COMMERCIAL RULE OF LAW

Introduction

When China acceded to the World Trade Organization (WTO) on December 11, 2001, the Chinese government made numerous commitments to strengthen transparency, run state-owned enterprises (SOEs) on a commercial basis, open Chinese markets, protect intellectual property rights, and reform China’s legal system. The Chinese government made additional transparency, trade, and intellectual property commitments through the U.S.-China Joint Commission on Commerce and Trade (JCCT) and the U.S.-China Strategic and Economic Dialogue (S&ED). From 2001 to 2013, U.S. imports from China increased by US$338 billion, while exports to China increased by US$103 billion—less than one-third as much. In 2012, the Ministry of Commerce reported that Chinese foreign direct investment into the United States exceeded investment by U.S. companies into China for the first time, and the Rhodium Group reported that in 2013, Chinese investments in the United States doubled from 2012 levels. The Chinese government has not kept its international trade commitments in many respects. China continued to discriminate against foreign companies and products, had not met its transparency commitments, provided large subsidies to SOEs, had poor protection for intellectual property, and lacked the rule of law. During the Commission’s 2014 reporting year, Chinese leaders committed to allowing the market to play a decisive role in allocating resources but also reaffirmed that SOEs would continue to play a primary role in China’s economy. Authorities also established a pilot Shanghai Free Trade Zone, and an amended PRC Trademark Law took effect.

State-Owned Enterprises and Indigenous Innovation

During this reporting year, the Chinese government continued to provide subsidies to state-owned and state-controlled enterprises (collectively, “SOEs”) and to promote indigenous innovation. The state capitalism practiced by China also continued to be a key issue in U.S.-China economic dialogues and ongoing treaty negotiations. When China acceded to the WTO, it made commitments to running SOEs on a market basis, including not interfering in procurement and sales decisions, except as provided for by WTO rules. The November 2013 Chinese Communist Party Central Committee Third Plenum Decision on Certain Major Issues Regarding Comprehensively Deepening Reforms emphasized a decisive role for the market in the allocation of resources, but acknowledged that SOEs would continue to play a primary role in China’s economy. Foreign companies also perceived SOEs as receiving preferential treatment in litigation. In 2014, an American Chamber of Commerce in China survey of U.S. companies found that the surveyed companies considered Chinese policies favoring SOEs to be the most negative type of industrial policy in China. As of July 2014, there were reportedly 113 central SOEs directly controlled by the national State-owned Assets Supervision and Administration Commission (SASAC). A total of 144,700 SOEs, including those controlled by provincial and local governments, were reported at
According to the China State Owned Assets Report, 92 of the 100 Chinese companies on the 2014 Global Fortune 500 List were SOEs. SOEs, however, are less profitable than private enterprises. High-level personnel changes at SOEs are often driven by political considerations. Through direct and indirect supervision, the Chinese Communist Party oversees the decision-making of SOEs, including using policies and subsidies to make non-market-based purchasing and sales decisions to support Chinese companies and technology. The Chinese government reportedly encouraged greater private investment in SOEs through a mixed-ownership model in which private companies take minority stakes in SOEs, but it is unclear whether the move was intended to make SOEs more subject to market-based decisionmaking or simply to provide SOEs with additional capital.

The Chinese government promoted SOEs and domestic companies through indigenous innovation policies, including subsidies, incentives, and preferential procurement policies. Some U.S. companies considered implementation of indigenous innovation policies to be an even larger problem than intellectual property theft. China’s High and New Technology Enterprise tax incentives, first implemented in 2008, continued during the reporting year, and maintained unfavorable licensing requirements and the requisite that beneficiaries conduct a majority of their research and development in China. Despite China’s commitments when it joined the WTO, technology transfer requirements are still often required of foreign companies, although at times described as “encouraged,” in order to operate in China. Fiscal and tax benefits were often given to Chinese companies, including in strategic industries, while many foreign companies in China believed they had been held to higher regulatory standards than Chinese companies.

