

COMMERCIAL RULE OF LAW

Introduction

December 11, 2016, marked 15 years since China acceded to the World Trade Organization (WTO).¹ The Chinese government and Communist Party are bound by commitments detailed in the WTO agreements and China's accession documents.² The Commission found during its 2017 reporting year that the government and Party continued to fail to comply with key WTO commitments, including to ensure equal treatment for foreign enterprises;³ to practice a market economy;⁴ and to enforce the rule of law with impartiality, transparency, and uniformity.⁵ Instead, the Chinese government continued to promote preferential treatment for domestic industry,⁶ compel technology transfer,⁷ and provide significant financial and political support to outbound investment,⁸ creating an uneven playing field and altering market prices both domestically and globally.⁹ Additionally, Chinese officials continued to enforce commercial regulations inconsistently, arbitrarily, and non-transparently, making it difficult for foreign enterprises to compete or enjoy open access in the Chinese market.¹⁰ Chinese authorities have promoted economic reform in policy documents and official speeches,¹¹ yet actual progress toward reform reportedly remains limited.¹² The Chinese government's implementation of its WTO commitments is a measure of the overall development of rule of law in China and of the Chinese government's willingness to comply with its international commitments.¹³

Evaluation of China's Commitment to Equal Treatment

When it joined the WTO, China committed to ensure non-discrimination against foreign enterprises with respect to the procurement of goods, services, and enforcement of intellectual property rights.¹⁴ Despite official rhetoric claiming openness,¹⁵ Chinese officials continued to promote discriminatory policies that reportedly perpetuated an uneven playing field for foreign enterprises.¹⁶ Moreover, many reports note that private enterprises have opaque ties to the government and Party, giving these companies an unfair advantage in Chinese markets and in courts.¹⁷ Summarizing the current adverse climate for foreign businesses competing in China, the Office of the U.S. Trade Representative (USTR) reported in March 2017 that "China continued to pursue a wide array of industrial policies in 2016 that seek to limit market access for imported goods, foreign manufacturers and foreign service suppliers, while offering substantial government guidance, resources and regulatory support to Chinese industries."¹⁸ While President and Party General Secretary Xi Jinping stated in January 2017 that "China will keep its door wide open and not close it,"¹⁹ the American Chamber of Commerce in China (AmCham) reported in a January 2017 survey that 81 percent of foreign companies felt "less welcome in China than before" in 2016, an increase from 77 percent the previous year.²⁰

Commercial Rule of Law

INDUSTRIAL POLICIES

During this reporting year, the Chinese government continued to promote industrial policies that reportedly disadvantage foreign enterprises and distort global markets.²¹ For example, authorities continued to implement “Made in China 2025,” a plan released by the State Council in May 2015,²² which is reportedly a US\$300 billion plan with the goal of becoming self-sufficient in 40 percent of core components and key basic materials by 2020, and 70 percent by 2025.²³ Chinese authorities’ de facto technology transfer requirements for foreign companies that want to be involved in “Made in China 2025” and the Chinese government’s promotion of indigenous innovation raise national treatment and other concerns, according to recent reports by representatives of the U.S. and European business communities.²⁴

INTERNET CENSORSHIP

The Chinese government’s strict control over the Internet continued to serve as an indirect form of preferential treatment for domestic enterprises, as consumers’ access to global websites remained obstructed. In March 2017, USTR identified Internet censorship in China as a barrier to trade for a second year, noting that Chinese authorities blocked “11 of the top 25 global sites” and highlighting U.S. industry research that found that “up to 3,000 sites in total are blocked.”²⁵ The March 2017 USTR report also stressed that even external sites that are not blocked must pass through the filters of China’s “Great Firewall,” in some cases slowing sites down so much as to “significantly degrade the quality of the service, in some cases to a commercially unacceptable level, thereby inhibiting or precluding the cross-border supply of certain services.”²⁶ In October 2016, a U.S. computer industry association reported that the blocking of U.S. services in China, including Google, Facebook, Twitter, Dropbox, and LinkedIn, had resulted in the loss of billions of dollars in revenue for U.S. companies, while China-based Internet firms had an “unfair commercial advantage” as they were not blocked in China or the United States.²⁷ AmCham’s 2017 China Business Climate Survey Report, published in January 2017, found that 87 percent of surveyed companies reported that Internet censorship negatively affected their “company’s competitiveness and operations in China,”²⁸ and a July 2017 report by AmCham Shanghai found that for small- and medium-sized member companies surveyed, “improved [I]nternet access” was their main reform priority.²⁹ Moreover, the Chinese government’s arbitrary and non-transparent blocking of websites may violate its WTO commitment to follow the rule of law, according to a computer industry association.³⁰ In January 2017, USTR reported that it had continued outreach to the Chinese government to discuss its “arbitrary blocking of commercial websites.”³¹ In July 2017, the Chinese government reportedly requested that Apple and a Chinese partner of Amazon take actions to limit Internet users in China from downloading or using virtual private networks (VPNs) to access websites censored by Chinese authorities.³² AmCham,³³ the European Chamber of Commerce in China,³⁴ and a representative of the Hong Kong Information Technology Federa-

