CHINA

TRADE SUMMARY

U.S. goods exports in 2014 were $124.0 billion, up 1.9 percent from the previous year. China is currently the third largest export market for U.S. goods. Corresponding U.S. imports from China were $466.7 billion, up 6.0 percent. The U.S. goods trade deficit with China was $342.6 billion in 2014, an increase of $23.9 billion from 2013.

U.S. exports of services to China were $37.8 billion in 2013 (latest data available), and U.S. imports were $14.3 billion. Sales of services in China by majority U.S.-owned affiliates were $39.1 billion in 2012 (latest data available), while sales of services in the United States by majority China-owned firms were $1.7 billion.

The stock of U.S. foreign direct investment (FDI) in China was $61.5 billion in 2013 (latest data available), up from $53.7 billion in 2012. U.S. FDI in China is led by the manufacturing, wholesale trade, and banking sectors.

KEY TRADE BARRIERS

The United States continues to pursue vigorous and expanded bilateral and multilateral engagement to increase the benefits that U.S. businesses, workers, farmers, ranchers, service providers and consumers derive from trade and economic ties with China. In an effort to remove Chinese barriers blocking or impeding U.S. exports and investment, the United States uses outcome-oriented dialogue at all levels of engagement with China, while also taking concrete steps to enforce U.S. rights at the WTO as appropriate. At present, China's trade policies and practices in several specific areas cause particular concern for the United States and U.S. stakeholders. The key concerns in each of these areas are summarized below. For more detailed information on these concerns, see the 2014 USTR Report to Congress on China's WTO Compliance, issued on December 30, 2014 at https://ustr.gov/sites/default/files/2014-Report-to-Congress-Final.pdf. The USTR Report to Congress on China's WTO Compliance provides comprehensive information on the status of the trade and investment commitments that China has made through the United States-China Joint Commission on Commerce and Trade (JCCT) and the United States-China Strategic and Economic Dialogue (S&ED).

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

Beef, Poultry, and Pork

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

Biotech Approvals

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

Intellectual Property Rights

Overview

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

Trade Secrets

The protection and enforcement of trade secrets in China is a serious problem that has attained a higher profile in recent years. Thefts of trade secrets that benefit Chinese companies have occurred both within China and outside of China. Offenders in many cases continue to operate with impunity, while the Chinese government too frequently has failed to recognize serious infringements of IPRs that violate Chinese law. Most troubling are reports that actors affiliated with the Chinese government and the Chinese military have infiltrated the computer systems of U.S. companies, stealing terabytes of data, including the companies' intellectual property. In order to help address these challenges, the United States has urged China to update and amend its trade secrets laws and regulations, particularly the *Anti-unfair Competition Law*. The United States also has urged China to take actions to address this problem across the range of state-sponsored actors and to promote public awareness of this issue.

At the December 2013 JCCT meeting, China committed to adopt and publish an action plan to address trade secrets protection and enforcement for 2014, as well as to work with the United States on proposals to amend China's trade secrets laws and regulations. Six months later, at the July 2014 S&ED meeting, China pledged to pursue criminal and other actions to deter the misappropriation of trade secrets, to ensure that criminal and civil cases are tried and the resulting judgments are published, and to protect trade secrets contained in materials submitted by companies as part of regulatory, administrative, and other proceedings.

Most recently, at the December 2014 JCCT meeting, China confirmed that trade secrets submitted to the government in administrative or regulatory proceedings are to be protected from improper disclosure to the public. China further confirmed that government officials shall only disclose trade secrets in connection with their official duties and that government officials who illegally disclose companies' trade secrets are to be subject to administrative or legal liability. China also committed to study various specified ways in which it could improve its laws, regulations and administrative procedures governing the protection of trade secrets in the context of administrative or regulatory proceedings.

Pharmaceutical Patents

The United States continues to engage China on a range of patent and technology transfer concerns relating to pharmaceuticals. One year ago, China committed to permit supplemental data supporting pharmaceutical patent applications. However, it appears that China has not yet fully implemented that commitment. In addition, many other concerns remain, including the need to provide effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to provide effective enforcement against infringement of pharmaceutical patents.