**Transparency and Access to Corporate Information**

This past year, China remained noncompliant with its WTO commitments for disclosing subsidies and providing regulatory transparency on draft laws and regulations, and access to government and corporate information in China remained challenging. In 2013, the percentage of Chinese government administrative regulations and departmental rules published for public comment on the Web site of the State Council Legislative Affairs Office (SCLAO) was less than 10 percent. At the June 2008 Strategic Economic Dialogue, according to the Joint U.S.-China Fact Sheet, China committed to publish on the SCLAO Web site “in advance for public comment, subject to specified exceptions, all trade and economic-related administrative regulations and departmental rules that are proposed for adoption and provide a public comment period of not less than 30 days.” An industry association of multinational corporations with investment in China reportedly had some success in strengthening the new PRC Trademark Law through submission of comments on draft amendments. In an October 2013 analysis of corporate reporting on anticorruption programs, organizational transparency, and financial information in major emerging markets by Transparency International, Chinese companies ranked last among companies from Brazil, Russia, India and South Africa. According to an October 2013 Bloomberg report, the lack of cor-
porate reporting requirements made conditions “ripe for” corruption. The Chinese government blocked access to the New York Times and Bloomberg News’ Web sites in the wake of their reporting on the wealth and business connections of government officials. In November 2013, a report on the hidden financial ties between China’s wealthiest man, Wang Jianlin, and family members of China’s top leaders reportedly was not published by a foreign media company, due to concern it would harm the company’s access in China. As of June 2014, the New York Times and Bloomberg News remained blocked in China, and in late 2013 many reporters had difficulty obtaining visas.

American regulators, private companies, and investors have also faced difficulty obtaining corporate information in China. In January 2014, the U.S. Securities and Exchange Commission (SEC) suspended the activities of the Chinese affiliates of the Big Four accounting firms for not providing audit documents of China-based companies “whose securities are registered with the SEC” and that were targets of “fraud investigation” by the SEC. The accounting firms did not provide the audit documents due to concerns they would be in violation of Chinese law, including the China Securities Regulatory Commission’s (CSRC) announcement 29 of 2009, which requires the approval of regulatory authorities before work papers can leave China. The Hong Kong Securities and Futures Commission also had difficulties in obtaining documents due to concerns over potential conflicts with the PRC State Secrets Law and related regulations. According to a 2014 survey conducted by the American Chamber of Commerce in China, 56 percent of businesses surveyed indicated that Internet censorship negatively affected their businesses. A lack of corporate transparency created obstacles for companies wishing to engage in merger and acquisition transactions in China and investors in Chinese companies. China’s vague personal privacy laws also created obstacles for due diligence work. Chinese officials, for example, detained and later arrested U.S. citizen Yu Yingzeng and her husband Peter Humphrey for purchasing personal information to assist them in doing due diligence on behalf of corporate clients. An article in the Atlantic Monthly described the arrests as revealing “a Chinese government that fears public exposure of corruption.” In August 2014, the Shanghai No. 1 Intermediate People’s Court sentenced Yu to two years in prison and Humphrey to two years and six months in prison.

**Commercial Developments and Cyber Theft**

American companies cited the continuing deterioration in the business environment in China and continuing bias against foreign companies. Despite Chinese government claims that “China has fully honored its extensive commitments of the WTO accession,” Chinese subsides and the lack of transparency reportedly had a negative impact on U.S. businesses. In 2014, an American Chamber of Commerce in China survey found that 41 percent of member companies surveyed believe that China is “less welcoming than before.” A European Union Chamber of Commerce in China (EUCC) survey found that 51 percent of member companies believe “that business in China has become more difficult over the
last couple of years,” including 68 percent of large companies with over 1,000 employees. According to 71 percent of member companies surveyed by the EUCCC, improved rule of law and more transparent policymaking are the most important factors for economic progress in China. Many U.S. technology and media companies remained blocked in China, including Facebook, Twitter, YouTube, Dropbox, the New York Times, and Bloomberg News. In May 2014, the Central Government Procurement Center banned the installation of Microsoft’s Windows 8 on government computers, and the Financial Times reported that SOEs were ordered to stop using U.S. consulting firms.

