

COMMERCIAL RULE OF LAW

World Trade Organization Commitments

On December 11, 2016, China will have been a member of the World Trade Organization (WTO) for 15 years,¹ yet the Chinese government and Communist Party continue to fail to honor many of China's fundamental WTO commitments.² China's commitments when it joined the WTO included to "apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures,"³ to allow for "impartial and independent" tribunals for review of administrative actions,⁴ to allow "prices for traded goods and services in every sector to be determined by market forces,"⁵ and to ensure non-discrimination against foreign enterprises.⁶ President and Party General Secretary Xi Jinping and other high-level Chinese officials asserted during the Commission's 2016 reporting year that China is fully adhering to its international trade obligations.⁷ U.S. businesses⁸ and the U.S. Government,⁹ however, expressed concerns regarding the Chinese government's continued failure to follow through on its WTO commitments, noting specific challenges such as restricted market access, discrimination against foreign companies, inadequate intellectual property protection, subsidies for state-owned enterprises, and the general absence of the rule of law.¹⁰

World Trade Organization Disputes and Internet Censorship

The U.S. Government has initiated a number of WTO disputes regarding the Chinese government's failure to comply with its WTO commitments, with the majority of disputes initiated since 2009 remaining unresolved. In 2015, the U.S. Government initiated two new WTO disputes against the Chinese government while five earlier WTO disputes initiated against the Chinese government since 2009 remain active.¹¹ In April 2016, China and the United States signed a memorandum of understanding that, if fully implemented by the Chinese government, will resolve a dispute on Chinese export subsidies that the U.S. Government initiated in February 2015.¹² In July 2016, the U.S. Government initiated a WTO dispute against Chinese export duties on nine types of raw materials used in manufacturing;¹³ U.S. Trade Representative Michael Froman described the duties as "China's attempt to game the system so that raw materials are cheaper for their manufacturers, and more expensive for ours."¹⁴ When China acceded to the WTO in 2001, it committed to eliminating all export duties "unless specifically provided for" in an annex to its accession agreement or "applied in conformity with" WTO rules;¹⁵ in 2009 and 2012, however, the United States initiated prior WTO disputes against Chinese export duties on other products.¹⁶

Under WTO rules, the U.S. Government has requested detailed information about, but has not yet formally challenged, the Chinese government's Internet censorship regime. In October 2011, the Office of the U.S. Trade Representative (USTR) requested information from the Chinese government on Internet restrictions that allow Chinese authorities to block websites of U.S. companies.¹⁷ In December 2015, USTR reported that it had continued its outreach

to the Chinese government to discuss its “arbitrary” censorship (“blocking of websites”).¹⁸ In March 2016, USTR identified Internet censorship in China as a barrier to trade for the first time,¹⁹ reporting that the problem appears to “have worsened over the past year, with 8 of the top 25 most trafficked global sites now blocked in China.”²⁰

Non-Market Economy Status and Trade Negotiations

Under China’s 2001 WTO accession protocol, other countries are permitted to treat China as a non-market economy; during the reporting year, the Chinese government sought a change to market economy status. In December 2016, a provision relating to China’s designation as a non-market economy in its WTO accession protocol will expire.²¹ The Chinese government has reportedly pressed that, starting on December 11, 2016, the United States and other countries should no longer designate China a non-market economy.²² Some American manufacturers may be negatively affected if the U.S. Government designates China a market economy because American manufacturers may lose protection against subsidized Chinese imports.²³ In determining whether a country is a market economy, the U.S. Commerce Department is required by law to consider factors including the extent to which the country’s currency is convertible; foreign investment is limited; the government owns or controls the means of production; and the government controls price and output decisions of enterprises.²⁴ As of May 2016, the U.S. Commerce Department reportedly had not made a decision on whether to grant China market economy status.²⁵ In May 2016, the European Parliament adopted a resolution opposing a European Union designation of market economy status for China.²⁶