Software Piracy

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

Online Piracy

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

Counterfeit Goods

Although rights holders report increased enforcement efforts by Chinese government authorities, counterfeiting in China, affecting a wide range of goods, remains widespread. One area of particular U.S. concern involves medications. Despite sustained engagement by the United States, China still needs to improve its regulation of the manufacture of active pharmaceutical ingredients to prevent their use in counterfeit and substandard medications. In a positive development, at the July 2014 S&ED meeting, China agreed to develop and seriously consider amendments to the *Drug Administration Law* that will require regulatory control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients. China further committed to hold a multi-ministerial meeting for the purpose of developing a possible framework for regulatory oversight of bulk chemicals. The United States has been monitoring developments closely and will continue to press China in 2015 to fully implement these commitments.

Industrial Policies

Overview

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

Indigenous Innovation

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

In late 2014, China announced two measures relating to information technology equipment used in the banking services sector and in providing Internet- or telecommunications-based services more generally. These measures raise fairness and transparency concerns as well as other industrial policy-related concerns. The United States has pressed China to suspend these measures and will continue to do so going forward.

Technology Transfer

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

Export Restraints

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

Export Subsidies

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

Excess Capacity

Chinese government actions and financial support in manufacturing industries like steel and aluminum have contributed to massive excess capacity in China, with the resulting overproduction distorting global markets and hurting U.S. producers and workers. For example, from 2000 to 2013, China accounted for more than 75 percent of global steelmaking capacity growth. Currently, China's capacity alone exceeds the combined steelmaking capacity of the EU, Japan, the United States, and Russia. China has no comparative advantage with regard to the energy and raw material inputs for steelmaking, yet China's capacity has continued to grow exponentially and is estimated to have exceeded one billion metric tons (MT) in 2013, despite weakening demand domestically and abroad. China's steel exports have grown to be the largest in the world, at 62 million MT in 2013, an 11 percent increase over 2012 levels, despite sluggish steel demand abroad. Excess capacity in China–whether in the steel industry or other industries like aluminum–hurts U.S. industries and workers not only because of direct exports from China to the United States, but because lower global prices and a glut of supply make it difficult for even the most competitive producers to remain viable. At the July 2014 S&ED meeting, China committed to establish mechanisms to reign in excess production capacity in key manufacturing sectors, including in crude steel making. Domestic industries in many of China's trading partners have continued to respond to the effects of the trade-distortive effects of China's excess capacity by petitioning their governments to impose trade remedies such as antidumping and countervailing duties.

Value-added Tax Rebates and Related Policies

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

Aircraft Tariffs

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

Strategic Emerging Industries

In 2010, China's State Council issued a decision on accelerating the cultivation and development of "strategic emerging industries" (SEIs) that called upon China to develop and implement policies designed to promote rapid growth in government-selected industry sectors viewed as economically and strategically important for transforming China's industrial base into one that is more internationally competitive in cutting-edge technologies. China subsequently identified seven sectors for focus under the SEI initiative, including energy-saving and environmental protection, new generation information technology, biotech, high-end equipment manufacturing, new energy, new materials, and new-energy vehicles.

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

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

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

Import Ban on Remanufactured Products

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

Standards, Technical Regulations, and Conformity Assessment Procedures

In the area of standards, technical regulations, and conformity assessment procedures, three principal types of problems harm U.S. companies. First, Chinese government officials in some instances have reportedly pressured foreign companies seeking to participate in the standards-setting process to license their technology or intellectual property on unfavorable terms. Second, China has continued to pursue unique national standards in a number of high technology areas where international standards already exist, such as 3G and 4G telecommunications standards, Wi-Fi standards and information security standards. Third, China appears to be turning more and more to in-country testing for a broader range of products, which does not conform with international practices that generally accept foreign test results and conformity assessment certifications. To date, bilateral engagement has yielded minimal progress in resolving these matters.

Two recent developments bear noting. In a positive development, at the December 2014 JCCT meeting, China committed to accelerate its review process for medical devices and pharmaceutical products and to eliminate its application backlog for pharmaceutical products within 2-3 years. At the same time, in a negative development, China has issued a draft technical regulation that proposes to impose labeling requirements on cosmetics that could discriminate unfairly against imported products and could serve as an unnecessary obstacle to trade. The United States is engaging China's regulatory authorities in an effort to facilitate the development of a measure that is both effective and avoids needlessly burdening trade.