The United States and China continued to negotiate a bilateral investment treaty and China continued to promote its Shanghai Free Trade Zone. In July 2014, during the Strategic and Economic Dialogue, the United States and China reportedly agreed to “intensify” negotiations over a bilateral investment treaty culminating in an agreement on “core issues” and “major articles” of the treaty by year’s end, and to begin negotiations on a “negative list” in early 2015. In January 2014, China submitted a fourth revised bid to join the WTO Government Procurement Agreement, which could open China’s government procurement market, valued at US$230 billion in 2012, to foreign companies. In September 2013, a pilot Shanghai Free Trade Zone was opened to reduce restrictions on investment and the services market. According to the Chinese government, the Shanghai Free Trade Zone is intended as a test area for “trade and investment liberalization” policies that may be implemented nationwide in the future. As of June 2014, Chinese and foreign media noted that modest liberalization of trade and investment policies had occurred to date in the Shanghai Free Trade Zone, although over 20 local governments have applied for similar free trade zone status.

There continued to be reports of significant theft of U.S. intellectual property originating from China, which caused significant losses for American companies. In May 2014, the U.S. Department of Justice (DOJ) charged five Chinese military hackers for cyber espionage against Westinghouse Electric Co., U.S. subsidiaries of SolarWorld AG, United States Steel Corp., Allegheny Technologies Inc., United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), and Alcoa Inc. The indictment marks the first time the DOJ has filed criminal charges against foreign government officials for computer hacking, although the DOJ has brought criminal charges against employees of Chinese companies. At the announcement of the indictment against the alleged military hackers, U.S. Federal Bureau of Investigation Director James B. Comey said, “[f]or too long, the Chinese government has blatantly sought to use cyber espionage to obtain economic advantage for its state-owned industries.” The Ministry of Foreign Affairs reportedly responded that the DOJ indictment included “intentionally-fabricated facts” and suspended the ongoing China-U.S. Cyber Working Group. In June 2014, U.S. Ambassador to China Max Baucus described cyber theft by state actors as a “major threat” to U.S. economic and national security. During the reporting year, the DOJ began criminal prosecutions in two
significant cases involving the theft of agricultural trade secrets. In December 2013, a Chinese national was arrested for allegedly conspiring to steal corn-related trade secrets of several U.S.-based seed manufacturing companies, including Monsanto and DuPont Pioneer, from fields in Iowa and Illinois. In July 2014, a second Chinese national who was allegedly part of the conspiracy to steal corn-related trade secrets was arrested. According to prosecutors, the value of the trade secrets was likely over US$500 million. In December 2013, two agricultural scientists from China reportedly were indicted in a different case for allegedly stealing seeds from a biopharmaceutical company’s research center in Kansas and providing them to a visiting Chinese delegation.

**Intellectual Property Rights**

During this reporting year, the State Council implemented amendments to the PRC Trademark Law, and the Chinese government and courts worked to strengthen the prosecution and enforcement of intellectual property rights (IPR) in China. U.S. companies in China, however, continued to have difficulty enforcing IPR through Chinese courts and administrative agencies. Sales of IPR-intensive goods, including copyrighted software, music, and movies, remained low for U.S. companies in China. One report estimated that in 2013, 74 percent of computer software in China was unlicensed. In 2014, Microsoft assisted state attorneys general in litigation against Chinese companies in U.S. state courts due to difficulties in collecting payments in China. Trade secret protection is also difficult in China. In August 2013, the U.S. pharmaceutical company Eli Lilly and its Chinese subsidiary were able to obtain the first preliminary injunction in a trade secret dispute. Prior to implementation of the revised PRC Civil Procedure Law on January 1, 2013, preliminary injunctions were not available in trade secret cases. In 2014, Massachusetts-based AMSC had four ongoing lawsuits against Sinovel Wind Group (Sinovel) totaling an estimated US$1.2 billion in damages, including a trade secrets case, two copyright infringement cases, and a commercial arbitration for violations of sales contracts. In June 2013, the DOJ, in a related case, also brought a criminal indictment against Sinovel, several Sinovel employees, and a former employee of AMSC’s Chinese subsidiary. In another significant lawsuit, Huawei Technologies (Huawei) filed civil complaints in its hometown of Shenzhen municipality, Guangdong province, against the Delaware company InterDigital, Inc., for failing to negotiate on fair, reasonable, and non-discriminatory terms for licensing its standard essential patents and abuse of its dominant market position. According to analysis by an international law firm, Huawei’s victory in the litigation “sends a clear message that China wants to encourage indigenous innovation and lower technology barriers against the development of domestic technology companies.”

