CHINA

TRADE SUMMARY

The U.S. goods trade deficit with China was $273.1 billion in 2010, up $46.2 billion from 2009. U.S. goods exports in 2010 were $91.9 billion, up 32.2 percent from the previous year. Corresponding U.S. imports from China were $364.9 billion, up 23.1 percent. China is currently the 3rd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to China were $15.7 billion in 2009 (latest data available), and U.S. imports were $8.2 billion. Sales of services in China by majority U.S.-owned affiliates were $19.5 billion in 2008 (latest data available), while sales of services in the United States by majority China-owned firms were $432 million.

The stock of U.S. foreign direct investment (FDI) in China was $49.4 billion in 2009 (latest data available), down from $52.5 billion in 2008. U.S. FDI in China is led by the manufacturing and banking sectors.

IMPORT BARRIERS

Prior to its WTO accession in December 2001, China restricted imports through high tariffs and taxes, quotas and other nontariff measures, and restrictions on trading rights, *i.e.*, the right to engage in importing and/or exporting goods. Beginning in 2002, its first year in the WTO, China significantly reduced tariff rates on many products, decreased the number of goods subject to import quotas, expanded the number of Chinese enterprises with trading rights and the products they could import and increased the transparency of its licensing procedures. Subsequently, China has continued to make progress by implementing tariff reductions on schedule, phasing out import quotas and expanding trading rights for foreign enterprises and individuals. Nevertheless, some serious problems remain, such as China's refusal to grant trading rights for certain industries that are listed in the following section.

Trading Rights

In its Protocol of Accession to the WTO, China committed to substantial liberalization in the area of trading rights. Although China did not fully adhere to the agreed phase-in schedule, it put in place a registration system implementing the required liberalization of trading rights, both for wholly Chinese-owned enterprises and for Chinese-foreign joint ventures, wholly foreign-owned enterprises and foreign individuals, including sole proprietorships. This liberalization is reflected in China's revised Foreign Trade Law, issued in April 2004. It provides for trading rights to be automatically available through a registration process, effective July 1, 2004. In June 2004, the Ministry of Commerce (MOFCOM) issued implementing rules establishing the procedures for registering as a foreign trade operator. U.S. companies have reported few problems with the trading rights registration process.

Consistent with the terms of China's Protocol of Accession to the WTO, the importation of some goods, such as petroleum and sugar, is still reserved for state trading enterprises. In addition, for goods still subject to tariff-rate quotas (TRQ), such as grains, cotton, vegetable oils and fertilizers, China reserves a portion of the in-quota imports for state trading enterprises, while it makes the remaining portion (ranging from 10 percent to 90 percent, depending on the commodity) available for importation through non-state traders. In some cases, the percentage available to non-state traders increases annually for a fixed number of years. (*For further information, please refer to the section below on Tariff-Rate Quotas.*)

China has continued to restrict the importation (and distribution) of copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs and music, in contravention of its trading rights (and distribution services) commitments, leading the United States to mount a successful WTO challenge to these policies. China has agreed to remove these restrictions by March 2011 in order to comply with the WTO ruling against it. The United States will closely monitor China's implementation of this ruling. (*For further information, please refer to the section below on Audiovisual and Related Services.*)

Import Substitution Policies

When it acceded to the WTO, China agreed to eliminate all subsidies prohibited under Article 3 of the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement), including all forms of subsidies contingent on the use of domestic over imported goods. In its Protocol of Accession to the WTO, China also committed that it would not condition import or investment approvals on whether there are competing domestic suppliers or impose other performance requirements. In anticipation of this commitment, China enacted legal changes in 2000 and 2001 to eliminate local content requirements for foreign investments. Under the prevailing rules, however, investors are still "encouraged" to follow some of the formerly mandated practices. Instances in which the Chinese government has reportedly pursued import substitution or similar policies are described below.

Automotive Parts

In May 2004, China issued a new automobile industrial policy, the Policy on Development of the Automotive Industry, and subsequently it issued implementing regulations that unfairly discriminated against imported automotive parts and discouraged automobile manufacturers in China from using imported automotive parts in the assembly of vehicles. In 2006, the United States, the EU and Canada initiated dispute settlement proceedings against China at the WTO. The WTO ultimately ruled in favor of the United States. In September 2009, China repealed the challenged measures.

Various U.S. industries are concerned about Chinese policies that may discriminate against foreign products. For example, the U.S. automotive industry is concerned that foreign-invested producers of New Energy Vehicles (NEVs) and NEV parts in China may begin to face discrimination. China is developing new regulations as part of its NEV plan, which encompasses hybrid and battery electric vehicles. Current drafts reportedly specify that automakers that intend to manufacture electric vehicles in China must demonstrate a "mastery" level of proficiency in key parts such as electric vehicle batteries, motors or control systems before receiving a license to produce and sell electric vehicles. In addition, according to reports on current drafts, the Chinese entity that manufacturers the vehicle, either a domestic manufacturer or joint venture operation, must demonstrate clear ownership of intellectual property rights to the technologies that enable the "mastery." U.S. industry is concerned that China may implement these proposed requirements by requiring that production of key NEV parts take place in China. These proposed requirements also give rise to concerns that foreign manufacturers of NEVs and NEV parts will be compelled to contribute their intellectual property to their Chinese joint venture operations in order to fully participate in the NEV market.

Steel

China issued a Steel and Iron Industry Development Policy (Steel Policy) in July 2005. Although many aspects of this Steel Policy have not been implemented, it includes a host of objectives and guidelines that raise serious concerns. For example, the Steel Policy requires that foreign enterprises seeking to invest in Chinese iron and steel enterprises possess proprietary technology or intellectual property in the processing of steel. Given that foreign investors are not allowed to have a controlling share in steel and iron enterprises in China, this requirement would seem to constitute a *de facto* technology transfer requirement, raising concerns given China's commitments under its Protocol of Accession to the WTO not to condition investment rights or approvals on the transfer of technology. The Steel Policy also appears to discriminate against foreign equipment and technology imports, encouraging the use of local content by calling for a variety of government financial supports for steel and iron projects using newly developed domestic equipment. Even more troubling, however, it calls for the use of domestically produced steel manufacturing equipment and domestic technologies whenever domestic suppliers exist, raising questions, given China's commitment under its Protocol of Accession to the WTO not to condition the right of investment or importation on whether competing domestic suppliers exist. The Steel Policy is also troubling because it prescribes the number and size of steel producers in China, where they will be located, the types of products that will and will not be produced and the technology that will be used. This high degree of government direction and decision-making regarding the allocation of resources into and out of China's steel industry raises concerns because of the commitment that China made in its Protocol of Accession to the WTO that the government would not influence, directly or indirectly, commercial decisions by state-owned or state-invested enterprises.

China's steel production has grown rapidly and at a rate faster than the growth in its domestic steel consumption. China became the largest steel exporting economy in 2006, and its steel exports have increasingly become subject to trade remedy actions by other countries in the past two years. In March 2006, the United States and China held the inaugural meeting of a new U.S.-China Joint Commission on Commerce and Trade (JCCT) dialogue on the steel industry (Steel Dialogue). Since then, the two sides have held three more Steel Dialogue meetings, with the most recent one taking place in October 2008. In bilateral and multilateral meetings, the United States has argued that China has acted to impose different levels of taxes on different exports of steel products and steelmaking inputs in a manner that appears to encourage the export of certain value-added steel products. In response to the financial downturn in the fall of 2008, China rapidly reduced or removed export duties on many, but not all, steel products to encourage exports during a period of steeply declining global demand. In a series of moves over the next several months, China eliminated export duties on additional semi-finished and finished steel products while it also reinstated or increased VAT export rebates. As a result, Chinese steel production reached a record 567 million MT for 2009, a 14 percent increase when compared to 2008. Later, in June 2010, the Ministry of Finance (MOF) and the State Administration of Taxation removed the nine percent VAT export rebate on a limited set of steel products, primarily intermediate hot-rolled products. Because the VAT export rebates on finished pipes, tubes and other tubular products remained in place, the differential VAT treatment between exports of hot-rolled products and tubular products actually increased, which had the effect of further incentivizing the production and export of tubular products.

In March 2009, China issued a stimulus plan to revitalize its steel industry. This plan represents the first major adjustment to the 2005 steel policy. The plan seeks to control steel output volume and to eliminate outdated and inefficient capacity while emphasizing technological improvement. The plan also seeks to stimulate exports, a significant difference from the 2005 steel policy. In addition, the plan calls for further industry consolidation and the creation of large steel enterprises with capacities exceeding 50 million MT.

In June 2010, the State Council published the Opinions on Strengthening Energy Saving and Emission Reduction and Accelerating Structural Adjustment in the Iron and Steel Sector. This measure reiterated existing steel policies, specifically identifying a number of well-known objectives for the sector, such as controlling steel industry growth, strengthening efforts to eliminate outdated capacity, promoting energy savings and emissions reduction, technical innovation, accelerating mergers, disciplining access to iron ore imports and promoting domestic iron ore mining, and encouraging domestic steel producers to explore mining and steel investments abroad.

In July 2010, the Ministry of Industry and Information Technology (MIIT) released the Regulations and Conditions of Production and Operation of the Iron and Steel Industry. These regulations are intended to support the objectives laid out in the State Council's June 2010 measure. They indicate that small steel mills will be shut down, establish operating standards for larger steelmakers and address issues such as product quality and environmental protection. Steel analysts view these regulations as a prelude to China's next five-year steel plan, expected to be issued in 2011. In August 2010, MIIT published a list of 762 steel mills that were required to close by September 2010 in order to improve the country's energy efficiency. Reportedly, these steel mills represent approximately 35 million MT of crude steelmaking capacity.

Despite China's stated goal of eliminating inefficient steel capacity, and despite slowing growth in domestic steel demand and stagnant demand in export markets, steel production in China in 2010 continued to grow, and steelmaking capacity in China is still projected to grow significantly through 2012. Chinese steel production reached a record 627 million MT for 2010, a nine percent increase when compared to 2009. The United States is working with Canada, Mexico, the EU and other trading partners to monitor and support concrete steps by China to rein in its steelmaking capacity.

Semiconductors

China's Tenth Five-Year Plan called for an increase in Chinese semiconductor output from $2 billion in 2000 to $24 billion in 2010. In pursuit of this policy, China has previously attempted to encourage the development of China's domestic integrated circuit (IC) industry through, among other things, discriminatory VAT policies, although China eliminated these policies in response to a WTO case brought by the United States in March 2004. The United States continues to monitor closely new financial support that China is making available to its domestic IC producers for consistency with the WTO Subsidies Agreement's disciplines.

Fertilizer

In 2001, China began exempting all phosphate fertilizers except diammonium phosphate (DAP) from the VAT. DAP, a product that the United States exports to China, competes with other phosphate fertilizers produced in China, particularly monoammonium phosphate. Both the United States Government and U.S. producers have complained that China has employed its VAT policies to benefit domestic fertilizer production.

Telecommunications Equipment

There have been continuing reports of MIIT adopting policies to discourage the use of imported components or equipment. For example, MIIT has reportedly still not rescinded an internal circular issued in 1998 instructing telecommunications companies to buy components and equipment from domestic sources.

In February 2009, China's State Council approved MIIT's stimulus plan to boost the country's electronics and information industries through preferential policies and increased investment, as well as encouraging purchases of components and equipment from domestic sources. The plan aims to advance three key goals: promoting innovation; increasing availability of financing; and fostering the use of information technologies over a three year period. Investment will focus on promoting the adoption of new technologies such as 3G services and digital television. Additional policy support will also be given to the sector, including VAT rebates for electronics and information product exports.

In addition, the United States has raised concerns about China's framework regulations for information security in critical infrastructure known as the Multi-Level Protection Scheme (MLPS), first issued in June 2007 by the Ministry of Public Security (MPS) and MIIT. The MLPS regulations put in place guidelines to categorize information systems according to the extent of damage a breach in the system could pose to social order, public interest and national security. The MLPS regulations also appear to require, by reference, purchasers' compliance with certain information security technical regulations and encryption regulations that are referenced within the MLPS regulations. If implementing rules for the MLPS regulations are issued and apply broadly to commercial sector networks and IT infrastructure, they could have a significant impact on sales by U.S. information security technology providers in China.

Tariffs and Other Import Charges

China still maintains high duties on some products that compete with sensitive domestic industries. For example, the tariff on large motorcycles is 30 percent. Likewise, most video, digital video and audio recorders and players still face duties of approximately 30 percent. Raisin imports face duties of 35 percent.

