2024 Report to Congress on China's WTO Compliance

United States Trade Representative
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ABBREVIATIONS

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

FOREWORD

This is the 23rd 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 2024. It also incorporates the findings of the Overseas Compliance Program, as required by section 413(b)(2) of the Act, 22 U.S.C. § 6943(b)(2).

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

To aid in its preparation of this report, USTR as chair of the TPSC published a notice in the Federal Register on August 5, 2024. The notice asked interested parties to submit written comments. A number of written comments were received from interested parties. These written comments are available at *www.regulations.gov* under docket no. USTR-2024-0012.

EXECUTIVE SUMMARY

OVERVIEW

In this report, we provide an updated assessment of China's WTO membership. This assessment reveals the unique, serious and constantly evolving challenge that China's state-led, non-market approach to the economy and trade continues to pose for the global trading community. While the United States and other like-minded WTO Members have pursued various WTO-focused strategies over the years to address the many problems created by China's non-market economic system, it remains clear that new and more effective strategies – including strategies that involve taking actions outside the WTO where necessary – are critically needed to address those problems. In particular, it has become clear that China's non-market economic system has evolved and become predatory, as China has designed its industrial plans for Chinese enterprises to displace foreign competitors and dominate targeted industries, both in China and globally.

Below, we first summarize China's compliance record as a WTO Member, which is poor. We then describe China's evolution into economic predation and detail how China's non-market economic system currently operates. Finally, we discuss the United States' multi-faceted strategy for addressing the China challenge. As we explain below, while this strategy is sound and is working, more remains to be done. In particular, with China's evolution into economic predation, the United States' strategy also needs to evolve.

POOR WTO COMPLIANCE RECORD

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

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

The vast majority of the harm that China inflicts upon other WTO Members is attributable to the daily and compounding impact of China's state-led, non-market approach to the economy and trade, which relies heavily on significant interventions in the market by the Chinese government and, increasingly, the Chinese Communist Party (CCP or the Party). As is well-documented, the Chinese government and the CCP routinely intervene in the market in a predatory manner using a wide array of non-market policies and practices, both to provide substantial artificial competitive advantages to targeted Chinese industries and enterprises and to actively disadvantage foreign industries and enterprises and their workers. These non-market policies and practices include not only massive and pervasive – and often non-transparent – subsidization, which is extremely large both in terms of absolute value and in relation to the size of the targeted industry, but also numerous other unfair policies and practices. Key examples include market access limitations, investment restrictions, forced or pressured technology transfer including state-sponsored theft of intellectual property, preferential treatment for state-owned enterprises and other favored Chinese companies, discriminatory regulation, unique national standards, data restrictions, inadequate protection and enforcement of intellectual property rights, the use of competition law enforcement for industrial policy purposes, and unfair labor practices, including forced labor.

ECONOMIC PREDATION

In recent years, a significant evolution has taken place in China's approach to the economy and trade. China has not simply continued to pursue what it termed a "socialist market economy" when it joined the WTO. China's so-called "socialist market economy" has evolved and turned decidedly predatory in nature. In other words, China no longer relies on central planning simply to direct and guide the business decisions of Chinese industries and enterprises, as do a handful of other non-market economies around the world. Rather, today's China is unique among them as it is now using its state-led, non-market approach to the economy and trade in ways designed to displace foreign competitors and secure the dominance of Chinese enterprises in targeted industries, both in the China market and in global markets.

This evolution in China's non-market economic system follows China's rise as an economic power. Since becoming a Member of the WTO, China has become the second largest economy in the world and the largest trader among WTO Members. The size of China's economy and the industries that it spawns has provided China with substantial economic and political power, which it now readily wields.

Over the years, observers coined various terms to describe China's economic system, from "state capitalism" to "China, Inc." and, more recently, "CCP, Inc." When coined, this terminology appropriately captured the essence of China's non-market economic system. It conveyed that foreign companies are competing not only against Chinese enterprises but also the Chinese state, giving rise to unfair competition and an unlevel playing field. Today, however, this terminology is no longer sufficient to convey the unique challenge that China poses for the global trading community. Today, China's economic system must be viewed as predatory.

In recent years, with China's decided turn to predatory behavior, backed by China's enormous economic power, it is no longer accurate simply to view the Chinese state and Chinese enterprises as a single corporate conglomerate against which foreign companies are unfairly forced to compete. Rather, today's China seeks to displace foreign competitors and to secure dominant production and market shares for Chinese enterprises in key industries, both in the China market and in global markets, and it pursues this dominance in both traditional industries and emerging industries through predatory behavior. As is readily apparent, moreover, the non-market policies and practices that China deploys in pursuit of its dominance objectives often have a devastating impact on bilateral and global trade as well as on the targeted industries, workers and businesses of other countries, as the world has seen in sectors like steel, aluminum, solar and electric vehicles.

As so many of China's industrial plans reflect, with *Made in China 2025* as a particularly egregious example, China's version of industrial targeting is different from what the world has seen in the past. In the 1980s, when the term "industrial targeting" was first commonly applied, it referred to the assistance that the Japanese government was then providing to Japanese companies in industries like the automobile industry. China's industrial targeting is a significantly more predatory version, as it does not simply seek to establish a capable Chinese competitor, but rather seeks to aggressively displace foreign competitors. Additionally, China's industrial targeting is now backed by the economic power of the second largest economy in the world and is driven forward by a state with a long track record of significant and relentless intervention in the economy.

The challenge that China's economic predation presents for the global trading community is immense, and the tools for dealing with this challenge are imprecise at best. Indeed, the currently available tools have not been able to stop China's predatory strategies. Existing trade laws have not traditionally been applied to address the type of predatory behavior being pursued by today's China.

One example of the new and unique type of predatory behavior that China pursues in the international trade context relates to what is traditionally called predatory pricing. Typically, in a market economy, predatory pricing takes place when a private company sets its prices unrealistically low, driving out its competitors and achieving monopoly power. The private company then raises its prices to recoup its losses while maintaining its dominant position. A similar dynamic plays out under many of China's industrial plans, but with important differences.

When China engages in industrial targeting and targets an industry for domination, its enterprises typically set their prices very low and often below cost, not unlike a private company with monopoly power in a market economy engaging in predatory pricing. However, the Chinese enterprises typically engage in this pricing behavior largely in unison, and they can sustain the heavy losses that their unreasonably low prices cause them for much longer periods of time than a private company in a market economy because of the substantial financial and regulatory support continually provided to them by the Chinese state. Moreover, even after their predatory pricing behavior drives out most of the foreign competitors from the domestic market, Chinese enterprises – given the backing of the state -- do not always charge higher prices to recoup their losses, as a private company in a market economy engaged in predatory pricing behavior might typically do. Instead, they may maintain their artificially low prices for long periods of time while they expand globally, as we have seen in the solar sector. Indeed, profit and loss – and monopoly rents – are not the motivators behind China's industrial targeting. Instead, China pursues industrial targeting to secure its industrial advancement, to achieve technological self-sufficiency and to dominate global markets and supply chains.

Meanwhile, when non-market excess capacity develops in a targeted industry, as it often does, the Chinese state encourages Chinese enterprises to continue to produce and to sell their excess production abroad, effectively exporting China's unemployment to other countries. In other words, even after achieving their dominance in the domestic market and even globally, Chinese enterprises continue to benefit from substantial financial and regulatory support from the Chinese state, and they often continue to keep their prices low, while the remaining foreign competitors and their workers continue to suffer harm from China's unfair competition and an unlevel playing field.

Another example of the new and unique type of predatory behavior that China pursues in the international trade context relates to what is traditionally called predatory bidding. Typically, in a market economy, predatory bidding takes place when a private company bids up the price of a critical input, paying more than the market price and foreclosing rival companies from competing and driving them from the market. Through this behavior, the private company secures monopsony power, which it subsequently is able to exploit by paying lower prices for the critical input, allowing it to recoup its losses. A similar dynamic plays out under some of China's industrial plans focused on advanced manufacturing industries, but again with important differences.

While companies in market economies typically purchase raw material inputs such as critical minerals from miners or processors around the world at the prevailing market rate, the Chinese state pursues a strategy in which it directs Chinese enterprises to purchase controlling interests in mines around the world at whatever price is necessary, typically with the understanding that they will send most of the output back to China for processing by Chinese enterprises. This strategy has led to China's dominant position in the supply of raw material inputs, including critical minerals such as nickel, lithium, cobalt, rare earths, antimony, tungsten, gallium, germanium and graphite, which are essential inputs for numerous advanced manufactured products, to the disadvantage of foreign competitors that manufacture downstream products using these raw material inputs. China also continually acts to maintain its dominant position by again lowering the price that it charges foreign enterprises whenever it detects foreign efforts to develop competing mines, rendering these foreign efforts economically unviable.

Unlike a market economy actor engaging in predatory bidding, however, China is not focused on recouping its losses. While China is certainly determined to exploit the dominant position that it maintains in the impacted supply chains in an effort to ensure the dominance of Chinese enterprises in the intermediate and final products manufactured from the critical minerals that it has targeted, the ultimate motive is, once again, not profit. Rather, as in the case of other industries, China seeks to displace foreign competitors and dominate industries involved in advanced manufacturing in order to secure its industrial advancement and to expand its overall economic power and leverage, which, among other things, facilitates its use of economic coercion. At the same time, the goal of becoming technologically self-sufficient is front and center for these industries, as China hopes to eliminate its dependencies on major countries like the United States and other market economies.

Notably, China's predatory behavior, in whatever form it takes, does not merely harm other developed economies with mature industries. Rather, as China pursues industrial plans targeting key industries for dominance, it especially harms emerging and developing economies. Too often, emerging and developing economies cannot successfully develop their own competing industries and instead become more dependent on China, something economists call "premature deindustrialization."

CHINA'S PREDATORY NON-MARKET ECONOMY

Under China's non-market economic system, control and direction of all aspects of the economy is retained by the Chinese government and the CCP, facilitated by a reliance on rule *by* law rather than rule *of* law. The mere fact that decisions in the marketplace are often made based on the objectives of the state, rather than based on commercial considerations, distorts China's economy and, in turn, the global economy in ways that can damage and weaken the economies of China's trading partners, given that China is the second largest economy in the world and the largest trader among WTO Members. This damage comes as no surprise to the Chinese state, as its typical motivation is to displace foreign competitors and secure dominant positions for Chinese enterprises in an array of targeted industries.

The non-market policies and practices that China has deployed over the years in support of Chinese industries and enterprises are myriad. They are also constantly evolving. While the particular combination of non-market policies and practices that China currently deploys in pursuit of securing dominant market shares for Chinese businesses domestically and globally can vary from industry to industry, the Chinese state commonly deploys a wide assortment of non-market policies and practices including:

- adopting and pursuing industrial plans that target specific industries for domination by Chinese enterprises, including by establishing capacity, production and export levels or market share targets;

- directing, pressuring or otherwise acting to ensure that Chinese enterprises adhere to the objectives set forth in state industrial plans;

- placing CCP officials in state-owned enterprises and private Chinese enterprises in management positions in order to monitor, direct, pressure or otherwise influence commercial decision making;

- deploying massive and frequently non-transparent subsidies relentlessly in pursuit of industrial plan objectives, including via policy banks, state-owned commercial banks and government investment and guidance funds at all levels of government;

- transferring risk to the state through loan guarantees and loan rollovers for Chinese enterprises in targeted industries;

- failing to publish final central level and provincial level measures that provide subsidies or other financial support to Chinese enterprises;

- directing, pressuring or otherwise acting to ensure that foreign enterprises operating in China not make business decisions that conflict with the objectives of the state's industrial plans, including in some cases by embedding CCP officials in those enterprises;

- according special regulatory and other preferences and competitive advantages to state-owned enterprises;

- directing or allowing government regulatory authorities to exercise their authority in a discriminatory manner, including by treating Chinese enterprises more favorably than foreign or foreign-invested enterprises;

- directing or sponsoring the theft of intellectual property, trade secrets and confidential business information for commercial use;

- engaging in forced or pressured technology transfer;

- directing, pressuring or otherwise acting to ensure that Chinese enterprises pursue acquisitions of foreign enterprises whose technologies are needed to achieve the state's industrial plan objectives;

- directing, pressuring or otherwise acting to ensure that Chinese enterprises purchase Chinese-made products over imported products in accordance with the state's industrial plan objectives;

- directing, pressuring or otherwise acting to ensure that Chinese enterprises invest in and secure access to raw materials outside of China for the sole use of Chinese enterprises producing downstream products in accordance with the state's industrial plan objectives;

- retaliating against foreign enterprises when they offend the Chinese state or otherwise act in a manner that displeases the Chinese state, thereby creating a chilling business environment for all foreign enterprises, especially ones with business operations located in China;

- using selective or arbitrary application or enforcement of intellectual property law to achieve the state's industrial plan objectives;

- using selective or arbitrary application or enforcement of competition law to achieve the state's industrial plan objectives;

- pursuing unique national standards when international standards already exist, with the intent of leveraging the economic power of China's market to promote or compel the adoption of those standards in global markets;

- using unfair labor practices, such as forced labor, restrictions on labor mobility, institutional constraints on the extent to which wage rates are determined through free bargaining between labor and management, the denial of the rights of workers to associate and to organize and collectively bargain, and a prohibition on the formation of independent trade unions to represent workers, which artificially lower labor costs for Chinese enterprises, especially in industrial sectors;

- condoning lax enforcement of environmental laws and regulations, which artificially lowers labor costs for Chinese enterprises, especially in industrial sectors;

- creating or maintaining persistent non-market excess capacity in industries through state-owned enterprises and private Chinese enterprises, to the detriment of competing foreign enterprises in the China market and in global markets around the world;

- directing the judiciary to render decisions that serve the state's industrial plan objectives; and

- failing to publish all central level and provincial level laws, regulations and other measures that impact the rights and obligations of enterprises and individuals.

