
**2014 Report to Congress
On China's WTO Compliance**



**United States Trade Representative
December 2014**

TABLE OF CONTENTS

FOREWORD 1

EXECUTIVE SUMMARY 2

OVERVIEW 2

CHINA'S FIRST 13 YEARS AS WTO MEMBER 3

2014 DEVELOPMENTS 5

CONCLUSIONS REGARDING CHINA'S WTO COMPLIANCE EFFORTS 8

PRIORITY ISSUES 8

 Intellectual Property Rights 8

 Industrial Policies 10

 Services 14

 Agriculture 17

 Transparency 18

 Legal Framework 19

NEXT STEPS 19

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

INTRODUCTION 27

CHINA'S WTO ACCESSION NEGOTIATIONS 27

CHINA'S WTO COMMITMENTS 27

OVERVIEW OF U.S. ENGAGEMENT 29

DIALOGUE 29

 Bilateral Engagement 29

 Multilateral Meetings 32

ENFORCEMENT 32

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

CHINA'S WTO COMPLIANCE 38

TRADING RIGHTS 38

IMPORT REGULATION 39

 Tariffs 39

 Customs and Trade Administration 40

 CUSTOMS VALUATION 40

 RULES OF ORIGIN 42

 IMPORT LICENSING 42

 Non-tariff Measures 44

 Tariff-rate Quotas on Industrial Products 44

 Other Import Regulation 45

 ANTIDUMPING 45

 COUNTERVAILING DUTIES 48

TABLE OF CONTENTS

CHINA'S WTO COMPLIANCE (cont'd)

IMPORT REGULATION (cont'd)

 Other Import Regulation (cont'd)

 SAFEGUARDS 50

EXPORT REGULATION 50

INTERNAL POLICIES AFFECTING TRADE 54

 Non-discrimination 54

 Taxation 56

 Subsidies 57

 Price Controls 61

 Standards, Technical Regulations and Conformity Assessment Procedures 63

 RESTRUCTURING OF REGULATORS 64

 STANDARDS AND TECHNICAL REGULATIONS 64

 CONFORMITY ASSESSMENT PROCEDURES 72

 TRANSPARENCY 78

 Other Internal Policies 78

 STATE-OWNED AND STATE-INVESTED ENTERPRISES 78

 STATE TRADING ENTERPRISES 81

 GOVERNMENT PROCUREMENT 81

INVESTMENT 86

AGRICULTURE 97

 Tariffs 99

 Tariff-rate Quotas on Bulk Agricultural Commodities 100

 China's Biotechnology Regulations 101

 Sanitary and Phytosanitary Issues 103

 Inspection-related Requirements 109

 Domestic Support 110

 Export Subsidies 111

INTELLECTUAL PROPERTY RIGHTS 111

 Legal Framework 112

 Enforcement 117

SERVICES 122

 Distribution Services 124

 WHOLESALING SERVICES 124

 RETAILING SERVICES 126

 FRANCHISING SERVICES 127

 DIRECT SELLING SERVICES 127

 Financial Services 128

 BANKING 128

 MOTOR VEHICLE FINANCING 130

 INSURANCE 131

 FINANCIAL INFORMATION 133

 ELECTRONIC PAYMENT SERVICES 133

TABLE OF CONTENTS

CHINA'S WTO COMPLIANCE (cont'd)

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

APPENDICES

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

2014 USTR Report to Congress on China's WTO Compliance

ABBREVIATIONS

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

FOREWORD

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

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

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

China's WTO accession agreement that might be implicated by them.

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

To aid in its preparation of this report, USTR also published a notice in the Federal Register on August 15, 2014, asking for written comments and testimony from the public and scheduling a public hearing before the TPSC, which took place on October 1, 2014. A list of the written submissions received from interested parties is set forth in Appendix 1, and the persons who testified before the TPSC are identified in Appendix 2.

EXECUTIVE SUMMARY

OVERVIEW

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

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

Despite these results, however, the overall picture currently presented by China's WTO membership remains complex, largely due to the Chinese government's interventionist policies and practices and the large role of state-owned enterprises and other national champions in China's economy.

In 2014, as in past years, when trade frictions have arisen, the United States pursued dialogue with China to resolve them. However, when dialogue with China has not led to the resolution of key trade issues, the United States has not hesitated to invoke the WTO's dispute settlement mechanism. Since China's accession to the WTO, the United States has brought 15 WTO cases against China, more than twice as many WTO cases as any other WTO member has brought against China. In doing so, the United States has placed a strong emphasis on the

need for China to adhere to WTO rules, holding China fully accountable as a mature participant in, and a major beneficiary of, the WTO's global trading system.

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

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

CHINA'S FIRST 13 YEARS AS WTO MEMBER

The commitments to which China's leaders agreed when China joined the WTO in 2001 were sweeping in nature and required the Chinese government to make changes to hundreds of laws, regulations and other measures affecting trade and investment. These changes largely coincided with the economic

reform goals of China's leaders at the time, which built on the economic reforms that China had begun under Deng Xiaoping in 1978. The Chinese leaders who negotiated the terms of China's WTO accession correctly believed that China's economy needed to rely more on market signals and less on Chinese government economic planners and state-owned enterprises. Indeed, these leaders had initiated a dramatic and rapid reform of state-owned enterprises in the mid-1990s.

