

COMMERCIAL RULE OF LAW AND HUMAN RIGHTS

Introduction

When acceding to the World Trade Organization (WTO) in 2001,¹ the Chinese government agreed to improve the rule of law vis-à-vis the commercial sector, committing to transparency, intellectual property rights enforcement, and the equal treatment of domestic and foreign firms. During the Commission's 2018 reporting year, concerns remained regarding the development of rule of law in these areas, particularly regarding forced technology transfers and unequal treatment of foreign firms. The commercial environment in China is further complicated by the role of the Chinese Communist Party and the government in commercial enterprises, and reports from this past year indicate that the Party is attempting to expand its role in the commercial sector. Moreover, amid what international human rights organizations describe as worsening government repression in China,² domestic and international businesses are increasingly at risk of complicity in human rights abuses, including the repression of minority groups, mass data collection, surveillance of citizens, and censorship. Although the Chinese government requires companies to comply with domestic laws and regulations that infringe on internationally recognized rights such as the right to privacy and freedom of expression, the UN Guiding Principles on Business and Human Rights state that businesses have a responsibility to respect human rights and should seek to avoid "contributing to adverse human rights impacts . . ."³

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TRANSPARENCY

Since China's accession to the WTO, the government has made progress toward meeting requirements for improving transparency of trade-related laws, yet still falls short in several key areas.⁵ In acceding to the WTO, the Chinese government made commitments to improve transparency, including to publish all trade-related laws and regulations and translate them into one of the official WTO languages, and to allow for public comments on all draft trade-related laws and regulations.⁶ According to the Office of the U.S. Trade Representative (USTR), the European Union Chamber of Commerce in China (European Chamber), and a legal expert, although the government publishes many trade-related laws and administrative regulations, the government has in many cases failed to publish local regulations and other legal documents such as opinions, circulars, and subsidy measures.⁷ Furthermore, the government reportedly has failed to publish translations of many trade-related laws and regulations.⁸ The central government has largely met its obligation to allow for public comments on national laws, yet incomplete implementation of the public comment system for lower level rules and regulations remains a barrier to citizen participation and an area of non-compliance with WTO commitments.⁹

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INTELLECTUAL PROPERTY RIGHTS

This past year, the Commission observed reports of improved enforcement of intellectual property rights (IPR) in some areas, though concerns remained about IPR infringement, including forced technology transfers. This past year, USTR, American Chamber of Commerce in the People's Republic of China (AmCham China), the US-China Business Council, and the European Chamber reported that the Chinese government had made some progress in IPR enforcement.¹⁰ Revisions to the PRC Anti-Unfair Competition Law, which took effect in January 2018, reportedly may provide improved protections for trade secrets.¹¹ In March and April 2018, government officials promised the creation of a system for seeking punitive damages over IPR infringements.¹² Nevertheless, USTR and business groups continued to report deficiencies in the government's protection and enforcement of IPR.¹³ Specific IPR concerns this past year included online piracy and copyright infringement,¹⁴ as well as forced technology transfers.¹⁵ A March 2018 USTR report found that the government uses restrictions on foreign ownership in certain sectors of the economy to force technology transfers through the establishment of joint ventures with Chinese firms, and that authorities often demand technology transfers orally or informally to avoid the appearance of violating international trade obligations.¹⁶

EQUAL TREATMENT UNDER THE LAW

This past year, the Chinese government took some steps toward meeting the WTO requirement for equal treatment of domestic and foreign companies, yet a significant percentage of U.S. and German companies reported feeling "less welcome" in China. When it joined the WTO, China committed to ensure non-discrimination against foreign enterprises in the procurement of goods and services and enforcement of intellectual property rights.¹⁷ In October 2017, several central government agencies jointly issued a provisional document outlining rules for implementing a fair competition review system, stating that government agencies should—with some exceptions¹⁸—review all new regulations to ensure that they do not limit market competition.¹⁹ In June 2018, the government issued new rules allowing for increased foreign investment in certain financial sectors and lifting all restrictions on foreign ownership in those sectors in 2021.²⁰ According to surveys of foreign businesses published by the American and German chambers of commerce this past year, 75 percent of American businesses surveyed and 39.1 percent of German businesses surveyed reported feeling "less welcome in China than before," while 54.7 percent of German businesses surveyed reported the situation had not changed.²¹