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

As has become evident to the United States and China's other trading partners, one of the more problematic manifestations of China's predatory non-market economic system is the creation of non-market excess capacity – that is, production capacity that would not have been created or would not persist if market forces were operating properly. Moreover, given China's economic size, being the second largest economy in the world and the largest trader among WTO Members, when China develops excess capacity, it has global implications, and those implications are broadly negative.

In a market economy, excess capacity can also occur periodically. However, it is typically a cyclical, short-term condition that market forces correct. In contrast, excess capacity in China is often structural and tends to persist and become severe. Because China's economic approach is founded on state intervention, the state typically responds to excess capacity by continuing to deploy non-market policies and practices that inevitably act to incentivize Chinese enterprises to continue manufacturing excessive amounts of products and sell them at unreasonably low or below-cost prices, particularly in export markets. Often, many of the incentives provided by the state originate from a provincial government, which does not want manufacturers within the province to go out of business because the provincial government depends on its share of the national tax revenues generated from manufacturers within the province to fund the services that it is required to provide to its citizens.

At the same time, the forms of China's excess capacity are not always the same as those found when excess capacity temporarily emerges in an industry in a market economy. For some industries in China, the capacity utilization rate is relatively low, signaling excess capacity as can be found in a market economy. For other industries in China, however, the capacity utilization rate remains in a normal range but enterprises engage in overproduction, as they produce excessive quantities of their products in relation to demand and then sell those products at unreasonably low prices, particularly in export markets. The substantial financial and regulatory support that China typically continues to provide to these enterprises prevents the market from correcting this behavior, and the overproduction and artificially low prices persist. In addition, in some of these industries, the overproduction leads to an overconcentration of production in China, such as in the solar sector, where China now accounts for 80 percent of global production. This overconcentration of production makes global supply chains less resilient and more vulnerable to disruption, whether caused by external supply shocks or geopolitical malfeasance by China.

In the past, China itself has acknowledged the existence of excess capacity in several of its industries, including steel, cement, aluminum, flat glass and shipbuilding. Numerous other Chinese industries with non-market excess capacity have been identified by industry associations in the United States and other countries, such as solar, electric vehicles, lithium-ion batteries and fisheries. Some of the additional 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 numerous industries found within 10 broad sectors, including advanced information technology, robotics and automated machine tools, aircraft and aircraft components, maritime vessels and marine engineering equipment, advanced rail equipment, new energy vehicles, electrical generation and transmission equipment, agricultural machinery, new materials and pharmaceuticals and medical devices. By some estimates, the Chinese government is making available more than $500 billion of financial support to these sectors, often using large government guidance funds that China attempts to shield from scrutiny by claiming that they are wholly private. Based on the recent history of the steel and aluminum industries, China's non-market distortions in these newer sectors will likely result in oversupply, leading to loss of jobs and production in market economies and, in some cases, less choice, lower quality, less innovation and higher prices for consumers over time.

Over the past two years, the non-market excess capacity that emanates from China's state-led industrial plans has taken center stage. At present, we are seeing non-market excess capacity emerge in more and more Chinese industries in a dynamic that economists are labeling "China Shock 2.0." Faced with an acute crisis in the real estate sector and struggling manufacturers coming out of the COVID pandemic, governments at all levels in China have increased their financial and regulatory support for manufacturers in traditional industries like steel, household appliances, fertilizers and machine tools as well as for manufacturers in emerging, high technology industries. These interventions have led to production well in excess of domestic demand in many sectors – and, in some sectors, such as solar, three or four times the level of global demand. In all of these sectors, with domestic demand in China remaining weak, a wide range of low-priced manufactured goods have been flooding export markets. The flood of exports has also led to many of China's trading partners pursuing import relief through antidumping and countervailing duty investigations. In the steel sector alone, WTO Members launched 67 new antidumping investigations against Chinese imports in the first 10 months of 2024.

Not unexpectedly, in recent years, China has accounted for the largest annual global trade surpluses in the history of the world, as China's exports have far exceeded China's imports. In 2024, with China Shock 2.0 under way, China reached another new record, with a global trade surplus of nearly $1 trillion. This global trade surplus is more than 16 percent higher than China's global trade surplus in 2023, when China's global trade surplus was more than three times the total for the country with the next largest global trade surplus, Russia.

Despite its past acknowledgements of excess capacity problems, China's response during China Shock 2.0 has shifted to one of denial, a tactic that China frequently uses in other contexts. China now insists that none of its industries are experiencing excess capacity. According to China, its enterprises have comparative advantages, and foreign claims of excess capacity are groundless. China argues that Chinese enterprises are dominating markets simply because of their innovation, efficiency and competitiveness. China's rhetoric wholly ignores the artificial competitive advantages provided to Chinese enterprises through China's predatory industrial plans and affirmatively denies that Chinese enterprises even receive subsidies.

China's fantastical rhetoric has not convinced its trading partners. In response to the significant harm being caused by China's excess capacity, the United States and a number of other WTO Members have been resorting to available trade defense tools not only in the steel sector, but also in a range of other industries. Unfortunately, these trade defense tools provide protection against only some of the harm caused by China's excess capacity. It is clear that industries, businesses and workers in the United States and other WTO Members continue to be harmed by China's excess capacity, while China itself has not taken any steps to change its behavior.

Another example of the harm that can be caused by China's predatory non-market economic system involves forced or pressured technology transfer. In USTR's investigation under 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 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 targeted in the state's industrial plans. Finally, the reports illustrated how the Chinese government has conducted or supported cyber intrusions into U.S. commercial networks, with the targets being intellectual property and sensitive commercial information held by U.S. firms. While these reports focused on the harm caused to U.S. interests, it is not a problem borne solely by the United States. As in the case of non-market excess capacity, China's unfair policies and practices relating to forced or pressured technology transfer also affect many other WTO Members whose companies have developed or are developing advanced technologies.

Closely related to its pursuit of forced or pressured technology transfer, China also sponsors and engages in the theft of intellectual property, trade secrets and confidential business information for commercial use. As previously reported, intelligence and law enforcement officials from the Five Eyes countries – Australia, Canada, New Zealand, the United Kingdom and the United States – have publicly characterized the Chinese state's sponsorship and pursuit of this type of theft as being on a scale unprecedented in human history. They added that it is the biggest of any country in the world and, indeed, bigger than every other country in the world combined. In the United States alone, in 2023, there were approximately 2,000 active investigations into apparent state-sponsored theft by China covering a diverse array of U.S. industries, from aviation to biotechnology to robotics, among many others. The Five Eyes officials noted that while many other countries engage in clandestine activities for national security purposes, China is different from most of those countries in that the Chinese state steals information and then uses it for commercial advantage.

Plainly, in addition to often being predatory, China's economic approach is far different from the open, market-oriented approach foundational to WTO membership and pursued by the United States and almost all other WTO Members. Key differences include:

- China routinely deploys economic and trade policies and practices that promote unfair competition and unlevel playing field, so that state-directed outcomes rather than fair competition and market-based outcomes prevail.

- China often does not enable or allow Chinese enterprises to make their own commercial decisions.

- China does not treat all enterprises engaged in commercial activities equally or allow the market to determine the allocation of resources.

- China does not require its regulatory authorities to administer in a fair, transparent, impartial and reasonable manner all laws, regulations and other measures pertaining to or affecting trade in goods, trade in services, investment and trade-related aspects of intellectual property rights.

- China does not maintain an independent judiciary, nor does it publish all laws, regulations and other measures that impact the rights and obligations of enterprises and individuals.

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

ADDRESSING TODAY'S CHINA CHALLENGE

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

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

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

This is the approach that the United States has been pursuing for the past four years. As described in more detail in past reports, this strategy has included (1) the pursuit of enhanced domestic investment in key industries, (2) bilateral engagement of China, (3) the deployment of domestic trade tools and (4) close coordination with allies and partners. Today, this strategy is working, but it needs to be refined and fortified. In particular, with China's strong embrace of predatory behavior, it is apparent that the U.S. strategy needs to evolve, particularly with regard to the deployment of domestic trade tools and with regard to the United States' work with allies and partners.

DOMESTIC INVESTMENT

The United States has been working to ensure that we are taking the steps domestically to invest in, and build policies supportive of, the industries of today and tomorrow. We therefore have been working to strengthen our economy, our supply chains, our infrastructure, our businesses, our farmers and our workers and to lay a solid foundation for us to continue to innovate and maintain our technological edge. Important steps taken to date include the passage of the CHIPS and Science Act, the Inflation Reduction Act and the Infrastructure Investment and Jobs Act, as well as the many subsequent steps taken in implementing those Acts. All of these steps are helping to ensure and accelerate the development of sectors that are important to the future of the U.S. economy, and more can be done.

Some observers have criticized these efforts as the United States resorting to the same industrial policy that it condemns China for pursuing. However, these criticisms miss the mark on two basic counts.

First, when compared to the industrial policies of other WTO Members, China's industrial policy is fundamentally different. As is explained in more detail below, China's industrial policy goes well beyond traditional approaches to guiding and supporting domestic industries in several significant ways, including through their predatory schemes, led by the Chinese state.

Second, as economists have explained, a more fundamental point is that when a country like China with its large economy advances an aggressive industrial policy pursuing dominant market shares in a targeted industry, other countries have a policy choice to make. A country's decision to do nothing is a policy choice, and it effectively becomes the country's industrial policy, meaning that the country has decided to accept the broad, negative changes to its own industry that inevitably will be caused by China's industrial policy.

In other words, if the United States and other WTO Members do not respond with their own affirmative industrial policies, the unfair competition and unlevel playing field that China creates and the successes that Chinese enterprises achieve will result in industries, businesses and workers in the United States and China's other trading partners bearing the costs of China's industrial policy. As economists regularly point out, the massive and relentless subsidization of manufacturing in China – a key component of any Chinese industrial plan – comes at the expense of households in China, who in effect fund the subsidies, and this dynamic leads to reduced domestic consumption in China and focuses Chinese manufacturers more on export markets around the world, where they are determined to make sales at virtually any price. Inevitably, competing manufacturers in the United States and other WTO Members lose significant income to their Chinese competition, which undermines their profitability and can put them out of business and their workers out of jobs. It can also devastate whole communities.

BILATERAL ENGAGEMENT

It is clear that bilateral engagement with China, even while it continues, has not been leading to significant changes in China's economic and trade policies and practices, nor have we seen any indication that China is even considering any significant changes. Nevertheless, continued bilateral engagement is important, at a minimum so that channels of communication can remain open and misunderstandings can be avoided.

In addition to periodic high-level discussions, the United States has been closely monitoring the progress that China has made in implementing its commitments under the Phase One Agreement, which entered into force in February 2020. The United States has also been utilizing the consultation arrangements set forth in the agreement, including meetings and other communications between the two sides. Through these many engagements, the United States has raised various concerns that have arisen regarding China's implementation progress. At present, serious ongoing concerns with China's implementation efforts persist in several areas covered by the agreement, including intellectual property, technology transfer and agriculture. In addition, official trade data appears to show that China fell far short of implementing its commitments to purchase U.S. goods and services, which covered the years 2020 and 2021.