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

New leaders took over in China in 2003, two years after China's WTO accession. While the Chinese government continued to take steps to implement China's outstanding WTO commitments, it generally did not pursue economic reforms as aggressively as before. Instead, the Chinese government increasingly emphasized the state's role in the economy, diverging from the path of economic reform that had driven China's accession to the WTO. With the state leading China's economic development, the Chinese government pursued new and more expansive industrial policies, often designed to limit market access for imported goods, foreign manufacturers and foreign service suppliers, while offering substantial government guidance, resources and regulatory support to Chinese industries, particularly ones dominated by state-owned enterprises. This heavy state role in the economy, reinforced by unchecked discretionary actions of Chinese government regulators, generated serious trade frictions with China's many trade partners, including the United States.

In particular, beginning with the creation of the State-owned Assets Supervision and Administration Commission (SASAC) in 2003, China's new leaders de-emphasized their predecessors' move toward a

greater reliance on market forces and a lesser reliance on Chinese government economic planners and state-owned enterprises. Instead, the new leaders set out to bolster the state sector by seeking to improve the operational efficiency of state-owned enterprises and by orchestrating mergers and consolidations in order to make these enterprises stronger. These actions soon led to institutionalized preferences for state-owned enterprises and the creation of national champions in many sectors.

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

For example, as USTR reported previously, and as remains true today, confidential accounts from foreign enterprises indicate that Chinese government officials, acting without fear of legal challenge, at times require foreign enterprises to transfer technology as a condition for securing investments approvals, even though Chinese law does not – and cannot under China's WTO commitments – require technology transfer. Similarly, in the trade remedies context, China's regulatory authorities at times seem to pursue antidumping and countervailing duty investigations and impose duties for the purpose of striking back at trading partners that have legitimately exercised their rights under WTO trade remedy rules. As three WTO cases won by the United States confirm, China's regulatory authorities appear to pursue these investigations even when necessary legal and factual support for the duties is absent. More

recently, U.S. industry has asserted that China's competition policy enforcement authorities not only are targeting foreign companies, but also at times use *Anti-monopoly Law* investigations as a tool to protect and promote domestic national champions and domestic industries.

By 2013, when China's next leadership transition was complete, some positive signs emerged suggesting a strong commitment among China's new leaders to further economic reform. As USTR noted in last year's report, a series of developments in 2013 seemed to confirm a re-focusing of China's energies and a high-level determination to accelerate needed economic reform, which, if realized, would provide tremendous benefits not only to China but also to its trading partners.

The new Chinese leadership's focus on economic reform in China led to a Decision reached in November 2013 at the Third Plenum of the 18th Central Committee of the Chinese Communist Party. The Third Plenum Decision endorsed a number of far-reaching economic reform pronouncements, calling for the market to play a "decisive" role in allocating resources, reducing Chinese government intervention in the economy, accelerating China's opening up to foreign goods and services, reforming China's state-owned enterprises and improving transparency and the rule of law to allow fair competition in China's market. Although these important pronouncements have yet to be fully translated into actions that would significantly change China's trade regime, much of the broad policy direction that they potentially indicate is encouraging.

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

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

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

Going forward, as reported in prior years, the United States looks to China to reduce market access barriers, uniformly follow the fundamental principles of non-discrimination and transparency, significantly reduce the level of government intervention in the economy, fully institutionalize market mechanisms, require state-owned enterprises to compete with other enterprises on fair and non-discriminatory terms, and fully embrace the rule of law. Taking these steps is critical to realizing the tremendous potential presented by China's WTO membership, including the breadth and depth of trade and investment – and prosperity – possible in a thriving, balanced global trading system. China's new leaders seem to have embraced many elements of this approach, and the United States will continue to work with China going forward to help make it a reality.

2014 DEVELOPMENTS

In 2014, the United States worked hard to increase the benefits that U.S. businesses, workers, farmers, ranchers, service providers and consumers derive from trade and economic ties with China. Throughout the past year, the United States focused on outcome-oriented dialogue at all levels of engagement with China, while also taking concrete steps to enforce U.S. rights at the WTO as appropriate in areas where dialogue had not resolved U.S. concerns.

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

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

- While both the United States and China acknowledged that the government properly can take measures to encourage innovation, China clarified and underscored that it will treat intellectual property rights owned or developed in other countries the same as domestically owned or developed intellectual property rights. China further agreed that enterprises are free to base technology transfer decisions on business and market considerations, and are free to independently negotiate and decide whether

and under what circumstances to assign or license intellectual property rights to affiliated or unaffiliated enterprises.