tion,³⁵ expressed concerns that the restrictions on VPNs will negatively affect business users.

CYBERSECURITY

The Chinese government took regulatory steps this past year to strengthen cybersecurity, but foreign business leaders warned that some of these steps could disadvantage foreign firms. In November 2016, the National People's Congress passed the PRC Cybersecurity Law, which took effect on June 1, 2017.³⁶ In April 2017, the Cyberspace Administration of China (CAC) released draft implementing measures for the data localization requirements of the PRC Cybersecurity Law,³⁷ mandating that Chinese authorities conduct a security review of certain types of data before companies can transmit the data out of China.³⁸ AmCham raised concerns that these new measures on data localization would "discourage foreign investment by unnecessarily imposing prohibitively complex or expensive requirements" in order to store their data in China.³⁹ In May 2017, 54 business groups sent a letter to the CAC expressing concerns regarding provisions in the draft measures, writing that the draft measures suggest "China is continuing to move away from its bilateral commitments, international obligations, and global norms."⁴⁰ The CAC subsequently informed business groups that enforcement of certain implementing measures of the PRC Cybersecurity Law would be postponed until December 31, 2018.⁴¹

FOREIGN INVESTMENT RESTRICTIONS

The Chinese government continued to limit foreign investment in China, and although the government took regulatory steps to reduce investment restrictions this past year, the impact of these changes remained unclear. A May 2017 report by a research firm and non-profit organization found that the Chinese government's restrictions on foreign investment reportedly contributed to an imbalance of acquisitions, with acquisitions by U.S. companies in China at their lowest level since 2009.⁴² In January 2017, the State Council released the Circular Regarding Several Measures on Expanding Further Openness and Active Utilization of Foreign Investment, with the stated aim of increasing foreign investment in China.⁴³ In June 2017, the National Development and Reform Commission and the Ministry of Commerce jointly released a revised Foreign Investment Industrial Guidance Catalogue (2017 Catalogue).⁴⁴ The 2017 Catalogue reduced the number of categories for which foreign investment is limited from 93 to 63;⁴⁵ however, foreign investment in media-related entities continues to be "prohibited."⁴⁶ In July 2017, the European Union Chamber of Commerce in China issued a press release that criticized "[t]he continued use of such a discriminatory catalogue" that maintained the "fundamental distinction" between "domestically-invested and foreign-invested enterprises with respect to market entry and approval requirements."⁴⁷

During this reporting year, AmCham identified negotiation of a U.S.-China Bilateral Investment Treaty as a priority for alleviating restrictions on foreign investment.⁴⁸ International experts have noted that human rights concerns are becoming increasingly impor-

Commercial Rule of Law

tant in the drafting and enforcement of bilateral investment treaties.⁴⁹

Evaluation of China's Commitment To Practice a Market Economy

While the Chinese government committed under WTO agreements to generally “allow prices for traded goods and services in every sector to be determined by market forces,”⁵⁰ it continues to distort domestic and global prices with its practice of providing what the Office of the U.S. Trade Representative (USTR) describes as “substantial subsidies” to domestic industries,⁵¹ and with its non-commercial operation of state-owned enterprises.⁵²