Meanwhile, it bears noting that, despite China's rhetoric, the United States does not view a bilateral "decoupling" from China as the solution to the many problems posed by China's state-led, non-market approach to the economy and trade. Indeed, if the United States were to decouple from China, it would not address those problems. The United States has taken targeted actions, including on export controls and outbound investment, to protect our national security, consistent with our approach to the U.S.-China economic and trade relationship, which is more appropriately characterized as one of de-risking and diversifying, not decoupling. Because the Chinese government continually intervenes in the market and actively seeks to advantage Chinese enterprises and disadvantage foreign enterprises, the United States is not in a position to rely on the good will of the Chinese state when it comes to supply chains, especially for critical minerals. Similarly, U.S. companies with operations in China are not able to have confidence that they will be treated fairly by the Chinese state, and they increasingly are re-evaluating the degree of their dependence on the China market.

Nevertheless, the United States still seeks to trade with China, just as the United States seeks to do with other countries. But the terms of competition must be fair. U.S. companies and workers need to be able to compete on a level playing field with Chinese companies and workers, whether in the China market, the U.S. market or other markets around the world. For two-way trade to expand, both the United States and China need to be committed to it. But questions remain about China's commitment, as China itself appears to be pursuing a decoupling strategy – and not just from the United States.

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

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

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

DOMESTIC TRADE TOOLS

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

It is also apparent that existing trade tools need to be strengthened, and new trade tools need to be forged. As discussed above, China's approach to trade has evolved into economic predation. It pursues unfair and anticompetitive policies and practices targeting key industries for domination. Recognizing that the scope and extent of this behavior simply was not contemplated when U.S. trade laws were enacted decades ago, we have been exploring ways in which to work with the Congress to update our trade tools to counter this behavior.

ALLIES AND PARTNERS

Despite the size of the U.S. economy, there are limits to the impact of U.S. domestic trade tools alone. That is why the United States has been working more intensely, strategically and broadly with allies and partners. We have been strengthening this coordination with our trading partners in order to more effectively address the challenges that China poses for the global economy.

As more and more U.S. allies and partners come to understand the need for new approaches for dealing with China and its non-market policies and practices, the United States is working more intensely and broadly with them, both in existing international trade fora and initiatives and in new ones. The COVID-19 pandemic, followed by Russia's full-scale invasion of Ukraine, and their impacts on supply chains and global economic conditions, have laid bare the vulnerabilities and interdependencies of economies around the world and have underscored the need to build up economic security and resiliency across sectors. The concentration of supply chains in China remains a particular problem, especially in light of the many serious risks and potential harms that emanate from China's state-led, non-market approach to the economy and trade. There is a strong need for new thinking and new coalitions of allies and partners, including not only on a bilateral basis — especially with major trading partners — but also regionally and multilaterally, to find global solutions to the many serious problems posed by China's state-led, non-market approach to the economy and trade.

Importantly, among many of the United States' key trading partners, there appears to be a convergence of thinking about the need to approach trade relations with China with more realism, as the United States has been doing. The most significant factor in this convergence of thinking is the incontrovertible evidence of the significant harm being caused by China's embrace of an increasingly predatory non-market economic system. Indeed, this harm is not confined to the advanced market economies, as emerging and developing economies tend to be particularly adversely impacted by China's non-market policies and practices. At the same time, many of our trading partners are also seeing that, as the United States grows more determined to mitigate the harms of China's non-market policies and practices, those harms may increasingly flow instead to other economies.

China's increased use of economic coercion in recent years has certainly also played a role in this convergence of thinking. As its economic power and leverage has grown, China has attempted to weaponize the economic dependencies that have developed in order to pressure other countries to adopt or maintain policies in China's favor or to punish other countries for policies that offend China. In particular, the Chinese government more and more has resorted to the threat or use of measures affecting trade and investment in an abusive, arbitrary or pretextual manner to pressure, induce or influence a foreign government into taking, or not taking, a decision or action in order to achieve a strategic political or policy objective, or to prevent or interfere with the foreign government's exercise of its legitimate sovereign rights or choices. It is particularly troubling to witness an authoritarian government using economic coercion to influence the policies being pursued by democratic countries.

As previously reported, the United States has been working with allies and partners through a variety of initiatives in recent years. This work is taking place in bilateral, regional and multilateral fora, including the WTO. Several of these initiatives have involved the European Union (EU) and Japan.

In 2021, the United States and the EU established the Trade and Technology Council, where one important component of the regular engagement under this initiative seeks to better understand and develop strategies for addressing non-market policies and practices. To date, these discussions have focused on the clean energy and medical device sectors. Separately, since the establishment of the Working Group on Large Civil Aircraft in 2022, the United States and the EU have also met regularly at the working level to explore strategies for confronting the challenges posed by China's non-market policies and practices in the aviation sector. Meanwhile, the United States and Japan have established a bilateral initiative, known as the Partnership for Trade, where China's non-market policies and practices are also a key focus.

Over the past four years, the United States, the EU and Japan have also continued their trilateral work, focusing on the identification of problems arising from non-market policies and practices, including in sectors such as legacy semiconductor chips. The three trading partners have also sought to identify gaps in existing trade tools and where further work is needed to develop new trade tools to address non-market policies and practices, as well as possible cooperation in utilizing existing tools.

Similar work continues to take place in fora such as the Group of Seven (G7), the Group of Twenty (G20) and the Organization for Economic Cooperation and Development (OECD). For example, at the G7 Leaders' Meeting held in June 2024, the United States and the other members of the G7 discussed the challenges that China's persistent industrial targeting and comprehensive non-market policies and practices pose to our workers, industries, and economic resilience and security. They reaffirmed their commitment to work together to address harmful market distortions and global excess capacity in key sectors resulting from non-market policies and practices. They also specifically committed to pursue joint monitoring to assess how non-market policies and practices are producing harmful effects, including excess capacity.

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

INTRODUCTION

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

ASSESSMENT OF CHINA'S WTO MEMBERSHIP

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

CHINA'S WTO ACCESSION

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

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

WTO Members formally approved an agreement on the terms of accession for China on November 10, 2001, at the WTO's Fourth Ministerial Conference, held in Doha, Qatar. One day later, China signed the agreement and deposited its instrument of ratification with the Director-General of the WTO. China became the 143rd member of the WTO on December 11, 2001. China's Protocol of Accession, accompanying Working Party Report and Goods and Services Schedules are available on the WTO's website (www.wto.org).

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

Like all acceding WTO Members, China also agreed to assume the obligations of more than 20 existing multilateral WTO agreements. Areas of principal concern to the United States and China's other trading partners, as evidenced by the accession negotiations, included core principles of the WTO, such as most-favored nation treatment, national treatment, transparency and the availability of independent review of administrative decisions. Other key concerns arose in the areas of agriculture, sanitary and phytosanitary measures, technical barriers to trade, trade-related investment measures, customs valuation, rules of origin, import licensing, antidumping, subsidies and countervailing measures, trade-related aspects of intellectual property rights and services. For some of its obligations, China was allowed minimal transition periods, where it was considered necessary.

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

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

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

EXPECTATIONS OF WTO MEMBERSHIP

For all WTO Members, the expectations of WTO membership are clearly set forth in the Marrakesh Declaration issued in April 1994 at the conclusion of the Uruguay Round negotiations. There, WTO Members expressly affirmed their view that the establishment of the WTO ushers in a "new era of global economic cooperation" that "reflect[s] the widespread desire to operate in a fairer and more open multilateral trading system." WTO Members further made clear their determination that their economies would participate in the international trading system, based on both "open, market-oriented policies" and "the commitments set out in the Uruguay Round Agreements and Decisions."

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

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

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

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

CHINA'S WTO COMPLIANCE RECORD

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

ADOPTION OF MARKET-ORIENTED POLICIES

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

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

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

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

Aside from the role of the government and the Party in managing the economy, there are also serious concerns over how the government and the Party exercise influence over the operations and investment decisions of state-owned and state-invested enterprises and private enterprises, including foreign-invested enterprises. This influence continues to grow, as the Party is increasing its control over key actors in China's economy and not, as had been hoped, enabling China's transition to a market economy.

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

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

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

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

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

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

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

Similarly, China's legal system continues to function as an instrument by which the government and the Party can secure discrete economic outcomes, channel broader economic policy and pursue the state's industrial policy objectives. Key legal institutions, such as the courts, are structured to respond to the Party's direction, both broadly and on a case-specific basis. As a general matter, to the extent that companies and individuals seek to act independently of government or Party direction, the legal system does not provide a venue for them to achieve these objectives on a systemic or consistent basis. In addition, companies and individuals continue to face challenges in obtaining impartial outcomes, either because of 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 not merely more extensive. They are also fundamentally different in kind. In several significant ways, China's industrial plans go well beyond traditional approaches to guiding and supporting domestic industries:

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

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

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

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

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

COMPLIANCE WITH WTO RULES

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

As we detailed in prior reports, China's economic and trade regime has generated many WTO compliance concerns over the years. Too often, WTO Members have had to resort to the WTO's dispute settlement mechanism to change problematic Chinese policies and practices. The United States, for example, has brought 27 cases against China at the WTO covering a wide range of important policies and practices, such as: (1) discriminatory requirements in the automobile sector; (2) discriminatory taxes in the integrated circuit sector; (3) hundreds of prohibited subsidies in a wide range of manufacturing sectors; (4)

inadequate intellectual property rights enforcement in the copyright area; (5) significant market access barriers in copyright-intensive industries; (6) severe restrictions on foreign suppliers of financial information services; (7) export restraints on numerous raw materials; (8) a denial of market access for foreign suppliers of electronic payment services; (9) repeated improper use of trade remedies; (10) excessive domestic support for key agricultural commodities; (11) the opaque and protectionist administration of tariff-rate quotas for key agricultural commodities; and (12) discriminatory regulations on technology licensing. Even though the United States prevailed in these WTO disputes, as other WTO Members have done in their disputes against China, they take years to litigate, consume significant resources and often require further efforts when China fails to comply with WTO rules.

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

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

Despite these efforts, China continues to shield massive government subsidies from the scrutiny of other WTO Members, at both the central and the sub-central level of government. For example, as the United States and several other WTO Members have complained, China is obscuring massive central government and sub-central government subsidies provided through a vehicle known as "government guidance funds." While China claims that these government guidance funds are wholly private, the facts plainly reveal that the funds are run by government agencies and state-owned enterprises and provide state capital to Chinese companies, and the amounts of funding involved are staggering. According to one estimate, the monies available through these government guidance funds total more than $900 billion.

Together with other complementary non-market practices, the massive and relentless subsidization provided by China's central government and sub-central governments severely distorts global markets. It also contributes to the serious excess capacity problems that have been plaguing industries like steel, aluminum, solar panels and fisheries and have been devastating foreign competitors. Similar results can be expected in other industries now being targeted by China for dominance.

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

WTO-FOCUSED ENFORCEMENT EFFORTS

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

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

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

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

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

Overreaching by the WTO's Appellate Body in deciding WTO dispute settlement cases has also shielded China's non-market policies and practices from discipline and has affirmatively undermined the efforts of the United States and other WTO Members to protect our workers and businesses from the harmful impacts of China's predatory non-market economic system. The Appellate Body's erroneous substantive interpretations have undermined core values, such as the ability to protect workers and businesses from non-market economic harms, to promote democracy and human rights or to protect human health or the environment. At the same time, China has sought to use the WTO dispute settlement system to subject U.S. national security measures to review, pursuing a strategy that would convert the WTO into a permanent venue for national security disagreements. As a result, the United States has been clear that fundamental reform is needed to ensure a well-functioning WTO dispute settlement system that supports WTO Members in the resolution of their disputes and in doing so limits the needless complexity and interpretive overreach seen in recent years. Among the objectives for reform, the United States has been clear that the dispute settlement system should preserve the policy space in WTO rules for WTO Members to address their critical societal interests and to support, rather than undermine, the WTO's role as a forum for discussion and negotiation. Most critically, fundamental reform must ensure that the WTO respects the essential security interests of WTO Members, including the United States.

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

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

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

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

As these experiences make clear, it is unrealistic to believe that actions at the WTO alone will be sufficient to force or persuade China to make fundamental changes to its economic system or trade regime. The WTO's trading system was designed for countries that are truly committed to fair competition based on market principles, not for an economically powerful country determined to maintain a state-led, non-market approach to the economy and trade, and China has demonstrated no willingness to change its approach in any meaningful way.