- China committed to take several specific steps to streamline and speed up its regulatory review and approval system for new pharmaceuticals.
- China committed to take several specific steps to streamline and speed up its regulatory review and approval system for new medical devices.
- China recognized that the objective of competition policy is to promote consumer welfare and economic efficiency rather than promote individual competitors or industries, and that enforcement of China's competition laws should be fair, objective, transparent and non-discriminatory. China agreed to provide any party under an *Anti-monopoly Law* investigation with information about the enforcement agency's concerns and an effective opportunity for the party to present evidence in its defense.
- China committed that, in *Anti-monopoly Law* enforcement proceedings, the Chinese authorities would treat domestic and foreign companies equally and normally would permit an investigated foreign company to have foreign counsel present, to advise it and to provide information on its behalf.
- China agreed to hold an annual, multi-ministerial dialogue with the United States at the Vice Minister level to carry out balanced, mutually beneficial discussions addressing science-based agricultural innovation and the increased use of innovative technologies in agriculture.
- In the area of geographical indications (GIs), China agreed that a term is not eligible for protection as a GI in its territory where the term is generic in its territory, such as trademarks or common names like "parmesan" and "feta" cheese.

2014 USTR Report to Congress on China's WTO Compliance

- China committed to pursue criminal and other actions to deter the misappropriation of trade secrets, to ensure that criminal and civil cases are tried and the resulting judgments are published, and to protect trade secrets contained in materials submitted by companies as part of regulatory, administrative and other proceedings.
- China confirmed that trade secrets submitted to the government in administrative or regulatory proceedings are to be protected from improper disclosure to the public and only disclosed to government officials in connection with their official duties and that government officials who illegally disclose companies' trade secrets are to be subject to administrative or legal liability. China further committed to study various specified ways in which it could improve its laws, regulations and administrative procedures governing the protection of trade secrets in the context of administrative or regulatory proceedings.
- China committed to protect the legal rights of inventors in respect of their inventions and creations, and to respect the legitimate rules and regulations developed by employers and the legitimate contracts between employers and inventors concerning inventor remuneration and awards.
- China committed to strengthen enforcement against unlawful trademark counterfeiting and copyright piracy activities in the online environment and to deter the occurrence of infringement and counterfeiting through criminal, civil and administrative remedies and penalties. China further committed to classify products with significant impacts on public health and safety as priorities, and to carry out enhanced enforcement actions.
- China committed to develop and seriously consider amendments to the *Drug Administration Law* that will require regulatory control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients.
- China committed to further deepen the reform of state-owned enterprises by improving and standardizing modern corporate governance structure and by reasonably increasing the proportion of market-based recruitment of management personnel for state-owned enterprises.
- China committed to establish mechanisms that strictly prevent the expansion of crude steelmaking capacity and that are designed to achieve, over the next five years, major progress in addressing excess production capacity in the steel sector.
- China agreed to improve its value-added tax rebate system, including by actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade.
- China committed to treat applicants for administrative licenses and approvals under the same rules and standards as the United States with regard to the resources available to accept and process applications and the number of applications permitted at one time from an applicant, and to strictly implement existing laws and regulations to adequately protect any trade secret or sensitive commercial information provided by the applicant during the administrative licensing or approval process, as required by law.
- China committed to continue to improve procedures for foreign investment approval and record-filing.
- China committed to revise regulations to further open the construction and engineering design sectors to foreign suppliers.

2014 USTR Report to Congress on China's WTO Compliance

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

While progress was made on some meaningful issues, as described above, many issues of concern remain. The United States will continue to engage China on important issues in the areas of investment restrictions, intellectual property rights enforcement, technology localization, indigenous innovation, market access for U.S. beef, biotechnology product approvals, export restraints, strategic emerging industries, state-owned enterprises, government subsidization, excess capacity, administrative licensing, government procurement, taxation, standards development, pharmaceuticals, medical devices, cosmetics, legal services, financial services, Internet-related services, telecommunications services, express delivery services and transparency, among others.

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

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

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

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

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

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

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

Meanwhile, in another WTO case, in which the United States successfully challenged restrictions that China had put in place to create and maintain a domestic national champion as the exclusive supplier of electronic payment services, i.e., the services needed to process most credit and debit card transactions in China, China missed its July 2013 deadline for complying with the WTO's rulings. In October 2014, China's State Council announced that China would be opening its market to foreign suppliers of electronic payment services, but as of December 2014 it still had not taken any steps to do so, and U.S. suppliers therefore remain blocked from entering the market. Accordingly, the United States was considering its further options at the WTO while continuing to press China to comply with the WTO's rulings.

CONCLUSIONS REGARDING CHINA'S WTO COMPLIANCE EFFORTS

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

PRIORITY ISSUES

At present, China's trade policies and practices in several specific areas cause particular concern for the United States and U.S. stakeholders, including in relation to China's approach to the obligations of WTO membership. The key concerns in each of these areas are summarized below. In 2015, the United States will continue to pursue vigorous and expanded bilateral engagement to resolve the

serious issues that remain in these areas. The United States also will continue to hold China accountable for adherence to WTO rules when dialogue does not resolve U.S. concerns, including through the use of the dispute settlement mechanism at the WTO.