Reports continued to emerge this past year of the favorable treatment of domestic firms over foreign firms through the blocking of foreign websites and other formal restrictions on foreign firms. This past year, the government reportedly blocked websites including Facebook, Twitter, and many of Google's services using censorship filters often referred to as the "Great Firewall."²² In November 2017, many application (app) stores in China reportedly removed Skype for download from their stores, though Skype itself remained

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accessible at that time.²³ Although some internet users in China—foreign firms in particular—have relied on virtual private networks (VPNs) to circumvent government internet restrictions,²⁴ in January 2017, the Ministry of Industry and Information Technology announced that starting March 31, 2018, only government-approved VPNs would be allowed.²⁵ Although app stores in China removed hundreds of VPNs,²⁶ initial reports following the March 31, 2018, deadline suggested that some private VPNs remained accessible.²⁷ [For more information on censorship in China, see Section II—Freedom of Expression.] In addition, the government continued to enforce quotas on foreign films, and as of July 2018, talks between U.S. and Chinese officials to raise the quota on U.S. films reportedly had stalled.²⁸

In addition to formal restrictions on foreign firms, the Commission observed reports of other forms of preferential treatment, both of domestic firms and of government- or Party-connected firms. USTR, AmCham China, and the European Chamber reported that foreign firms face unequal treatment in the issuing of licenses and enforcement of regulations.²⁹ State-owned enterprises in China reportedly receive favorable treatment in obtaining loans from government-controlled banks, which has put both foreign and private domestic firms at a disadvantage.³⁰ According to the international non-governmental organization Freedom House, regulators and courts in China treat private firms with informal ties to the government and Party favorably compared to firms without such connections.³¹

Role of the Chinese Communist Party and Government in the Commercial Sector

The Chinese Communist Party and government maintain a role in most enterprises that operate in mainland China, whether they are state-owned enterprises (SOEs), domestic private firms, foreign firms, or joint ventures. The PRC Company Law and the Chinese Communist Party Constitution require any firm with three or more Party members to allow the Party to establish a Party group within that firm.³² According to government data, as of the end of 2016, 93.2 percent of SOEs and 67.9 percent of private enterprises had Party groups, as did 70 percent of foreign-invested enterprises.³³ In addition to Party groups,³⁴ many firms have a branch of the Party-led All-China Federation of Trade Unions (ACFTU) on site.³⁵ [For more information on the ACFTU, see Section II—Worker Rights.] Within a typical SOE, company executives are also members of the SOE's Party committee,³⁶ and Party committee members serve on the board of directors.³⁷ Scholar Yasheng Huang³⁸ noted that state control in sectors of China's economy such as finance is another mechanism through which the government can exert power over the private sector.³⁹ Private investors and firms also invest in SOEs;⁴⁰ Director Xiao Yaqing of the State-Owned Assets Supervision and Administration Commission said in April 2018 that over 60 percent of SOEs had mixed ownership.⁴¹ Moreover, many executives of private firms in China are reportedly also members of Party-led organizations or delegates to China's legislature.⁴² In addition to these formal ties, Party and government officials have long maintained informal and often corrupt ties to the private sec-

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tor.⁴³ [For more information on the relationship between the Communist Party and the government, see Section III—Institutions of Democratic Governance.]