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

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

OTHER ENFORCEMENT EFFORTS

In recent years, it became evident to the United States that new strategies were needed to deal with the many problems generated by China's state-led, non-market approach to the economy and trade, including solutions independent of the WTO. In one significant action, 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. In March 2018, after a thorough review and analysis of the evidence, USTR issued a detailed report, finding that China had engaged in a range of unfair and harmful conduct:

- First, USTR found that China uses foreign ownership restrictions, including joint venture requirements, equity limitations and other investment restrictions, to require or pressure technology transfer from U.S. companies to Chinese entities. USTR also found that China uses administrative review and licensing procedures to require or pressure technology transfer, which, *inter alia*, undermines the value of U.S. investments and technology and weakens the global competitiveness of U.S. companies.

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

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

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

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

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

Notably, the Phase One Agreement did not address many of the U.S. concerns that the United States had been seeking to address in its negotiations with China. The reality is that the Phase One 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. The unresolved issues included critical concerns in areas such as state-led industrial plans targeting industries for dominance, massive and pervasive subsidization, favorable regulatory support for domestic enterprises, state-owned enterprises, non-market excess capacity, state-sponsored theft of intellectual property, standards, cybersecurity, data localization requirements, restrictions on cross-border data transfers, competition law enforcement and regulatory transparency as well as certain issues in the areas of intellectual property, technology transfer and services market access that were not addressed in the Phase One Agreement. In furtherance of its industrial policy objectives, China's government has also limited market access for imported goods and services and restricted the ability of foreign manufacturers and services suppliers to do business in China.

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

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

In May 2022, USTR launched a statutorily mandated four-year review of the tariffs that had been imposed on Chinese imports as a result of the Section 301 investigation into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation. As part of this review, USTR examined the effectiveness of the tariff actions in achieving the objectives of the original investigation, other actions that could be taken and the effects of those actions on the United States economy, including consumers. In May 2024, USTR issued a report that found that China's unfair acts, policies and practices had continued and, in some cases, had worsened. USTR also solicited public comments on proposed modifications to the existing Section 301 tariffs. In September 2024, following the issuance of a Presidential directive and after taking into account public comments, USTR announced the final modifications to the tariffs, which maintained the current tariffs in place while selectively increasing tariffs on Chinese imports in certain strategic sectors.

LOOKING AHEAD

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

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

In the United States, it is widely accepted that the existing WTO rules do not, and cannot, effectively discipline many of China's most harmful policies and practices. It is similarly evident to us that China has become quite adept at circumventing the existing rules, as well as the attempted enforcement of those rules, by obscuring state involvement in the economy in ways that the WTO rules did not anticipate at the time of their negotiation. These problems are exacerbated by China's long record of flouting the transparency obligations that it undertook when it joined the WTO. At the same time, there is no expectation that China would agree to new WTO rules disciplining its problematic behavior. As a result, in the United States' view, while the WTO still has a significant role to play, enforcement of WTO rules has become less significant and solutions independent of the WTO are necessary, including solutions pursued through bilateral engagement and the use of domestic trade tools, to counter the harm caused by China's unfair and anticompetitive policies and practices.

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

It is also noteworthy that, in recent years, many of China's trading partners have also become increasingly skeptical of China's rhetoric. For example, China often touts its strong commitment to win-win outcomes in international trade matters, but its actions plainly belie its words.

Through state-led industrial plans like *Made in China 2025*, which targets 10 strategic emerging sectors, China pursues a zero-sum approach. It first seeks to develop and dominate its domestic markets. Once China develops, acquires or steals new technologies and Chinese enterprises become capable of producing the same quality products in those industries as the foreign competition, the state suppresses the foreign competition domestically and then supports Chinese enterprises as they "go out" and seek dominant positions in global markets. Countries with industries like steel, aluminum, solar and fisheries have experienced this reality, and all WTO Members know that a new wave of severe and persistent non-market excess capacity has begun, to the detriment of their industries, businesses and workers.

In addition, as discussed above, China's "dual circulation" strategy reflects China's goal of becoming self-sufficient domestically. What this means in reality is that, for now, China will continue to export to the world, and China will continue to welcome foreign companies operating in China and continue to import products needed by Chinese companies, especially in technology products. But once Chinese companies are capable of displacing the foreign competition in any particular industry in the China market, the Chinese state will no longer welcome foreign companies and their products.

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

Similarly, it has also not gone unnoticed among China's trading partners — particularly the democratic market economies — that China's leadership appears confident in its predatory non-market economic system and feels no need to conform to global norms. China's leadership also demonstrates confidence in its ability to quiet dissenting voices. Indeed, it has become increasingly evident that China's leadership is seeking to establish new global norms that better reflect and support not only China's approach to the economy and trade but also China's governance model, providing a potentially attractive alternative for other authoritarian regimes around the world.

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

SPECIFIC TRADE CONCERNS

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

INDUSTRIAL PLANS

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

One of the more far-reaching and harmful industrial plans is *Made in China 2025*. China's State Council released this industrial plan in May 2015. It is a 10-year plan targeting 10 strategic sectors, which include advanced information technology, automated machine tools and robotics, aviation and aerospace equipment, maritime engineering equipment and high-technology ships, advanced rail transit equipment, new energy vehicles (NEVs), power equipment, agricultural machinery, new materials, and biopharmaceuticals and advanced medical device products. While purportedly intended simply to raise industrial productivity through more advanced and flexible manufacturing techniques, *Made in China 2025* is emblematic of China's evolving and increasingly sophisticated approach to "indigenous innovation," which is evident in numerous supporting and related industrial plans. Under China's unfair and anticompetitive approach to indigenous innovation, the overarching objective 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 first to dominate the China market and then to use that dominance as a springboard to dominate global markets.

Made in China 2025, which covers the first 10 years of a 30-year strategy known as the *Strong Manufacturing Nation Strategy*, seeks to build up Chinese companies in the 10 targeted sectors at the expense of, and to the detriment of, foreign companies and their technologies, products and services through a multi-step process from 2015 to 2025. The first objective of *Made in China 2025* is to ensure, through various means, that Chinese companies develop their own "indigenous" technologies, intellectual property and know-how, either through their own efforts or by extracting or acquiring technologies, intellectual property and know-how from foreign enterprises. The next objective of *Made in China 2025* is to substitute domestic technologies, products and services for foreign technologies, products and services in the China market. The final objective of *Made in China 2025* is to capture much larger worldwide market shares in the 10 targeted sectors.

In pursuit of these objectives, subsequently released documents set specific targets for capacity and production levels and market shares for the dozens of industries that comprise the 10 broad sectors targeted in *Made in China 2025*. In October 2015, China's National Manufacturing Strategic Advisory Committee published the *Made in China 2025 Key Area Technology Roadmap*, and since then it has published three updated editions of this document. The first update, titled the *Made in China 2025 Key Area Technology and Innovation Greenbook – Technology Roadmap (2017)*, was similar to its predecessor in that it set explicit market share and other targets to be attained by Chinese companies in dozens of high-technology industries, often both in the China market and globally. For example, it calls for "indigenous new energy vehicle annual production" to have a "supplying capacity that can satisfy more than 80 percent of the market" in China by 2020, up from a 70 percent target set in the 2015 document. The two subsequent updates of the *Made in China 2025 Key Area Technology and Innovation Greenbook – Technology Roadmap* are dated 2019 and 2023.

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

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

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

In March 2021, the National People's Congress approved the *14th Five-Year Plan (2021-2025) for National Economic and Social Development* (the *14th Five-Year Plan*), together with the *Long-Range Objectives Through Year 2035*. The *14th Five-Year Plan* and the sector-specific five-year plans subsequently issued by the central government, along with five-year plans issued by sub-central governments, make clear that China will continue to pursue its various industrial domination objectives. While the *14th Five-Year Plan* does not explicitly reference *Made in China 2025*, it nevertheless continues to focus on the sectors identified in *Made in China 2025*. More recent industrial plans, including those issued by provincial and municipal governments in China, also make clear that China, at various levels of government, is continuing to support these sectors.

In addition, longer-ranging industrial plans, such as the *New Energy Vehicle Industry Development Plan (2021-2035)* and *China Standards 2035*, reaffirm China's strong commitment to a state-led, non-market approach to the economy and trade and the pursuit of industrial dominance. Other longer-ranging industrial plans, such as the *National Medium to Long-Term Science and Development Plan (2021-2035)*, the successor to the *National Medium to Long-Term Science and Development Plan (2006-2020)*, are reported to exist but have not been publicly released.

In September 2023, China introduced the concept of "new quality productive forces," which now appears in many official publications and statements. This concept echoes many of China's existing industrial plans, as it calls for increasing economic productivity through the strengthening of science and technology innovation in order to support "industrial upgrading," "emerging industries" and "future industries." The specific sectors targeted by this concept include many of the same sectors prioritized in *Made in China 2025* and other industrial plans related to Made in China 2025, including NEVs, high-end equipment and high-technology ships.

STATE-OWNED ENTERPRISES

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

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

However, instead of adopting measures giving effect to its commitments, China took steps intended to strengthen the role of state-owned and state-invested enterprises in the economy and to protect them against foreign competition. China established the State-owned Asset Supervision and Administration Commission (SASAC) and adopted the *Law on State-owned Assets of Enterprises*, in addition to numerous other measures that mandate state ownership and control of many important industrial sectors. The CCP also ensured itself a decisive role in state-owned and state-invested enterprises' major business decisions, personnel changes, project arrangements and movement of funds. The fundamental premise of these measures is to enable the Chinese government and the CCP to intervene in the business strategies, management and investments of these enterprises in order to ensure that they play a dominant role in the national economy in line with the overall objective of developing China's "socialist market economy" and

China's plans for industrial domination. Over the past few years, Party leadership in state-owned and state-invested enterprises has been strengthened through practices such as appointing a person as both the chairman of the board and the Party secretary for a state-owned enterprise and requiring the establishment of party committees in state-owned enterprises.

In its 2013 *Third Plenum Decision,* China endorsed a number of far-reaching economic reform pronouncements, which called for making the market "decisive" in allocating resources, reducing Chinese government intervention in the economy, accelerating China's opening up to foreign goods and services and improving transparency and the rule of law to allow fair competition in China's market. It also called for "reforming" China's state-owned and state-invested enterprises.

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

With regard to the reform of China's state-owned enterprises, one example of China's efforts included an announcement that China would classify these enterprises into commercial, strategic or public interest categories and require commercial state-owned and state-invested enterprises to garner reasonable returns on capital. However, this plan also allowed for divergence from commercially driven results to meet broadly construed national security interests, including energy and resource interests and cyber and information security interests. In recent years, China has also sought to strengthen the role of its state-owned enterprises in a number of sectors through mergers to create larger, consolidated and more powerful enterprises, while also increasing the investment of state capital into sectors that the state deems strategic. Similarly, in recent years, China has pursued reforms through efforts to realize "mixed ownership." These efforts included largely unsuccessful attempts to pressure 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. Plainly, none of these various reforms have strengthened the role of the market. Rather, they have strengthened the role of state-owned enterprises in the economy while directing increasing amounts of state capital toward certain industries, including those specified in *Made in China 2025*, in pursuit of China's industrial domination objectives.

Previously, China had also 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 Chinese 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 government's role in the economy has only increased. It also seems clear that China's past policy initiatives were not designed to reduce the presence of state-owned and state-invested enterprises in China's economy or to force them to compete on the same terms as private commercial operators. Rather, the reform objectives were to strengthen state-owned and state-invested enterprises through consolidation, increased access to state capital, preferential access to goods and services and the use of other non-market policies and practices designed to give these enterprises unfair competitive advantages, both in China and globally.

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

TECHNOLOGY TRANSFER

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

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

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

In May 2022, USTR commenced the statutorily mandated four-year review of the tariffs that had been imposed on Chinese imports as a result of the Section 301 investigation into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation. As part of this review, USTR examined the effectiveness of the tariff actions in achieving the objectives of the original investigation, other actions that could be taken and the effects of those actions on the United States economy, including consumers. In May 2024, USTR issued a report that found that while the Section 301 tariff actions have been effective in certain respects, China's unfair acts, policies and practices had continued and, in some cases, had worsened. Pursuant to the President's direction, USTR also proposed, and sought comments on, modifications to the existing Section 301 tariffs. In September 2024, in accordance with the President's direction and after reviewing the public comments, USTR announced the final modifications to the actions, which maintained the current tariffs while increasing tariffs on Chinese products in targeted strategic sectors.