In May 2014, the amended PRC Trademark Law and implementing regulations took effect, which increased statutory damages for trademark infringement from 500,000 yuan (US$80,000) to 3 million yuan (US$480,000). In most intellectual property cases, however, the recovered compensation is well below the statutory damages, and in one database of 5,169 intellectual property judg-
ments for 2012, average compensation awarded was 44,871 yuan (US$7,200). During this reporting year, the State Administration for Industry and Commerce began to draft proposed revisions to the 1993 PRC Anti-Unfair Competition Law, China’s key law for civil protection of trade secrets.

Antimonopoly Law and Company Law

Chinese authorities are conducting an increasing number of antimonopoly reviews, including merger reviews and investigations of abuse of dominant market positions. Article 7 of the PRC Antimonopoly Law provides preferential treatment for SOEs that are important to the national economy or security. Between 2008 and 2013, the Ministry of Commerce (MOFCOM) received 866 declarations for “concentration of business operations,” and among the 740 settled cases, MOFCOM unconditionally approved 717 “concentration of business operations,” conditionally approved 22, and prohibited only 1. In June 2014, however, MOFCOM blocked a cooperative vessel-sharing agreement between A.P. Moller-Maersk, CMA CGM, and MSC Mediterranean Shipping Company (“P3 network”). The P3 network had been approved by the U.S. Federal Marine Commission and the European Commission. Analysts believe that the Chinese P3 network decision may have been influenced by a motivation to protect domestic industry; the PRC Antimonopoly Law provides for an assessment of the impact on “national economic development.” Chinese SOEs in the shipping industry had suffered significant losses in recent years and reportedly pressured Chinese government officials not to approve the P3 network. The previous deal blocked by MOFCOM was the Coca-Cola Company’s failed acquisition of Chinese beverage company Huiyuan Juice Group in 2009. In 2013, 80 price-related investigations were conducted by the National Development and Reform Commission (NDRC) under the PRC Antimonopoly Law, a number four times greater than the total of 20 investigations conducted in the previous five years. Investigations against U.S. and foreign firms reportedly have also increased. In July 2014, NDRC reportedly determined that Qualcomm Inc., the American semiconductor company, was a monopoly, a decision which may result in up to US$1 billion in fines. Also in July 2014, the Chinese government began investigating Microsoft for possible violations of the PRC Antimonopoly Law. According to an August 2014 Wall Street Journal editorial, “the investigations are clustered in industries in which foreign firms have a competitive advantage and Chinese firms are struggling,” and these “attacks on foreign firms” may serve to “distract from the huge cost to consumers” of China’s monopolist SOEs. In September 2014, the US-China Business Council reported that 86 percent of firms that responded to its survey had some level of concern about competition enforcement activities in China. Foreign companies’ concerns with China’s enforcement activities included selective and subjective enforcement, lack of regulatory transparency, and the use of administrative intimidation tactics. According to a September 2014 U.S. Chamber of Commerce report, China’s enforcement activities, which “often appear designed to advance industrial policy and boost national champions,” may be a violation of its WTO commitments.
In December 2013, the National People’s Congress passed significant amendments to the PRC Company Law that simplified the registration process and review procedure for companies. Registered capital will no longer be required for registration of most companies, along with other reforms. In the first three months after the amended PRC Company Law took effect, the number of new companies increased by over 66 percent compared to the same three-month period in 2013. The amended PRC Company Law will increase the need for due diligence.