Negotiations for a Bilateral Investment Treaty (BIT) between China and the United States progressed in 2016, and China monitored Trans-Pacific Partnership (TPP) developments.²⁷ In 2016, BIT negotiations were a “top economic priority” of the U.S. Government, with the objectives of “non-discrimination, fairness and transparency.”²⁸ As of August 2016, ongoing U.S.-China BIT negotiations focused on a “negative list”—a list of sectors in which U.S. investment in China would remain prohibited.²⁹ The Chinese government was not part of the TPP negotiations³⁰ due in part to challenges the Chinese government would face in meeting some TPP standards, including those related to the treatment of state-owned enterprises and Internet censorship.³¹ The Chinese government may seek to join the TPP in the future,³² and the U.S. Government has indicated that it would be open to the idea.³³

Commercial Transparency and Censorship

During the reporting year, Chinese authorities continued to control access to commercial information and impose restrictions on economic reporting, targeting negative reports on the Chinese economy. When China acceded to the WTO, the Chinese government committed to “apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures of the central government as well as local regulations, rules and other measures issued or applied at the sub-national level”³⁴ Re-

ports from this past year indicate, however, that the Chinese government does not uniformly apply laws and regulations, especially those that limit media censorship and promote transparency.³⁵ The U.S.-based news-media-monitoring website China Digital Times identified seven different censorship directives issued between August 2015 and April 2016 related to economic reporting.³⁶ In April 2016, Reporters Without Borders ranked China 176th out of 180 countries for press freedom.³⁷ During the reporting year, the websites of the New York Times, Bloomberg News, the Wall Street Journal, and Reuters remained blocked in China.³⁸

Significant developments demonstrating Chinese authorities' continued disregard for transparency, impartiality, and freedom of the press included:

- On August 25, 2015, Chinese authorities detained Caijing reporter Wang Xiaolu, later placing him under “criminal compulsory measures” on suspicion of “colluding with others and fabricating and spreading fake information on [the] securities and futures market.”³⁹ Wang had reported that the Chinese government might reduce financial support for stabilizing stock prices.⁴⁰ In or around February 2016, authorities reportedly released Wang from detention at an unknown location in Shanghai municipality, although sources did not report on the conditions of his release.⁴¹
- Between January 2010 and November 2015, Chinese companies raised US\$36.7 billion from U.S. investors in initial public offerings, according to analysis by Bloomberg News.⁴² As of August 2016, however, the Public Company Accounting Oversight Board (PCAOB), a non-profit corporation established by the U.S. Congress to oversee public company audits,⁴³ reportedly remained unable to obtain legal and financial documents from China-based companies listed on U.S. stock exchanges.⁴⁴ Although U.S. and Chinese regulators announced a pilot inspection program in June 2015,⁴⁵ inspections have not taken place because Chinese authorities only permit limited access to documents.⁴⁶
- In December 2015, Chinese official media reported that, in order to explain current “dramatic economic drops” in local growth figures, several officials in northeast China had admitted to “faking” GDP and other statistical data in previous years, with some local counties having reported GDP rivaling that of Hong Kong.⁴⁷ According to a Xinhua report, “very few” officials have lost their jobs due to manipulating data despite provisions in the PRC Statistics Law that stipulate termination as punishment for such violations.⁴⁸
- On January 26, 2016, Communist Party authorities extralegally detained Wang Bao’an, the Director of the National Bureau of Statistics of China,⁴⁹ hours after he defended China’s economic performance and GDP figures at a news conference.⁵⁰ According to international media reports, Wang’s detention increased concern about the reliability of the Chinese government’s GDP statistics.⁵¹
- In April 2016, a consortium of journalists published an exposé on international tax avoidance schemes, revealing that a Panamanian law firm had set up 16,300 secret offshore com-

panies through its offices in China and Hong Kong,⁵² including companies owned by family members of eight current or past members of the Standing Committee of the Communist Party Central Committee Political Bureau.⁵³ Chinese authorities censored reporting by Chinese media and postings on social media about the disclosure of offshore accounts.⁵⁴