Reports from this past year indicate that the Party and government are attempting to expand their roles in commercial enterprises. In October 2017, the Party amended its constitution to stipulate that Party committees play a “leading role” in the decision-making of SOEs.⁴⁴ This followed reports of dozens of SOEs amending their articles of incorporation in the summer of 2017 to strengthen the role of the Party within their enterprises.⁴⁵ The European Chamber and international media reported this past year that multiple SOEs engaged in joint ventures with foreign companies had proposed granting internal Party groups a greater decisionmaking role within those joint ventures.⁴⁶ In June 2018, the China Securities Regulatory Commission proposed revisions to stock market guidelines that would require all listed companies to establish Party groups.⁴⁷ In addition, in October 2017, the Wall Street Journal reported that the Chinese news app Yidian Zixun had allowed the government to purchase shares in the firm in order to obtain licenses for online content distribution.⁴⁸ The government is also reportedly exploring purchasing stakes in major technology firms including Alibaba and Tencent.⁴⁹

Human Rights and the Commercial Sector

Role of Commercial Firms in Domestic Security in Xinjiang

This past year, companies provided a wide range of equipment and services to the government in the Xinjiang Uyghur Autonomous Region (XUAR), despite reports of the suppression of ethnic and religious minorities. International human rights organizations report that human rights abuses in the XUAR are widespread, including severe restrictions on freedom of religion⁵⁰ and the internment of hundreds of thousands to as many as 1.1 million individuals belonging to Muslim ethnic minority groups in a network of extrajudicial “political reeducation” centers or camps.⁵¹ In an analysis for the Jamestown Foundation, scholar Adrian Zenz documented a 92.8 percent increase in domestic security spending in the XUAR from 2016 to 2017.⁵² The same scholar analyzed procurement documents from local governments in the XUAR and found bids for the construction and operation of “political reeducation” camps, including the purchases of surveillance equipment, furniture, and food delivery services.⁵³ In one example, the government of Hotan (Hetian) city, Hotan prefecture, planned to purchase 900 specially designed smart phones from the state-owned China Telecom⁵⁴ for use in “political reeducation” centers.⁵⁵

**Role of Commercial Firms in Domestic Security in Xinjiang—
Continued**

According to a report in *Foreign Policy*, since 2016, the XUAR government has awarded contracts worth over US\$1 billion to two of the world's largest security camera manufacturers,⁵⁶ Chinese companies Hikvision and Dahua Technology for surveillance projects in the XUAR.⁵⁷ In the spring of 2018, international media reported that the international security services company Frontier Services Group had partnered with the state-owned enterprise CITIC Group to invest in the Beijing municipality-based International Security Defense College.⁵⁸ According to the school's website, it specializes in counterterrorism and other security training courses for Chinese military, police, private security firms, and the general public.⁵⁹ The school's founder told the *Washington Post* that it was building a branch in the XUAR to train military and police personnel in the region.⁶⁰ [For more information on human rights abuses in the XUAR, see Section IV—Xinjiang.]

COMMERCIAL FIRMS' COMPLIANCE WITH DOMESTIC LAW RAISES
PRIVACY CONCERNS

Human rights groups warn that Chinese laws allow for collection of personal data from commercial firms without adequately protecting individuals' internationally recognized right to privacy.⁶¹ The PRC Cybersecurity Law took effect on June 1, 2017, requiring companies to store user data inside mainland China.⁶² The law provides some privacy protections, such as requiring businesses to obtain user consent before collecting data,⁶³ though the law does not define consent.⁶⁴ The Information Security Technology—Personal Information Security Specification,⁶⁵ effective May 1, 2018, also requires consent to collect individual data,⁶⁶ but provides eleven exemptions to this requirement,⁶⁷ including when such information is "directly relevant to public security, public health, or significant public interest."⁶⁸ The PRC Cybersecurity Law further requires companies to provide technical support to authorities that are conducting criminal investigations or "protecting state security,"⁶⁹ without specifying what such technical support entails.⁷⁰ An expert in Chinese law noted that "police have broad powers to collect evidence" from companies without judicial review,⁷¹ and international human rights groups warned that Chinese laws governing authorities' collection of data do not adequately protect individuals' privacy rights.⁷² The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights provide for the right to privacy.⁷³