World Trade Organization Disputes

During this reporting year, the U.S. Government continued to use the World Trade Organization (WTO) dispute settlement mechanism to address China’s noncompliant trade policies, including export restrictions and subsidies, that could not be resolved through dialogue. A lack of transparency in China and weak rule of law made WTO disputes challenging, a situation exacerbated by the fear of retaliation for companies that are involved in trade disputes. Four U.S. entities—United States Steel Corp., Allegheny Technologies Inc., U.S. subsidiaries of SolarWorld AG, and the United Steelworkers union—were allegedly victims of cyber theft after they challenged discriminatory Chinese trade policies. China also continued to challenge U.S. trade policies in WTO disputes. As of July 2014, China had been involved in 12 WTO disputes as a complainant, 31 cases as a respondent, and 110 cases as a third party. China has been a complainant in 9 cases against the United States and the United States has been a complainant in 15 cases against China. In December 2013, China filed a WTO dispute challenging duties the United States had imposed on a number of Chinese products, including coated paper, steel products, and shrimp.

In the first half of 2014, significant WTO panel decisions were issued in a rare earths dispute involving Chinese export quotas and an automobile subsidies dispute involving Chinese duties on U.S. automobile imports. In March 2014, a WTO panel found that “under the circumstances, China’s imposition of the export duties [on rare earths] in question was found to be inconsistent with China’s WTO obligations,” and “that China’s export quotas were designed to achieve industrial policy goals rather than conservation.” In August 2014, the WTO Appellate Body upheld the panel’s findings that China’s rare earths export quotas were not measures relating to conservation. In May 2014, a WTO panel in an automobile duties case reportedly found a number of errors in China’s determination of automobile duties, including calculating rates without a factual basis and not providing facts used to determine the duties. The U.S. Trade Representative’s Office (USTR) estimated over US$5 billion of U.S. auto exports were affected by these illegal duties in 2013. USTR reported that the Chinese government imposed the duties in retaliation against U.S. President Barack Obama’s decision in September 2009 to impose tariffs on Chinese tire imports. During the reporting year, the United States also initiated a WTO compliance proceeding against China’s failure to implement an October 2012 WTO appellant report that upheld a finding that Chinese duties on imports of grain-oriented...
flat-rolled electrical steel from the United States violated WTO rules.\textsuperscript{133}