INDIGENOUS INNOVATION

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

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

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

SUBSIDIES

INDUSTRIAL SUBSIDIES

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

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

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

EXCESS CAPACITY

Because China employs a state-led approach to the economy and its economy is the second largest in the world, China is the world's leading offender in creating non-market excess capacity. For years, China has been responsible for maintaining severe and persistent excess capacity in several industries, including steel, aluminum, solar and shipbuilding. China is also creating severe excess capacity in other industries, such as electric vehicles and legacy semiconductors, among others, through its pursuit of industrial plans such as *Made in China 2025*, pursuant to which the Chinese government is providing 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, aluminum and shipbuilding, China's economic planners have contributed to massive excess capacity in China through various government support measures, often in furtherance of China's industrial targeting. For steel, the resulting over-production has distorted global markets, harming U.S. workers and manufacturers in both the U.S. market and third country markets, where U.S. exports of steel and steel-intensive products compete with exports from China. This over-production has similarly harmed the workers and manufacturers of many of the United States' allies and partners. While China has publicly acknowledged excess capacity in its steel and aluminum industries, it has yet to take meaningful steps to address the root causes of this problem in a sustainable way. Indeed, China continues to replicate these results in other industries.

From 2000 to 2023, China accounted for 73 percent of global steelmaking capacity growth, an increase well in excess of the increase in global and Chinese demand over the same period. Currently, China's capacity represents about one-half of global capacity and more than twice the combined steelmaking capacity of the EU, Japan, the United States, Canada, Mexico and Brazil.

At the same time, China's steel production is continually reaching new highs, eclipsing demand. In 2020, China's steel production climbed above one billion metric tons for the first time, reaching 1,065 million metric tons, a seven percent increase from 2019, and remained high at 1,019 million metric tons in 2023, despite a significant contraction in domestic steel demand. This sustained ballooning of greenhouse gas (GHG) emissions-intensive steel production, combined with weakening economic growth and a slowdown in the Chinese construction sector, has flooded the global market with excess steel and steel-intensive products at a time when steel and other manufacturing sectors outside of China are facing renewed weakness in market conditions, growing global excess capacity, a slowdown in world economic growth and continued disruptions in supply chains. In 2023, China exported more steel than the world's second, third, fourth and fifth largest steel producers (India, Japan, the United States and Russia) combined. Furthermore, China's exports from January through August 2024 were 19 percent higher than during the same period in 2023. Today, China remains by far the world's largest exporter of steel and steel-intensive products. China's steel production also remains far dirtier in terms of greenhouse gas emissions than the steel production that it displaces in the United States and most other countries, thereby undermining global efforts to transition to a clean-energy economy.

Excess capacity in China's steel sector boosts the price competitiveness of China's downstream manufacturing industries in global markets through the provision of artificially low-priced steel inputs. For example, in the shipbuilding sector, steel constitutes a significant percentage of a vessel's cost. However, reports indicate that Chinese steel is substantially cheaper than in market-oriented economies. For example, the OECD has noted that "Chinese steel prices are significantly lower than Japanese and European ones . . . in some periods up to 50% compared to . . . European prices and 60% lower than Japanese prices."

In its 2023 Results Report, the Global Forum on Steel Excess Capacity, a multilateral body facilitated by the OECD, found that "excess capacity in the Chinese steel industry is depressing domestic prices for crude steel products and encouraging production and indirect exports of steel-containing goods." In addition, according to the 2023 Results Report, "a situation where steel excess capacity starts to build in downstream sectors of the steel market . . . and artificially boost[s] the price competitiveness of those sectors is an additional cause of concern." Similarly, a study by the OECD reveals that China's exports of indirect steel products have increased steadily in the last decade while exports of similar products in major steel-making economies such as India, Japan and the EU have remained stable or, in the case of the United States and South Korea, declined. A rapid increase in Chinese exports of these products in 2017 coincided with a significant buildup of Chinese capacity and reduction in Chinese direct steel exports, leading the OECD to conclude that a substitution effect along the Chinese steel value chain may have taken place. Chinese exports of steel-intensive products continued to increase significantly in volume terms over the last five years.

State-directed mergers and acquisitions in the Chinese steel sector have been framed by China as a means for increasing efficiency and reducing excess capacity, but rather has contributed to it. In 2009, the State Council issued the *Steel Industry*

Adjustment and Revitalization Plan, which set a target of creating five large steel groups controlling 45 percent or more of total national production capacity, with at least 40 percent of production capacity concentrated along rivers and in coastal regions. This industrial plan and other industrial policy measures, including the 1*4th Five-Year Plan for Development of Raw Materials Industries* (2021), the *Guiding Opinion Regarding Promoting High Quality Development in the Steel Industry* (2022), and the *Work Plan for Stable Growth in the Steel Industry* (2023), also refer to "capacity replacement policy support" for steel producers engaging in mergers and reorganizations, which effectively exempted these enterprises from otherwise stated prohibitions on new projects without elimination of an equal or greater amount of existing capacity.

Despite an acknowledgement by the State Council of the significant growth in "surplus production capacity" in China's steel sector as far back as 2009, China's crude steelmaking capacity continued to increase, rising from 980 million metric tons in 2009 to 1.142 billion metric tons in 2023. During this period, China's state-owned steel producers increased production and market shares, both in the China market and in global markets. In addition, between 2009 and 2023, the shares of domestic crude steel production and global crude steel production attributable to the top four state-owned steel producers in China alone increased from 14.1 percent to 25.8 percent and from 6.5 percent to 13.9 percent, respectively.

Similarly, primary aluminum production capacity in China increased by more than 1,600 percent between 2000 and 2023, with China accounting for 80 percent of global capacity growth during that period. China's expansion of production capacity has driven price declines globally, but even with these low prices, China has continued to expand its production capacity. Much of this additional capacity has been built with government support and relies on GHG emissions-intensive sources of electricity. China's primary aluminum capacity accounts for 57 percent of global capacity and is more than double the capacity of the next eight aluminum-producing countries combined. As in the steel sector, China's aluminum production has also ballooned in recent years, as China's aluminum production has continued to increase despite domestic and global demand shocks. China's capacity and production continue to contribute to major imbalances and price distortions in global markets, harming U.S. and allied aluminum producers and workers.

In China's shipbuilding sector, non-market policies and practices have led to a significant build up in excess capacity, undercutting foreign competition and consolidating China's dominant position globally. In a 2021 report, the OECD found that entry subsidies provided by the Chinese government attracted inefficient enterprises and led to market fragmentation and excess capacity in the shipbuilding sector, while the introduction of production and investment subsidies in combination with sub-optimal exit strategies for inefficient enterprises exacerbated these outcomes. As a result, Chinese shipbuilders increased their share of all merchant tonnage produced globally from 5 percent in 1999 to over 50 percent in 2023, increasing China's ownership of the global commercial fleet to 19 percent, while securing control of 95 percent of shipping containers and 86 percent of the world's supply of intermodal chassis, among other components and products.

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 and through indirect trade of steel and aluminum-intensive products, which makes it difficult for competitive manufacturers throughout the world to remain viable. Indeed, domestic industries in many of China's trading partners continue to petition their respective governments to impose trade measures to respond to the trade-distortive effects of China's excess capacity. In addition, the United States has acted under Section 232 of the Trade Expansion Act of 1962 to impose additional duties on steel, aluminum, and derivative steel and aluminum products after finding that these products are being imported into the United States in such quantities and under such circumstances as to threaten to impair U.S. national security. In the United States' view, in the absence of efforts to redress China's anticompetitive behavior, the risk is that steel and aluminum producers in the United States and many other countries with market-oriented economies will be forced to close, which would, among other things, create even greater dependencies on China.

Over the past year, the world has been reminded that the non-market policies and practices that emanate from China's state-led industrial plans often generate severe and persistent excess capacity, sometimes even when China is not targeting a particular industry for domestic and global dominance. At present, we are seeing excess capacity emerge in more and more Chinese industries in a dynamic that economists are labeling "China Shock 2.0." Faced with an acute crisis in the real estate sector and struggling manufacturers coming out of the COVID pandemic, governments at all levels in China have increased their financial and regulatory support for manufacturers in traditional industries like steel, aluminum, household appliances, fertilizers, and machine tools, as well as for manufacturers in emerging, high technology industries. These interventions have led to production well in excess of domestic demand in many sectors, and, in some sectors, such as solar, three or four times the level of global demand. In all of these sectors, with domestic demand in China remaining weak, a wide range of low-priced manufactured goods have been flooding export markets. As discussed above, given China's economic size as the second largest economy in the world and the largest trader among WTO Members, China's excess capacity has global implications, and those implications are broadly negative for China's trading partners, as we are seeing with China Shock 2.0.

AGRICULTURAL DOMESTIC SUPPORT

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

There is also evidence that China subsidizes its livestock industry, including at the provincial and local government levels. For example, in the swine industry, state-owned banks offer large-scale swine operations discounted loans, while provincial and local governments offer preferential land deals and rail and utility consolidation. Meanwhile, in the dairy industry, provincial and local governments offer subsidies for milk and whole milk powder production.

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 December 2022 and September 2024, China submitted additional notifications concerning domestic support measures for the years 2017 through 2022. These notifications show that China exceeded de minimis support for wheat, rice and soybeans in 2017, 2018 and 2019.

In September 2016, the United States launched a WTO dispute 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. The WTO panel hearing the case issued its decision in February 2019, ruling that China's domestic support for wheat and rice was WTO-inconsistent. In July 2020, the United States submitted a request for authorization to suspend concessions and other obligations pursuant to Article 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) on the ground that China had failed to bring its measures into compliance with its WTO obligations. After China objected to this request, the matter was referred to arbitration in accordance with Article 22 of the DSU. The arbitration is currently suspended, and the United States continues to closely monitor the operation of China's market price support programs for wheat and rice.

FISHERIES SUBSIDIES

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

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

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

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

IMPORT POLICIES

TRADE REMEDIES

As of December 2024, China had 11 ongoing antidumping investigations and 108 antidumping measures in place, affecting imports from 17 countries or regions. China also had one ongoing countervailing duty investigation and four countervailing duty measures in place, affecting imports from two countries or regions. In addition, China had one ongoing safeguard investigation.

The most significant systemic shortcomings in China's antidumping and countervailing duty practice continue to be in the areas of transparency and due process. Over the years, China has often utilized antidumping and countervailing duty investigations as more of a retaliatory tool than as a mechanism to nullify the effects of dumping or unfair subsidization within its domestic market. In response, the United States has pressed China bilaterally, in WTO meetings and through written comments submitted in connection with pending antidumping and countervailing duty proceedings to adhere strictly to WTO rules in the conduct of its trade remedy investigations.

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

In certain past antidumping 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." China is again exploring whether a "non-market situation" exists in certain U.S. energy sectors in its ongoing antidumping investigation of polyoxymethylene copolymer from the United States. A preliminary determination in this investigation is expected in early 2025.

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

On several occasions in the past, the United States has expressed serious concerns about China's pursuit of antidumping and countervailing duty remedies that appear to be retaliatory and intended to discourage the United States and other trading partners from the legitimate exercise of their rights under WTO antidumping and countervailing duty rules and the trade remedy provisions of China's accession agreement. It also appears that China has used arbitrary economic and trade measures, including antidumping and countervailing duty investigations, as a form of economic coercion designed to achieve China's political goals. The antidumping and countervailing duties that China imposed on imports of Australian barley in 2021 and the antidumping duties that China imposed on imports of Australian wine in 2021 are two obvious examples of this tactic, as China used them to express dissatisfaction with political statements and actions taken by the Australian government. More recently, in 2024, China launched antidumping investigations of imports of brandy, pork and dairy products from the EU as the EU's anti-subsidy investigation of Chinese electric vehicle imports proceeded. These moves by China represented a blatant attempt to threaten repercussions against individual EU member states and to divide the EU if the EU were to impose countervailing duties against Chinese electrical vehicle imports, regardless of whether the EU strictly followed the rules and procedures established by the WTO Agreement on Subsidies and Countervailing Measures in conducting its anti-subsidy investigation.

In certain recent investigations of U.S. imports, China has also made determinations without legal or factual support. For example, in the final countervailing duty determination on imports of n-propanol from the United States, China found that alleged subsidies to the U.S. oil and gas sector automatically passed through to petrochemical products without providing the analysis required by the Subsidies Agreement.