Despite these privacy concerns, reports from this past year indicate that international companies are increasingly storing Chinese user data inside mainland China to comply with the PRC Cybersecurity Law. In February 2018, Apple transferred operations of iCloud services for mainland Chinese accounts to the state-owned Chinese firm Guizhou-Cloud Big Data.⁷⁴ Apple notified Chinese users of the change and allowed them to opt out of using iCloud services.⁷⁵ Amnesty International warned that "Chinese authorities now have potentially unfettered access to all Apple's Chinese customers' iCloud data."⁷⁶ Even prior to passage of the Cybersecurity

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Law, Microsoft, Amazon, and IBM reportedly had partnered with local Chinese firms on cloud services in China starting in 2013.⁷⁷ Chinese companies such as Alibaba and Tencent also collect large amounts of data from their users.⁷⁸ It is unclear how much data these companies share with authorities, but reports from international news media indicate that domestic technology firms work closely with police and other government authorities.⁷⁹

In one example of how company data may be used by police, a November 2017 Human Rights Watch (HRW) report described the “Police Cloud” (*jing wu yun*) system, which the Ministry of Public Security is developing to collect large amounts of data in order to surveil targeted individuals or groups of concern.⁸⁰ Police in one locality reportedly purchased company data from third parties such as e-commerce companies,⁸¹ and police in another locality reportedly plan to collect usernames, IP addresses, and package delivery information.⁸² According to HRW, the Police Cloud system will target groups seen as a threat to stability, including petitioners seeking redress from the government and ethnic minority groups,⁸³ potentially violating rights to the presumption of innocence and freedom of association.⁸⁴

ROLE OF COMMERCIAL FIRMS IN THE COLLECTION OF BIOMETRIC DATA

Government and companies’ large-scale collection of data in China includes the collection of biometric data such as faces, voice samples, and DNA, and raises concerns regarding the potential targeting of rights advocates and compliance with international standards protecting the right to privacy. In October 2017, HRW reported that national police databases contained over 1 billion faces and over 40 million DNA samples, and that the Ministry of Public Security began construction of a national voice recognition database in 2012.⁸⁵ HRW further reported that police in Anhui province and the Xinjiang Uyghur Autonomous Region (XUAR) purchased voice pattern collection systems from the Anhui province-based technology company iFLYTEK, which provides speech recognition and text-to-speech applications (apps) for millions of mobile phones in China,⁸⁶ and XUAR security personnel reportedly procured DNA sequencers from the U.S.-based firm Thermo Fisher Scientific.⁸⁷ The PRC Criminal Procedure Law allows police to collect biometric data including fingerprints, urine, and blood samples from anyone suspected of committing a crime.⁸⁸ Human rights organizations reported, however, that the Chinese government has brought criminal cases against individuals such as lawyers, journalists, human rights advocates, and religious believers for exercising their internationally recognized human rights.⁸⁹ Moreover, reports this past year indicate that DNA collection is not limited to criminal suspects.⁹⁰ For example, in the XUAR, authorities have reportedly been collecting DNA samples and other biometric data from all residents aged 12 to 65.⁹¹ According to HRW, the collection of biometric data should be “comprehensively regulated” and “narrow in scope” in order to comply with international standards protecting the right to privacy.⁹²

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ROLE OF COMMERCIAL FIRMS IN THE SOCIAL CREDIT SYSTEM

During this reporting year, the Chinese government continued to work with Chinese companies to develop and implement a social credit system that aims to aggregate and monitor the data that the government and companies collect, which some observers warned could increase the government's capacity for social control. In 2014, the State Council released an outline for the creation of a national social credit system by 2020 to measure and improve the credibility of government agencies, organizations, and individuals.⁹³ Scholars describe the social credit system as an ambitious project that will aggregate and monitor the large amounts of data that the state and companies collect on citizens in order to guide citizens' behavior through the use of incentives.⁹⁴ The government has reportedly worked with Chinese companies on the technology needed to implement the program.⁹⁵ In February 2018, the People's Bank of China formally approved the first nationwide credit-scoring company, Baihang Credit Scoring, which is a joint venture between a state- and Party-organized entity and eight Chinese technology firms.⁹⁶ Although the social credit system remained in the pilot stage this past year,⁹⁷ human rights experts and other observers warned the system could be used to further tighten government control over citizens.⁹⁸