Government Procurement

The United States continues to press China to fulfill its commitment to accede to the WTO's Government Procurement Agreement (GPA) and to open up its vast government procurement market to the United States and other GPA parties. To date, however, the United States, the EU, and other GPA parties have viewed China's offers of coverage as highly disappointing in scope and coverage. At the December 2013 JCCT meeting, China committed to submit its fifth revised offer by the end of 2014 and that the offer would be "on the whole commensurate" with coverage provided by GPA parties. While China's 2014 offer made notable progress in some areas, including by lowering thresholds, adding sub-central and other entities, and eliminating exclusionary notes, the offer still falls far short of GPA standards and remains far from acceptable to the United States and other GPA parties.

China's current government procurement regime is governed by two important laws. The Government Procurement Law, which is administered by the Ministry of Finance, governs purchasing activities conducted with fiscal funds by state organs and other organizations at all levels of government in China. The Tendering and Bidding Law falls under the jurisdiction of the National Development and Reform Commission and imposes uniform tendering and bidding procedures for certain classes of procurement projects in China, notably construction and works projects, without regard for the type of entity that conducts the procurement. Both laws cover important procurements that GPA parties would consider to be government procurement eligible for coverage under the GPA. The United States will continue to work with the Chinese government to ensure that China's future GPA offers include coverage of government procurement regardless of which law it falls under, including procurement conducted by both government entities and other entities, such as state-owned enterprises. In a recent development, on December 31, 2014, China announced that the State Council had approved final *Implementing Regulations for the Government Procurement Law*, although it did not publish the measure for two more months. This measure, together with further rules currently under development, should significantly affect the way that Chinese government agencies procure and which types of goods and services are eligible to be procured.

Investment Restrictions

China seeks to protect many domestic industries through a restrictive investment regime, which adversely affects foreign investors in services sectors, such as financial services, telecommunications services, Internet-related services, legal services, and express delivery services, as well as in certain manufacturing industries and the agricultural sector. In addition to prohibitions and restrictions on market access imposed through China's foreign investment catalogue or other means, China can readily impose additional constraints on investment through its foreign investment approval processes, where Chinese government officials can use vaguely defined powers on an *ad hoc* basis to delay or restrict market entry. For example, foreign enterprises report that Chinese government officials may condition investment approval on a requirement that a foreign enterprise conduct research and development in China, transfer technology, satisfy performance requirements relating to exportation or the use of local content, or make valuable, deal-specific commercial concessions.

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

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

Meanwhile, the United States continues to pursue negotiations with China for a Bilateral Investment Treaty (BIT). These negotiations intensified after China committed at the July 2013 S&ED meeting to negotiate a high-standard BIT that will embrace the principles of openness, nondiscrimination and transparency, provide national treatment at all phases of investment, including market access (*i.e.*, the "pre-establishment" phase of investment), and employ a "negative list" approach in identifying exceptions (meaning that all investments are permitted except for those explicitly excluded). At the 2014 S&ED meeting, China built on this commitment by agreeing to provide its first negative list offer by early 2015.

Trade Remedies

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

Services

Overview

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

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

Electronic Payment Services

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

Theatrical Film Distribution

In February 2012, the United States and China reached an alternative solution with regard to certain rulings relating to the importation and distribution of theatrical films in a WTO case that the United States had won. The two sides signed a memorandum of understanding (MOU) providing for substantial increases in the number of foreign films imported and distributed in China each year, along with substantial additional revenue for foreign film producers. Significantly more U.S. films have been imported and distributed in China since the signing of the MOU, and the revenue received by U.S. film producers has increased significantly. However, China has not yet fully implemented its MOU commitments, including with regard to a critical commitment to open up film distribution opportunities for imported films that are distributed in China on a flat-fee basis rather than a revenue-sharing basis. As a result, the United States has been pressing China for full implementation.