\textit{Outbound Investments and Foreign Exchange Controls}

In 2013, Chinese investments in the United States doubled from 2012 levels, reaching US$14 billion, and China has now invested more in the United States over the past decade than any other country.\textsuperscript{134} According to the Rhodium Group, the largest of approximately 80 significant investments in 2013 were in the food industry, energy, and real estate sectors.\textsuperscript{135} China’s Shuanghui International Holdings’ US$7.1 billion acquisition of the pork processor Smithfield Foods was the largest deal of 2013.\textsuperscript{136} In the first quarter of 2014, Chinese companies announced new deals totaling over US$8 billion.\textsuperscript{137} During 2014, the Committee on Foreign Investment in the U.S. (CFIUS) reviewed national security concerns relating to the announced acquisitions by the Chinese company Lenovo Group of an International Business Machines Corporation (IBM) server unit and of Motorola Mobility from Google.\textsuperscript{138} In January 2014, Lenovo agreed to purchase IBM’s x86 server business for US$2.3 billion and Motorola Mobility for US$2.9 billion.\textsuperscript{139} The x86 servers are used by the Department of Defense, Department of Homeland Security, and Federal Bureau of Investigation.\textsuperscript{140} As of July 2014, the deals were reportedly still under review by CFIUS.\textsuperscript{141} The purchase of residential properties in the United States by Chinese buyers also increased significantly, with US$22 billion in purchases in the year ending March 2014, up from US$13 billion in the previous year, raising questions about compliance with Chinese law.\textsuperscript{142} Chinese regulations prevent Chinese citizens from exchanging over US$50,000 in currency per year, but CCTV reported in July 2014 that the Bank of China provided “illegal” foreign exchange services above that amount and expressly targeted Chinese looking to emigrate and purchase property overseas.\textsuperscript{143} This past year, intervention by the Chinese government continued to contribute to significant undervaluation of the Chinese yuan.\textsuperscript{144} The yuan reportedly reversed a trend of appreciation in 2014, depreciating by 1.5 percent in February 2014, for the largest two-week depreciation since 2005,\textsuperscript{145} and depreciating 2.68 percent for the year ending in April 2014.\textsuperscript{146} China’s currency policy reportedly results in increases in the cost of U.S. imports for Chinese consumers and lowers the price of Chinese exports, increasing the U.S. trade deficit with China.\textsuperscript{147} In 2013, China’s inbound foreign direct investment (FDI) and current account surplus amounted to more than US$446 billion,\textsuperscript{148} and China’s foreign currency reserves reached approximately US$4 trillion in June 2014.\textsuperscript{149} According to February 2014 analysis by the Economic Policy Institute, eliminating currency manipulation globally, with China as the “linchpin,” could reduce the U.S. trade deficit in three years by as much as US$500 billion and create up to 5.8 million U.S. jobs.\textsuperscript{150}

\textit{Food Safety and Labeling}

During the Commission’s 2014 reporting year, food safety concerns and labeling issues affected consumers in China and overseas. Chinese media highlighted official plans\textsuperscript{151} to address food
safe concerns, including the use of banned pesticides,152 unsafe veterinary drugs,153 illegal food additives,154 use of expired food,155 sale of waste oil,156 and mislabeled food.157 A Pew Research survey published in September 2013 found 38 percent of Chinese consider food safety to be a "very big problem," an increase from the 12 percent reported in 2008.158 In June 2014, an investigation by a reporter for Chinese state media159 found widespread use of bribes by Chinese companies to obtain certifications for farm produce and other products, including pesticide.160 During the reporting year, food safety concerns affected a number of foreign companies; for example, Wal-Mart announced that it would strengthen its food safety inspection system in China161 after donkey meat sold in its stores there was found to contain fox meat.162 In July 2014, the Chinese subsidiary of the U.S. meat supplier OSI Group was also reportedly discovered selling expired meat in China and Japan, negatively impacting its customers McDonald's, KFC, Pizza Hut, Burger King, and Papa John's.163 In June 2014, draft amendments to the PRC Food Safety Law, including improvements to the supervision and management system and higher penalties for violations, were published for public comment.164

China's food safety concerns also affect U.S. consumers who may not be aware that a product is sourced from or processed in China.165 In May 2014, the U.S. Food and Drug Administration (FDA) announced that since 2007 more than 1,000 canine deaths may be associated with eating jerky pet treats that primarily come from China.166 Following the FDA announcement, U.S. pet food retailers Petco and PetSmart announced they would stop selling pet treats from China.167 As of July 15, 2014, the FDA had 79 active import alerts for China, which is more than for any other country.168 In August 2013, China became eligible to export processed poultry to the United States, provided it is slaughtered in the United States or other approved countries.169 According to the U.S. Department of Agriculture, imported processed chicken will not be labeled as a product of China if it is repackaged in the United States.170 Although the U.S. Government plans to increase the number of food safety inspectors in China, there reportedly were difficulties in obtaining visas for them, despite U.S. Vice President Joe Biden addressing the issue during a December 2013 visit to China.171