TARIFF-RATE QUOTA ADMINISTRATION FOR AGRICULTURAL COMMODITIES

Market access promised through the tariff-rate quota (TRQ) system set up pursuant to China's WTO accession agreement has yet to be fully realized as of December 2024. 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 face reduced market access opportunities. As a result, for many years, China's TRQs for wheat, corn and rice would seldom fill even when they were oversubscribed. Since 2020, China's corn and wheat imports have exceeded TRQ levels, but the TRQ issuance, application and allocation processes still lack transparency, and large state-owned enterprises in China appear to have been the primary beneficiaries of the increased imports.

In December 2016, the United States launched a WTO dispute challenging China's administration of

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

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

VAT Rebates for Agricultural Commodities

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

Environment

Import Ban on Scrap Materials and Recyclable Materials

Currently, China restricts almost all imports of unprocessed scrap and recyclable materials. China only allows imports of certain processed materials, including "recycled raw materials" such as copper, steel, aluminum and brass that meet purity standards, pelletized scrap plastic and pulped scrap paper. These restrictions have contributed to increased costs for recycling in the United States and the decisions by some communities to terminate some of their recycling programs. Because China was previously such a large destination market, significant amounts of U.S. scrap materials are being redirected to landfills or incinerators.

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. Notably, China does not universally apply similar restrictions to domestic processers of domestically sourced scrap and recovered materials.

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

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

In addition to impacting the global market for scrap and recovered materials, the tightened restrictions have raised the costs of recycling in the United

States, as exporters seek domestic processing facilities or international buyers. Additionally, other countries, particularly in Southeast Asia, have introduced their own regulatory changes that in some ways parallel the changes in China's import regime, such as by setting impossibly high purity standards for recyclable materials, imposing new import licensing requirements and requiring pre-shipment and post-shipment inspections. As a result, significant amounts of U.S. scrap materials and recyclable materials have not found new buyers, leading to increased landfilling, incineration and air pollution and increased demand for virgin materials globally.

IMPORT BAN ON REMANUFACTURED PRODUCTS

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

LABOR

The Chinese government represses internationally recognized labor rights and fails to adequately enforce existing prohibitions on forced labor. China has been the subject of international attention for its forced labor practices, especially in the Xinjiang Uyghur Autonomous Region (Xinjiang), where China has arbitrarily detained more than one million Uyghurs and other mostly Muslim minorities. Victims, news media and think tanks report that factories, including factories producing cotton and tomato products, frequently engage in coercive recruitment, limit workers' freedom of movement and communication and subject workers to constant surveillance, retribution for religious beliefs, exclusion from community and social life, and isolation. It is currently estimated that hundreds of thousands of Uyghurs, ethnic Kazakhs and members of other Muslim minority groups are being subjected to forced labor in China following detention. Based on the U.S. Government's independent analysis of these sources, the U.S. Government has taken several actions to address forced labor and other human rights abuses in Xinjiang.

Over the years, the U.S. Department of Homeland Security'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. One of them, issued in January 2021, was a region-wide WRO on cotton and tomato products and all downstream goods containing those products.

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

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

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

Various U.S. agencies, including USTR, have been working to compile and update the UFLPA Entity List, a consolidated register of four distinct lists, including: (1) a list of entities in Xinjiang that mine, produce or manufacture wholly or in part any goods, wares, articles and merchandise with forced labor; (2) a list of entities that work with the government authorities of Xinjiang to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz or members of other persecuted groups out of Xinjiang; (3) a list of entities that export products mined, produced or manufactured by entities in lists 1 or 2 above from China into the United States; and (4) a list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from Xinjiang or from persons working with the government in Xinjiang or the Xinjiang Production and Construction Corps for purposes of the "poverty alleviation" program or the "pairing assistance" program or any other government labor scheme that uses forced labor. To date, over 100 entities have been added by the U.S. Government to the UFLPA Entity List.

There is no evidence that China has taken any steps toward the elimination of forced labor practices and human rights abuses in Xinjiang. Indeed, China's initial response was to conduct raids and impose significant restrictions on U.S. and other foreign consulting companies in China that provide due diligence for foreign investors. Subsequently, China began retaliating against multinational companies that have heeded the Xinjiang Business Advisory and complied with the UFLPA Enforcement Strategy, particularly when these companies have announced their plans publicly. For example, China has actively discouraged Chinese consumers from purchasing the products made by several of these companies, and it has even initiated an investigation into one large U.S. apparel company for "violating normal market trading practices" because this company made a public pledge to move its cotton sourcing out of Xinjiang. Depending on its outcome, this retaliatory investigation could potentially result in the company being placed on China's so-called "Unreliable Entity List" and being subjected to penalties.

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

It also remains concerning that China does not adhere to certain other internationally recognized labor standards, including freedom of association and effective recognition of the right to collective bargaining. Chinese law provides for the right to associate and form a union, but does not allow workers to form or join an independent union of their own choosing. Unions must affiliate with the official All-China Federation of Trade Unions (ACFTU), which is under the direction of the CCP. Workers at enterprises in China are required to accept the ACFTU as their representative. They cannot instead select another union or decide not to have any union representation. Only collective bargaining through the ACFTU is permitted, and there is no legal obligation for an employer to bargain in good faith. Striking is also prohibited.

SANITARY AND PHYTOSANITARY MEASURES

OVERVIEW

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

AGRICULTURAL BIOTECHNOLOGY APPROVALS

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

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

Since 2021, China's National Biosafety Committee (NBC) has issued biosafety certificates to foreign developers for several new GE products for import as feed or for processing, including alfalfa, canola, corn, cotton, soybean, and sugarcane products. Some of these approved products had been under review for more than 10 years. During the same time period, China has issued biosafety certificates to Chinese developers for dozens of new corn, cotton and soybean varieties for domestic cultivation, including both transgenic and genome-edited products.

China's commitments related to agricultural biotechnology are among the most significant commitments under the Phase One Agreement, but they remain unfulfilled. Despite the commitments that China made, there remains a significant lack of transparency regarding the procedures for convening meetings of the NBC, including regarding dates and agenda items for these meetings and the process for notifying applicants of outcomes and for soliciting additional information to support product applications. While the NBC is required to meet at least two times each year, the meetings are not held pursuant to a regular schedule, and information about the meetings is not widely shared with the public in a transparent and predictable manner. In addition, in conducting its approval process, China continues to ask for information that is not relevant to a product's intended use or information that applicants have previously provided. For this and other reasons, China has not reduced the average time for its approval process for agricultural biotechnology products for feed or further processing to no more than 24 months.

FOOD SAFETY

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

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

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

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

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

POULTRY

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

Starting in February 2022, the United States notified China of detections of HPAI in multiple U.S. states. In the ensuing months, several states recovered from these detections, and they were deemed HPAI-free by the United States. The United States submitted reports to China for these states and requested approval to resume exporting poultry from these states to China. In November 2023, China removed restrictions on seven states, but numerous other HPAI-free states remain restricted. To date, China has yet to confirm the restoration of market access for the majority of the impacted U.S. states.

PORK

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

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

Since 2022, China has rejected shipments from certain U.S. pork facilities and subjected subsequent shipments from these facilities to increased inspections due to alleged detections of animal diseases, such as porcine reproductive respiratory syndrome and Seneca Valley virus. Certain common testing techniques are known to show false positives when the animals being tested have received vaccinations against these animal diseases. In addition, these animal diseases are endemic in China and pose no threat to human health, and China has not identified any standard or regulation that the shipments in question violated, nor has China identified a pathway for shipments from these facilities to resume normal customs clearance procedures.

BEEF

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 MRLs consistent with Codex standards and guidelines for three synthetic hormones legally used for decades in the United States. 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. China's failure to publish the

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

As previously noted, China also made a commitment in the Phase One Agreement to complete a risk assessment for ractopamine in swine and cattle, but it has not yet followed through. Meanwhile, in 2022, China began rejecting certain shipments of U.S. beef products due to alleged findings of the veterinary drug ractopamine. China subsequently suspended the U.S. facilities that produced these products from exporting to China. In several cases, China also suspended the cold storage facilities that had handled the products immediately prior to shipping, despite the fact that these cold storage facilities have no role in raising or feeding cattle or in processing beef products. The cold storage facility suspensions imposed by China also restrict exports of unrelated products, such as poultry and pork products. To date, China has not outlined a process for the relisting of any of the impacted facilities as eligible to export to China.

The Phase One Agreement requires China to "accept meat, poultry meat, and processed meat and poultry meat . . . inspected by the FSIS . . . and accompanied by an FSIS Export Certificate of Wholesomeness." China may refuse to accept shipments from a facility if "China determines that there is "a significant, sustained or recurring pattern of non-conformity . . . until the problem is resolved." In each of the cases in question, China suspended the facilities after a single isolated incident and has not lifted the suspensions even after USDA explained the new mitigation measures implemented by each of the impacted facilities. The United States will continue to closely monitor China's actions in this area.

TECHNICAL BARRIERS TO TRADE

STANDARDS

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

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

As these implementing measures have been issued, China's existing technical committees have continued to develop standards. U.S. and other foreign companies have reported that they are often not permitted to participate in these domestic technical committees, 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 report that they are sometimes excluded from serving on technical committees and submitting comments on draft standards on the basis that their companies are headquartered outside of China. They also report challenges to participating in key aspects of the standardization process, such as drafting. In addition, they 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. 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 aim ultimately 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.

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 discriminatory limitations on foreign participation in China's standards-setting processes, China's use of bespoke standards without basis and certain licensing practices in China's standards-setting processes.

COSMETICS

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

The CSAR implementing measures contain provisions that would require companies to disclose full product formulations, ingredient suppliers, manufacturing methods, claims and safety data to both NMPA and local agents in China when products are registered or notified. In addition, these measures require companies to publish claims abstracts that may contain trade secrets and confidential business information on NMPA's website. The United States has expressed concern to China that its regulators are applying an approach that treats cosmetics as having much higher safety risks than is warranted. China's filing and registration requirements for cosmetics also significantly diverge from those in other major markets without a valid regulatory reason, making compliance very burdensome for exporters.

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

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

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

In sum, after years of the United States engaging with China bilaterally and via the International Cooperation on Cosmetics Regulation, the WTO and other fora to share views and expertise regarding the regulation of cosmetics, China has not yet addressed key U.S. concerns, including the use of 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, which have not changed over the past year, many U.S. companies will be impeded in accessing, or simply unable to access, the China market.

INVESTMENT RESTRICTIONS

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

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 replaces the 2022 version and entered into force in November 2024, provides no meaningful reductions in the significant investment restrictions that continue to apply in a number of areas important to foreign investors, such as key services sectors, certain types of agriculture and several extractive industries. With regard to services sectors, China maintains prohibitions or restrictions in key sectors such as cloud computing services and other Internet-related services, telecommunications services, film production and film distribution services, and video and entertainment software services. With regard to agriculture, China maintains prohibitions on the development of agricultural biotechnologies and restrictions on the development of new varieties of corn and wheat. Similarly, China maintains prohibitions on the exploration, mining and processing of all of the 17 types of rare earths as well as tungsten.

China's *Foreign Investment Law*, implementing regulations and other related measures suggest that China is pursuing the objective of replacing its case-by-case administrative approval system for a broad range of investments with a system that would only be applied to "restricted" sectors. However, it currently remains unclear whether China is fully achieving that objective in practice. Moreover, even for sectors that have been liberalized, the potential for heightened licensing requirements for foreign companies or the application of licensing processes that disadvantage foreign companies 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, 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.

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

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

COMPETITION POLICIES

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. Moreover, the enforcement actions that do take place, along with any corresponding penalties imposed, are not open and transparent to the public. In addition, provisions in the *Anti-Monopoly Law* protect the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important.

Another key concern relates to how the *Anti-Monopoly Law* is applied to foreign companies. Many U.S. companies have cited selective enforcement of the *Anti-Monopoly Law* against foreign companies seeking to do business in China as a major concern, and they have highlighted in particular the comparatively limited enforcement of this law against state-owned enterprises.

Still another concern expressed by U.S. industry relates to how draft implementing rules for the *Anti-Monopoly Law* define anticompetitive behavior in the development of standards and the licensing and implementation of standards-essential patents. U.S. industry fears that *Anti-Monopoly Law* enforcement will be misused for the purpose of depressing the value of foreign-owned intellectual property in key technologies, including by finding *Anti-Monopoly Law* violations with regard to the licensing of patents in the absence of actual harm to competition or the competitive process.