Tariff Classification

Chinese customs officers have wide discretion in classifying a particular import. While foreign businesses might at times benefit from their ability to negotiate classification of products into tariff categories with lower import duty rates, lack of uniformity makes it difficult to anticipate border charges.

Customs Valuation

China still has not uniformly implemented the various customs valuation measures issued following its accession to the WTO. U.S. exporters continue to report that they are encountering valuation problems at many ports. According to U.S. exporters, even though the Customs Administration's measures provide that imported goods normally should be valued on the basis of their transaction price, meaning the price the importer actually paid, many Chinese customs officials are still improperly using "reference pricing," which usually results in a higher dutiable value. Reportedly imports of wood products are often subjected to reference pricing.

In addition, some of China's customs officials are reportedly not applying the rules set forth in the Customs Administration's measures as they relate to software royalties and license fees. Following their pre-WTO accession practice, these officials are still automatically adding royalties and license fees to the dutiable value (for example, when an imported personal computer includes pre-installed software), even though the rules expressly direct them to add those fees only if they are import-related and a condition of sale for the goods being valued.

U.S. exporters also have continued to complain that some of China's customs officials are assessing duties on digital products based on the imputed value of the content, such as the data recorded on a floppy disk or CD-ROM. China's own regulations require this assessment to be made on the basis of the value of the underlying carrier medium, meaning the floppy disk or CD-ROM itself.

More generally, U.S. exporters continue to be concerned about inefficient and inconsistent customs clearance procedures in China. These procedures vary from port to port, lengthy delays are not uncommon, and the fees charged appear to be excessive, giving rise to concerns that they are not related to the cost of services rendered as required under GATT 1994.

Border Trade

China's border trade policy also continues to generate MFN and other concerns. China provides preferential import duty and VAT treatment to certain products, often from Russia, apparently even when those products are not confined to frontier traffic as envisioned by Article XXIV of GATT 1994. In June 2003, China began to address these concerns when it eliminated preferential treatment for boric acid and 19 other products. However, several other products continue to benefit from preferential treatment.

Antidumping, Countervailing Duty and Safeguard Measures

Since acceding to the WTO, China has emerged as a significant user of antidumping measures, underscoring the importance of China's full adherence to the transparency and procedural fairness requirements embodied in WTO rules. As of December 2010, China had a total of 113 antidumping measures in place (some of which predate China's membership in the WTO) affecting imports from 17 countries and regions, and 10 antidumping investigations in progress. The greatest shortcomings in China's antidumping practice continue to be in the areas of transparency and procedural fairness.

Most of the rules and regulations that the Ministry of Commerce (MOFCOM) uses to conduct its antidumping investigations were issued by its predecessor agencies – the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and the State Economic and Trade Commission (SETC). While these measures generally represent good faith efforts to implement the relevant WTO commitments and to improve China's pre-WTO accession measures, they also contain vague language, have gaps in areas of practice and allow inordinate discretion in their application. In July 2009, MOFCOM solicited public comment on draft revisions of its rules on new shipper reviews, antidumping duty refunds and price undertakings. Once finalized, China is obligated to notify these revised rules to the WTO to give Members an opportunity to review the rules for compliance with the WTO Antidumping Agreement and seek any clarifications.

In 2010, respondents from the United States and other WTO Members continued to express concerns about key lapses in transparency and procedural fairness in China's conduct of antidumping investigations. The principal areas of concern include the inadequate disclosure of key documents placed on the record by domestic Chinese producers, insufficiently detailed disclosures of the essential facts underlying MOFCOM decisions, such as the results of on-site verification, dumping margin calculations and evidence supporting injury and dumping conclusions, and inadequate responses to critical arguments or evidence put forward by interested parties.

Meanwhile, as China's antidumping regime has matured, many of the antidumping orders put in place have reached the five-year mark, warranting expiry reviews. As of December 2010, MOFCOM was conducting 9 expiry reviews, two of which involve products from the United States, and several more are scheduled for 2011. To date, every expiry review involving U.S. products has resulted in the measure being extended. Because of the problems that respondents have encountered in China's antidumping investigations, it is critical that China publish rules and procedures specifically governing the conduct of expiry reviews, as required by the WTO Antidumping Agreement. The United States has pressed China to issue regulations governing expiry reviews for more than two years and will continue to do so.

To date, it appears that no interested party has filed for judicial review of a Chinese antidumping proceeding. However, as China continues to launch antidumping investigations and apply antidumping measures against imports, the opportunity for interested parties to seek judicial review will become more critical.

China initiated its first three countervailing duty investigations in 2009. Each of these investigations involved imports of products from the United States – grain-oriented electrical steel (GOES), poultry and automobiles. China's conduct in these countervailing duty investigations raises the same types of concerns regarding transparency and procedural fairness as those raised by China's antidumping practice. The methodologies used by China in these countervailing duty investigations also raise significant concerns, in light of WTO Subsidies Agreement rules. The United States is currently pursuing a WTO case alleging multiple violations of WTO rules in China's antidumping and countervailing duty investigations of imports of GOES from the United States.

Nontariff Barriers

Nine years after China's WTO accession, many U.S. industries complain that they face significant nontariff barriers to trade, which are discussed in more detail in various sections below. These barriers include, for example, regulations that set high thresholds for entry into service sectors such as banking, insurance and telecommunications, selective and unwarranted inspection requirements for agricultural imports, and the use of questionable sanitary and phytosanitary (SPS) measures to control import volumes. (*China's SPS measures are addressed in a separate report issued by USTR entitled "2011 Report on Sanitary and Phytosanitary Measures.*)

Beef

China continues to maintain OIE-inconsistent market access barriers to U.S. beef and beef product exports. Reopening China's beef market consistent with science and international standards as well as in a commercially viable manner is an important priority. This issue is discussed in detail in USTR's annual Report on Sanitary and Phytosanitary Measures.

Tariff-Rate Quotas (TRQs)

As part of its WTO accession commitments, China was to establish large and increasing TRQs for imports of wheat, corn, rice, cotton, wool, sugar, rapeseed oil, palm oil, soybean oil and fertilizer, with most in-quota duties ranging from one percent to nine percent. Under these TRQ systems, China places quantitative restrictions on the amount of these commodities that can enter at a low "in-quota" tariff rate, and any imports over that quantity are charged a prohibitively high duty. Each year, a portion of each TRQ is to be reserved for importation through non-state trading entities. China's Protocol of Accession to the WTO sets forth specific rules for administration of the TRQs, including increased transparency and reallocation of unused quotas to end users that have an interest in importing. China phased out the vegetable oil TRQs in 2006, but currently maintains a TRQ regime on six agricultural products including wheat, cotton, corn, rice, wool and sugar, as well as three chemical fertilizers, including DAP.

The administration of China's TRQ system for fertilizer has suffered from systemic problems since China's WTO accession, including insufficient transparency and administrative guidance affecting how the allocated quota is used. U.S. fertilizer exports to China have declined throughout the post-WTO accession period, due in part to continuing problems with MOFCOM's administration of the fertilizer TRQ system and in part to Chinese government policies restricting the export of a key fertilizer input, phosphate rock, which has led to overcapacity in China's domestic fertilizer industry. U.S. fertilizer exports to China totaled $676 million in 2002, but had fallen to $48 million by 2009.

INTERNAL POLICIES

Non-discrimination

Wind Power Projects

At the October 2009 JCCT meeting, China committed to remove a measure imposing local content requirements for wind turbines being manufactured in China. In December 2009, China followed through on this commitment by eliminating this requirement. However, since then, China has imposed criteria for obtaining approval to pursue new wind power projects that, in effect, appear to discriminate against foreign enterprises. For example, China imposes a requirement of prior experience in supplying large-scale wind power projects in China, but foreign-invested enterprises only have prior experience with these projects outside of China.

Throughout 2010, the United States pressed China to revise the criteria being applied to wind power projects. At the December 2010 JCCT meeting, China agreed to modify its criteria for the approval of new wind power projects by no longer requiring foreign enterprises to have prior experience in China in providing large-scale wind power projects and instead recognizing their prior experience outside China. China further agreed that foreign enterprises could submit documentation based on existing installed wind power projects outside China in order to meet technical requirements for eligibility to supply large-scale wind power projects in China.

Taxation

Value-Added Taxes

China gains a significant amount of annual tax revenue from value-added taxes (VAT). This revenue is shared between the central government, which receives 75 percent, and the local government, which receives 25 percent. In 2009, the central government implemented VAT reforms by changing the VAT from being production-based to being consumption-based. All enterprises and individuals engaged in the sale of goods, provision of processing, repairs and replacement services, and import of goods within China are required to pay the VAT, although there are a few exemptions.

Uneven application of the VAT – which ranges between five percent and 17 percent, depending on the product – continues. Importers from a wide range of sectors report that, because taxes on imported goods are reliably collected at the border, they are sometimes subject to the application of a VAT that their domestic competitors often fail to pay. In addition, China's selective exemption of certain fertilizer products from the VAT has operated to the disadvantage of imports from the United States.

China retains an active and constantly changing VAT rebate program for exports. The effect of many of China's VAT rebate adjustments, which are often used in conjunction with export duties, is to make larger quantities of primary and intermediate products in a particular sector available domestically at lower prices than the rest of the world, giving China's downstream producers of finished products using these inputs a competitive advantage over foreign downstream producers. China discourages the export of the relevant primary and intermediate products by reducing or eliminating VAT rebates and perhaps also imposing export duties on them, resulting in increased domestic supply and lower domestic prices. China's downstream producers, in turn, benefit from these lower input prices as well as full VAT rebates on export of their finished products. In some situations, China has also used its border taxes to encourage the export of certain finished products over other finished products within a sector, especially the steel and aluminum sectors.

Following the onset of the global economic crisis in 2008, China expressed a desire to remove barriers to exports as part of its stimulus programs, leading to a reversal of its trend of gradually reducing export VAT rebates. Since then, China has increased export VAT rebates on many products multiple times, including textiles, clothing, bamboo products, toys, furniture, high-technology products, electrical machinery products, electronics, selected steel products, sewing machines, certain agricultural products, selected plastic and glass products, and alcohol. Among the products affected by recent changes in VAT treatment was soda ash. In April 2009, China raised the VAT rebate from zero to nine percent for exports of soda ash, which compete with U.S. exports in important third-country markets.

Business Tax on Foreign Services

Effective January 1, 2009, China issued amendments to its business tax regulations that reinterpreted the scope of taxable services. Previously, taxes were imposed only on taxable services provided within China. Under the amendments, if services are provided to an enterprise, a non-business organization or an individual in China, the service provider is liable for business tax regardless of where the services are performed.

EXPORT REGULATION

Export Quotas, Duties and Licenses

Since its accession to the WTO, China has continued to impose restraints on exports of raw materials – including quotas, duties and related fees, licensing requirements and other restraints – as the Chinese government has continued to guide the development of downstream industries. These export restraints are widespread. For example, China maintains export quotas and sometimes export duties on antimony, bauxite, coke, fluorspar, indium, magnesium carbonate, molybdenum, rare earths, silicon, talc, tin, tungsten, yellow phosphorus and zinc, all of which are of key interest to U.S. producers of downstream products. These types of export restraints can significantly distort trade, and for that reason WTO rules normally outlaw them. In the case of China, the trade-distortive impact is exacerbated because, for many of the raw materials at issue, China is the world's leading producer.

China's export restraints affect U.S. and other foreign producers of a wide range of downstream products, such as steel, chemicals, hybrid and electric cars, energy efficient light bulbs, wind turbines, hard-disc drives, magnets, lasers, ceramics, semiconductor chips, refrigerants, medical imagery, aircraft, refined petroleum products, fiber optic cables and catalytic converters, among numerous others. The export restraints can create serious disadvantages for these foreign producers by artificially increasing China's export prices for the raw material inputs, which also drives up world prices. At the same time, the export restraints can artificially lower China's domestic prices for the raw materials due to significant increases in domestic supply, enabling China's domestic producers of downstream products to produce lower-priced products from the raw materials and thereby creating significant advantages for China's domestic downstream producers when competing against foreign producers of these products both in the China market and in other countries' markets. The export restraints can also create incentives for foreign downstream producers to move their operations and technologies to China.

Despite extensive U.S. engagement in this area, which began shortly after China's WTO accession, China appears to have maintained its policies for these input materials. It appears that, over time, China has increased the artificial advantages afforded to its downstream producers by making the export quotas more restrictive and by imposing or increasing export duties on many raw materials at issue.

In June 2009, the United States and the EU initiated a WTO case challenging export quotas, export duties and other restraints maintained by China on the export of several key raw material inputs for which China is a leading world producer. The materials at issue include bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorus and zinc. The WTO panel hearing hear this case is scheduled to issue its decision publicly in 2011.

