequate notice. Other key areas of concern include laws governing land use in China, commercial dispute resolution and the treatment of non-governmental organizations. 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.

## INTELLECTUAL PROPERTY RIGHTS

### Overview

After its accession to the WTO, China undertook a wide-ranging revision of its framework of laws and regulations aimed at protecting the 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). Currently, China is in the midst of establishing an intellectual property appellate court and revisions to certain laws and regulations. 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 2021 Special 301 Report. In addition, in January 2021, USTR announced the results of its 2020 Review of Notorious Markets, which identifies online and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting. 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.

As of December 2021, 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 work to do 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. China has yet to demonstrate that it has published data on enforcement actions online on a regular 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. In 2016 and 2017, China circulated proposed revisions to the *Anti-unfair Competition Law* for public comment. China issued the corresponding final measure in November 2017, effective January 2018. Despite improvements in the protection of trade secrets relative to prior law, the final measure reflects a number of missed opportunities for the promotion of effective trade secrets protection. Although China subsequently amended the *Anti-unfair Competition Law*, the *Foreign Investment Law* and the *Administrative Licensing Law*, these amendments still do not fully address critical shortcomings in the scope of protections and obstacles to enforcement.

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, to shift the burden of proof in civil cases to the defendants when there is a reasonable indication of trade secret theft, 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 draft measures relating to civil, criminal and administrative enforcement of trade secrets, such as SAMR's draft *Provisions on the Protection 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 (SPP) and the Ministry of Public Security (MPS) 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 will require revisions to the judicial interpretations and prosecution standards issued earlier in the year. The United States will continue to monitor the effectiveness of these measures.

### Bad Faith Trademark Registration

The continuing registration of trademarks in bad faith in China remains a significant concern. 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 require the disallowance of bad faith trademark applications. However, implementation 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 and low rate of success for oppositions. 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 coronavirus 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. A draft tort liability chapter in the *Civil Code*, published in January 2019, contained similar problematic provisions that would weaken the existing notice-and-takedown system.

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 SPC 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.

More recently, 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 take into account 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 is 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.

## AGRICULTURE

### 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. The inability or unwillingness of China's regulators 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.

The Phase One Agreement, signed in January 2020, addresses many non-tariff barriers to agricultural trade and has expanded market access for a variety of U.S. food, agriculture and seafood product exports, including for meat and meat products, poultry, seafood, rice, dairy, infant formula, horticultural products, animal feed and feed additives, pet food and products of agricultural biotechnology. The agreement also includes enforceable commitments requiring China to purchase and import increased amounts of U.S. agricultural and seafood products in 2020 and 2021. China's implementation of the agricultural commitments in the Phase One Agreement has been generally positive, with significant reforms in some agricultural sub-sectors, including meat and poultry products and facility registration. However, there has been a notable lack of meaningful action in other areas, including with regard to agricultural biotechnology and a required risk assessment for the use of ractopamine in the production of beef and pork.

### **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.

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.

### Tariff-Rate Quota Administration

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 2021. 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 though they are often oversubscribed.

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. Hearings before the panel took place in July and October 2018, and 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. The United States and China originally agreed that the reasonable period of time for China to come into compliance with WTO rules would end on December 31, 2019. The United States subsequently agreed to extend this deadline to June 29, 2021. 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.

### 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 and alfalfa. The number of products pending Chinese regulatory approval continues to increase, causing uncertainty among traders and resulting in an adverse trade impact, particularly for U.S. exports of corn and alfalfa. In addition, the asynchrony between China's biotechnology product approvals and the product approvals made by other countries has widened considerably in recent years.

In the past, biotechnology product approvals by China's regulatory authorities mainly materialized only after high-level political intervention. For example, following a commitment made by China's President Xi during an April 2017 summit meeting, the National Biosafety Committee (NBC) met in May and June 2017 and issued two product approvals after each meeting, while taking no action on several other products that were subject to NBC review. Following a subsequent meeting between the U.S. and Chinese Presidents in December 2018, the NBC issued five additional product approvals and 23 renewals. One year later, in December 2019, the NBC issued two additional product approvals and 10 renewals for foreign developers.

In 2020 and 2021, China held NBC meetings twice per year. In June 2020, the NBC issued one additional product approval and three renewals for foreign developers. In January 2021, China issued one product approval and two product renewals for foreign developers. In September 2021, China

announced the outcomes of the July 2021 NBC meeting, which included no apparent progress on approvals for foreign developers. In January 2022, China issued two product approvals and 25 product renewals for foreign developers. Meanwhile, over the past two years, China has issued numerous approvals and renewals for Chinese developers.

In the Phase One Agreement, China committed to implement a transparent, predictable, efficient and science- and risk-based system for the review of products of agricultural biotechnology. The agreement also calls 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 by 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 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.

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. 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. Indeed, the NBC still has not approved one canola event and two alfalfa events whose applications have been pending for approximately ten years, while at least one corn event and one cotton event have waited over five years for approval.

### Food Safety Law

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 goods such as dairy, infant formula, seafood, grains, animal feed, pet food and oilseeds. Overall, China's notification of these measures to the WTO TBT Committee and the WTO Sanitary and Phytosanitary Committee (SPS Committee) has been uneven.

Despite facing strong international opposition and agreeing to a two-year implementation delay of an official certification requirement for all food products, China's regulatory authorities issued draft measures for public comment in November 2019 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.