- Chinese government and Communist Party authorities reportedly investigated executives in the banking and financial sectors in the aftermath of the 2015 Chinese stock market fluctuations.⁵⁵ Some executives were reportedly “disappeared” or temporarily detained without transparent reporting on their whereabouts.⁵⁶ According to media reports, these unexplained absences affected investor confidence and stock prices.⁵⁷

Disappearance and Arbitrary Detention of an American Businesswoman

In March 2015, American businesswoman Sandy Phan-Gillis disappeared as she was about to travel from Zhuhai municipality, Guangdong province, into Macau.⁵⁸ According to the Ministry of Foreign Affairs, Chinese authorities placed Phan-Gillis “under investigation ‘on suspicion of activities harmful to Chinese national security.’”⁵⁹ After holding Phan-Gillis under “residential surveillance at a designated location”⁶⁰ for six months at an undisclosed location in the Guangxi Zhuang Autonomous Region, authorities reportedly transferred her to the Nanning No. 2 PSB Detention Center in Nanning municipality, Guangxi in September.⁶¹ The Guangxi procuratorate reportedly approved her arrest on October 26, but officials did not provide her with any details of the charges.⁶² The U.S. State Department reported that she met with consular officials on a monthly basis, but Chinese authorities reportedly have prohibited her from speaking openly with consular officials or from meeting with her lawyer.⁶³ The U.S.-China Consular Convention (Convention) provides that consular officials are entitled “to converse and to exchange correspondence” with detained individuals and “may assist in arranging for legal representation.”⁶⁴ According to the U.S. State Department, the Chinese government’s restrictions on communication between U.S. consular officials and Phan-Gillis are “inconsistent” with China’s obligations under the Convention.⁶⁵ In June 2016, the United Nations Working Group on Arbitrary Detention rendered an opinion that Phan-Gillis had been arbitrarily detained.⁶⁶ The opinion was based on a determination that Phan-Gillis had been deprived of her right to legal counsel, and that she had not promptly been brought before a judicial or other independent authority since her detention began.⁶⁷ In July 2016, international media reported that Phan-Gillis had been, or was soon expected to be, indicted.⁶⁸

State-Owned Enterprises

This past year, in spite of the Chinese government’s continued promotion of structural reforms to state-owned enterprises (SOEs), American and European companies expressed concerns that SOEs continued to be run in a non-commercial manner. When China acceded to the World Trade Organization (WTO), the Chinese government committed that “all state-owned and state-invested enter-

prises would make purchases and sales based solely on commercial considerations . . .”⁶⁹ In September 2015, the State Council issued a guiding opinion on the reform of SOEs⁷⁰ that would categorize SOEs as public-class and commercial-class, and encourage market-based reforms and mixed ownership for commercial-class SOEs.⁷¹ Chinese media reported that this effort to promote mixed ownership will increase the efficiency of the 150,000 SOEs, which hold more than 100 trillion yuan (approximately US\$16 trillion) in assets and employ more than 30 million people.⁷² A U.S. business association, however, reported that the impact of the reforms would likely be limited as it does not address “core SOE issues.”⁷³ In the 2015 Fortune Global 500 list, 76 out of 98 Chinese companies included were SOEs,⁷⁴ and according to the World Trade Organization Trade Policy Review Body, the Chinese government is a majority shareholder in 99 of the 100 largest publicly listed companies.⁷⁵ As of May 2015, 1,012 “state-owned holding” enterprises reportedly accounted for 68 percent of the total equity of the Shanghai and Shenzhen stock markets according to Chinese authorities.⁷⁶ In July 2016, Chinese and international media reported on listed SOEs that had amended their articles of association to give internal Party committees greater control over corporate decisions following September 2015 demands by the Chinese Communist Party Central Committee.⁷⁷ Xinhua noted that the Party constitution stipulates that foreign companies in China with more than three Party members “should have” Party branches and that the numbers of Party branches at foreign companies “are growing.”⁷⁸ During the reporting year, Chinese authorities continued to exercise significant influence over all types of firms.⁷⁹ According to Xinhua, although the number of SOEs may be decreasing, the “influence and dominance” of SOEs is growing in strength.⁸⁰ The Chinese government’s support for SOEs reportedly has resulted in “severe overcapacity” in industries, including steel, cement, aluminum, flat glass, and shipbuilding, which has resulted in low global prices and trade tensions with the United States and Europe.⁸¹ According to the U.S. International Trade Commission, as of August 15, 2016, the United States had 140 antidumping (102) and countervailing (38) duty orders in force that targeted Chinese imports,⁸² an increase from the 129 antidumping (98) and countervailing (31) duty orders in force as of September 1, 2015.⁸³