ROLE OF COMMERCIAL FIRMS IN THE EXPANSION OF SURVEILLANCE NETWORKS

Chinese security authorities are working with companies not only to collect and monitor individuals' data, but also to integrate improved technology into China's expanding network of surveillance cameras, as human rights advocates raised concerns over the government's use of surveillance to target rights advocates and ethnic minorities. For example, the Chinese company Megvii makes software for commercial photo apps while also providing facial recognition software that the company claims has helped police make 4,000 arrests since the beginning of 2016.⁹⁹ Major Chinese technology companies Alibaba and Tencent also reportedly work with Chinese authorities to equip Chinese cities with surveillance technology.¹⁰⁰ The state-owned technology firm Aebell is developing a nationwide system called "Sharp Eyes," which would link surveillance cameras installed in rural areas to individuals' televisions and smart phones, allowing individuals to assist authorities in monitoring their villages.¹⁰¹ The Party-run news outlet Legal Daily reported that by the end of 2017, authorities in Sichuan province had completed Sharp Eyes projects in 14,087 villages, installing 41,695 new surveillance cameras.¹⁰² The consulting firm IHS Markit predicted China would account for 46 percent of the global video surveillance market in 2018.¹⁰³ Discussing possible privacy concerns, the Chief Executive Officer of the Chinese company LLVision—which created glasses that Beijing police have tested that can match faces to a database of suspects in real time—told Reuters, "We trust the government."¹⁰⁴ Human rights advocates reported, however, that the government has used surveillance to target political dissidents and ethnic minority groups.¹⁰⁵ [For more

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information on government surveillance, see Section III—Institutions of Democratic Governance.]

ROLE OF COMMERCIAL FIRMS IN INTERNET CENSORSHIP

The Chinese government continued to restrict freedom of expression online by blocking and censoring content. Freedom House called China “the world’s worst abuser of internet freedom,”¹⁰⁶ and international human rights organizations have documented ongoing and increasing censorship this past year, particularly censorship of online content.¹⁰⁷ The Chinese government is able to censor online speech both by preemptively blocking content and by censoring content after it appears online.¹⁰⁸ Moreover, the government has detained social media users, bloggers, and the founders of rights advocacy websites in connection with their online speech.¹⁰⁹ [For more information, see Section II—Freedom of Expression.]

In addition to blocking or censoring content, Chinese authorities require companies to monitor content on their websites and apps, and in several cases this past year, authorities threatened or punished companies over online content. The PRC Cybersecurity Law requires companies to monitor content their customers create or share, censor content that violates laws and regulations, and report such content to authorities.¹¹⁰ For example, in late September 2017, the Cyberspace Administration of China fined technology companies Sina, Tencent, and Baidu for violating the Cybersecurity Law over content its users shared, which reportedly included political content.¹¹¹ In January 2018, the Shanghai Cyberspace Administration forced the U.S.-based hotel chain Marriott to take its websites and apps in China offline for a week after it sent an email to Chinese customers that listed Tibet, Hong Kong, Macau, and Taiwan as countries.¹¹² The company quickly issued a public apology and an eight-point “rectification plan.”¹¹³ Radio Free Asia reported in March that the State Council Taiwan Affairs Office would not permit the screening of Taiwanese films in China if those films featured actors who had voiced support for Taiwan independence.¹¹⁴ In April, the State Administration of Radio and Television (SART) criticized a popular news app and a video app, both owned by the China-based company Bytedance (*Jinri Toutiao*), for “violating social morality”; those apps, and several other popular news and video apps, temporarily disappeared from app stores.¹¹⁵ SART then ordered Bytedance to permanently close a popular joke-sharing app, calling the app “vulgar.”¹¹⁶ Although the International Covenant on Civil and Political Rights—which China has signed and committed to ratify¹¹⁷—allows governments to limit freedom of expression for the protection of “morals,”¹¹⁸ the Chinese government has in the past used campaigns against pornography and other “unlawful information” to restrict the legitimate exercise of freedom of expression.¹¹⁹