In 2010, China's export restraints on rare earths – a collection of 17 different chemical elements used in a variety of green technology products, among other products – generated significant concern among China's trading partners. Even though it controls about 97 percent of the global rare earths market, China has been imposing increasingly restrictive export quotas and export duties on rare earth ores, oxides and metals. In July 2010, China sharply reduced its export quotas, causing world prices for some of the rare earths to rise dramatically higher than China's domestic prices, and further hindering efforts in other countries to develop expertise in the increasingly important downstream manufacturing of green technology products. Then, in September 2010, China reportedly imposed a temporary *de facto* ban on all exports of rare earths to Japan, causing even more concern among China's trading partners. China has since announced more restrictive export quotas on rare earths for 2011, while also increasing export duties on some of the individual rare earths.

Export Subsidies

A general lack of transparency makes it difficult to identify and quantify possible export subsidies provided by the Chinese government. China's subsidy programs are often the result of internal administrative measures and are not publicized. U.S. industry has alleged that subsidization is a key reason that Chinese exports are undercutting prices in the United States and gaining market share. Of particular concern are China's practices in the steel, petrochemical, high technology, forestry and paper products, textiles, hardwood, plywood, machinery and copper and other nonferrous metals industries.

In its Protocol of Accession to the WTO, China committed to eliminate all subsidies prohibited under Article 3 of the WTO Subsidies Agreement, including all forms of export subsidies on industrial and agricultural goods, upon its accession to the WTO in December 2001. To date, China has submitted only one of its annually required subsidies notifications to the WTO's Subsidies Committee. China submitted that notification in April 2006. Although the notification was lengthy, with over 70 subsidy programs reported, it was also notably incomplete, as it failed to notify any subsidies provided by provincial and local government authorities or any subsidies provided by state-owned banks, whether in the form of preferential loans, debt forgiveness or otherwise. In addition, while China notified several subsidies that appeared to be prohibited under WTO rules, it did so without making any commitment to withdraw them, and it failed to notify other subsidies that appeared to be prohibited.

Since then, the United States has pursued three WTO dispute settlement cases against China involving claims of prohibited subsidies. In the first case, initiated in February 2007, the United States, with Mexico as a co-complainant, challenged a number of subsidies that appeared to be prohibited, including both export subsidies and import substitution subsidies. These subsidies benefited a wide range of industries in China, principally through income tax and VAT exemptions and reductions. Following negotiations, China agreed to eliminate all of the prohibited subsidies at issue by January 1, 2008, and, as agreed, China subsequently issued measures that formally eliminated these subsidies effective January 1, 2008. Next, in December 2008, the United States requested WTO dispute settlement consultations regarding China's "Famous Brand" initiatives, with Mexico and subsequently Guatemala joining as co-complainants. Designed primarily to promote the development of global Chinese brand names and increase sales of Chinese branded merchandise around the world, these initiatives appeared to incorporate prohibited export subsidies. Following discussions as China concurrently took steps to repeal or modify the numerous measures at issue, the parties to the dispute concluded a settlement agreement in December 2009 in which China confirmed that it had eliminated all of the export-contingent benefits in the challenged measures. Finally, in December 2010, following an investigation in response to a petition filed under section 301 of the Trade Act of 1974, as amended, the United States initiated a WTO case challenging what appear to be prohibited import substitution subsidies being provided by the Chinese government to support the production of wind turbine systems in China. Consultations with China at the WTO took place in February 2011.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

China was listed on the Priority Watch List in the 2010 Special 301 report. Persistent inadequacies in the protection and enforcement of IPR represent barriers to U.S. exports and investment. Key concerns listed in the report included unacceptable levels of retail and wholesale counterfeiting, as well as persistently high-levels of book and journal piracy, end-user piracy of business software and copyright piracy over the Internet. The report describes these enforcement-related concerns and summarizes the legal difficulties rights holders face when attempting to assert their IPR rights in China. The lack of deterrent penalties and other policies, such as barriers to the market for legitimate products, contribute to the poor record on reducing IPR crime in China. The report also recognizes industry concerns about the possibility that laws or policies in a variety of fields might be used to unfairly favor domestic intellectual property (IP) over foreign IP, including procurement preferences for products with domestically developed IP and the treatment of IPR in setting standards.

With respect to copyright piracy and trademark counterfeiting, weaknesses in China's enforcement system – criminal, civil and administrative – contribute to China's poor IPR enforcement record. There are also a number of other obstacles to effective enforcement. High value and volume thresholds must be met in order to initiate criminal prosecution of IPR infringement. U.S. trademark and copyright industries also report that administrative fines are too low, and imposed too infrequently, to be a deterrent. Consequently, infringers view administrative seizures and fines merely as a cost of doing business. Civil damages for infringement are likewise inadequate.

The United States sought to resolve specific concerns about China's high legal thresholds for criminal enforcement, along with other concerns regarding weaknesses in China's laws concerning border enforcement and the denial of copyright protection and enforcement to creative works that are awaiting or have not received Chinese censorship approval. When bilateral attempts to address these concerns did not succeed, the United States requested WTO dispute settlement consultations in April 2007, and the WTO panel composed to hear the case circulated its decision in January 2009, finding for the United States on two out of three claims, and clarifying important legal principles related to the third claim. China did not appeal the panel's rulings and subsequently modified the measures at issue, effective March 2010.

An exacerbating factor contributing to China's poor IPR protection has been China's maintenance of restrictions on the right to import and distribute legitimate copyright-intensive products, such as theatrical films, DVDs, music, books, newspapers and journals. These restrictions impose burdens on legitimate, IPR-protected goods and delay their introduction into the market. These burdens and delays faced by legitimate products create advantages for infringing products and help to ensure that those infringing products continue to dominate markets within China. As discussed above in the sections on Trading Rights and Distribution Services, the United States challenged these restrictions in a WTO dispute filed in April 2007. A WTO panel ruled in favor of the United States on all significant issues in August 2009, and the WTO's Appellate Body rejected China's subsequent appeal on all counts in December 2009. China subsequently agreed to comply with these rulings by March 2011.

On October 1, 2009, the Third Amendment to China's Patent Law, passed in December 2008, went into effect. While many areas of the Patent Law were clarified and improved, rights holders have raised a number of concerns about the new law and its implementing regulations, including concerns about disclosure requirements for genetic resources, inventor remuneration and the scope of, and procedures related to, compulsory licensing, among other matters. The United States will be closely following implementation of these measures in 2011.

The United States and China continued to engage in bilateral efforts to address a variety of IPR issues. JCCT IPR Working Group meetings held in April and November 2010 allowed for constructive dialogue on the intellectual property regimes of both countries. Subsequently, at the December 2010 JCCT meeting, the United States secured a series of commitments from China that will have systemic consequences for the protection of IPR in China. In addition to announcing a six-month campaign to step up enforcement against a range of IPR infringements, China agreed to expand and enhance its software legalization program, to take steps to eradicate the piracy of electronic journals, to work intensively toward adopting more effective rules for addressing Internet piracy and to crack down on landlords who rent space to counterfeiters.

Meanwhile, a troubling trend that emerged more conspicuously in 2009, and continued in 2010, was China's willingness to encourage domestic or "indigenous" innovation at the cost of foreign innovation and technologies. One example, discussed below in the Government Procurement section, involves the Circular Launching the 2009 National Indigenous Innovation Product Accreditation Work, which aimed to improve "indigenous" innovation in computer and other technology equipment by imposing qualifying criteria for government procurement preferences such as the ownership or development of a product's intellectual property in China.

Another example of problematic Chinese indigenous innovation policies is the draft Regulations for the Administration of the Formulation and Revision of Patent-Involving National Standards, which the Standardization Administration of China (SAC) released for public comment in November 2009. These proposed regulations generated concerns because of their expansive scope, questions about the feasibility of certain patent disclosure requirements and the undermining of IP rights through possible compulsory licensing of essential patents included in national standards. If adopted in their current form, these regulations may have the unintended effect of undermining incentives for innovation and, by discouraging rights holders from participating in the development of standards in China, depriving the standards-setting process of potentially superior technology. The United States provided comments to SAC on the proposed regulations and requested that SAC not move forward with the finalization of the regulations and instead consult with stakeholders. SAC reportedly received comments from 300 other interested parties as well. A draft measure with similar provisions was issued by the China National Institute for Standards (CNIS) in February 2010, and the United States subsequently provided comments to CNIS. Throughout 2010, the United States also raised its concerns in meetings with China's regulators, and as of December 2010 neither SAC nor CNIS had moved forward to finalize their draft measures.

SERVICES BARRIERS

The market for services in China has significant growth potential in both the short and long term. However, China imposes restrictions in a number of services sectors that prevent or discourage foreign suppliers from gaining or further expanding market access. For example, for certain sectors, China does not grant new licenses or maintains a licensing review process that is opaque or slow-moving. In certain cases, China imposes foreign equity limitations or other discriminatory measures on foreign suppliers. High minimum capital requirements plague other sectors. China also sometimes applies overly burdensome regulatory regimes or other restrictions.

Insurance Services

China continues to maintain certain market access barriers for the insurance sector. Foreign life insurance companies can only be established as joint ventures, with foreign equity capped at 50 percent. China's markets for third party liability automobile insurance and for political risk insurance are closed to foreign participation.

Although China has shown some recent improvement in the insurance sector, U.S. and other foreign companies already established in China continue to have difficulty setting up internal branches in order to expand their operations. The China Insurance Regulatory Commission (CIRC) is not always consistent in following its own deadlines for reviewing and approving internal branch applications from foreign life and non-life companies. Unlike domestic companies, foreign companies also report difficulties in applying for and receiving multiple, concurrent internal branch approvals. The United States will continue to press China to ensure that foreign insurance companies receive the same treatment as domestic insurance companies regarding approvals for new branches and sub-branches. In addition, the United States has urged the relevant Chinese authorities to ensure that China Post, which has been granted a license to supply insurance through its existing network of postal facilities, is not given advantages in terms of how it is regulated and to what extent it is required to provide distribution possibilities for insurance products of other companies.

Private Pensions – Enterprise Annuities

U.S. and other foreign companies have found it difficult to obtain a license to participate in China's market for "enterprise annuities" services (private pensions similar to the U.S. 401(k) system), which will grow in importance as China develops alternatives to its state-funded social security system. China has not granted any new enterprise annuities licenses for more than three years. Even under previous licensing windows, China licensed very few foreign operators and only for limited elements of enterprise annuities services. If China were to re-open its licensing procedure, any license to manage enterprise annuities would need to be obtained from the Ministry of Human Resources and Social Security, which must include the China Banking Regulatory Commission (CBRC), the China Securities Regulatory Commission and CIRC in its decision-making process. The United States will continue to urge China to re-open its licensing process and ensure that any such licensing procedures do not impose quotas on the number of licenses granted to qualified suppliers.

Banking Services

The Regulations for the Administration of Foreign-Funded Banks, issued in November 2006, allow foreign banks to compete in all lines of banking business on the same terms as domestic banks, subject to certain conditions. These regulations require foreign banks to incorporate in China. Moreover, the regulations mandate that 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, 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.

To date, numerous foreign banks have received approval to convert to subsidiaries. In 2008, the first application to issue local currency credit and debit cards was approved, although administrative barriers have hindered the approval of other applications and the actual issuance of RMB credit and debit cards. Although the CBRC announced in 2009 that foreign banks would be allowed to trade and underwrite bonds on the interbank market, relevant Chinese regulatory authorities have yet to issue criteria for participation in underwriting of corporate bonds that would allow qualified foreign banks access to this market. At the July 2009 U.S.-China Strategic & Economic Dialogue (S&ED) meeting, China reiterated its commitment to allow foreign-invested banks incorporated in China to underwrite bonds on the interbank market on the same terms as domestic banks. However, to date, there have been only limited instances of foreign banks underwriting bonds on the interbank market, given the continued lack of objective criteria for underwriters.

Locally incorporated foreign banks operating in China face numerous administrative barriers to competing on equal terms with Chinese banks. For example, foreign banks have been unable to gain approval to distribute mutual fund and trust fund products to clients, a common practice of Chinese banks. In addition, foreign banks have faced difficulties in attaining licenses to serve as custodians for various types of investment accounts, preventing them from expanding into business lines enjoyed by Chinese banks.