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

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

EXPORT POLICIES

EXPORT RESTRAINTS

Over the years, China has deployed a combination of export restraints, including export quotas, export licensing, minimum export prices, export duties and other restrictions, on a number of raw material inputs where it holds the leverage of being among the world's leading producers. In many instances, through these export restraints, it appears that

China has been able to provide substantial economic advantages to a wide range of downstream producers in China at the expense of foreign downstream producers, while creating pressure on foreign downstream producers to move their operations, technologies and jobs to China.

In 2013, China removed its export quotas and duties on several raw material inputs of key interest to the U.S. steel, aluminum and chemicals industries after the United States won a dispute against China at the WTO. In 2014, the United States won a second WTO dispute, 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 dispute 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 has continued to monitor the situation and finds it deeply concerning that the United States needed to bring multiple disputes to address the same WTO compliance issues.

A newer concern involves China's expanding regulation of rare earths. Since November 2023, China has been requiring exporters to provide detailed reporting on transactions involving rare earths. In addition, in June 2024, the Ministry of Industry and Information Technology (MIIT) issued the *Regulations on the Administration of Rare Earths*, which covers the mining, refining and separation, metal smelting and usage of rare earths. Foreshadowing possible future regulation of rare earths under China's export control regime, this measure also provides that rare earth exporters need to abide by laws and regulations in the area of export controls.

In 2023, China began applying its export control regime to various critical minerals by requiring export licenses for products containing gallium, germanium and graphite. Similarly, in 2024, China began requiring export licenses for products containing antimony. China typically uses selective or arbitrary application or enforcement of its export control laws to achieve the state's industrial plan objectives.

In November 2021, China announced an export ban on certain fertilizers. In June 2024, China imposed further export restrictions on fertilizers. Despite repeated requests from its trading partners to lift this export ban and help address growing international concern over rising commodity prices and disrupted global supply chains, China continues to impose this export ban.

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

VAT REBATES AND RELATED POLICIES

As in prior years, in 2024, the Chinese government attempted to manage the export of many primary, intermediate and downstream products by raising or lowering the VAT rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty and unfairness in the global markets for some products, particularly downstream products for which China is a leading world producer or exporter, such as products made by the steel, aluminum and soda ash industries. These practices, together with other policies, such as excessive government subsidization, have also contributed to severe excess capacity in these same industries.

An apparently positive development took place at the July 2014 S&ED meeting, when China committed to improve its VAT rebate system, including by actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade. Once more, however, this promise remains unfulfilled. To date, China has not made any movement toward the adoption of international best practices.

INTELLECTUAL PROPERTY PROTECTION

OVERVIEW

After its accession to the WTO, China undertook a wide-ranging revision of its framework of laws and regulations aimed at protecting the intellectual property rights of domestic and foreign right holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Despite various plans and directives issued by the State Council, inadequacies in China's intellectual property protection and enforcement regime continue to present serious barriers to U.S. exports and investment. As a result, as in the previous year, China was again placed on the Priority Watch List in USTR's 2024 Special 301 Report. In addition, in January 2025, USTR announced the results of its 2024 Review of Notorious Markets for Counterfeiting and Piracy, which identifies online and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting and explains the harm not only to U.S. businesses, but also to U.S. workers. Several markets in China were among those named as notorious markets, as China continues to be the number one source of pirated and counterfeit products in the world.

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.

To date, 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*. At the same time, U.S. right holders have expressed serious concerns about some final measures that lack details and leave too much discretion with the enforcement authorities, which creates uncertainties and can lead to inconsistencies in the scope of coverage and the availability and nature of relief. In addition, China has outstanding work to finalize the draft measures that it has published and to publish other draft measures in accordance with the Intellectual Property Action Plan that it released in April 2020. Outstanding areas to be addressed include areas such as: the protection of trade secrets and confidential business information from unauthorized disclosures by government personnel and third-party experts; criminal enforcement of trade secrets theft; enforcement procedures to combat online infringement, including an effective notice and takedown system; the protection and enforcement of trademark rights, particularly against bad faith trademark registrations; increases in the minimum and maximum levels of statutory damages and criminal penalties for intellectual property infringement; patent term extensions for unreasonable marketing approval delays; and geographical indications.

Meanwhile, in connection with the Phase One Agreement, China has reported increased enforcement actions against counterfeit medicines and increased customs actions against pirated and counterfeit goods. However, China has yet to demonstrate that it has taken the following actions: (1) published data online regarding enforcement actions against counterfeit goods with health and safety risks, enforcement actions at physical markets and enforcement actions at the border; (2) increased enforcement actions against counterfeits with health and safety risks and at physical markets; (3) increased training of customs personnel; or (4) ensured the use of only licensed software in government agencies and state-owned enterprises.

Going forward, the United States will continue to monitor China's implementation of the intellectual property chapter of the Phase One Agreement. The United States will also assess the impact of the final measures that have been issued by China and the enforcement actions that China takes.

TRADE SECRETS

Serious inadequacies in the protection and enforcement of trade secrets in China have been the subject of high-profile engagement between the United States and China in recent years. Several instances of trade secret theft for the benefit of Chinese companies have occurred both within China and outside of China. Offenders in many cases continue to operate with impunity. Particularly troubling are reports that actors affiliated with the Chinese government and the Chinese military have infiltrated the computer systems of U.S. companies, stealing terabytes of data, including the companies' proprietary information and intellectual property, for the purpose of providing commercial advantages to Chinese enterprises.

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

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

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

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

BAD FAITH TRADEMARK REGISTRATION

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

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

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

As a result of these deficiencies, U.S. companies across industry sectors continue to face Chinese applicants registering their marks and "holding them for ransom" or seeking to establish a business building off of U.S. companies' global reputations. The Phase One Agreement requires China to ensure adequate and effective protection and enforcement of trademark rights, particularly against bad faith trademark registrations. The United States will continue to closely monitor developments in this area of long-standing concern.

ONLINE INFRINGEMENT

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

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

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

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

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

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

COUNTERFEIT GOODS

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

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

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

PHARMACEUTICALS AND MEDICAL DEVICES

PHARMACEUTICALS

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

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

In 2017, CFDA finally issued several draft notices addressing the issue of RDP. These draft notices set out a conceptual framework to protect against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and they also sought to promote the efficient resolution of patent disputes between right holders and the producers of generic pharmaceuticals. However, the proposed framework did not provide for a six-year period of RDP despite the commitment that China had made in its WTO accession agreement in 2001.

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

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

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

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

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

MEDICAL DEVICES

For many years, working closely with U.S. industry, the United States has raised concerns about China's pricing and tendering procedures for medical devices and its treatment of imported medical devices. Notably, at the November 2015 JCCT meeting, China committed that, in terms of accessing the market, it will give imported medical devices the same treatment as medical devices manufactured or developed domestically. Unfortunately, despite this commitment, China continues to pursue a wide range of policies that direct China's purchasing authorities to prioritize the procurement of domestic medical devices over imported medical devices. In addition, when China allows the procurement of imported medical devices, the applicable regulations often explicitly preference foreign suppliers that agree to transfer their technology to Chinese enterprises.

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

In 2019, China's State Council launched a volume-based procurement (VBP) approach for medical devices in a few provinces and municipalities in an attempt to cut healthcare costs. Since then, VBP has become further engrained in China's system, with the formation of multi-province and municipal alliances to conduct joint procurements under VBP. In 2020, China implemented its first national VBP tender, which has been followed by additional national tenders in subsequent years. However, U.S. industry reports that the vast majority of VBP tendering activities are occurring at the sub-national level and that future VBP tenders are likely to be led by individual or groups of subnational entities. U.S. industry also reports that pricing for subsequent rounds of the same products under VBP tenders will likely be based on the results from past tenders.

In practice, China's VBP approach prioritizes cost over a medical device's value or quality, inhibiting the ability of high-quality, cutting-edge exports from the United States and other countries to compete with low-cost local alternatives. As the Chinese government has acknowledged, the price-cutting generated by VBP disproportionately impacts foreign medical device manufacturers, whose only option for securing sales is to offer their products at unsustainably low prices.

According to U.S. industry stakeholders, if China continues to pursue VBP without significant changes, it could lead to the creation of a sector in which Chinese medical device companies develop monopolies in the manufacture and sale of various low-cost, low-quality medical devices in the China market. This outcome would operate to the disadvantage of innovative medical device companies, many of which are foreign companies, and the patients who rely on advanced medical technologies. Reportedly, some of these medical device companies are reducing training to healthcare providers in order to offer the necessary price cuts. Overall, given the size of China's medical device market, China's VBP approach poses a risk to innovation in the medical device sector and the provision of high-quality medical treatment, not only in the China market but also globally.

Meanwhile, the *Made in China 2025* industrial plan announced by the State Council in 2015 seeks to prop up China's domestic medical device sector through a series of support policies, including targeted funds and procurement policies. The goal of these policies is to significantly increase the market share of domestically owned and domestically manufactured medical devices, and correspondingly decrease market share of foreign medical devices, by 2025. At the same time, some provincial governments directly subsidize the purchase of domestically manufactured medical devices. In addition, some provincial governments have issued guidelines urging medical institutions to prioritize the procurement of local medical equipment over imported equipment. In at least one province, the guidelines suggest that only imported medical devices for which there is not a domestic replacement will be eligible for procurement.

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

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

In August 2024, NMPA published a draft *Medical Device Management Law*. The draft law appears to eliminate certain onerous requirements such as requiring home country approvals before an imported medical device can be registered in China. However, the draft law also promises further industrial policy support for China's medical device sector, including financial support, which indicates that China's unfair, anticompetitive approach will likely continue.

Finally, in June 2024, MIIT issued new guidance on "first-of-its-kind" major technical equipment, and several provincial and local authorities have subsequently issued measures and related guidance. Collectively, these new actions create incentives for procuring medical devices and other technical equipment for which the underlying intellectual property is owned by an entity in China. To date, the implications of these new measures remain unclear, both for U.S. medical device exports and medical devices produced in China based on intellectual property owned by U.S. entities. The United States is monitoring developments closely.

SERVICES

OVERVIEW

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

In 2024, numerous challenges persisted in a number of services sectors. As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, case-by-case approvals in some services sectors, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services to achieve their full market potential in China. These policies and practices affect U.S. service suppliers across a wide range of sectors, including cloud computing, telecommunications, film production and distribution, online video and entertainment services, express delivery and legal services. In addition, China's *Cybersecurity Law* and related implementing measures include mandates to purchase domestic information and communications technology (ICT) products and services, while China's *Cybersecurity Law*, *Data Security Law* and *Personal Information Protection Law* and related implementing measures include excessive restrictions on cross-border data flows, and excessive requirements to store and process data locally. These types of data measures undermine U.S. services suppliers' ability to take advantage of market access opportunities in China by prohibiting or severely restricting cross-border transfers of information that are routine in the ordinary course of business and are fundamental to any business activity. China's data localization requirements also raise concerns about state surveillance. In addition, China 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 addresses a number of longstanding trade and investment barriers to U.S. providers of a wide range of financial services, including banking, insurance, securities, asset management, credit rating and electronic payment services, among others. The barriers addressed in the agreement include joint venture requirements, foreign equity limitations and various discriminatory regulatory requirements. Removal of these barriers is designed to allow U.S. financial service providers to compete on a more level playing field and expand their services export offerings in the China market. Nevertheless, China's excessive restrictions on cross-border data flows and data localization requirements 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. These restrictions have kept foreign banks from establishing, expanding and obtaining significant market share in China, including through capital controls and minimum asset thresholds.

Some years ago, China did take some steps to ease or remove market access restrictions. For example, China removed a number of long-standing barriers for foreign banks, including the $10 billion minimum asset requirement for establishing a foreign bank in China and the $20 billion minimum asset requirement for setting up a Chinese branch of a foreign bank. China 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 expand opportunities for U.S. financial institutions, including bank branches, to supply securities investment fund custody services by considering their global assets when they seek licenses. China also agreed to review and approve qualified applications by U.S. financial institutions for securities investment fund custody licenses on an expeditious basis. In addition, China committed to consider the international qualifications of U.S. financial institutions when evaluating license applications for Type-A lead underwriting services for all types of non-financial debt instruments in China. The United States will continue to monitor these developments.

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 five years, some U.S. financial institutions have applied for and received licenses to operate as wholly foreign-owned enterprises in these sectors. The United States is monitoring these and other developments as U.S. companies continue to seek to obtain licenses and undertake operations in these sectors.