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

In the Phase One Agreement, China specifically 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 facilities registration procedures set forth in the Phase One Agreement and the requirements of Decrees 248 and 249, China did not provide the requested information.

The United States and several other trading partners also requested an 18-month postponement in the implementation date for Decrees 248 and 249, scheduled for January 1, 2022. They explained that much more time was needed to register facilities and to understand and comply with the new labeling and conformity assessment requirements if major trade disruptions were to be avoided. China rebuffed these requests.

### **Poultry**

In January 2015, due to an outbreak of high pathogenicity avian influenza (HPAI) in the United States, China imposed a ban on the import of all U.S. poultry products. Even though the outbreak was resolved in 2017 in accordance with the guidelines of

the World Organization for Animal Health (known by its French acronym, OIE), China did not take any action to re-open its market to U.S. poultry products until November 2019. At that time, China reopened its market to U.S. poultry meat, but not to other U.S. poultry products such as shell eggs. Since then, GACC has completed the updating of a list of hundreds of U.S. establishments eligible to export poultry meat to China.

In the Phase One Agreement, China agreed to maintain measures consistent with OIE guidelines for future outbreaks of avian influenza. China also agreed to sign and implement 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. Subsequently, during an avian influenza outbreak in South Carolina in April 2020, China did not restrict imports of poultry products from other U.S. regions.

### **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 Alimentarius (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, 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 maximum residue

levels (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.

### 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 MRLs set by Codex.

In the past, China randomly enforced a zero tolerance for the detection of salmonella in imported pork. In June 2017, a Chinese national standard that laid out the testing requirements for imported raw meat products was replaced by a new standard that does not include a salmonella test for raw meat products.

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.

### VAT Rebates and Related Policies

The Chinese government attempted to manage imports of primary agricultural commodities by raising or lowering the 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.

### 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 Organization for Economic Cooperation and Development continues to rate China's services regime as one of the most restrictive among the world's major economies.

In 2021, 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 ICT products and services, while China's *Cybersecurity Law*, *Data Security Law* and *Personal Information Protection Law* include restrictions on cross-border data flows, and requirements to store and process data locally. These types of data restrictions undermine U.S. services suppliers' ability to take advantage of market access opportunities in China. 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 should allow U.S. financial service providers to compete on a more level playing field and expand their services export offerings in the China market. At the same time, however, China's 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 longstanding 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 taking into account 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. One U.S. bank was approved for this license in 2021. In addition, China committed to take into account 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 two 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.

China allows wholly foreign-owned companies in the non-life (i.e., property and casualty) insurance sector. However, the market share of foreign-invested companies in this sector is only about two percent.

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 the CBIRC to issue timely approvals of their requests to open up new internal branches to expand their operations. The United States continues to urge CBIRC 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 take needed steps even to 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 even being able to apply for an actual license.

By the time that the United States and China entered into the Phase One Agreement in January 2020, 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. Indeed, at times, PBOC 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. This history shows how China has been able 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 to operate in China's market. Meanwhile, the United States is closely monitoring developments as applications from two other U.S. suppliers, Visa and MasterCard, are progressing through PBOC's licensing process. The United States will continue to closely monitor PBOC's licensing process going forward to ensure China's compliance with its commitments in the Phase One Agreement.

### 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 in a sector that previously had been unregulated. 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 had faced entering the 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 the case of 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, 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 thus 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 GATS commitments 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, prohibits investment in TV production, prohibits foreign investment in TV stations and channels in China and 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 is already being implemented in China, 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 the summit meeting between the two countries' Presidents in Buenos Aires on December 1, 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. With respect to content, China requires foreign companies to license their content to Chinese companies. China 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, formerly the State Administration of Press, Publication, Radio, Film and Television, 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 the *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. In the package segment, China applies overly burdensome and inconsistent regulatory approaches, including with regard to security inspections, and reportedly has provided more favorable treatment to Chinese service suppliers when awarding business permits.

### Data Restrictions

In 2021, China continued to build out its expansive regulation of data. A new *Data Security Law* entered into force in September 2021, and a new *Personal Information Protection Law* entered into force in November 2021. These new 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 to prohibit or severely restrict cross-border transfers of information that are routine in the ordinary course of business and are fundamental to any business activity. These laws and measures also impose local data storage and processing requirements on companies that collect "important data," which is a broad and vaguely defined term. They also suggest that China intends to apply these restrictions and requirements not only to companies that are considered to operate in "critical information infrastructure sectors," another broad and vaguely defined term, but also to companies

operating in other sectors. Given the wide range of business activities that are dependent on cross-border transfers of information and flexible access to global computing facilities, these developments have generated serious concerns among foreign governments as well as among stakeholders in the United States and other countries, including among services suppliers.

## TRANSPARENCY

### Overview

One of the core principles reflected throughout China's WTO accession agreement is transparency. Unfortunately, after 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. Many years later, 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 does not publish any trade-related measures issued by sub-central governments.

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 less common 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. In addition, China rarely publishes certain types of trade-related measures in the official journal, such as subsidy measures.

### Notice-and-Comment Procedures

In its WTO accession agreement, China committed to provide a reasonable period for public comment before implementing new trade-related laws, regulations and other measures. 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.

Currently, 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 normative documents.

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 this commitment entered into force 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.

### 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 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 ignores this obligation.

In April 2020, for example, the United States submitted a request concerning five Chinese legal measures covering semiconductors and fisheries subsidy programs that did not appear to have been notified to the WTO and were not available online. Despite the obligation in its WTO accession agreement to 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.