Faced with the possibility of lost revenue and other forms of punishment, both domestic and international companies engaged in self-censorship. After authorities took disciplinary action against them, domestic technology companies Kuaishou and Bytedance reportedly announced plans to expand the number of employees who monitor and censor content on their platforms.¹²⁰ In October 2017, the German academic publishing company Springer Nature agreed

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to censor its journal articles in mainland China.¹²¹ In congressional testimony in March, one media scholar described how film industry executives outside mainland China have invited Chinese content regulators to speak at conferences to provide guidance on how to create content that Chinese censors will allow.¹²² The Chinese microblog Weibo announced that in May 2018 it had blocked or deleted 141,000 posts containing “harmful information about current politics.”¹²³ Weibo also closed or limited functionality for 5,450 accounts for sharing “harmful” political information, an increase of 355 percent from April.¹²⁴ In the summer of 2018, dozens of international airline companies reportedly changed their international websites to comply with Chinese government demands to remove references to Taiwan as a country.¹²⁵ Reports emerged in August 2018 that Google was developing a censored search app for the Chinese market.¹²⁶

Notes to Section III—Commercial Rule of Law and Human Rights

¹World Trade Organization, “Protocols of Accession for New Members Since 1995, Including Commitments in Goods and Services,” last visited 28 April 18. 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.

²Freedom House, “Freedom in the World 2018—China,” last visited 16 April 18; Human Rights Watch, “Submission to the Universal Periodic Review of China,” 29 March 18; Amnesty International, “China 2017/2018,” last visited 3 September 18.

³UN Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, HR/PUB/11/04, 16 June 11, principle 13.

⁴This subsection analyzes the Chinese government’s compliance with its World Trade Organization commitments vis-à-vis the rule of law. For in-depth analyses of the U.S.-China trade relationship, market access for U.S. businesses in China, and recent WTO disputes involving the United States and China, see U.S.-China Economic and Security Review Commission, 2017 Annual Report, 15 November 17, chap. 1, secs. 1, 3.

⁵See, e.g., Henry Gao, “The WTO Transparency Obligations and China,” *Journal of Comparative Law*, Vol. 12, No. 2 (5 March 18), 1, 13, 19–22; Office of the U.S. Trade Representative, “2017 Report to Congress on China’s WTO Compliance,” January 2018, 23–24; European Union Chamber of Commerce in China, “European Business in China Position Paper 2017/2018,” 19 September 17, 126.

⁶World Trade Organization, Protocol on the Accession of the People’s Republic of China, WT/L/432, 10 November 01, Part I, 2(C)1–3; World Trade Organization, “Report of the Working Party on the Accession of China,” WT/ACC/CHN/49, 1 October 01, paras. 334–35; General Agreement on Tariffs and Trade (GATT 1947), 30 October 47, art. X; U.S. Government Accountability Office, “World Trade Organization: Analysis of China’s Commitments to Other Members,” GAO–03–4, October 2002, 31; Henry Gao, “The WTO Transparency Obligations and China,” *Journal of Comparative Law*, Vol. 12, No. 2 (5 March 18), 1, 3, 13, 19–22.

⁷Office of the U.S. Trade Representative, “2017 Report to Congress on China’s WTO Compliance,” January 2018, 23–24; European Union Chamber of Commerce in China, “European Business in China Position Paper 2017/2018,” 19 September 17, 126; Henry Gao, “The WTO Transparency Obligations and China,” *Journal of Comparative Law*, Vol. 12, No. 2 (5 March 18), 14–15.