The rules on the establishment of Chinese-foreign joint venture banks remain a concern. China continues to follow a 2003 regulation that defines a "Chinese bank" as one that has less than 25 percent foreign ownership, with no single foreign investor having over 19.9 percent ownership (the so-called 20/25 rule). China draws a distinction between domestic and foreign companies through different treatment and requirements relating to experience in China. Under this bifurcated regulatory structure, if a Chinese bank were to sell over 25 percent of its shares to foreign investors, it would be re-classified as a foreign bank and fall under separate rules, which could possibly reduce its permitted scope of business. While the November 2006 State Council regulations appear to eliminate virtually all significant differences in rules for locally incorporated foreign banks and domestic Chinese banks, no foreign bank to date has been approved for increasing its stake in a Chinese bank above the 25 percent threshold and engaging in the full range of banking business.

Securities Services

In December 2007, as follow up to a U.S.-China Strategic Economic Dialogue (SED) commitment, China lifted its moratorium on new licensing in the securities sector, and several foreign firms subsequently began discussions with potential joint venture partners. Since that time, China has begun to license some new Chinese-foreign joint ventures, and recently approved two Sino-U.S. joint ventures. However, China continues to apply a 33 percent foreign equity limit in this sector (as well as a 49 percent foreign equity limit for the asset management sector). In addition, China's 2007 rules relating to joint venture securities companies' expansion of their scope of business contain onerous seasoning requirements that will continue to limit competition in the securities sector to the advantage of Chinese firms.

Electronic Payment Services

In the Services Schedule accompanying its Protocol of Accession to the WTO, China committed to remove market access limitations and provide national treatment for foreign suppliers providing payment and money transmission services, including credit, charge and debit cards, with this commitment becoming effective with regard to the domestic currency (RMB) business of retail clients. China also committed to allow the provision and transfer of financial information, financial data processing, and advisory, intermediation and other financial services auxiliary to payments and money transmission services. These electronic payment and related commitments were to be implemented by no later than December 11, 2006.

In the years leading up to 2006, China's regulator, the People's Bank of China (PBOC), had placed severe restrictions on foreign suppliers of electronic payment services, like the major U.S. payment card companies, which typically provide electronic payment services in connection with the operation of electronic networks that process payment transactions involving credit, charge, debit, prepaid and other payment cards. These services enable, facilitate and manage the flow of information and the transfer of funds from cardholders' banks to merchants' banks. However, the PBOC prohibited foreign suppliers from handling the typical payment card transaction in China, in which a Chinese consumer makes a payment in China's domestic currency. Instead, through a variety of measures, China allows only one domestic entity, China UnionPay (CUP), to supply these services.

After the December 11, 2006 deadline passed without China taking any action, the United States pursued extensive bilateral engagement, which did not resolve U.S. concerns. The United States accordingly requested WTO consultations in September 2010 over China's various restrictions on foreign suppliers of electronic payment services. Consultations were held in October 2010, but those consultations did not resolve the dispute. In February 2011, the United States requested the establishment of a dispute settlement panel to hear the case.

Retailing Services

Although China has made great strides in approving foreign retail outlets, the United States continues to have concerns that China treats domestic companies more favorably than foreign companies regarding zoning and urban development requirements and imposes additional informal minimum capital requirements on foreign suppliers. The United States also would like China to lift ownership restrictions on foreign retailers operating more than 30 stores in China and selling certain commodities.

Sales Away From a Fixed Location

Since 2005, China has significantly liberalized its regime for direct selling services, and a number of foreign direct sellers have received licenses to operate. In October 2009, China finally approved some additional applications for direct selling licenses, the first such approvals since July 2007. This is a welcome step, but the United States will be closely monitoring how future foreign applications are treated. A number of concerns remain, as China maintains unduly burdensome "service center" establishment requirements, caps and other restrictions on sales force compensation, and discriminatory qualification requirements affecting foreign direct sellers.

Express Delivery Services

A number of aspects of China's express delivery regime continue to cause concern for the United States, but work with China's regulator of the sector, the State Postal Bureau (SPB), has resulted in some incremental progress. As part of the 2010 JCCT plenary, the United States obtained assurances from the SPB that it would continue cooperation with relevant Chinese government ministries and agencies to investigate and shut down fake express delivery services (EDS) websites established in China. The SPB also agreed on the importance of protecting data security, an area where the United States and China will continue to strengthen their exchange of ideas. In addition, during the run-up to the JCCT, the United States and the SPB held serious discussions about the need to ensure that China's express delivery industry associations, including the national-level China Express Association (CEA) and the provincial level express associations, do not attempt to mandate self-discipline agreements on express delivery service suppliers that would violate the terms of China's own anti-monopoly legislation.

However, the United States also has been monitoring China's implementation of its 2009 Postal Law and related regulations and standards closely and is concerned that China's regime will not treat foreign and domestic companies equally. For example, it already is clear that the Law excludes foreign suppliers from the important document segment of China's domestic express delivery market. In addition, The United States is also concerned that China may interpret the universal service fund requirement of the law to require private companies to pay into that fund and, in effect, be forced to subsidize China Post's own express delivery services.

Express delivery firms also faced customs issues in 2010, including a proposed four-hour advance manifest rule that, if implemented, would hobble overnight international deliveries. In addition, in July 2010, the General Administration of Customs (GAC) eliminated the RMB 400 *de minimis* exemption for goods imported to China. As a result, all goods entering China valued below RMB 400 must now provide a 10-digit Harmonized Schedule number, and the importer must apply for a GAC importer registration number. These requirements add administrative burdens to express delivery service providers and slow the shipping process.

On the related issue of air freight forwarding, wholly foreign-owned express delivery companies cannot qualify for an Air Transport Agency license, and therefore do not have the ability to directly load cargo on Chinese domestic or international flights, but instead must work through a Chinese agent. Additional express delivery issues are found in the sections below relating to Aviation and Maritime Services and Logistics Services.

Construction, Engineering, Architectural and Contracting Services

In 2002, the Ministry of Construction (re-named the Ministry of Housing and Urban-Rural Development in 2008) and the Ministry of Foreign Trade and Economic Cooperation (now MOFCOM) issued the Rules on Administration of Foreign-Invested Construction Enterprises (known as Decree 113) and Rules on the Administration of Foreign-Invested Construction Engineering and Design Enterprises (known as Decree 114). Decrees 113 and 114 create concerns for foreign firms by imposing more restrictive conditions than existed prior to China's WTO accession, when they were permitted to work in China on a project-by-project basis pursuant to Ministry of Construction rules. These decrees, for the first time, require foreign-invested enterprises to incorporate in China. The decrees also impose high minimum registered capital requirements as well as technical personnel staff requirements that are difficult for many foreign-invested enterprises to satisfy. Decree 113 also limits the scope of projects (in terms of size and scale) open to participation by foreign-invested enterprises in comparison with the rights enjoyed by domestic companies.

Regarding Decree 113, the United States has urged China to broaden the scope of projects that can be undertaken by foreign-invested enterprises. The United States also is asking China to reduce its minimum capital requirements and/or consider bonding and other guarantee arrangements in lieu of minimum capital.

Implementing rules for Decree 114 became effective in 2007. These rules are important, as U.S. companies have a very strong interest in providing engineering and design services in China. The implementing rules were generally positive, in that they temporarily lifted foreign personnel residency requirements imposed by Decree 114, and recognized the foreign qualifications of technical experts for licensing purposes. U.S. and other foreign companies would like to see these improvements in the implementation of Decree 114 made permanent. In addition, under existing rules, set forth in Circular 202, issued by the Ministry of Construction in August 2007, foreign construction engineering design companies do not have the right to apply for a comprehensive, "Grade A" design license, like domestic companies can do.

Circular 200, issued by the Ministry of Construction in 2004, imposes certain qualification requirements on foreign suppliers of project management services that the industry finds overly burdensome. Specifically, China does not allow foreign companies to provide project management services without already holding construction or design enterprise approvals. If China were to issue implementation rules for Decree 155, issued jointly by the Ministry of Construction and MOFCOM in 2007, which relates to foreign-invested construction engineering services enterprises, this would provide an important new avenue for foreign companies to supply project management services.

Logistics Services

In March 2008, China announced the establishment of a new Ministry of Transport (MOT) that combined responsibilities formerly held by the Ministry of Communications, the General Administration of Civil Aviation (CAAC) and SPB. The Ministry of Railways continues to administer rail transport separately.

MOT has been slow to approve applications by foreign logistics firms and is unwilling to issue nationwide trucking licenses, which limits the ability of foreign firms to build economies of scale. In addition, local regulations in almost all major Chinese cities limit daytime access by trucks. China's enforcement efforts are often targeted at foreign transport/logistics firms, while local firms are permitted to operate without being in full compliance.

In February 2009, China's State Council announced a support plan for the logistics industry as part of the Chinese Government's industry revitalization plans for ten key industries. Foreign logistics firms with investments in China have raised concerns about inadequate transparency for implementing measures, equitable treatment and efforts to strengthen industry standardization.

There also are growing concerns about the use of inappropriate standards that may hinder market access for logistics firms. Foreign companies have complained about AQSIQ standards issued in April 2005 that are unnecessarily burdensome since they establish artificial classification categories of transport, warehousing and multi-purpose activities. In addition, freight forwarding firms are concerned that their exclusion from these regulatory categories may prevent their participation in standards-setting activities.

Aviation Services

Under the auspices of the SED, the United States and China negotiated an amended bilateral air services agreement, which they signed in July 2007. The agreement brings significant economic benefits to the aviation industry, passengers, shippers and local communities. Among other things, the agreement added ten new daily passenger flights that U.S. carriers could operate to the Chinese gateway cities of Beijing, Shanghai and Guangzhou by 2012, allowed unlimited U.S. cargo flights to any point in China and an unlimited number of U.S. cargo carriers to serve the China market as of 2011, increased from six to nine the number of U.S. passenger carriers that may serve the China market by 2011, and expanded opportunities for U.S. carriers to code-share on other U.S. carriers' flights to China. The agreement also committed the United States and China to launch Open Skies negotiations in 2010. However, China's interpretation of cargo hub provisions in the agreement has resulted in U.S. cargo carriers experiencing difficulties in getting their operating schedules approved by CAAC in China. U.S. and Chinese negotiators are currently involved in a series of technical discussions to resolve this issue.

Telecommunications

Foreign participation in China's telecommunications market, including both basic and value-added telecommunications services, remains very limited. China maintains foreign equity restrictions and a multitude of other barriers in the telecommunications sector, including investment approval procedures that are non-transparent and lengthy. Although China has the world's largest fixed landline, mobile and broadband markets measured by subscribership, the lack of opportunities for foreign service suppliers is striking. China's regulator for the sector, MIIT, while nominally separate from current telecommunications operators, maintains extensive influence and control over their operations and the overall structure of the market. China's foreign equity restrictions (a maximum of 49 percent foreign equity for basic telecommunications and 50 percent for value-added telecommunications) severely diminish commercial opportunities in the sector.

Regarding basic telecommunications, not only has there been no new market entry in that sector over the past decade, China forced a consolidation of this sector in 2008, reducing the number of national operators from six to three—China Mobile, China Telecom and China Unicom. China's policy is to permit only foreign joint ventures with existing, state-owned licensees. This policy has further reduced market access opportunities for U.S. suppliers and the potential for additional competition in the Chinese telecommunications market. Although not explicitly stated in rule or policy, China appears to apply an economic needs test to new entrants in this sector to avoid "unhealthy competition." China also shows reluctance to authorize new services or technologies which might compete with the revenue of incumbent operators, such as cable modem service, Voice over Internet Protocol (VoIP) or WiFi over a mobile handset. In September 2008, in response to a long-standing U.S. request, China slightly reduced basic telecommunications capitalization requirements to RMB 1 billion (approximately $146 million). This level is still excessively high and makes it commercially unattractive for most foreign operators to invest in the sector, particularly for leased line, resale and corporate data services, which require no new building of facilities.

In January 2009, China's MIIT issued 3G licenses based on the three different existing technologies, with a TD-SCDMA license for China Mobile, a W-CDMA license for China Unicom and a CDMA2000 EV-DO license for China Telecom. However, despite the issuance of licenses for all three standards, the Chinese government continued to heavily promote, support and favor the TD-SCDMA standard. For example, China's economic stimulus-related support plan for Information Technology and Electronics, approved by the State Council and published in April 2009, specifically identifies government support for TD-SCDMA as a priority.

In March 2010, U.S. concerns over China's preferential treatment of TD-SCDMA were exacerbated by the inclusion of products based on this technology in the Opinions on Advancing Third-Generation Communications Network Construction, issued by MIIT, the National Development and Reform Commission (NDRC), the Ministry of Science and Technology (MOST), the Ministry of Finance (MOF), the Ministry of Land and Resources, the Ministry of Housing and Urban-Rural Development and the State Administration of Taxation. This measure entitles these products to government procurement preferences, if they are listed in the Catalogue of Indigenous Innovation Products for Government Procurement and if the indigenous innovation product accreditation system is implemented.