Notes to Section III—Commercial Rule of Law


2 Information on China’s participation in the World Trade Organization (WTO), including principal accession documents, schedules, trade policy reviews, and dispute case documents, can be found on the WTO Web site. China’s commitments are outlined in these documents, as well as in WTO agreements applicable to all members, including the General Agreement on Tariffs and Trade (GATT 1947) and the Trade-Related Aspects of Intellectual Property Rights. See World Trade Organization, “WTO Legal Texts,” last visited 28 July 14; World Trade Organization, WTO Agreement, Marrakesh Agreement, Establishing the World Trade Organization, Annex 1A, General Agreement on Tariffs and Trade 1994, 15 April 1994, art. X. Transparency requirements include those under Article X of GATT: “Laws, regulations, judicial decisions and administrative rulings of general application, . . . , shall be published promptly in such a manner as to enable governments and traders to become acquainted with them.” See, e.g., Sijie Chen, “China’s Compliance With WTO Transparency Requirements: Institution-Related Impediments,” Amsterdam Law Forum, Vol. 4, No. 4 (Fall 2012), 25.

3 World Trade Organization, Report on the Working Party on the Accession of China, WT/ACC/CHN/49, 1 October 01, 34. See also Claustre Bajona and Tianshu Chu, “China’s WTO
Acquisition and Its Effect on State-Owned Enterprises,” East-West Center, No. 70, April 2004, 16.


11 Chinese Communist Party Central Committee, Decision on Certain Major Issues Regarding Comprehensively Deepening Reforms [Zhonggong zhongyang guanyu quanmian shenhua gaige qunxing qingkuang], 17 July 14.


14 PRC Trademark Law [Zhonghua renmin gongheguo shangbiao fa], passed 23 August 82, amended 22 February 93, 27 October 01, 30 August 13, effective 1 May 14.

15 Ministry of Finance, “2014 January to June State-Owned Enterprise and State-Controlled Enterprise Economic Situation” [2014 nian 1–6 yue guoyu ji guoyou qingkui jingjing yuying qingkuang], 17 July 14. The term SOE is often used, including by the Chinese government, to refer to both state-owned and state-controlled enterprises.


22 Note that SOEs includes state-owned enterprises together with state-controlled enterprises.


31 Ibid., 46–47.


34 Ibid.


37 PRC Trademark Law [Zhonghua renmin gongheguo shangbiao fa], passed 23 August 82, amended 22 February 93, 27 October 01, 30 August 13, effective 1 May 14.


47 Chinese Chamber of Commerce in China (AmCham), “2014 China Business Climate Survey Report,” 2014, 11. According to the AmCham survey, 56 percent of the companies surveyed...
reported that Internet censorship negatively or somewhat negatively affected their business in China, and 66 percent of the companies surveyed reported that the blocking of Internet search engines negatively or somewhat negatively affected their business.

50 Ibid., 12. According to the AmCham survey, 73 percent of the companies surveyed identified “difficulty of obtaining credible data” as the biggest obstacle for pursuing mergers and acquisitions in China.


52 Ana Swanson, “China’s Chilling Crackdown on Due-Diligence Companies,” Atlantic, 23 October 13.


54 Ana Swanson, “China’s Chilling Crackdown on Due-Diligence Companies,” Atlantic, 23 October 13.

55 Shanghai No. 1 Intermediate People’s Court, Weibo post, 8 August 14, 10:57 p.m. The Shanghai No. 1 Intermediate People’s Court sentenced Yu Yingzeng to two years in prison and fined her 150,000 yuan (US$24,000). Peter Humphrey was sentenced to two years and six months in prison, fined 200,000 yuan (US$32,000), and will be deported upon completion of his sentence.


60 Ibid.

61 Ibid., 43.


63 Central Government Procurement Center, Important Circular of the Central Government Agencies Government Procurement Center [Zhongyang guojia caigou congci], issued 29 September 13, effective 1 October 13.


65 Shanghai Municipal People’s Government, Administrative Measures for the China (Shanghai) Pilot Free Trade Zone [Zhongguo (shanghai) ziyou maoyi shiyan qu guanli banfa], issued 10 October 13.