⁸Office of the U.S. Trade Representative, “2017 Report to Congress on China’s WTO Compliance,” January 2018, 138; Henry Gao, “The WTO Transparency Obligations and China,” *Journal of Comparative Law*, Vol. 12, No. 2 (5 March 18), 19–20, 22.

⁹Henry Gao, “The WTO Transparency Obligations and China,” *Journal of Comparative Law*, Vol. 12, No. 2 (5 March 18), 15–18; Office of the U.S. Trade Representative, “2017 Report to Congress on China’s WTO Compliance,” January 2018, 24; European Union Chamber of Commerce in China, “European Business in China Position Paper 2017/2018,” 19 September 17, 126.

¹⁰Office of the U.S. Trade Representative, “2017 Report to Congress on China’s WTO Compliance,” January 2018, 18; American Chamber of Commerce in the People’s Republic of China and Bain & Company, “2018 China Business Climate Survey Report,” January 2018, 46; US-China Business Council, “2017 Member Survey,” 6 December 17, 10; European Union Chamber of Commerce in China, “European Business in China Position Paper 2017/2018,” 19 September 17, 86.

¹¹Office of the U.S. Trade Representative, “2017 Report to Congress on China’s WTO Compliance,” January 2018, 16–17. See also PRC Anti-Unfair Competition Law [Zhonghua renmin gongheguo fan buzhengdang jingzheng fa], passed 2 September 93, amended 4 November 17, effective 1 January 18.

¹²Mark Cohen, “Updates March 6–12, 2018,” China IPR (blog), 14 March 18; “Interview: China Calls for Better Protection for Chinese IPR,” Xinhua, 12 April 18; State Council, “Government Work Report” [Zhengfu gongzuo baogao], 5 March 18, sec. 3(3).

¹³Office of the U.S. Trade Representative, “2017 Report to Congress on China’s WTO Compliance,” January 2018, 16–17; US-China Business Council, “2017 Member Survey,” 6 December 17, 10; American Chamber of Commerce in the People’s Republic of China and Bain & Company, “2018 China Business Climate Survey Report,” January 2018, 41; European Union Chamber of Commerce in China, “European Business in China Position Paper 2017/2018,” 19 September 17, 37; German Chamber of Commerce in China, “German Business in China: Business Confidence Survey 2017/18,” 16 November 17, 20, 22, 24, 33.

¹⁴Office of the U.S. Trade Representative, “2017 Report to Congress on China’s WTO Compliance,” January 2018, 18; European Union Chamber of Commerce in China, “European Business in China Position Paper 2017/2018,” 19 September 17, 89–90. For specific examples of online copyright infringement, see Office of the U.S. Trade Representative, “2017 Out-of-Cycle Review of Notorious Markets,” January 2018, 13–14, 20–22, 24.

¹⁵Office of the U.S. Trade Representative, “2017 Report to Congress on China’s WTO Compliance,” January 2018, 3; US-China Business Council, “2017 Member Survey,” 6 December 17, 9; Julia Horowitz, “Why Tech Secrets, Not Steel, Could Cause the Real Clash Between the U.S. and China,” CNN, 21 February 18.

¹⁶Office of the U.S. Trade Representative, “Findings of the Investigation Into China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974,” 22 March 18, 19–20, 22.

¹⁷World Trade Organization, Protocol on the Accession of the People’s Republic of China, WT/L/432, 10 November 01, Part I, 2(A)(2), 3.

¹⁸National Development and Reform Commission et al., Fair Competition Review System Implementing Rules (Provisional) [Gongping jingzheng shencha zhidu shishi xize (zhanxing)],

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issued 23 October 17, art. 18. See also Office of the U.S. Trade Representative, “2017 Report to Congress on China’s WTO Compliance,” January 2018, 143.

¹⁹National Development and Reform Commission et al., Fair Competition Review System Implementing Rules (Provisional) [Gongping jingzheng shencha zhidu shishi xize (zhanxing)], issued 23 October 17, art. 2; Office of the U.S. Trade Representative, “2017 Report to Congress on China’s WTO Compliance,” January 2018, 143.