Meanwhile, China's insistence on promoting TD-SCDMA has discouraged further innovation. For example, China has been reluctant to permit operators to deploy alternative technologies, including 4G technologies.

Throughout 2010, the United States continued to press China to reaffirm the principle of technology neutrality for current and future services and technologies. In an important development at the December 2010 JCCT meeting, China agreed to technology neutrality for 3G networks and future networks based on new technologies, allowing operators to choose freely among those technologies and without the Chinese government providing any preferential treatment based on the standard or technology used by an operator.

Regarding value-added telecommunications, although there are over 20,000 licensed domestic telecommunications value-added suppliers in China, MIIT has issued, as of December 2009, only 19 value-added licenses to foreign companies, including licenses to five U.S.-affiliated companies. One difficulty foreign companies face in obtaining a license is the lack of clarity regarding which services a foreign-affiliated firm is permitted to offer. In addition, MIIT seems to classify certain value-added corporate data services ("IP-VPN") as value-added when offered domestically, but as basic (and thus capped at lower foreign equity levels and subject to higher capitalization requirements) when offered internationally. MIIT has provided no justification for this practice.

China made a draft of its Telecommunications Law available for review and comment on an unofficial basis in the fall of 2009. This draft contains troubling elements, including provisions that would codify China's foreign equity limitations for the sector, complicating ongoing efforts in the WTO and other fora to encourage China to liberalize this sector, and other issues of concern to industry. China has been working on the draft law for over ten years. MIIT still lacks a specific authorizing statute for its powers.

In 2010, the United States continued to urge China to pursue further market liberalization. Among other issues, the U.S. sought to ensure that China's plans for allowing telecommunications sector convergence would allow foreign providers a fair opportunity to participate in that market, and that China would allow foreign suppliers to provide international corporate data services under telecommunications value-added licenses.

Online Services

China operates the world's most comprehensive Internet filtering regime, which affects a broad range of commercial activity conducted via the Internet. Chinese authorities routinely filter Internet traffic entering China, focusing primarily on the content they deem objectionable on political, social, or religious grounds. In 2002, China lifted filters on most major western news sites. Nevertheless, since then, foreign news and other content websites have periodically been blocked, some apparently permanently. While the 2008 Olympics resulted in some previously blocked sites being unblocked, once the Olympics were over, a concerted effort to reassert control appears to have been instituted, through what the Open Net Initiative termed "Control 2.0" and an effort to "set the agenda for coverage, rather than suppress it."

Changes to Internet filtering can occur without warning or public explanation. While ostensibly to address issues of the public interest enumerated in law, Chinese government authorities may issue lists of banned search terms or banned sites weekly, with little justification or means of appeal, putting Internet-enabled services in a precarious position, caught between complying with the law and implementing apparently arbitrary restrictions.

China's Internet regulation regime is exceedingly complex. Internet content restrictions for Internet Content Providers, electronic commerce sites and application service providers located in China are governed by a number of measures, not all of which are public. Since 2000, these measures have increased, and press reports note that at least 12 government entities have authority over Internet access and content. Some of these measures restrict who may report news and place limits on what exactly may constitute news. In addition to interfering with news reporting in the traditional sense, these measures may also provide a basis for Chinese authorities to interfere with the normal business reporting operations of non-news organizations, such as multinational corporations, if they use the Internet to keep clients, members, their headquarters and other interested parties informed about events in China.

This complex regulatory regime governing on-line services has resulted in several high-profile cases which have affected foreign firms' delivery of on-line services, such as search engine and web domain registration. There continues to be uncertainty in a number of other on-line service areas such as mapping and other on-line content distribution methods.

Audiovisual and Related Services

Importation and distribution of books, newspapers, journals, sound recordings, videos, films and television programs remain highly restricted. Inconsistent and subjective application of censorship regulations further impedes market growth for foreign providers. China's large black market for foreign DVDs and other home entertainment video products continues to grow because these market access restrictions create a demand for pirated goods in the absence of legitimately licensed home or theatrical entertainment.

At both the central and regional levels, interconnected agencies under the State Administration for Radio, Film and Television (SARFT) dictate the terms under which films can be produced and distributed. SARFT permits only one film importer and two film distributors (which are both components of the same monopoly managed by SARFT) to operate in China. For theatrical releases, the monopoly importer and distributor dictate the films that will be imported (currently limited by China to 20 revenue-sharing films a year, with remaining films imported only under low, fixed price terms), when they will be released in the market, and the box office revenue-sharing terms in a master contract agreement imposed unilaterally and uniformly on foreign studios by the Chinese government. In addition, the Chinese government sets strict guidelines with respect to the public screening of foreign films. Under Article 44 of the Regulations for the Administration of Films, issued by the State Council in 2001, the total annual screening time for foreign films must not exceed one-third of the total screening time of all films (domestic and foreign).

Television quotas are also highly restrictive. The Administrative Measures on the Import and Broadcast of Extraterritorial Television Programs, effective October 23, 2004, restrict foreign television drama and film programming to no more than 25 percent of total airtime, and other foreign programming to no more than 15 percent of total air time. Foreign programming, including animated programs, is banned between 7:00 P.M. and 10:00 P.M. on terrestrial stations. SARFT's Interim Regulation on Digital Cable TV Pay Channels (November 14, 2003) restricts foreign programming to a maximum of 30 percent of total airtime on pay television channels.

In addition to censorship reviews by Chinese authorities, which can delay the arrival of imported foreign films on Chinese movie screens, the Chinese government has historically decreed "black-out periods" during which no new revenue-sharing blockbuster foreign films may be released in order to prevent competition with Chinese films being released during the same period. Banning the release of new foreign titles or removing popular foreign films during peak seasons not only hurts theatrical revenues but also contributes to increased piracy, as pirates meet immediate consumer demand for foreign titles by offering illegal downloads through the Internet, on pirate optical discs and pirate video-on-demand channels.

Regulations restricting direct distribution by non-Chinese companies of imported theatrical films, home video, public performance video and television products remain. China Film dictates the contractual terms, play dates and other aspects of film exhibition. When Chinese entities contract for the rights to distribute titles in various home video formats, the differentiation between video rights and rights for home use or public use is often ignored; home video products are often used for public performance exhibitions in mini-cinemas and by some pay-television operators providing to hotels.

China Film also continues to require that film prints be made in local laboratories. The requirement pertains to theatrical distribution in most cases, and it applies to home video distribution in all cases. Local printing and duplication requirements reduce rights holders' ability to control the quality of a film copy and may result in increased costs.

For sound recordings, China limits market access opportunities for imported sound recordings in a manner similar to the limitations imposed on films for theatrical release or home viewing. In addition, new barriers were erected in the recent past. The Ministry of Culture's Opinion on the Development and Regulation of Network Music bans foreign ownership of firms supplying digital music services, requiring that entities engaging in the online distribution of sound recordings in China be wholly Chinese-owned entities. In late 2007, this regulation was amplified in new rules established jointly by MIIT and SARFT, explicitly restricting audio and video distribution services (including over electronic networks such as the Internet) to state-owned entities.

As discussed above in the section on Trading Rights, the United States initiated a WTO dispute settlement case against China in April 2007 challenging the importation and distribution restrictions applicable to certain copyright-intensive products, including books, newspapers, journals, theatrical films, videos and sound recordings, and associated services. The WTO panel that heard the case issued its decision in August 2009, ruling in favor of the United States on all significant issues. China appealed the panel's decision in September 2009. The WTO's Appellate Body rejected China's appeal on all counts in December 2009. China subsequently agreed to comply with these rulings by March 2011.

Investment in China's audiovisual sector is highly restricted. For television production, joint ventures or cooperative firms must have a minimum capital requirement of RMB 2 million ($275,000), and foreign capital is capped at 49 percent. In February 2005, SARFT issued a circular placing further restrictions on foreign partners and requiring two-thirds of the programs of a joint venture or cooperative firm to have Chinese themes.

In August 2005, the State Council issued a directive stating that private capital cannot be used to establish or operate a news agency, newspaper, publishing house, radio station, or television station. The directive also stated that radio and television signal broadcasting and relay station, satellite and backbone networks are closed to private capital.

Travel and Tourism Services

In December 2007, the United States and China signed an MOU to facilitate Chinese group leisure travel to the United States and the marketing in China of U.S. destinations or businesses. The first group of Chinese leisure travelers visited the United States under the MOU in June 2008. In November 2009, the United States and China agreed to implement the second phase of the MOU to include an additional 12 jurisdictions, bringing the total to 21. As part of the December 2010 JCCT, the United States and China agreed to implement the third phase of the MOU, opening the market to three additional provinces in China. The United States will continue to press China to broaden the scope of access to include the remaining provinces.

Foreign travel and tourism firms in China are still restricted from competing under the same conditions as Chinese firms for any aspect of the travel and tourism market not specific to group leisure travel. For example, wholly foreign-owned enterprises and Chinese-foreign joint ventures continue to be restricted in selling outbound travel packages and airline tickets. In addition, China requires all travel agents and airlines to connect into China's nationally owned and operated computer reservation system when booking airline tickets for domestic flights and outbound international flights. China also continues to apply an annual sales requirement on foreign travel agencies, although there are no such requirements for domestic agencies.

Education and Training Services

The Ministry of Education (MOE) continues to restrict participation by foreign educators and trainers. China permits only nonprofit educational activities that do not compete with the MOE-supervised nine years of compulsory education, thereby inhibiting much-needed foreign investment in the education sector. China also bans foreign companies and organizations from offering educational services via satellite networks. Foreign universities may set up nonprofit operations. However, they must have a Chinese university host and partner to ensure that programs bar subversive content and that informational material that is imported is adapted to suit local conditions.

Legal Services

Foreign law firms face numerous restrictions on the scope and structure of their activities in China, as well as other barriers affecting market access. Current Chinese laws and regulations prohibit foreign firms from practicing Chinese law, which means that they are unable to hire Chinese-qualified lawyers to practice Chinese law as employees of their firms, or otherwise provide advice on Chinese law to clients. China also maintains restrictions on cooperation with Chinese law firms (including investment and profit-sharing restrictions) that further limit market opportunities. Foreign law firms are also barred from directly representing clients in, or even from attending along with local Chinese counsel, regulatory proceedings administered by Chinese government agencies. In addition, foreign law firms are concerned that China may make it even more difficult to provide other legal services (such as advisory and consultation services) that are currently widely regarded as permissible.

China also maintains regulatory requirements for foreign representative legal offices that are not applied to Chinese law firms, as set forth in the December 2001 Regulations on the Administration of Foreign Firm Representative Offices and July 2002 implementing rules. The measures appear to create an economic needs test for foreign law firms seeking to establish representative offices in China. In addition, a foreign law firm may not establish an additional representative office until its most recently established office has been in practice for three consecutive years. China also requires that representatives of foreign law firms must have practiced for no less than two years outside of China as a member of a bar or law society of a WTO Member. New foreign representatives must undergo a lengthy approval process that can take more than one year, during which they must leave the country periodically to renew their visas.

Substantial differences in official tax policies applied to the representative offices of foreign law firms in comparison with taxes applied to Chinese law firms, coupled with inconsistent enforcement policies, represent an additional significant hurdle to supplying legal services in China.

INVESTMENT BARRIERS

The volume of foreign direct investment (FDI) in China rose by 6.3 percent in 2010 amid a marginal one percent increase in FDI flows globally and in spite of China's maintenance of significant investment barriers. According to the United Nations Conference on Trade and Development, China received $101 billion in FDI in 2010. China was the world's second-largest destination for FDI, after the United States. In 2010, investors continued to complain of a lack of transparency, inconsistently enforced laws and regulations, weak IPR protection, corruption and an unreliable legal system that fails to enforce contracts and judgments.

China's leadership has repeatedly affirmed its commitment to further open China to foreign investment, including a strong statement at the S&ED meeting in May 2010 in which China reiterated its commitment to open trade and investment. However, there is growing concern that other steps China has taken continue to discriminate against or otherwise disadvantage foreign investors. The United States is concerned about the increase in proposed and adopted measures that restrict investment. These restrictions are often accompanied by other problematic industrial policies, such as the increased use of subsidies and the development of China-specific standards. Many of these developments appear to represent protectionist tools created by industrial planners to shield inefficient or monopolistic enterprises, particularly those in which the Chinese government has an ownership interest, from competition.