Intellectual Property Rights

Overview

Since its accession to the WTO, China has undertaken a wide-ranging revision of its framework of laws and regulations aimed at protecting the intellectual property rights (IPR) of domestic and foreign right holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). However, inadequacies in China's IPR protection and enforcement regime continued to present serious barriers to U.S. exports and investment. China was again placed on the Priority Watch List in USTR's 2014 Special 301 report. In addition, in 2014, USTR announced the results of its 2013 Out-of-Cycle Review of Notorious Markets, which identifies Internet and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting. Several Chinese markets were among those named as notorious markets.

Trade Secrets

The protection and enforcement of trade secrets in China is a serious problem that has attained a higher profile in recent years. Thefts of trade secrets that benefit Chinese companies have occurred both within China and outside of China. Offenders in many cases continue to operate with impunity, while the Chinese government too frequently has failed to recognize serious infringements of IPRs that violate Chinese law. Most troubling are reports that actors affiliated with the Chinese government and the Chinese military have infiltrated the computer systems of U.S. companies, stealing terabytes of data, including the companies' intellectual property. In order to help address these challenges, the United

States has urged China to update and amend its trade secrets laws and regulations, particularly the *Anti-unfair Competition Law*. The United States also has urged China to take actions to address this problem across the range of state-sponsored actors and to promote public awareness of this issue.

At the December 2013 JCCT meeting, China committed to adopt and publish an action plan to address trade secrets protection and enforcement for 2014, as well as to work with the United States on proposals to amend China's trade secrets laws and regulations. Six months later, at the July 2014 S&ED meeting, China pledged to pursue criminal and other actions to deter the misappropriation of trade secrets, to ensure that criminal and civil cases are tried and the resulting judgments are published, and to protect trade secrets contained in materials submitted by companies as part of regulatory, administrative and other proceedings. Most recently, at the December 2014 JCCT meeting, China confirmed that trade secrets submitted to the government in administrative or regulatory proceedings are to be protected from improper disclosure to the public. China further confirmed that government officials shall only disclose trade secrets in connection with their official duties and that government officials who illegally disclose companies' trade secrets are to be subject to administrative or legal liability. China also committed to study various specified ways in which it could improve its laws, regulations and administrative procedures governing the protection of trade secrets in the context of administrative or regulatory proceedings.

Pharmaceutical Patents

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

remain, including the need to provide effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to provide effective enforcement against infringement of pharmaceutical patents.

Software Piracy

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

Online Piracy

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

Counterfeit Goods

Although rights holders report increased enforcement efforts by Chinese government authorities, counterfeiting in China, affecting a wide range of goods, remains widespread. One area of particular U.S. concern involves medications. Despite sustained engagement by the United States, China still needs to improve its regulation of the manufacture of active pharmaceutical ingredients to prevent their use in counterfeit and substandard medications. At the July 2014 S&ED meeting, in a positive development, China agreed to develop and seriously consider amendments to the *Drug Administration Law* that will require regulatory control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients. China further committed to hold a multi-ministerial meeting by the end of 2014 for the purpose of developing a possible framework for regulatory oversight of bulk chemicals.

Industrial Policies

Overview

China continued to pursue industrial policies in 2014 that seek to limit market access for imported goods, foreign manufacturers and foreign service suppliers, while offering substantial government guidance, resources and regulatory support to Chinese industries. The principal beneficiaries of these policies are state-owned enterprises, as well as other favored domestic companies attempting to move up the economic value chain.

Indigenous Innovation

In 2014, policies aimed at promoting “indigenous innovation” continued to represent an important component of China’s industrialization efforts. Through intensive, high-level bilateral engagement, the United States previously secured a series of critical commitments from China that generated major progress in de-linking indigenous innovation

policies at all levels of the Chinese government from government procurement preferences, culminating in the issuance of a State Council measure mandating that provincial and local governments eliminate any remaining linkages by December 2011. Since then, the principal challenge has been to address a range of discriminatory indigenous innovation preferences proliferating outside of the government procurement context. Using the U.S.-China Innovation Dialogue, the United States was able to persuade China to take an important step in this direction at the May 2012 S&ED meeting, where China committed to treat IPR owned or developed in other countries the same as IPR owned or developed in China. The United States also used the 2012 JCCT process to press China to revise or eliminate specific measures that appeared to be inconsistent with this commitment. Throughout 2013 and 2014, China reviewed specific U.S. concerns, and the United States and China intensified their discussions. At the December 2014 JCCT meeting, China clarified and underscored that it will treat IPR owned or developed in other countries the same as domestically owned or developed IPR, and it further agreed that enterprises are free to base technology transfer decisions on business and market considerations, and are free to independently negotiate and decide whether and under what circumstances to assign or license intellectual property rights to affiliated or unaffiliated enterprises.

Technology Transfer

While some longstanding concerns regarding technology transfer remain unaddressed, and new ones have emerged, such as tying government preferences to the localization of technology in China (discussed above), some progress has been made in select areas. For example, China committed at the December 2013 JCCT meeting not to finalize or implement a selection catalogue and rules governing official use vehicles. The catalogue and rules would have interfered with independent decision making on technology transfer and would

have effectively excluded vehicles produced by foreign and foreign-invested enterprises from important government procurement opportunities.