67 Shanghai No. 1 Intermediate People’s Court, Weibo post, 8 August 14, 10:57 p.m. The Shanghai No. 1 Intermediate People’s Court sentenced Yu Yingzeng to two years in prison and fined her 150,000 yuan (US$24,000). Peter Humphrey was sentenced to two years and six months in prison, fined 200,000 yuan (US$32,000), and will be deported upon completion of his sentence.

68 Shanghai No. 1 Intermediate People’s Court, Weibo post, 8 August 14, 10:57 p.m. The Shanghai No. 1 Intermediate People’s Court sentenced Yu Yingzeng to two years in prison and fined her 150,000 yuan (US$24,000). Peter Humphrey was sentenced to two years and six months in prison, fined 200,000 yuan (US$32,000), and will be deported upon completion of his sentence.

69 Central Government Procurement Center, Important Circular of the Central Government Agencies Government Procurement Center [Zhongyang guojia caigou congci], issued 29 September 13, effective 1 October 13.

70 Peggy Sito, “Pause in China’s Trade Zones Unlikely To Dim Mood for Pacesetters,” South China Morning Post, 9 June 14.


83. PRC Trademark Law [Zhonghua renmin gongheguo shangbiao fa], passed 30 August 82, amended 22 February 93, 27 October 01, 30 August 13, effective 1 May 14; PRC Trademark Law Implementing Regulations [Zhonghua renmin hegou shangbiao fa shishi tiaoli], issued 29 April 14, effective 1 May 14.


96. PRC Trademark Law Implementing Regulations [Zhonghua renmin gongheguo shangbiao fa shishi tiaoli], issued 3 August 02, amended 29 April 14, effective 1 May 14; PRC Trademark Law [Zhonghua renmin gongheguo shangbiao fa], passed 23 August 82, amended 22 February 93, 27 October 01, 30 August 13, effective 1 May 14, art. 63; PRC Trademark Law [Zhonghua renmin gongheguo shangbiao fa], passed 23 August 82, amended 22 February 93, 27 October 01, art. 56.


100. PRC Antimonopoly Law [Zhonghua renmin gongheguo guo fanlongduan fa], passed 30 August 07, effective 1 August 08, art. 7; Peter Wang, Jones Day, “New Chinese Anti-Monopoly Law,”


105 PRC Antimonopoly Law [Zhonghua renmin gongheguo fan longduan fa], passed 29 December 93, art. 28, 28 December 13.


118 “China’s New Companies Surge on Business Registration Reform,” Xinhua, 7 July 14.


121 Ibid., 3.


125 Ibid.

126 World Trade Organization, DS471, United States—Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China, Dispute Settlement, last visited 1 July 14; Office of the U.S. Trade Representative, “WTO Dispute Settlement Proceeding Regarding Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China,” Federal Register, 8 April 14.

127 World Trade Organization, DS431, China—Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum, Dispute Settlement, last visited 15 August 14; World Trade Organization, DS440, China—Anti-Dumping and Countervailing Duties on Certain Automobiles From the United States, Dispute Settlement, last visited 15 August 14.


152 See “Chinese Herbs: Elixir of Health or Pesticide Cocktail?” Greenpeace, 2013, 12.


159 Mao Weihao et al., “Certification or Recognize Money?—A Xinhua Reporter’s Undercover Investigation of the Certification Market” [Renzheng, haishi renqian?—xinhua she jizhe diansha anfang renzheng shichang], Xinhua, 15 June 14.
165 For example, during a June 2014 hearing, Dr. Daniel Engeljohn, Assistant Administrator for the Food Safety Inspection Service, U.S. Department of Agriculture, explained that poultry processed in China will not be labeled as being from China if it is repackaged in the United States. See Pet Treats and Processed Chicken from China: Concerns for American Consumers and Pets, Hearing of the Congressional-Executive Commission on China, 17 June 14, Written Statement of Dr. Daniel Engeljohn, Assistant Administrator, Office of Field Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, 4.
168 U.S. Food and Drug Administration, Number of Import Alerts by Country/Area, last visited 1 July 14.