Investment Requirements

Upon its accession to the WTO, China assumed the obligations of the Agreement on Trade Related Investment Measures (TRIMS Agreement), which prohibits trade-related investment measures that violate GATT Article III obligations to treat imports no less favorably than domestic products and GATT Article XI obligations not to impose quantitative restrictions on imports. In its Protocol of Accession to the WTO, China also specifically agreed to eliminate export performance, local content and foreign exchange balancing requirements from its laws, regulations and other measures, and not to enforce the terms of any contracts imposing these requirements. In addition, China agreed that it would no longer condition importation or investment approvals on these requirements or on other requirements such as technology transfer and offsets.

Although China has revised many of its laws and regulations to conform to its WTO investment commitments, some of these measures continue to raise WTO concerns, including those that "encourage" technology transfers to China, without formally requiring them. U.S. companies remain concerned that this "encouragement" in practice can amount to a "requirement," particularly in light of the high degree of discretion provided to Chinese government officials when reviewing investment applications. Similarly, some laws and regulations "encourage" exportation or the use of local content. Moreover, according to U.S. companies, some Chinese government officials in 2010, even in the absence of encouraging language in a law or regulation, still considered factors such as export performance and local content when deciding whether to approve an investment or to recommend approval of a loan from a Chinese policy bank, which is often essential to the success of an investment project.

Investment Guidelines

Catalogue Guiding Foreign Investment

China's foreign investment objectives are primarily defined through its Catalogue Guiding Foreign Investment in Industry, which is revised every few years and was most recently updated in November 2007. The most recent revision of the catalogue suggests that China's investment policies may be becoming more selective in allowing foreign investment by actively targeting higher value-added sectors (including high technology research and development, advanced manufacturing, energy efficiency, environmental conservation and modern agriculture and services) rather than basic manufacturing. Meanwhile, the catalogue places new restrictions on several industries, including chemicals, automotive parts, rare earths processing, biofuel production and edible oil processing, while the prohibitions and restrictions facing copyright-intensive products, conventionally bred plant seeds and genetically modified plant seeds remain in place. In addition, in the most recent revision, the mining of raw materials such as antimony, fluorite, molybdenum, tin and tungsten was moved from the "restricted" category to the "prohibited" category.

In April 2010, the State Council issued the Opinions on Improving Foreign Capital Utilization. This measure instructs relevant Chinese ministries to amend the Catalogue Guiding Foreign Investment in Industry to encourage foreign investment in high-end manufacturing, high technology, modern services, alternative energies and energy saving and environmentally friendly industries and to restrict foreign investment in industries that are energy intensive, resource intensive, highly polluting, use "obsolete" technology, or have overcapacity. In May 2010, MOFCOM issued a Notice on Relevant Issues about Decentralizing Foreign Investment Approval Authority, which raised the threshold for central MOFCOM government approval of investments in the "encouraged" category from $100 million to $300 million. In October 2010, the State Council issued a Decision on Accelerating the Cultivation and Development of Strategic Emerging Industries, which called for amendments to the catalogue to encourage foreign investment in a set of "strategic emerging" industries similar to those listed in April 2010, including energy conservation and environmental protection, next-generation information technology, biotechnology, high-end equipment manufacturing, alternative energy, advanced materials and alternative energy automobiles.

Using both the JCCT process and the S&ED process, the United States has pressed China to increase the transparency of its revisions to the catalogue. At the May 2010 S&ED meeting, China committed to publish proposed future revisions of the catalogue in advance for public comment. China reportedly plans to issue a revised catalogue in 2011.

Administrative Measures to Restrict Investment

Over the past few years, Chinese regulators have announced a number of measures limiting the ability of foreign firms to invest in China's market. For example, in November 2006, the NDRC released a five year plan on foreign investment, which promised greater scrutiny over foreign capital utilization. The plan called for the realization of a "fundamental shift" from "quantity" to "quality" in foreign investment during the period from 2006 to 2010. The state's focus would change from shoring up domestic capital and foreign exchange shortfalls to introducing advanced technology, management expertise and talent. In addition, the plan specifically encouraged foreign investments contributing to natural resource conservation and environmental protection, and discouraged foreign investment in industries with a high rate of pollution and water resource depletion. The plan also demanded tighter tax supervision of foreign enterprises and sought to restrict foreign firms' acquisition of "dragon head" enterprises to prevent the "emergence or expansion of foreign capital monopolies," to protect national economic security and to prevent the "abuse of intellectual property." As discussed above, in April 2010, the State Council issued the Several Opinions on Further Improving the Work of Utilizing Foreign Investment, which appears to be a step toward implementing part of the five-year plan. While the stated purpose of the measure is to create a better environment for foreign investors in China, it remains to be seen how the policy will be implemented in practice. A new five-year plan on foreign investment is expected to be issued in 2011.

In June 2009, revisions to the Provisions on the Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, which had been issued in 2006, were promulgated by MOFCOM and five other government agencies. Under the 2006 measure, foreign mergers and acquisitions of domestic enterprises that would result in "actual control" of a domestic enterprise in a "key industry" with "potential impact on national economic security" or that would give control of a famous Chinese trademark or traditional Chinese brand to a foreign investor require approval at the central government level by MOFCOM. The 2006 measure also placed MOFCOM in the role of determining if the domestic acquisition target has been appropriately valued. The 2009 revisions neither removed nor provided greater clarity with respect to terms such as "national economic security" and "critical industries," and also retained the provision permitting denial of a foreign investor's acquisition if a famous trademark or a traditional Chinese brand is being acquired. Changes in these areas would have provided useful clarity for foreign investors, and the continued lack of precision raises concerns that administrative ambiguity will continue to provide a basis for uneven administration and for differential treatment of Chinese and foreign investors. China is currently in the process of developing an additional review process for foreign mergers and acquisitions of domestic companies to target national security aspects of such transactions, as called for in the 2007 Anti-monopoly Law.

In December 2006, SASAC issued the Guiding Opinion Concerning the Advancement of Adjustments of State Capital and the Restructuring of State-Owned Enterprises. Statements accompanying the release of this measure identified an expansive list of sectors deemed critical to the national economy. This measure explained that “pillar” and “backbone” industries such as automotive, chemical, construction, electronic information, equipment manufacturing, iron and steel, nonferrous metal, science and technology, and survey and design must maintain relatively strong state control. Reportedly, SASAC officials also identified a separate set of seven strategic sectors in which state capital must play a leading role, including aviation, coal, defense, electric power and grid, oil and petrochemicals, shipping and telecommunications. SASAC committed to restrict foreign participation in these sectors by preventing further foreign investment in state-owned enterprises operating in these sectors. In October 2008, the National People’s Congress issued the Enterprise State-Owned Assets Law, which later took effect in May 2009. Among other provisions, Article 57 of the law states that where state-owned assets are transferred to a foreign investor, the transfer must not harm the national security or public interests of China. It remains unclear how SASAC implements these policies in practice or, in the context of the Enterprise State-Owned Assets Law, how it interprets the “national security” and “public interests” of China. In August 2010, the State Council issued the Opinions on Promoting Enterprise Merger and Restructuring, which promotes consolidation of enterprises in six industries, most of which are dominated by state-owned enterprises, including the automobile, steel, cement, aluminum, rare earths and machinery manufacturing industries. China also continued to employ various sector-specific measures designed to impose new requirements on foreign investors. For example, in January 2010, China imposed a new restriction on foreign investment in the offshore wind market. At that time, China’s National Energy Administration (NEA) and the State Oceanic Administration (SOA) jointly issued the Interim Measures for Offshore Wind Power Development and Construction, which stipulate that offshore wind farm investment projects in China must be undertaken by either a Chinese enterprise or a Chinese majority-controlled enterprise with foreign ownership of no greater than 49 percent. Measures affecting foreign investment in the automotive and steel sectors are discussed above in the section on Import Substitution Policies.

Other Investment Issues

Venture Capital and Private Equity

Foreign venture capital and private equity investments are subject to a variety of regulatory limitations in China. For example, transferring foreign capital into China to fund these investments remains a significant challenge, requiring approval from the State Administration for Foreign Exchange (SAFE). In addition, limited investment exit options have, to some extent, curbed foreign participation in China's venture capital and private equity sectors. Most foreign venture capital and private equity investments in China are housed in offshore holding companies, which, in the past, as with other offshore FDI, could be transferred without Chinese government approval. The Chinese Government issued regulations in 2006, however, that effectively shut down this method of transferring local assets to offshore “special purpose vehicles.” The 2006 regulations require pre-approval by no less than six agencies for a Chinese company to transfer assets offshore to a foreign entity. Since the issuance of these rules, no approvals have been granted. Further, in 2006, China implemented policies that made it more difficult for Chinese firms to list on foreign stock exchanges, while at the same time it facilitated listing on the domestic A-share market. Although private equity investors have successfully listed in the domestic A-share market, these investors face a three year lock-up period during which they may not sell their listed holdings.

Holding Companies

China has relaxed some restrictions on the scope and operations of holding companies, although minimum capital requirements normally make the establishment of a holding company suitable only for corporations with several large investments. Holding companies may manage human resources across their affiliates and also provide certain market research and other services. However, some restrictions on services provided by holding companies and on holding companies' financial operations, in addition to the ability to balance foreign exchange internally, remain in place. Profit and loss consolidation within holding companies also remains prohibited.

Securities Investments

China continues to open its domestic equity markets to investments from foreign firms. Through the Qualified Foreign Institutional Investor (QFII) program, foreign securities firms may apply for QFII status, which permits limited access to the RMB-denominated A-share market. As of December 2010, China had granted QFII status to 97 foreign entities, with quotas allotted totaling over $19.7 billion.

Access to Capital Markets

Foreign-invested firms in China are often unable to access domestic and international stock markets, to sell corporate bonds and equity, or to engage in normal merger, acquisition and divestment activity. However, at the U.S.-China Strategic Economic Dialogue (SED) meeting in December 2007, China agreed to allow, in accordance with relevant prudential regulations, qualified foreign-invested companies to issue RMB-denominated stocks, and qualified listed companies to issue RMB-denominated corporate bonds. Coupled with the ability to trade in these asset classes, foreign firms would add substantial expertise, liquidity and competition to the Chinese market.

Foreign exchange transactions on China's capital account can be concluded only through case-by-case review by SAFE and approvals are tightly regulated. To date, foreign firms remain generally satisfied because they are able to repatriate profits. With respect to capital inflows, several foreign firms continue to note difficulties in obtaining government approval to bring in foreign capital to expand their businesses.

GOVERNMENT PROCUREMENT

Accession to the WTO Agreement on Government Procurement

China is not yet a signatory to the WTO Agreement on Government Procurement (GPA). In accordance with its commitment upon accession to the WTO, China became an observer to the WTO Committee on Government Procurement in 2002. China also committed, in its Protocol of Accession to the WTO, to initiate negotiations for accession to the GPA "as soon as possible." China initiated GPA accession by submitting its application for accession and initial offer of coverage in December 2007.

The United States and other GPA Parties noted that significant improvements would be needed in China's initial offer to bring China's coverage to the level of other Parties' coverage. At the October 2009 WTO Government Procurement Committee's meeting, China submitted a report on the coverage that it intended to include in its revised offer, which included the coverage of more entities, goods and services and lower thresholds. At the same time, however, China noted that it was encountering difficulties in completing its revised offer. At the May 2010 S&ED meeting, China committed to submit its revised offer to the WTO's GPA Committee by July 2010, which it subsequently did. While the revised offer reflected some improvements over China's initial offer, the United States and other GPA Parties have noted that a number of improvements are necessary to bring China's coverage to a level comparable to that of the other GPA Parties. The Parties particularly emphasized the need for China to include sub-central entities and certain state-owned enterprises that engage in government activities in its next offer.

At the December 2010 JCCT meeting, the United States was able to obtain China's commitment to accelerate its accession to the GPA, as China agreed to work with provincial and local governments and to submit a robust revised offer of coverage in 2011. In addition, during Chinese President Hu's state visit in January 2011, China agreed that its revised offer would include sub-central entities.

Government Procurement Regime

In January 2003, China implemented a Government Procurement Law (GPL), which generally reflects GPA obligations and incorporates provisions from the United Nations Model Law on Procurement of Goods. However, the GPL also directs central and sub-central government entities to give priority to "local" goods and services, with limited exceptions. According to MOF, China's government procurement for 2009 was approximately $109 billion, using MOF's definition of government procurement spending, a 24 percent increase over 2008.