Export Restraints

China continues to deploy a combination of export restraints, including export quotas, export licensing, minimum export prices, export duties and other restrictions, on a number of raw material inputs where it holds the leverage of being among the world's leading producers. Through these export restraints, it appears that China is able to provide substantial economic advantages to a wide range of downstream producers in China at the expense of foreign downstream producers, while creating pressure on foreign downstream producers to move their operations, technologies and jobs to China. In 2013, China removed its export quotas and duties on several raw material inputs of key interest to the U.S. steel, aluminum and chemicals industries after the United States won a dispute settlement case against China at the WTO. In 2014, the United States won a second WTO case, where the claims focused on China's export restraints on rare earths, tungsten and molybdenum, which are key inputs for a multitude of U.S.-made products, including hybrid automobile batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum, and chemicals. China has agreed to comply with the WTO's rulings in this second case by May 2015.

Export Subsidies

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

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

Excess Capacity

Chinese government actions and financial support in manufacturing industries like steel and aluminum have contributed to massive excess capacity in China, with the resulting over-production distorting global markets and hurting U.S. producers and workers. For example, from 2000 to 2013, China accounted for more than 75 percent of global steelmaking capacity growth. Currently, China's capacity alone exceeds the combined steelmaking capacity of the EU, Japan, the United States, and Russia. China has no comparative advantage with regard to the energy and raw material inputs for steelmaking, yet China's capacity has continued to grow exponentially and is estimated to have exceeded one billion metric tons (MT) in 2013, despite weakening demand domestically and abroad. Yet, China's steel exports have grown to be the largest in the world, at 62 million MT in 2013, an 11 percent increase over 2012 levels, despite sluggish steel demand abroad. Excess capacity in China – whether in the steel industry or other industries like aluminum – hurts U.S. industries and workers not only because of direct exports from China to the United States, but because lower global prices and a glut of supply make it difficult for even the most competitive producers to remain viable. Domestic industries in many of China's trading partners have continued to respond to the effects of the trade-distortive effects of China's excess capacity by petitioning their governments to impose trade remedies such as antidumping and countervailing duties.

Value-added Tax Rebates and Related Policies

As in prior years, in 2014, the Chinese government attempted to manage the export of many primary, intermediate and downstream products by raising or lowering the value-added tax rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These

practices have caused tremendous disruption, uncertainty and unfairness in the global markets for some products, particularly downstream products where China is a leading world producer or exporter, such as products made by the steel, aluminum and soda ash industries. These practices, together with other policies, such as excessive government subsidization, also have contributed to severe excess capacity in these same industries. A positive development took place at the July 2014 S&ED meeting, when China agreed to improve its value-added tax rebate system, including by actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade.

Aircraft Tariffs

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

Strategic Emerging Industries

In 2010, China's State Council issued a decision on accelerating the cultivation and development of "strategic emerging industries" (SEIs) that called upon China to develop and implement policies designed to promote rapid growth in government-selected industry sectors viewed as economically and strategically important for transforming China's

industrial base into one that is more internationally competitive in cutting-edge technologies. China subsequently identified seven sectors for focus under the SEI initiative, including energy-saving and environmental protection, new generation information technology, biotechnology, high-end equipment manufacturing, new energy, new materials and new-energy vehicles.

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

Similarly, some central and sub-central government measures use local content requirements as a condition for enterprises in SEI sectors to receive financial support or other preferences. For example, in the high-end equipment manufacturing sector, China maintains a program that conditions the receipt of a subsidy on an enterprise's use of at least 60 percent Chinese-made components when manufacturing intelligent manufacturing equipment. Citing WTO concerns, the United States has been pressing China to repeal or modify these measures.

In addition, an array of Chinese policies designed to assist Chinese automobile enterprises in developing electric vehicle technologies and in building domestic brands that can succeed in global markets continued to pose challenges in 2014. As previously reported, these policies have generated serious concerns about discrimination based on the country of origin of intellectual property, forced technology transfer, research and development requirements, investment restrictions and discriminatory treatment of foreign brands and imported vehicles. Although significant progress has been made in addressing some of these policies, more work remains to be done.

Import Ban on Remanufactured Products

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

Standards and Technology

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

Government Procurement

The United States continues to press China to take concrete steps toward fulfilling its commitment to accede to the WTO's Government Procurement Agreement (GPA) and to open up its vast government procurement market to the United States and other GPA parties. To date, however, the United States, the EU, and other GPA parties have viewed China's offers of coverage as highly disappointing in scope and coverage. China submitted its fourth revised offer in December 2013. This offer showed some progress in areas consistent with a commitment that China had made at the July

2013 S&ED meeting, including by lowering thresholds and increasing sub-central entities coverage and other coverage, but it fell short of U.S. expectations and remains far from acceptable to the United States and other GPA parties. At the December 2013 JCCT meeting, China agreed to accelerate its GPA accession negotiations and submit in 2014 an additional revised offer that is on the whole commensurate with the coverage of GPA parties. China submitted a revised offer near the end of December 2014.