Chinese Government Support of Cyber Theft

Cyber theft and the theft of intellectual property by, or with the support of, the Chinese government remained of significant concern. In August 2015, the Washington Post reported that the U.S. Government was considering imposing sanctions on Chinese companies that had benefited from Chinese-government-supported theft of U.S. intellectual property.⁸⁴ According to the Washington Post report, Chinese SOEs State Nuclear Power Technology, Baosteel Group, and the Aluminum Corporation of China likely would have been subject to sanctions, although the U.S. Government did not officially name them.⁸⁵ In September 2015, U.S. President Barack Obama and Chinese President Xi Jinping agreed that “[N]either country’s government will conduct or knowingly support cyber-enabled theft of intellectual property, including trade

secrets or other confidential business information, with the intent of providing competitive advantages to companies or commercial sectors.”⁸⁶ One analyst surmised the agreement was “a tactical maneuver by China, an effort to prevent [the United States] from levying sanctions.”⁸⁷ In October, a cybersecurity firm reported that Chinese attacks had continued the day after as well as in the weeks following the agreement.⁸⁸ During the reporting year, dialogue between the United States and China on cyber theft continued, and in December 2015, the U.S. Departments of Justice and Homeland Security and China’s State Council agreed to guidelines for requesting information on cyber crimes.⁸⁹ In April 2016, the United States Steel Corporation filed a complaint with the U.S. International Trade Commission, alleging that the Chinese steel industry had benefited from Chinese government-sponsored cyber theft in January 2011 of trade secrets related to advanced steels.⁹⁰

Intellectual Property Rights and Antimonopoly Law Enforcement

During the reporting year, American companies continued to experience the negative consequences of the Chinese government’s inadequate protection for intellectual property (IP), although Chinese officials made some positive judicial and regulatory developments. According to the Office of the U.S. Trade Representative’s Special 301 Report, China continued to “present a complex and contradictory environment for protection and enforcement of IPR [intellectual property rights],” noting significant problems including “rampant piracy and counterfeiting” and “unchecked trade secret theft.”⁹¹ In February 2016, the U.S. Chamber of Commerce identified “growing online counterfeiting” as a key area of weakness for intellectual property protection in China.⁹² Despite these challenges, Chinese authorities continued to affirm the importance of intellectual property protection and of implementing legal reforms.⁹³ In 2015, China’s new specialized IP courts in Beijing and Shanghai municipalities, and Guangzhou municipality, Guangdong province, reportedly concluded 9,872 cases.⁹⁴ According to the Supreme People’s Court, as of February 2016, Chinese courts had publicly released more than 15 million case decisions, of which civil, commercial, and IP cases totaled approximately 10.5 million decisions.⁹⁵ In December 2015, the State Council Legislative Affairs Office made available for public comment draft revisions to the PRC Patent Law.⁹⁶ The draft revisions included changes such as extending protection for design patents from 10 to 15 years and increasing damages for intentional infringement.⁹⁷

Chinese authorities’ discriminatory and non-transparent antimonopoly enforcement remained an area of concern for American companies. According to a US-China Business Council survey, 80 percent of surveyed American companies were concerned about antimonopoly law enforcement in China, including lack of transparency, target enforcement, and lack of due process.⁹⁸ In August 2015, the State Administration for Industry and Commerce (SAIC) Provisions on the Prohibition of Conduct Eliminating or Restricting Competition by Abusing Intellectual Property Rights took effect.⁹⁹ According to one USTR official, “there is a concern that China’s existing and draft antimonopoly law enforcement guidelines could be used to improperly value intellectual property rights, which calls

into doubt the seriousness of China's avowed intentions to create a system that promotes and protects intellectual property rights," potentially resulting in artificially low prices.¹⁰⁰ In February 2016, SAIC published for public comment its seventh draft Guidelines on Anti-Trust Enforcement Against IP Abuse,¹⁰¹ which contains provisions that place restrictions on licensing certain types of intellectual property.¹⁰² In February 2016, the State Council Legislative Affairs Office published a draft revision to the PRC Anti-Unfair Competition Law, which contains provisions that, if implemented, could strengthen trade secret protection in China by increasing administrative fines and adopting other measures.¹⁰³