In 2010, China circulated two draft measures intended to implement its Government Procurement Law. The first draft measure, the Regulations to Implement the Government Procurement Law, was issued by MOF in January. The United States submitted comments in February, in which, among other things, it expressed concern that the draft measure did not provide a GPA-consistent regime. The United States also expressed concern that the draft measure did not provide more specificity about the conduct of government procurement. The second draft measure, the Administrative Measures for Government Procurement of Domestic Products, was issued for public comment in May by MOF, MOFCOM, NDRC and the General Administration of Customs. In accordance with China's October 2009 JCCT commitment, this draft measure sets out the requirements for a product to qualify as a "domestic product," ensuring that products produced in China by foreign-invested enterprises receive the same treatment as products produced in China. The United States submitted comments on this draft measure in June, in which it expressed concerns about the lack of details regarding how the draft measure would be implemented.

The GPL generally does not cover tendering and bidding for public works and government infrastructure projects. Those projects are subject to a different regulatory regime, established by China's Tendering and Bidding Law (TBL), which entered into force in January 2000. While official figures for procurement covered under the TBL are not available, analysts estimate that this procurement may exceed $200 billion. In September 2009, the State Council finally circulated NDRC's draft implementing regulations for the TBL for public comment. In October 2009, the United States submitted written comments on these draft regulations in which it emphasized, among other things, the need for greater clarification of the relationship between the TBL and the GPL, and the need to define "domestic products." Final regulations have not yet been issued.

Indigenous Innovation Policies

In December 2007, MOF issued two measures that would substantially restrict the Chinese government's purchase of foreign goods and services. The first measure, the "Administrative Measures on the Government Procurement of Imported Products," severely restricts government procurement of imported foreign products and technologies. The second measure, the "Administrative Measures for Government Procurement on Initial Procurement and Ordering of Indigenous Innovation Products," is directed at restricting government procurement of "indigenous innovation" products to Chinese products developed by domestic enterprises or research institutions. The central government and provincial governments have since followed up by creating catalogues of qualifying "indigenous innovation products," which are periodically updated to include new products. While China may maintain these measures until it completes its GPA accession, the United States has raised strong concerns with regard to them, as they run counter to the liberalization path expected of a WTO Member seeking to accede to the GPA.

In 2009, China reinforced its existing "Buy China" measures at the central, provincial and local government levels. For example, in May 2009, MIIT issued a circular entitled Government Procurement Administration Measures, which applies to MIIT and its direct subsidiaries. The measure requires priority to be given in government procurement to domestic products and services, as well as to indigenous innovation products, except where the products or services cannot be produced or provided in China or are for use outside of China. In May 2009, nine central government ministries and agencies jointly issued the Opinions on Further Strengthening Supervision of Tendering and Bidding Activities in Construction Projects, which included a "Buy China" directive for all projects under China's stimulus package. This directive specifically requires that priority be given to "domestic products" for all government-invested projects, unless the products are not available in China, cannot be purchased on reasonable commercial terms in China, or are for use abroad.

In November 2009, MOST, NDRC and MOF issued the Circular on Launching the 2009 National Indigenous Innovation Product Accreditation Work, requiring companies to file applications by December 2009 for their products to be considered for accreditation as "indigenous innovation products." This measure provides for preferential treatment in government procurement to any products that are granted this accreditation, which is based on criteria such as the ownership or development of a product's intellectual property in China. Subsequently, the United States and U.S. industry, along with the governments and industries of many of China's other trading partners, expressed serious concerns to China about this measure, as it appears to establish a system designed to provide preferential treatment in government procurement to products developed by Chinese enterprises.

In April 2010, MOST, NDRC and MOF issued a draft measure for public comment, the Circular on Launching 2010 National Innovation Product Accreditation Work. The draft measure would amend certain of the product accreditation criteria set forth in the November 2009 measure, but would leave other problematic criteria intact, along with the accreditation principles, application form and link to government procurement. In addition, the draft measure originally was to become effective the day after comments were due. The United States submitted comments in May 2010, in which it asked China to suspend the implementation of the indigenous innovation accreditation system and to engage in consultations with the United States to address U.S. concerns with the system. To date, the draft measure has not been finalized, and the Chinese authorities have not requested or accepted applications for accreditation.

At the December 2010 JCCT meeting, China took important steps to address U.S. concerns about these indigenous innovation policies. China agreed not to maintain any measures that provide government procurement preferences for goods or services based on the location where the intellectual property is owned or was developed. During Chinese President Hu's January 2011 state visit, China further committed to delink its innovation policies from the provision of government procurement preferences.

ELECTRONIC COMMERCE

China has experienced dramatic growth in Internet usage since 1999. According to the 26th Internet Survey Report recently published by the China Internet Network Information Center (CNNIC), the number of Internet users in China reached approximately 420 million as of June 2010, representing an Internet penetration rate of 31.8 percent. The majority of these people are accessing the Internet through non-computer means, *i.e.*, cell phones, etc. With regard to broadband, there are reportedly now more than 125 million subscribers in China. Meanwhile, 3G mobile subscribers surpassed 50 million as of January 2011, representing a three-fold increase in one year.

China is experiencing the rapid development of online businesses such as search engines, network education, online advertisements, audio-video service, paid electronic mail, short message, online job searches, Internet consulting, electronic trading and online gaming. However, CNNIC reported that only 28 percent of surveyed Chinese Internet users frequently use the Internet for online shopping services.

The Chinese government recognizes the potential of electronic commerce to promote exports and increase competitiveness and has made some progress toward establishing a viable commercial environment. However, several Chinese ministries have jurisdiction over electronic commerce and impose a range of burdensome restrictions on Internet use (*e.g.*, registration requirements for web pages and arbitrary and nontransparent content controls), stifling the free flow of information and the consumer privacy needed for electronic commerce to flourish. Content is still controlled and encryption is also regulated, as discussed more fully above (in the "Online Services" section), and the frequent blocking of websites (even those of a commercial nature) inhibits the predictability and reliability of using electronic networks as a medium of commerce.

A number of technical problems also inhibit the growth of electronic commerce in China. Rates charged by government approved Internet service providers make Internet access expensive for most Chinese citizens. Slow connection speeds are another problem, although this is changing quickly as broadband connections become more readily available. At the same time, Internet penetration is still relatively low in China, and there is a large urban/rural divide in penetration rates (the urban penetration rate is six times higher than the rural penetration rate), so there is still significant room for growth.

Other impediments to businesses and consumers conducting online transactions in China include the paucity of credit card payment systems (exacerbated by a current monopoly provider of RMB-denominated services), consumer reluctance to trust online merchants, lack of secure online payment systems and inefficient delivery systems. China has also yet to develop a legal framework conducive to the rapid growth of electronic commerce. Laws recognizing the validity of "electronic contracting" tools and stressing the importance of online privacy and security have been proposed but not yet issued. Despite these obstacles, however, a large and growing percentage of Chinese Internet users reportedly have made online purchases.

ANTICOMPETITIVE PRACTICES

Competition Policy Laws and Regulations

China maintains many laws and regulations in the competition policy area. One of China's principal laws is the Anti-Unfair Competition Law, enacted by the National People's Congress (NPC) in 1993. This law addresses a variety of matters, as it: (a) prohibits firms from using a trademark, name, or packaging without a license, as well as false advertising and other practices intended to confuse consumers; (b) outlaws bribery, the purchase or sale of business secrets, and predatory pricing; (c) restricts a firm's ability to tie the sale of one product to another or impose "unreasonable conditions" on purchases; (d) bans collusion and outlaws "spreading false facts" that damage a competitor; and (e) in theory, limits the business practices of legally authorized monopolies and restricts the government's ability to require that private firms engage in certain commercial transactions with state-owned enterprises.

The national government has legislated that production in certain sectors be concentrated in monopolies or near monopolies or authorized oligopolies. As in some other countries, these enterprises are concentrated in capital intensive sectors, like electricity and transportation, or in industries such as fixed-line telephony and postal services, in which this approach may be used to ensure national coverage. Some of the key laws and regulations include the Law on Electricity (1996), Civil Aviation Law (1995), Regulations on Telecommunication (2000), Postal Law (1986), Railroad Law (1991) and Commercial Bank Law (amended in 2003), among others. The enforcement of these laws and regulations is uneven as a result of the challenges inherent in attempting to coordinate their implementation nationally and as a result of inconsistent local and provincial enforcement. More troubling are efforts by government authorities at all levels in China to regulate competition with specific firms, often state-owned enterprises. Official statements frequently suggest that these efforts are tied primarily to employment concerns. However, the ultimate beneficiaries of the resulting measures are often unclear. In addition, local governments frequently enact rules that restrict interprovincial trade. Since the central government has difficulty enforcing its own competition policy measures at the local level, these local government rules continue to restrict market access for certain imported products, raise production costs and limit market opportunities for foreign invested enterprises.

The NPC in August 2007 passed China's first Anti-monopoly Law, which took effect in August 2008, and China is in the midst of drafting implementing regulations. Under this law, an Anti-monopoly Commission with oversight and coordinating responsibilities has been established, drawing its members from several Chinese ministries and agencies. Enforcement responsibilities have been divided among three agencies. MOFCOM has assumed responsibility for reviewing mergers. NDRC has assumed responsibility for reviewing monopoly activities, abuse of dominance and abuse of administrative power when they involve pricing, while SAIC reviews these same types of activities when they are not price related.

After the Anti-monopoly Law was issued, MOFCOM, SAIC, NDRC and other Chinese government ministries and agencies began to formulate implementing regulations, departmental rules and other measures. Generally, these ministries and agencies have been willing to seek public comment on their proposed measures. In commenting on these proposed implementing measures, the United States has urged China to implement the Anti-monopoly Law in a manner consistent with global best practices and with a focus on consumer welfare and the protection of the competitive process, rather than consideration of industrial policy or other non-competition objectives. The United States has also specifically pressed China to ensure that any implementing measures do not create disguised or unreasonable barriers to trade and do not provide less favorable treatment to foreign goods and services or foreign investors and their investments. During the past year, the United States submitted comments on SAIC's revised draft implementing regulations on monopoly agreements, abuse of dominant market position and abuse of administrative power.

The Anti-monopoly Law does contain provisions that have generated concern. For example, it remains unclear how China will implement one provision that requires protection for the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. On the other hand, the inclusion of provisions on the abuse of administrative power in the Anti-monopoly Law, which also appear in NDRC's and SAIC's draft implementing regulations, could be important instruments for promoting the establishment and maintenance of increasingly competitive markets in China. In addition, because trade associations in China frequently appear to have strong government ties, the United States has encouraged the Chinese agencies charged with enforcing the Anti-monopoly Law to work with Chinese regulatory agencies with sectoral responsibilities to emphasize the importance of trade associations refraining from engaging in conduct that would violate the Anti-monopoly Law.

Since the Anti-monopoly Law went into effect in 2008, China's administrative enforcement of it has been most active in the merger area overseen by MOFCOM, largely due to the requirement to pre-notify merger transactions. While more than 70 percent of mergers notified to MOFCOM since the law came into effect have involved multinational corporations, all six cases in which approval was granted with conditions have involved offshore transactions between foreign parties rather than transactions between Chinese enterprises. In addition, MOFCOM has formally blocked only one transaction, and that transaction involved a foreign enterprise's attempt to acquire a well-known Chinese enterprise. Although

MOFCOM's initial merger decisions were brief, over the last year MOFCOM has begun to release more detailed explanations of its merger decisions, some of which have been criticized by U.S. industry observers for lack of adequate bases to find that a merger has or may have the effect of eliminating or restricting competition.

Measures Restricting Inward Investment

In 2006, China began to revise its policies toward inward investment. While insisting that it remains open to foreign investment, China adopted policies that restrict inward investment in a range of "strategic" sectors, which appear designed to shield domestic enterprises from foreign competition. As discussed above in the Investment Barriers section, these policies include the State Council's June 2006 Opinions on the Revitalization of the Industrial Machinery Manufacturing Industries, which calls for China to expand the market share of domestic companies in 16 equipment manufacturing industries.

In addition, in August 2006, the Ministry of Commerce and five other agencies issued revised rules for foreign mergers and acquisitions, which, among other things, establish a vague "national economic security" basis for rejecting proposed transactions as well as an anti-monopoly review for foreign transactions. In November 2006, the NDRC issued a Five Year Plan on foreign investment that seeks to restrict foreign acquisitions of leading Chinese enterprises, prevent the emergence of foreign capital monopolies, protect industrial security and prevent abuse of intellectual property. In December 2006, SASAC published an expansive list of seven "critical economic sectors" in which China should restrict foreign participation, including armaments, electrical power and distribution, oil, chemicals, telecommunications, coal, aviation and shipping. Finally, the Catalogue Guiding Foreign Investment in Industry, as discussed above in the Investment Barriers section, suggests China's policies toward inward investment may be more selective.

Some of these measures maintain or create conflicts of interest by assigning regulatory power to agencies that administer state-owned enterprises competing in the same sectors. In addition, key terms in the new policies, such as "national economic security," remain undefined. The opaque standards and ill-defined processes in these measures have introduced additional ambiguity into China's investment policy.