INSURANCE SERVICES

In the Phase One Agreement, China committed to accelerate the removal of the foreign equity caps for life, pension and health insurance so that they are removed no later than April 1, 2020. In addition, it confirmed the removal of the 30-year operating requirement, known as a "seasoning" requirement, which had been applied to foreign insurers seeking to establish operations in China in all insurance sectors. China also committed to remove all other discriminatory regulatory requirements and processes and to expeditiously review and approve license applications.

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

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

Finally, some U.S. insurance companies established in China have encountered difficulties in getting CBIRC, replaced by the National Administration of

Financial Regulation (NAFR) in March 2023, to issue timely approvals of their requests to open up new internal branches to expand their operations. The United States continues to urge NAFR to issue timely approvals when U.S. insurance companies seek to expand their branch networks in China.

ELECTRONIC PAYMENT SERVICES

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

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

In the Phase One Agreement, China committed to ensure that PBOC operates an improved and timely licensing process for U.S. suppliers of electronic payment services so as to facilitate their access to China's market. In June 2020, four months after the entry into force of the Phase One Agreement, American Express became the first foreign supplier of electronic payment services to secure a license from PBOC to operate in China's market. In November 2023, after years of delays, Mastercard was finally able to secure a license to operate in the China market. Meanwhile, PBOC has been delaying action for even longer periods of time on the licensing application submitted by another U.S. supplier, Visa. The United States continues to closely monitor this situation with concern.

INTERNET-ENABLED PAYMENT SERVICES

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

TELECOMMUNICATIONS SERVICES

China's restrictions on basic telecommunications services, such as an informal ban 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 more than two decades ago, not a single foreign firm has succeeded in establishing a new joint venture to enter this sector.

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

INTERNET REGULATORY REGIME

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

China continues to engage in extensive blocking of legitimate websites, imposing significant costs on both suppliers and users of web-based services and products. 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, application 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 protocol (VOIP) services are permitted in China, China's regulatory authorities have restricted the ability to offer VOIP services interconnected to the public switched telecommunications network (i.e., to call a traditional phone number) to basic telecommunications service licensees. There is no obvious rationale for such a restriction, which deprives consumers of a useful communication option, and the United States continues to advocate for eliminating it.

CLOUD COMPUTING SERVICES

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

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

In October 2024, MIIT launched a pilot program in four free trade zones, including in Beijing and Shanghai, that is to allow foreign companies to wholly own and operate Internet data centers and content delivery networks. It is not yet clear whether this program will result in any commercially meaningful market access openings. Going forward, the United States will closely monitor developments in this area.

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.

Meanwhile, China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers. For example, China prohibits retransmission of foreign TV channels, foreign investment in TV production and foreign investment in TV stations and channels. China also imposes quotas on the amount of foreign programming that can be shown on a Chinese TV channel each day. In addition, in September 2018, the National Radio and Television Administration (NRTA) issued a problematic draft measure that would impose new restrictions in China's already highly restricted market for foreign creative content. It would require that spending on foreign content account for no more than 30 percent of available total programs in each of several categories, including foreign movies, TV shows, cartoons, documentaries and other foreign TV programs, made available for display via broadcasting institutions and online audio-visual content platforms. It also would prohibit foreign TV shows in prime time. Although this measure has not yet been issued in final form, it continues to raise serious concerns, as it appears that, as a matter of practice, it has been implemented in China since 2021, including by online audio-visual content platforms.

THEATRICAL FILMS

In February 2012, the United States and China reached an alternative resolution with regard to certain rulings relating to the importation and distribution of theatrical films in a WTO dispute that the United States had won. The two sides signed a memorandum of understanding (MOU) providing for substantial increases in the number of foreign films imported and distributed in China each year, along with substantial additional revenue for U.S. film producers. However, China has not yet fully implemented its MOU commitments, including with regard to critical commitments to open up film distribution opportunities for imported films. As a result, the United States has been pressing China for full implementation of the MOU.

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

ONLINE VIDEO AND ENTERTAINMENT SERVICES

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

LEGAL SERVICES

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

EXPRESS DELIVERY SERVICES

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

DIGITAL AND ELECTRONIC COMMERCE POLICIES

DATA RESTRICTIONS

In 2024, China, an authoritarian government that surveils its people, continued to build out its expansive state control over the collection, storage, processing and sharing of data. China's *Data Security Law* entered into force in September 2021, and China's *Personal Information Protection Law* entered into force in November 2021. These laws operate together with the *Cybersecurity Law*, which took effect in June 2017, the *National Security Law*, which has been in effect since 2015, and various implementing measures, including the *Security Assessment Measures for Outbound Transfers of Data*, which took effect in September 2022, to prohibit or severely restrict cross-border transfers of "important data," a broadly and vaguely defined term, and, in certain cases, personal information collected by companies through their operations in China. These laws and implementing measures also impose local data storage and processing requirements on companies operating in China that collect "important data" and, in certain cases, personal information. China's data localization requirements also raise concerns about state surveillance.

In March 2024, China's *Regulations on Promoting and Regulating the Cross-Border Flow of Data* took effect. This measure addresses certain aspects of the *Security Assessment Measures for Outbound Transfers of Data* with more specificity, but significant U.S. concerns remain, including with regard to the issue of cross-border transfers of "important data." Recently, China has initiated several pilot projects in its Free Trade Zones relating to cross-border transfers of data, although it is not yet clear whether any meaningful changes will result.

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

SECURE AND CONTROLLABLE ICT POLICIES

Implementing measures for China's *Cybersecurity Law* remain a continued source of serious concern since the law's enactment in 2016. These measures are overbroad and serve to promote China's domestic industry at the expense of the industries of China's trading partners. Of particular concern are the *Measures for Cybersecurity Review*, first issued in 2016 and later updated in 2020 and 2021. This measure implements one element of the cybersecurity regime created by the *Cybersecurity Law*. Specifically, the measure puts in place a review process to regulate the purchase of ICT products and services by critical information infrastructure operators and online platform operators in China. In addition, in September 2022, China published a draft revision of the *Cybersecurity Law* with a 15-day public comment period. The draft revision would introduce penalties on operators of critical information infrastructure who use products or services that have not undergone the required security review, and it would also raise fines for certain violations of the *Cybersecurity Law*.

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

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

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

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

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

Again, however, China has not honored its promises. The numerous draft and final implementation measures issued by China since 2017 in the area of cybersecurity raise serious questions about China's approach to cybersecurity regulation. China's measures do not appear to be in line with China's prior commitments, 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.

Finally, the United States and U.S. stakeholders remain concerned about a nonpublic document authored by SASAC in 2022. Known as Document 79, this document reportedly sets out timelines for using only secure and controllable ICT products in the ICT systems of the Chinese government, the CCP and state-owned enterprises. The nonpublic nature of Document 79 and China's lack of transparency with regard to a policy that affects a broad range of industries signal that China may be seeking to evade past commitments to the maintenance of a non-discriminatory, non-trade restrictive approach to cybersecurity regulation.

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, standardized encryption.

GOVERNMENT PROCUREMENT

In its WTO accession agreement, China made a commitment to initiate negotiations to accede to the WTO Agreement on Government Procurement (GPA) and to open up its vast government procurement market to the United States and other GPA parties. More than two decades later, this commitment remains unfulfilled, while China's government procurement has continued to grow. Even though it has been an observer to the WTO Committee on Government Procurement since February 2002, China is still not become a party to the GPA.

The United States, the EU and other GPA parties have viewed China's GPA offers over the years as highly disappointing in scope and coverage. China submitted its sixth revised offer in October 2019 and significant deficiencies remain in a number of critical areas. China's most recent submission, made in June 2021, was 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 the National Development and Reform Commission (NDRC) and imposes uniform tendering and bidding procedures for certain classes of procurement projects in China, notably construction and works projects, without regard for the type of entity (e.g., a government agency or a state-owned enterprise) that conducts the procurement. Both laws cover important procurements that GPA parties would consider to be government procurement eligible for coverage under the GPA.

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

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

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

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

In December 2024, China's Ministry of Finance issued for public comment the *Notice on Matters Concerning Domestic Product Standards and Implementation Policies in the Field of Government Procurement (Draft for Comments)*. This draft measure provides that for a product to be eligible for certain benefits, the product must meet several criteria, including that it must be manufactured within China's territory, the cost of components produced in China must meet the prescribed proportion requirements that will be determined on a sector-by-sector basis, and it must comply with requirements for domestic manufacturing of certain key components and processes of specific products. The draft measure also provides that products meeting these criteria will receive a 20 percent price deduction applied to the bidding price for evaluation purposes in government procurement activities where both domestic and non-domestic products compete.

ADMINISTRATIVE PROCESS

ADMINISTRATIVE LICENSING

U.S. companies continue to encounter significant problems with a variety of administrative licensing processes in China, including processes to secure product approvals, investment approvals, business expansion approvals, business license renewals and even approvals for routine business activities. While there has been an overall reduction in license approval requirements and a focus on decentralizing licensing approval processes, U.S. companies continue to report that one of their key concerns involves China's problematic licensing approval processes. Among other things, according to U.S. companies, China provides preferential treatment to Chinese companies, including both state-owned and private enterprises, when granting license approvals.

In July 2024, the Central Committee of the CCP and the State Council jointly issued the *Opinions on Promoting the Growth and Development of the Private Economy*, sometimes referred to as the "31-Point Plan." The measure, whose stated objective is to promote the growth and development of the private sector in China, purports to prohibit government agencies from using administrative requirements, such as filing, licensing, and approvals, to create market entry barriers. In theory, foreign companies, as part of the Chinese private economy, should benefit from the measure. However, to date, the measure has not resulted in any concrete improvements for U.S. companies seeking to conduct business in China.

TRANSPARENCY

OVERVIEW

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

PUBLICATION OF TRADE-RELATED MEASURES

In its WTO accession agreement, China committed to adopt a single official journal for the publication of all trade-related laws, regulations and other measures. In 2006, China adopted a single official journal, administered by MOFCOM. However, many trade-related measures are never published in this journal.

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

Meanwhile, the situation is even worse for measures issued by sub-central governments in China. China rarely publishes any trade-related measures issued by sub-central governments in the official journal.

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

NOTICE-AND-COMMENT PROCEDURES

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

At the May 2011 S&ED meeting, China committed to issue a measure implementing the requirement to publish all proposed trade- and economic-related administrative regulations and departmental rules on the website of the State Council's Legislative Affairs Office (SCLAO) for a public comment period of not less than 30 days. In April 2012, the SCLAO issued two measures that appear to address this requirement.

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

Currently, outside the context of Phase One Agreement implementing measures, the process for issuing new measures in China can be opaque and unpredictable. China has yet to adequately improve its practices relating to the publication of proposed administrative regulations and departmental rules for public comment. China has also yet to formalize its use of notice-and-comment procedures for proposed normative documents, although some individual ministries have standardized their internal procedures for issuing administrative normative documents. In addition, even when China provides for a notice-and-comment period, too often it issues the final measure immediately after the end of the comment period, suggesting that it did not give serious consideration to the comments received. In addition, China often fails to provide an adequate implementation period once a measure has been finalized.

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

TRANSLATIONS

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

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

ENQUIRY POINT

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

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

SOCIAL CREDIT SYSTEM

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

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

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

However, currently, there is no fully integrated national system for assigning comprehensive social credit scores for companies, and the social credit system remains highly fragmented. Certain central government agencies and sub-central government agencies maintain their own rating systems, with each agency making its own decisions about the types of transgressions that warrant negative ratings or placing a company on a censure list.

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

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

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

Foreign companies also have numerous concerns with China's social credit system, which is becoming increasingly complex and expansive. They are concerned that the Chinese government will use it to disadvantage or coerce foreign companies or provide favorable treatment to domestic companies. They are concerned that the Chinese government will use the social credit system to pressure them to act in furtherance of China's industrial policies or other state priorities or otherwise to make investments or conduct their business operations in ways that run counter to market principles or their own business strategies. In addition, foreign companies are concerned about the opaque nature of the social credit system. Currently, for example, a company sometimes only learns about its negative ratings when, for example, it requests a permit and receives a denial, even though the *Measures for Administration of the List of Serious Violators of Trust and Law* includes a requirement that companies be informed of their being censured in advance. Other times, a company learns for the first time that it has been censured when a Chinese government agency posts its name on the agency's website, even though the censuring of a company can cause severe harm to the company's reputation and adversely impact its efforts to attract customers, secure needed financing or make new investments. When Chinese government agencies begin to pursue joint punishment in the way that NDRC envisions, it will mean that an infraction in one regulatory context could have wider consequences across the company's entire business operations.

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

OTHER NON-TARIFF MEASURES

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