The International Monetary Fund and Chinese Outbound Investment

During the reporting year, the Chinese government reached its goal of increased international use of the yuan, and foreign investment by Chinese companies continued to increase. In November 2015, the International Monetary Fund (IMF) decided to add the yuan to the Special Drawing Rights (SDR), effective October 1, 2016.¹⁰⁴ Although the yuan is not fully convertible to other currencies, the IMF determined that the yuan satisfied a requirement that a SDR currency is "freely usable."¹⁰⁵ President Xi Jinping reportedly said that the yuan's new status "will improve the international monetary system and safeguard global financial stability."¹⁰⁶ According to a January 2016 Wall Street Journal report, "the IMF stamp of approval puts the yuan in the same league as the dollar, yen and sterling," and Chinese officials have reportedly begun to weaken the value of the yuan to increase exports.¹⁰⁷ In March 2016, another Wall Street Journal article reported that the IMF requested China to release more data related to the Chinese government's intervention in the yuan's exchange rate,¹⁰⁸ although IMF officials later denied the report, according to the state-run news agency Xinhua.¹⁰⁹

Foreign investments by Chinese companies, with the support of the Chinese government and Chinese government-controlled financial institutions, continued to grow during the 2016 reporting year. According to an analysis conducted by a research firm and non-profit organization, as of April 2016, Chinese companies had US\$30 billion in pending investment deals and projects in the United States, indicating that total Chinese foreign investment likely will increase in 2016 from US\$15 billion in 2015.¹¹⁰ In the first three months of 2016, Chinese companies announced the largest planned acquisition of a U.S. company to date—Anbang's US\$14.3 billion purchase of Starwood Hotels—as well as what would be five of the six largest acquisitions, including Tianjin Tianhai's US\$6.3 billion purchase of Ingram Micro, Qingdao Haier's US\$5.4 billion purchase of General Electric Appliance Business, Zoomlion's US\$5.4 billion purchase of Terex, and Dalian Wanda's US\$3.5 billion purchase of Legendary Entertainment.¹¹¹ In March 2016, Anbang withdrew its bid for Starwood Hotels,¹¹² and in May 2016, Zoomlion announced it was no longer pursuing Terex.¹¹³ In January 2016, the Chinese-led multilateral development bank, the Asian Infrastructure Investment Bank (AIIB), officially opened.¹¹⁴ The AIIB may be a funding mechanism for Chinese foreign investment.¹¹⁵ One Amer-

ican expert said that the AIIB may adopt standards similar to the World Bank and other multilateral institutions, but cautioned that “the key is if and how these standards will be enforced.”¹¹⁶

Food and Drug Safety

The Chinese government continued to take steps to address food and drug safety challenges this past year. In October 2015, the amended PRC Food Safety Law took effect, which included stronger penalties for violations and additional monitoring requirements.¹¹⁷ In December 2015, the State Food and Drug Administration (SFDA), State Council, Ministry of Public Security, Supreme People’s Court, and Supreme People’s Procuratorate jointly issued a set of measures on facilitating inter-agency work on food- and drug-related crime.¹¹⁸