OTHER BARRIERS

Transparency

Official Journal

In its WTO accession agreement, China committed to establish or designate an official journal dedicated to the publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange. China also agreed to publish the journal regularly and to make copies of all issues of the journal readily available to enterprises and individuals. Following its accession to the WTO, however, China did not establish or designate an official journal. Rather, China relied on multiple channels, including ministry websites, newspapers and a variety of journals, to provide information on trade-related measures. Following sustained U.S. engagement, the State Council issued a notice in March 2006 directing all central, provincial and local government entities to begin sending copies of all of their trade-related measures to MOFCOM for immediate publication in the MOFCOM Gazette. The United States subsequently monitored the effectiveness of this notice, both to assess whether all government entities regularly publish their trade-related measures in the MOFCOM Gazette and whether all types of measures are being published. It appeared that adherence to the State Council's notice was far from complete. As a result, the United States continued to engage China bilaterally on the need for a fully compliant single official journal, and at the December 2007 SED meeting China reconfirmed its WTO commitment to publish all final trade-related measures in a designated official journal before implementation. Since then, the United States has been monitoring the effectiveness of this commitment, and it appears that most government entities are now regularly publishing their trade-related measures in this journal, although it is still not clear whether all types of trade-related measures are being published. For example, in March 2010, SASAC posted a notice on its website, rather than the MOFCOM Gazette, announcing the issuance of a potentially far-reaching measure, the Interim Provisions on Guarding Central State-Owned Enterprises' Commercial Secrets, effective as of the date of its issuance. SASAC had never solicited public comments on this measure, and did not even make the full text of the measure publicly available until one month later.

Public Comment

In its WTO accession agreement, China committed to provide a reasonable period for public comment on new or modified trade-related laws and regulations before implementing them, except in certain enumerated instances. However, China has been slow to implement this commitment. Following sustained U.S. engagement, the NPC's Standing Committee instituted notice-and-comment procedures for draft laws in April 2008. Two months later, in June 2008, China agreed to publish in advance for public comment, subject to specified exceptions, all trade and economic-related administrative regulations and departmental rules that are proposed for adoption, and provide a public comment period of not less than 30 days from the date of publication. China further agreed to publish such measures for comment in a single location: the Chinese Government Legislative Information Website of the Legislative Affairs Office of the State Council. Since then, the United States has been monitoring the effectiveness of these changes. While the NPC has been regularly publishing draft laws for public comment, and the State Council has also been regularly publishing draft regulations for public comment, it appears that China has had more difficulty implementing China's new policy regarding trade- and economic-related departmental rules. Since June 2008, China has increased the number of proposed departmental rules published for public comment on the State Council's website. However, a significant number of departmental rules are still issued without first having been published for public comment on the State Council's website. While some ministries publish departmental rules on their own websites, they often allow less than 30 days for public comment, making it difficult for foreign interested parties to submit timely and complete comments.

In October 2010, the State Council issued the Opinions on Strengthening the Building of a Government Ruling by Law, which directs ministries and agencies at the central and provincial levels of government to solicit public comment when developing their rules, subject to certain exceptions. The United States will closely monitor whether this measure leads to improvements in the use of notice-and-comment procedures.

Legal Framework

Laws and Regulations

Laws and regulations in China often contain provisions that are relatively general and ambiguous. While this approach allows the Chinese authorities to apply laws and regulations flexibly, it also results in inconsistency and confusion in application. Companies often have difficulty determining whether their activities contravene a particular law or regulation.

In China, regulations are also promulgated by a host of different entities at the central, provincial and local levels, and it is not unusual for the resulting regulations to be at odds with one another. Even though finalized regulations are now routinely published in China, they often leave room for discretionary application and inconsistencies. Indeed, government bureaucracies have sometimes been accused of selectively applying regulations. China has many strict rules that are often ignored in practice until a person or entity falls out of official favor. Governmental authorities can wield their discretionary power on foreign or disfavored investors or make special demands on them simply by threatening to crack down.

This lack of a clear and consistent framework of laws and regulations can be a barrier to the participation of foreign firms in the Chinese domestic market. A comprehensive legal framework, coupled with adequate prior notice of proposed changes to laws and regulations and an opportunity to comment on those changes, would greatly enhance business conditions, promote commerce and reduce opportunities for corruption. The U.S. Government has provided technical assistance, at the central, provincial and local levels of government in China, in an effort to promote improvements in China's legislative and regulatory drafting processes. In its Protocol of Accession to the WTO, China committed to establish tribunals for the review of all administrative actions relating to the implementation of trade related laws, regulations, judicial decisions and administrative rulings. These tribunals must be impartial and independent of the government authorities entrusted with the administrative enforcement in question, and their review procedures must include the right of appeal. To date, little information is publicly available regarding the frequency or outcomes of reviews before these tribunals.

China also committed, at all levels of government, to apply, implement and administer all of its laws, regulations and other measures relating to trade in goods and services in a uniform and impartial manner throughout China, including in special economic areas. In connection with this commitment, in 2002, China also established an internal review mechanism, now overseen by MOFCOM's Department of WTO Affairs, to handle cases of non-uniform application of laws. The actual workings of this mechanism remain unclear, however.

Commercial Dispute Resolution

Both foreign and domestic companies often avoid seeking resolution of commercial disputes through the Chinese courts, as skepticism about the independence and professionalism of China's court system and the enforceability of court judgments and awards remains high. There is a widespread perception that judges, particularly outside of China's big cities, are subject to influence by local political or business pressures. Many judges are not trained in the law and/or lack higher education, although this problem decreases at the higher levels of the judiciary.

At the same time, the Chinese government is moving to establish consistent and reliable mechanisms for dispute resolution through the adoption of improved codes of ethics for judges and lawyers and increased emphasis on the consistent and predictable application of laws. For example, Supreme Court rules provide that foreign or Chinese enterprises and individuals may bring cases in the designated courts raising challenges under the Administrative Litigation Law to decisions made by China's administrative agencies relating to international trade matters. The rules also state that when there is more than one reasonable interpretation of a law or regulation, the courts should choose an interpretation that is consistent with the provisions of international agreements to which China has committed, such as the WTO rules.

Despite initial enthusiasm, foreign observers have grown increasingly skeptical of the China International Economic and Trade Arbitration Commission (CIETAC) as a forum for the arbitration of trade disputes. Some foreign firms have obtained satisfactory rulings from CIETAC, but other firms and legal professionals have raised concerns about restrictions on the selection of arbitrators and inadequacies in procedural rules necessary to ensure thorough, orderly and fair management of cases.

Finally, in cases where the judiciary or arbitration panels have issued judgments in favor of foreign-invested enterprises, enforcement of the judgments has often been difficult. Officials responsible for enforcement are often beholden to local interests and unwilling to enforce court judgments against locally powerful companies or individuals.

Labor Issues

In recent years, China has expanded the scope of its national labor laws and regulations. Three labor laws went into effect in 2008: the Labor Contract Law, which clarifies the rights and obligations of workers and employers to promote better labor relations; the Labor Dispute Mediation and Arbitration Law, which improves and streamlines the labor dispute resolution process; and the Employment Promotion Law, which aims to stimulate employment opportunities. However, China does not appear to adhere to certain internationally recognized labor standards, including the freedom of association and the right to bargain collectively. In addition, reports continue to indicate that China does not effectively enforce its labor laws and regulations concerning issues such as minimum wages, hours of work, occupational safety and health, bans on child labor, forced prison labor and participation in social insurance programs. Effectively enforcing internationally recognized labor standards, and its own labor laws and regulations, would help ensure that China is not promoting trade at the expense of its workers.

Chinese law provides for the right to associate and form a union, but does not allow workers to form or join an independent union of their own choice. Any union formed must affiliate with the official All-China Federation of Trade Unions (ACFTU), which reports to the Communist Party of China. Once a union chapter is established, the enterprise is required to pay fees to the ACFTU, often through the local tax bureau, equaling two percent of total payroll, regardless of the number of union members in the enterprise. The workers at these enterprises are required to accept the ACFTU as their representative; they cannot instead select another union or decide not to have any union representation. In addition, while China's laws on union formation apply equally to domestic enterprises and foreign-invested enterprises, since 2006 the ACFTU has engaged in a campaign to organize ACFTU chapters in foreign-invested enterprises, particularly large multinational corporations. This campaign has generated concerns about discriminatory treatment of foreign-invested enterprises in relation to domestic enterprises.

Meanwhile, skilled workers are in relatively short supply. Restrictions on labor mobility continue to distort labor costs. China is gradually easing restrictions under the country's household registration system, which has traditionally limited the movement of workers within the country, in part due to the recognition that labor mobility is essential to the continued growth of the economy.

Corruption

Many people expected that China's entry into the WTO, which mandated a significant reduction in tariffs, would in turn reduce incentives for smuggling-related corruption. While WTO membership has increased China's exposure to international best practices and resulted in some overall improvements in transparency, corruption remains endemic. Chinese officials themselves admit that corruption is one of the most serious problems the country faces, and China's leadership has called for an acceleration of the country's anti-corruption drive with a focus on closer monitoring of provincial-level officials. According to Chinese state media sources, China launched an anti-corruption campaign in 2006 targeting Communist Party of China officials. According to official reports, the Communist Party's Central Commission for Discipline Inspection (CDIC) punishes and disciplines an average of 130,000-190,000 party officials each year for misdeeds and more serious crimes.

In July 2004, China implemented a new Administrative Licensing Law. This law is designed to increase transparency in the licensing process, an area that has long served as a source of official corruption. This law seeks to ensure the reasonable use of administrative licensing powers to protect the interests of corporations and individuals and to promote efficient administrative management by requiring government agencies to set up special offices for issuing licenses and to respond to applications within 20 days. Since its 2004 implementation, the law has increased transparency in the licensing process, while reducing procedural obstacles and strengthening the legal environment for domestic and foreign enterprises.

China issued its first law on unfair competition in 1993, and the central government continues to call for improved self-discipline and anticorruption initiatives at all levels of government. While the central government in recent years has pledged to begin awarding contracts solely on the basis of commercial criteria, it is unclear how quickly, and to what extent, the government will be able to follow through on this commitment. U.S. suppliers complain that the widespread existence of unfair bidding practices in China puts them at a competitive disadvantage. This dilemma is less severe in sectors where the United States holds clear technological or cost advantages. Corruption nevertheless undermines the long-term competitiveness of both foreign and domestic entities in the Chinese market.

Land Issues

China's constitution specifies that all land is owned in common by all the people. In practice, agricultural collectives, under the firm control of local Communist Party chairmen, distribute agricultural land to rural residents, while provincial and municipal governments distribute land for residential and industrial use. The State and collectives can either "grant" or "allocate" land-use rights to enterprises in return for the payment of fees, or in some cases without the payment of any fees. Enterprises granted land-use rights are guaranteed compensation if the State asserts eminent domain over the land, while those with allocated rights are not. Granted land-use rights cost more, not surprisingly, than allocated rights. However, the law does not define standards for compensation when eminent domain supersedes granted land-use rights. This situation creates considerable uncertainty when foreign investors are ordered to vacate. The absence of public hearings on planned public projects, moreover, can give affected parties, including foreign investors, little advance warning.

The time limit for land-use rights acquired by foreign investors for both industrial and commercial enterprises is 50 years. A major problem for foreign investors is the array of regulations that govern their ability to acquire land-use rights. Local implementation of these regulations may vary from central government standards, and prohibited practices may occur in one area while the regulations are enforced in another. Most wholly-owned foreign enterprises seek granted land-use rights to state-owned urban land as the most reliable protection for their operations. Chinese-foreign joint ventures usually attempt to acquire granted land-use rights through lease or contribution arrangements with the local partners.

China's National People's Congress passed a Property Rights Law on March 16, 2007, the first comprehensive legal protection for private property since the founding of the People's Republic in 1949. This law, which generated years of controversy in the Chinese government but was never published in draft form, grants equal legal status to private, state and collectively owned property, although at the same time it explicitly affirms the dominant role of public property in the economy. In addition, this law covers the "means of production," such as factories, but agricultural land remains a collective possession subject to 30 year leases. It is unclear at this time how the law will be implemented.

Given the scarcity of land resources in China, the price of land-use rights and land allocation are important considerations from both a market access and competition standpoint and from the perspective of their effect on production and trade. It is therefore of some concern to the United States that the Chinese government is recentralizing control over land administration, with the objective, in part, to ensure that land use-rights are allocated in accordance with a compulsory national land-use plan and state industrial development policies.