China's current government procurement regime is governed by two important laws. The Government Procurement Law, which is administered by the Ministry of Finance, governs purchasing activities conducted with fiscal funds by state organs and other organizations at all levels of government in China. The Tendering and Bidding Law falls under the jurisdiction of the National Development and Reform Commission and imposes uniform tendering and bidding procedures for certain classes of procurement projects in China, notably construction and works projects, without regard for the type of entity that conducts the procurement. Both laws cover important procurements that GPA parties would consider to be government procurement eligible for coverage under the GPA. The United States will continue to work with the Chinese government to ensure that China's future GPA offers include coverage of government procurement regardless of which law it falls under, including procurement conducted by both government entities and other entities, such as state-owned enterprises.

Investment Restrictions

China seeks to protect many domestic industries through a restrictive investment regime, which adversely affects foreign investors in services sectors, such as financial services, telecommunications services, Internet-related services, legal services and express delivery services, as well as in certain manufacturing industries and the agricultural sector. In addition to prohibitions

and restrictions on market access imposed through China's foreign investment catalogue or other means, China can readily impose additional constraints on investment through its foreign investment approval processes, where Chinese government officials can use vaguely defined powers on an ad hoc basis to delay or restrict market entry. For example, foreign enterprises report that Chinese government officials may condition investment approval on a requirement that a foreign enterprise conduct research and development in China, transfer technology, satisfy performance requirements relating to exportation or the use of local content, or make valuable, deal-specific commercial concessions.

The United States has repeatedly raised concerns with China about its restrictive investment regime. To date, this sustained bilateral engagement has not led to a significant relaxation of China's investment restrictions, nor has it appeared to curtail ad hoc actions by Chinese government officials. However, China is starting to take steps to reform its investment approval system.

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

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

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

Trade Remedies

China's regulatory authorities in some instances seem to be pursuing antidumping and countervailing duty investigations and imposing duties for the purpose of striking back at trading partners that have exercised their WTO rights against China, even when necessary legal and factual support for the duties is absent. The U.S. response has been the filing and prosecution of three WTO disputes. The decisions reached by the WTO in those three disputes – the most recent of which was issued in May 2014 – confirm that China failed to abide by WTO disciplines when imposing the duties at issue.

Services

Overview

The prospects for U.S. service suppliers in China are promising, given the size of China's market and the Chinese leadership's stated intention to promote the growth of China's services sectors. The United States continues to enjoy a substantial surplus in trade in services with China, as the United States' cross-border supply of services into China totaled \$38 billion in 2013. In addition, services supplied through majority U.S.-invested companies in China totaled \$39 billion in 2012, the latest year for which data are available. This success has been largely attributable to the market openings phased in by China pursuant to its WTO commitments, as well as the U.S. Government's comprehensive engagement with China's various regulatory authorities, including

in the pursuit of sector openings that go beyond China's WTO commitments.

Nevertheless, in 2014, numerous challenges persisted in a range of services sectors. As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, overly burdensome licensing and operating requirements, and other means to frustrate efforts of U.S. suppliers of banking, insurance, telecommunications, Internet-related, audiovisual, express delivery, legal and other services to achieve their full market potential in China. Some sectors, including electronic payment services and theatrical film distribution, have been the subject of WTO dispute settlement. While China declared an intent to further liberalize a number of services sectors in its Third Plenum Decision, concrete steps have not yet been taken.

Electronic Payment Services

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

Theatrical Film Distribution

In February 2012, the United States and China reached an alternative solution with regard to certain rulings relating to the importation and distribution of theatrical films in a WTO case that the United States had won. The two sides signed a memorandum of understanding (MOU) providing for substantial increases in the number of foreign films imported and distributed in China each year, along

with substantial additional revenue for foreign film producers. Significantly more U.S. films have been imported and distributed in China since the signing of the MOU, and the revenue received by U.S. film producers has increased significantly. However, China has not yet fully implemented its MOU commitments, including with regard to a critical commitment to open up film distribution opportunities for imported films that are distributed in China on a flat-fee basis rather than a revenue-sharing basis. As a result, the United States has been pressing China for full implementation.

Banking Services

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

Insurance Services

China's regulation of the insurance sector has resulted in market access barriers for foreign insurers, whose share of China's market remains very low. In the life insurance sector, China only permits foreign companies to participate in Chinese-foreign joint ventures, with foreign equity capped at 50 percent. The market share of these joint ventures is less than 4 percent. For the health insurance sector, China also caps foreign equity at 50 percent. While China allows wholly foreign-owned subsidiaries in the non-life insurance (i.e., property and casualty) sector, the market share of foreign-invested companies in this sector is only 1 percent. China also limits foreign insurance brokers from providing a full scope of services, and its market for political risk insurance is completely closed to foreign participation. In addition, some U.S. insurance companies established in China continue to encounter difficulties in getting the Chinese regulatory authorities to issue timely approvals of their requests to open up new internal branches to expand their operations.