Events surrounding a major drug safety scandal this past year highlighted the ongoing tension between authorities’ efforts to enforce drug safety measures and to silence those who question government oversight. In March 2016, the SFDA reportedly stated that 29 companies and 16 clinics had illegally distributed more than 20,000 vaccines, leading authorities to detain 130 suspects.¹¹⁹ In April 2016, a media report indicated that 192 criminal cases had been filed, and 357 government officials punished.¹²⁰ Another media report, meanwhile, indicated that authorities detained as many as 1,000 parents gathered to protest in front of a government agency in Beijing municipality, following a vaccine scandal that they claim caused a range of negative health consequences.¹²¹ An April report in the *Economist* described the vaccine scandal as China’s biggest in years, involving “tens of millions of dollars-worth of black-market, out-of-date and improperly stored vaccines.”¹²² The total number of faulty vaccines was estimated at two million.¹²³ In response to the illegal vaccine reports, Premier Li Keqiang reportedly said the case “exposed many regulatory loopholes.”¹²⁴ The *Economist* article quoted a statement President and Party General Secretary Xi Jinping reportedly had made in 2013 in which he linked the Party’s legitimacy to its ability to oversee food safety, saying, “If our party can’t even handle food-safety issues properly, and keeps on mishandling them, then people will ask whether we are fit to keep ruling China.”¹²⁵ Subsequently, the *Economist*’s website was blocked in China, allegedly in response to an image of Xi on the magazine’s coverage accompanying the report.¹²⁶

The Chinese government’s non-transparent food safety regulations and enforcement negatively affected at least one American company this reporting year, and may affect American consumers who purchase goods originating in or processed in China. According to one American attorney who focuses on food safety, “China has a very complex uncodified body of hundreds of standards . . . along with a separate body of equally complex procedural regulations overlaying them.”¹²⁷ On February 1, 2016, the Jiading District People’s Court in Shanghai municipality fined two Chinese subsidiaries of the American meat processor OSI Group 1.2 million yuan each (approximately US\$190,000) and sentenced an Australian citizen and nine local employees to prison terms of up to three years and fines of up to 80,000 yuan (approximately US\$12,000), for the production and sale of substandard food products.¹²⁸ Although OSI

Group had acknowledged problems in their production process¹²⁹ and tried to cooperate with local authorities,¹³⁰ OSI Group criticized the judgment as “inconsistent with the facts and evidence,” claiming authorities had recognized that the case was “never” about food safety, but was influenced by accusations made in misleading media reports.¹³¹ The Wall Street Journal described OSI Group’s press release as an “unusual move” that “vehemently disputed” the ruling.¹³² OSI Group’s subsidiary Shanghai Hushi Food had reportedly won recognition from the Chinese government for safe food production and been successfully audited by the U.S. Department of Agriculture (USDA) in 2004 and 2010 to potentially allow Chinese poultry exports to the United States.¹³³

Food safety experts have expressed concern that imports of potentially unsafe Chinese food products may increase due to recent U.S. Government action. In March 2016, the USDA’s Food Safety Inspection Service published an audit that found China’s poultry slaughter inspection system equivalent to that of the United States, allowing the rulemaking process to proceed for raw poultry from China to be imported into the United States,¹³⁴ despite concerns in the United States.¹³⁵ According to Food & Water Watch, a U.S. non-profit organization that advocates for food safety, potentially unsafe poultry exports from China will “seriously endanger” American consumers.¹³⁶

Notes to Section III—Commercial Rule of Law

¹World Trade Organization, “Protocols of Accession for New Members Since 1995, Including Commitments in Good and Services,” last visited 15 June 16. China became a member of the World Trade Organization (WTO) on December 11, 2001. A list of members and their dates of membership is available on the WTO website.

²Stephen J. Ezell and Robert D. Atkinson, “False Promises: The Yawning Gap Between China’s WTO Commitments and Practices,” Information Technology & Innovation Foundation, 17 September 15, 5; Office of the U.S. Trade Representative, “2015 Report to Congress on China’s WTO Compliance,” December 2015, 23–28, 95. See also American Chamber of Commerce in the People’s Republic of China, “American Business in China 2016 White Paper,” April 2016, II. According to the American Chamber of Commerce, “serious and systematic challenges” remain in China. “10 Commitments China Made When It Joined the WTO and Has Not Respected,” AEGIS Europe, last visited 15 June 16.