²⁰National Development and Reform Commission and Ministry of Commerce, Special Administrative Measures for Foreign Investment Access (Negative List) (2018 Edition) [Waishang touzi zhunru tebie guanli cuoshi (fumian qingdan) (2018 nian ban)], issued 28 June 18, effective 28 July 18, 4; Issaku Harada, “China To Abolish Foreign Ownership Caps in Finance in 2021,” Nikkei Asian Review, 30 June 18; Dorcas Wong, “How To Read China’s 2018 Negative List,” Dezan Shira & Associates, China Briefing (blog), 7 July 18.

²¹American Chamber of Commerce in the People’s Republic of China and Bain & Company, “2018 China Business Climate Survey Report,” January 2018, 39; German Chamber of Commerce in China, “German Business in China: Business Confidence Survey 2017/18,” 16 November 17, 17. Note that the AmCham China survey asked only if businesses felt “more” or “less welcome,” while the German Chamber survey had an additional option of “unchanged.”

²²Jörg Brunsmann, “Internet in China—No More Safe Havens?” Deutsche Welle, 1 February 18; Paul Mozur, “Skype Vanishes From App Stores in China, Including Apple’s,” New York Times, 21 November 17; Lucy Hornby, “China’s VPN Crackdown Is About Money as Much as Censorship,” Financial Times, 22 January 18; Eva Pils, Human Rights in China (Medford: Polity Press, 2018), 89–90.

²³Paul Mozur, “Skype Vanishes From App Stores in China, Including Apple’s,” New York Times, 21 November 17; “Skype Removed From China Apple and Android App Stores,” BBC, 22 November 17.

²⁴Josephine Wolff, “The Internet Censor’s Dilemma,” Slate, 5 March 18; “China’s Great Firewall Is Rising,” Economist, 4 January 18; Coco Liu, “Guess What Chinese Travellers Are Bringing Back Home? VPNs, Lots of Them,” South China Morning Post, 6 October 17.

²⁵Ministry of Industry and Information Technology Circular on Rectifying and Regulating Internet Service Provider Markets [Gongye he xinxihua bu guanyu qingli guifan hulianwang wangluo jieru fuwu shichang de tongzhi], issued 22 January 17, preamble, 2(2)4; Jörg Brunsmann, “Internet in China—No More Safe Havens?” Deutsche Welle, 1 February 18; Lucy Hornby, “China’s VPN Crackdown Is About Money as Much as Censorship,” Financial Times, 22 January 18.

²⁶“Timeline: Under Xi, Five Years of Tighter Controls Across Chinese Society,” Reuters, 16 October 17; Letter from Cynthia C. Hogan, Vice President for Public Policy, Americas, Apple, to U.S. Senators Ted Cruz and Patrick Leahy, 21 November 17; Oiwan Lam and Jack Hu, “China’s Great Firewall Grows Ever-Stronger as Virtual Private Networks Disappear,” Global Voices, 27 June 17.

²⁷Asha McLean, “VPNs Can Still Be Used in China Despite March 31 Ban,” ZDNet, 5 April 18; Ralph Jennings, “How To Surf China’s Internet Freely Despite the Latest Ban,” Forbes, 23 April 18.

²⁸Brent Lang and Patrick Frater, “China Film Quota Talks Could Be a Casualty in Trump’s Trade War,” Variety, 29 March 18; Pei Li and Michael Martina, “Hollywood’s China Dreams Get Tangled in Trade Talks,” Reuters, 19 May 18; “Hollywood Braces for Collateral Damage From Trade War With China,” Bloomberg, 19 July 18.

²⁹Office of the U.S. Trade Representative, “2017 Report to Congress on China’s WTO Compliance,” January 2018, 19, 142; European Union Chamber of Commerce in China, “European Business in China Position Paper 2017/2018,” 19 September 17, 168, 373; American Chamber of Commerce in the People’s Republic of China and Bain & Company, “2018 China Business Climate Survey Report,” January 2018, 40, 44.

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