Telecommunications Services

Restrictions maintained by China on value-added telecommunications services have created serious barriers to market entry for foreign suppliers seeking to provide value-added services. In addition, China's restrictions on basic telecommunications services, such as informal bans on new entry, a requirement that foreign suppliers can only enter into joint ventures with state-owned enterprises, and exceedingly high capital requirements, have blocked foreign suppliers from accessing China's basic services market. In May 2013, China introduced rules establishing a pilot program for the resale of mobile services, which can increase competitive opportunities in China's heavily concentrated market. The United States is very concerned that foreign firms continue to be excluded from the pilot program, while China has issued licenses to more than a dozen Chinese suppliers.

Internet-related Services

China's Internet regulatory regime is restrictive and non-transparent, affecting a broad range of commercial services activities conducted via the Internet. In addition, China's treatment of foreign companies seeking to participate in the development of cloud computing, including computer data and storage services provided over the Internet, raises concerns. For example, China has sought to impose value-added telecommunications licensing requirements on this sector, including a 50 percent equity cap on investments by foreign companies, even though the services at issue are not telecommunications services.

Audio-visual Services

China's restrictions in the area of theater services have wholly discouraged investment by foreign suppliers, and China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers.

Express Delivery Services

The United States continues to raise concerns with China regarding implementation of the 2009 Postal Law and related regulations. China has blocked foreign companies' access to the document segment of China's domestic express delivery market, and it has threatened troubling restrictions on foreign companies' access to the package segment of China's domestic express delivery market, including discriminatory treatment in approving their business permits.

Legal Services

China has issued measures intended to implement the legal services commitments that it made upon joining the WTO. However, these measures restrict the types of legal services that can be provided and impose lengthy delays for the establishment of new offices.

Agriculture

Overview

China is the largest agricultural export market for the United States, with nearly \$26 billion in U.S. agricultural exports in 2013. Much of this success resulted from intensive engagement by the United States with China's regulatory authorities. Notwithstanding this success, China remains among the least transparent and predictable of the world's major markets for agricultural products, largely because of uneven enforcement of regulations and selective intervention in the market by China's regulatory authorities. As in past years, seemingly capricious practices by Chinese customs and quarantine agencies delay or halt shipments of agricultural products into China. In addition, SPS measures with questionable scientific bases and a generally opaque regulatory regime frequently create difficulties and uncertainty for traders in agricultural commodities, who require as much certainty and transparency as possible.

Beef, Poultry and Pork

In 2014, beef, poultry and pork products were affected by questionable SPS measures implemented by China's regulatory authorities. For example, China continued to block the importation of U.S. beef and beef products, more than seven years after these products had been declared safe to trade under international scientific guidelines established by the World Organization for Animal Health (known by its historical acronym OIE), and despite the further fact that in 2013 the United States received the lowest risk status from the OIE, i.e., negligible risk. China also continued to impose some unwarranted state-level Avian Influenza import suspensions on poultry. Additionally, China continued to maintain overly restrictive pathogen and residue standards for raw meat and poultry. Consequently, anticipated growth in U.S. exports of these products was again not realized.

Biotechnology Approvals

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

Agricultural Support

Over the past several years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector. China has established a direct payment program, instituted minimum support prices for basic commodities and sharply increased input subsidies. China has implemented a cotton reserve system, based on minimum purchase prices, and cotton target price programs. China also has begun several new support schemes for hogs and pork, along with a purchasing reserve system for pork. China has not submitted a notification concerning domestic support measures since October 2011, and that notification covered only the period 2005-2008. This notification documents an increase in China's support levels, but the United States is concerned that the methodologies used by China to calculate support levels, particularly with regard to its price support policies and direct payments, result in underestimates.

Transparency

Overview

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

Publication of Trade-related Laws, Regulations and Other Measures

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

Notice-and-comment Procedures

In its WTO accession agreement, China committed to provide a reasonable period for public comment before implementing new trade-related laws, regulations and other measures. China has taken several steps related to this commitment. In 2008,

the National People's Congress (NPC) instituted notice-and-comment procedures for draft laws, and shortly thereafter China indicated that it would also publish proposed trade and economic related administrative regulations and departmental rules for public comment. Subsequently, the NPC began regularly publishing draft laws for public comment, and China's State Council often (but not regularly) published draft administrative regulations for public comment. In addition, many of China's ministries were not consistent in publishing draft departmental rules for public comment. At the May 2011 S&ED meeting, China committed to issue a measure implementing the requirement to publish all proposed trade and economic related administrative regulations and departmental rules on the website of the State Council's Legislative Affairs Office (SCLAO) for a public comment period of not less than 30 days. In April 2012, the SCLAO issued two measures that appear to address this requirement. Since then, despite continuing U.S. engagement, no noticeable improvement in the publication of departmental rules for public comment appears to have taken place, even though China recently confirmed that those two SCLAO measures are binding on central government ministries.