³World Trade Organization, Protocol on the Accession of the People’s Republic of China, WT/L/432, 10 November 01, Part I, 2(A)2.

⁴Ibid., Part I, 2(D)1.

⁵Ibid., Part I, 9(1).

⁶Ibid., Part I, 3.

⁷Ministry of Foreign Affairs, “Foreign Ministry Spokesperson Hong Lei’s Regular Press Conference on February 16, 2016,” 16 February 16. According to the Chinese Foreign Ministry spokesperson: “China has been earnestly honoring each and every [sic] of its legal obligations since its accession . . .” “Full Text of Xi Jinping’s Speech on China-U.S. Relations in Seattle,” Xinhua, 24 September 15. In September 2015, Chinese President and Communist Party General Secretary Xi Jinping said that China observes “the [WTO] principle of national treatment,” and treats “all market players including foreign-invested companies fairly. . . .” Michael Martina, “China Internet Regulator Says Web Censorship Not a Trade Barrier,” Reuters, 11 April 16. In April 2016, China’s Internet regulator reportedly said that “China scrupulously abides by World Trade Organization principles and its accession protocols . . .”

⁸Stephen J. Ezell and Robert D. Atkinson, “False Promises: The Yawning Gap Between China’s WTO Commitments and Practices,” Information Technology & Innovation Foundation, 17 September 15, 5.

⁹Office of the U.S. Trade Representative, “2015 Report to Congress on China’s WTO Compliance,” December 2015, 23–28, 95. See also Ambassador Robert W. Holleyman II, Deputy U.S. Trade Representative, “Remarks by Deputy USTR Robert Holleyman to the U.S. Chamber of Commerce Global Intellectual Property Center 2015 Global IP Summit,” 6 November 15.

¹⁰Stephen J. Ezell and Robert D. Atkinson, “False Promises: The Yawning Gap Between China’s WTO Commitments and Practices,” Information Technology & Innovation Foundation, 17 September 15, 5; Office of the U.S. Trade Representative, “2015 Report to Congress on China’s WTO Compliance,” December 2015, 23–28, 95. See also Ling Li, “The Chinese Communist Party and People’s Courts: Judicial Dependence in China,” *American Journal of Comparative Law*, Vol. 64, No. 1 (2016).

¹¹Office of the U.S. Trade Representative, “2015 Report to Congress on China’s WTO Compliance,” December 2015, 34, 38. In addition to the active disputes initiated since 2009, a WTO dispute initiated by the United States in April 2007 against China concerning market access for books, movies, and music also remained active.

¹²Memorandum of Understanding Between the People’s Republic of China and the United States of America Related to the Dispute: China—Measures Related to Demonstration Bases and Common Service Platforms (DS489), 14 April 16; Office of the U.S. Trade Representative, “Fact Sheet: Agreement To Terminate Export Subsidies Under China’s Demonstration Bases—Common Service Platform Program,” April 2016. As part of the Memorandum of Understanding (MOU), China agreed to “exchange further information related to future actions taken pursuant to [this] MOU.” See also Timothy Webster, “Paper Compliance: How China Implements WTO Decisions,” *Michigan Journal of International Law*, Vol. 35, Issue 3 (2014), 574.

¹³World Trade Organization, DS508, China—Export Duties on Certain Raw Materials, Dispute Settlement, last visited 22 August 16.

¹⁴Office of the U.S. Trade Representative, “United States Challenges China’s Export Duties on Nine Key Raw Materials To Level Playing Field for American Manufacturers,” July 2016.

¹⁵World Trade Organization, Protocol on the Accession of the People’s Republic of China, WT/L/432, 10 November 01, Part I, 11(3).

¹⁶Office of the U.S. Trade Representative, “2015 Report to Congress on China’s WTO Compliance,” December 2015, 53–55. See also World Trade Organization, DS394, China—Measures Related to the Exportation of Various Raw Materials, Dispute Settlement, last visited 22 August 16; World Trade Organization, DS431, China—Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum, Dispute Settlement, last visited 22 August 16.