Banking Services

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

Information and communications technology-related banking rules issued late in 2014 by Chinese banking regulators raised serious concerns, including concerns that domestic and foreign companies offering banking services in China will be required to purchase information and communications technology equipment that may create a less secure and more vulnerable infrastructure for them.

Insurance Services

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

Telecommunications Services

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

Internet-related Services

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

Audio-visual Services

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

Express Delivery Services

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

Legal Services

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

Agriculture

Overview

China is the largest agricultural export market for the United States, with nearly $24.6 billion in U.S. agricultural exports in 2014. Much of this success resulted from intensive engagement by the United States with China's regulatory authorities. Notwithstanding this success, China remains among the least transparent and predictable of the world's major markets for agricultural products, largely because of uneven enforcement of regulations and selective intervention in the market by China's regulatory authorities. As in past years, seemingly capricious practices by Chinese customs and quarantine agencies delay or halt shipments of agricultural products into China. In addition, SPS measures with questionable scientific bases and a generally opaque regulatory regime frequently create difficulties and uncertainty for traders in agricultural commodities, who require as much certainty and transparency as possible.

Subsidies

Over the past several years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector. China has established a direct payment program, instituted minimum support prices for basic commodities and sharply increased input subsidies. China has implemented a cotton reserve system, based on minimum purchase prices, and cotton target price programs. China also has begun several new support schemes for hogs and pork, along with a purchasing reserve system for pork. China has not submitted a notification concerning domestic support measures since October 2011, and that notification covered only the period 2005-2008. This notification documents an increase in China's support levels, but the United States is concerned that the methodologies used by China to calculate support levels, particularly with regard to its price support policies and direct payments, result in underestimates. In 2014, the United States grew increasingly concerned about the effects of domestic support measures that China has been pursuing for cotton, pork, wheat, corn, and rice.

Transparency

Overview

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

Publication of Trade-related Laws, Regulations and Other Measures

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

Notice-and-comment Procedures

In its WTO accession agreement, China committed to provide a reasonable period for public comment before implementing new trade-related laws, regulations, and other measures. China has taken several steps related to this commitment. In 2008, the National People's Congress (NPC) instituted notice-and-comment procedures for draft laws, and shortly thereafter China indicated that it would also publish proposed trade and economic related administrative regulations and departmental rules for public comment. Subsequently, the NPC began regularly publishing draft laws for public comment, and China's State Council often (but not regularly) published draft administrative regulations for public comment. In addition, many of China's ministries were not consistent in publishing draft departmental rules for public comment.

At the May 2011 S&ED meeting, China committed to issue a measure implementing the requirement to publish all proposed trade and economic related administrative regulations and departmental rules on the website of the State Council's Legislative Affairs Office (SCLAO) for a public comment period of not less than 30 days. In April 2012, the SCLAO issued two measures that appear to address this requirement. Since then, despite continuing U.S. engagement, no noticeable improvement in the publication of departmental rules for public comment appears to have taken place, even though China recently confirmed that those two SCLAO measures are binding on central government ministries.

Translations

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

Legal Framework

Overview

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

Administrative Licensing

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

Anti-Monopoly Law

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

Another serious concern relates to the procedural fairness of *Anti-Monopoly Law* investigations. U.S. stakeholders have expressed concern about insufficient predictability, fairness, and transparency in the National Development and Reform Commission's (NDRC) investigative processes, including NDRC pressure to "cooperate" in the face of unspecified allegations or face steep fines. U.S. stakeholders also has reported pressure from NDRC against seeking outside counsel, in particular foreign counsel, or having counsel present at meetings.

At the July 2014 S&ED meeting, China recognized that the objective of competition policy is to promote consumer welfare and economic efficiency rather than promote individual competitors or industries, and that enforcement of China's competition laws should be fair, objective, transparent, and nondiscriminatory. China also committed to provide any party under an *Anti-Monopoly Law* investigation with information about the enforcement agency's concerns and an effective opportunity for the party to present evidence in its defense. More recently, at the December 2014 JCCT meeting, China committed that, in *Anti-Monopoly Law* enforcement proceedings, the Chinese authorities would treat domestic and foreign companies equally and normally would permit an investigated foreign company to have foreign counsel present, to advise it, and to provide information on its behalf.