Translations

In its WTO accession agreement, China committed to make available translations of all of its trade-related laws, regulations and other measures at all levels of government in one or more of the WTO languages, i.e., English, French and Spanish. To date, however, China has focused only on translations of trade-related laws and administrative regulations, and China is years behind in translating these measures. At the July 2014 S&ED meeting, China committed that it will extend its translation efforts to include not only trade-related laws and administrative regulations but also trade-related departmental rules. The United States is pressing China to ensure that a translation normally is made available before a measure's implementation, as required by China's WTO accession agreement.

Legal Framework

Overview

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

Administrative Licensing

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

Anti-monopoly Law

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

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

Another serious concern relates to the procedural fairness of *Anti-monopoly Law* investigations. U.S. industry has expressed concern about insufficient predictability, fairness and transparency in NDRC's investigative processes, including NDRC pressure to "cooperate" in the face of unspecified allegations or face steep fines. U.S. industry also has reported pressure from NDRC against seeking outside counsel, in particular foreign counsel, or having counsel present at meetings. At the July 2014 S&ED meeting, China recognized that the objective of competition policy is to promote consumer welfare and economic efficiency rather than promote individual competitors or industries, and that enforcement of China's competition laws should be fair, objective, transparent and non-discriminatory. China also committed to provide any party under an *Anti-monopoly Law* investigation with information about the enforcement agency's concerns and an effective opportunity for the party to present evidence in its defense. More recently, at the December 2014 JCCT meeting, China committed that, in *Anti-monopoly Law* enforcement proceedings, the Chinese authorities would treat domestic and foreign companies equally and normally would permit an investigated foreign company to have foreign counsel present, to advise it and to provide information on its behalf.

NEXT STEPS

In 2015, as in prior years, the Administration will continue to vigorously pursue increased benefits for U.S. businesses, workers, farmers, ranchers and service providers from our trade and economic ties with China. The Administration will use all available tools to achieve these objectives, including the pursuit of productive, outcome-oriented dialogue in both bilateral and multilateral settings, as well as the vigorous use of enforcement mechanisms, where appropriate.

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

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

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

The United States shares the Third Plenum Decision's goals of reducing Chinese government intervention in the economy, accelerating China's opening up to foreign goods and services, reforming China's state-owned enterprises and improving transparency and the rule of law to allow fair competition in China's market. The United States therefore will urge China to speedily implement these promising Third Plenum Decision economic reform elements, which have many similarities with the U.S. trade agenda with China.

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

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

2014 USTR Report to Congress on China's WTO Compliance

Table 1

Summary Conclusions regarding China's WTO Compliance Efforts

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

2014 USTR Report to Congress on China's WTO Compliance

Table 1 (cont'd)

Summary Conclusions regarding China's WTO Compliance Efforts

EXPORT REGULATION

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

INTERNAL POLICIES AFFECTING TRADE

Non-discrimination

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

Taxation

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

Subsidies

China continues to provide injurious subsidies to its domestic industries, and some of these subsidies appear to be prohibited under WTO rules. Although China filed a long-overdue WTO subsidies notification in 2011, this notification only covered subsidies provided during the period from 2005 to 2008 and was far from complete. In addition, China has a poor record of responding to other WTO members' questions about its subsidies before the WTO's Subsidies Committee.

Price Controls

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

Standards, Technical Regulations and Conformity Assessment Procedures

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

Restructuring of Regulators

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

Standards and Technical Regulations

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

Conformity Assessment Procedures

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

Transparency

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

Other Industrial Policies

State-owned and State-invested Enterprises

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

Table 1 (cont'd)

Summary Conclusions regarding China's WTO Compliance Efforts

Other Industrial Policies (cont'd)

State Trading Enterprises

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

Government Procurement

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

INVESTMENT

China has revised many laws, regulations and other measures on foreign investment to eliminate WTO-inconsistent requirements relating to export performance, local content, foreign exchange balancing and technology transfer. However, some of the revised measures continue to "encourage" these requirements, and it appears that Chinese government officials at times continue to use the foreign investment approval process to pressure foreign companies to accept one or more of these requirements or other conditions. China has also issued industrial plans covering the auto and steel sectors that include guidelines that appear to conflict with its WTO obligations. In addition, China has added a variety of restrictions on investment that appear designed to shield inefficient or monopolistic Chinese enterprises from foreign competition.

AGRICULTURE

While China has timely implemented its tariff commitments for agricultural goods, a variety of non-tariff barriers continue to impede market access, particularly in the areas of SPS measures and inspection-related requirements.

Tariffs

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

Tariff-rate Quotas on Bulk Agricultural Commodities

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

China's Biotechnology Regulations

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

Sanitary and Phytosanitary Issues

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

Inspection-related Requirements

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

Domestic Support

In recent years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector, including a number of products competing with imports from the United States.

Export Subsidies

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

Table 1 (cont'd)

Summary Conclusions regarding China's WTO Compliance Efforts

INTELLECTUAL PROPERTY RIGHTS

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

SERVICES

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

Distribution Services

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

Wholesaling Services

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

Retailing Services

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

Franchising Services

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

Direct Selling Services

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

Financial Services

Banking

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

Motor Vehicle Financing

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

Insurance

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

Financial Information

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