¹⁷Office of the U.S. Trade Representative (USTR), “United States Seeks Detailed Information on China’s Internet Restrictions,” 19 October 11. USTR made the information request to China under paragraph 4 of Article III of the General Agreement on Trade in Services.

¹⁸Office of the U.S. Trade Representative, “2015 Report to Congress on China’s WTO Compliance,” December 2015, 150.

¹⁹Office of the U.S. Trade Representative, “2016 National Trade Estimate Report on Foreign Trade Barriers,” March 2016, 91. See also James Zimmerman, “Censorship in China Also Blocks Business Growth,” *Wall Street Journal*, 17 May 16; Susan Shirk et al., “It’s Official: Washington Thinks Chinese Internet Censorship Is a ‘Trade Barrier,’” *Foreign Policy*, China File, 14 April 16.

²⁰Office of the U.S. Trade Representative, “2016 National Trade Estimate Report on Foreign Trade Barriers,” March 2016, 91.

²¹ World Trade Organization, Protocol on the Accession of the People's Republic of China, WT/L/432, 10 November 01, Part I, 15(d). The provision states "Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector."

²² Tom Mitchell, "China Revs Up Its Bid for WTO Market Economy Status," *Financial Times*, 20 September 15; Lucy Hornby and Shawn Donnan, "China Fights for Market Economy Status," *Financial Times*, 9 May 16.

²³ "Coalition of U.S. Manufacturers Calls on Department of Commerce To Fairly Assess China's Economic Status," *Manufacturers for Trade Enforcement* (blog), 16 March 16; Wayne Morrison, "China's Status as a Nonmarket Economy (NME)," *Congressional Research Service*, 23 June 16; Adam Behsudi, "Manufacturers Form Coalition Against China 'Market Economy' Status," *Politico*, Morning Trade (blog), 16 March 16. See also Robert E. Scott and Xiao Jiang, *Economic Policy Institute* (EPI), "Unilateral Grant of Market Economy Status to China Would Put Millions of EU Jobs at Risk," EPI Briefing Paper, No. 407, 18 September 15.

²⁴ U.S. Code, Title 19—Customs Duties, Chap. 4, Subtitle IV, Part IV, §1677(18)(B)(2016).

²⁵ U.S. Senate, *China Market Economy Status Congressional Review Act*, 114th Congress, 2nd session, S. 2906, introduced 9 May 16; U.S. House of Representatives, *China Market Economy Status Congressional Review Act*, 114th Congress, 2nd session, H. Res. 4927, introduced 13 April 16. Members of U.S. Congress introduced legislation in the Senate and House to require congressional approval to change China's designation as a nonmarket economy. See also Wayne Morrison, "China's Status as a Nonmarket Economy (NME)," *Congressional Research Service*, 23 June 16.

²⁶ European Parliament, *European Parliament Resolution of 12 May 2016 on China's Market Economy Status*, 2016/2667(RSP), 12 May 16; European Parliament, "China's Proposed Market Economy Status: Defend EU Industry and Jobs, Urge MEPS," *European Parliament News*, 12 May 16; Jonathan Stearns, "Lowering of EU Tariffs on China Opposed by European Parliament," *Bloomberg*, 12 May 16.

²⁷ See, e.g., "What You Need To Know About the TPP" [Guanyu TPP ni xuyao zhidao de shi], *Xinhua*, 6 October 15; Wang Qingyun, "No Single Country Can Determine Trade Rules, Ministry Says," *China Daily*, 5 February 16.

²⁸ Office of the U.S. Trade Representative, "2015 Report to Congress on China's WTO Compliance," December 2015, 6.

²⁹ "U.S.-China BIT Offer Exchange Expected Before G20 as Engagement Ramps Up," *China Trade Extra*, 17 August 16. See also "Low: China's Commitment to Fair Investment Rules Key To Open Economy," *China Trade Extra*, 20 January 16.

³⁰ See, e.g., Liu Zhen and Wendy Wu, "40 Per Cent of World's Economy Signs Up to TPP Trade Pact That Obama Says 'Allows US, Not China To Write the Rules of the Road,'" *South China Morning Post*, 5 February 16.

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