CHINESE GOVERNMENT SUBSIDIES

Chinese authorities continued to provide substantial subsidies to domestic industries including steel and aluminum, resulting in overcapacity in China and distorted global markets.⁵³ According to USTR, for example, despite declining demand and no comparative advantages in energy and raw material inputs for steel making, China's steel capacity continued to grow.⁵⁴ Some international experts point to government subsidies as a key cause of overcapacity in the steel and aluminum sectors.⁵⁵ This overcapacity has led to excess global supply, distorting global market prices.⁵⁶ The Chinese government has previously claimed it would allow “market forces to play a central role” in allocating resources and reducing overcapacity,⁵⁷ yet output in many areas has reportedly continued to increase.⁵⁸ A report commissioned by an international environmental advocacy group found that China's steel capacity increased as many of the steel factories the Chinese government claimed it shut down as part of efforts to reduce overcapacity had already been closed or were already idle.⁵⁹

This past year, the U.S. Government filed WTO disputes against the Chinese government regarding its use of subsidies to boost domestic production. In September 2016, the U.S. Government filed a dispute over Chinese subsidies for wheat, rice, and corn producers.⁶⁰ In January 2017, the U.S. Government filed a WTO dispute regarding Chinese subsidies to the aluminum sector.⁶¹ In April 2017, the U.S. Government requested that the Chinese government notify the WTO about 80 government measures that provided subsidies to Chinese companies.⁶² The U.S. Government's 584-page request included translations of each of the measures,⁶³ as the Chinese government had failed to provide translations themselves, despite committing to provide translations of all its trade laws, regulations, and other measures.⁶⁴ The request noted that these subsidies were part of a program that appeared to be a “successor” to China's Famous Brands Program, which the U.S. Government successfully challenged in a WTO dispute filed in 2008.⁶⁵ In addition to not providing translations, the Chinese government has not fully complied with its WTO obligations to publish all trade-related laws, regulations, and other measures, making WTO disputes more challenging.⁶⁶

State-Owned Enterprises and the Communist Party

State-owned enterprises (SOEs) continue to play a key role in the Chinese economy.⁶⁷ According to 2016 statistics, the National Bureau of Statistics of China reported that there were 133,631 SOEs⁶⁸ and 291,263 state-holding companies operating in China.⁶⁹ Observers note that SOEs tend to be less productive than private companies,⁷⁰ yet Chinese government statistics showed that the number of industrial sector state-holding companies increased yearly from 2011 to 2015.⁷¹ According to an April 2017 International Monetary Fund (IMF) publication, SOEs accounted for over 50 percent of bank credit in China and around 60 percent of corporate debt in China.⁷² The provision of loans from state-owned banks to SOEs on a non-commercial basis serves as a major form of government subsidy in China,⁷³ and according to the IMF distorts the “allocation of resources” and promotes “inefficiency.”⁷⁴

The Chinese Communist Party played an increasingly important role in SOEs⁷⁵ and reportedly increased its influence over other types of corporate entities in China as well.⁷⁶ While Chinese officials maintain that SOEs are “entitled to make independent business operation decisions,”⁷⁷ in October 2016, President and Party General Secretary Xi Jinping stressed Party leadership is the “root” and “soul” of SOEs.⁷⁸ In June 2017, the director of the State-Owned Assets Supervision and Administration Commission of the State Council reported that SOEs employed over 40 million workers, more than 10 million of whom were Party members.⁷⁹ Experts note that the Party asserts a leadership role in corporate decisionmaking for SOEs.⁸⁰ According to an August 2017 Wall Street Journal analysis, since 2016, at least 32 Hong Kong-listed SOEs have proposed amendments to their articles of association to explicitly give Party committees the authority to advise corporate boards;⁸¹ these companies have a combined market capitalization of approximately \$1.2 trillion USD, totaling nearly one-third of the total value of stocks listed in Hong Kong.⁸² Private companies are also subject to Party control and influence,⁸³ with 1.6 million non-public companies having internal Party groups, according to Party Central Committee statistics.⁸⁴

Evaluation of China’s Commitment to Rule of Law

Despite the Chinese government’s WTO commitments to “apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures,”⁸⁵ Chinese officials continued to enforce laws and regulations, including in the commercial sphere, in an arbitrary and non-transparent manner.⁸⁶ The American Chamber of Commerce in China’s (AmCham) 2017 American Business in China White Paper found that “inconsistent regulatory interpretation and unclear laws [were] the top business challenge . . . for the second year in a row.”⁸⁷

WEAK INTELLECTUAL PROPERTY RIGHTS PROTECTION AND LIMITED REFORMS

This past year, the Chinese government continued to provide ineffective protection for intellectual property rights. For example, in April 2017, the USTR again placed China on its priority watch list

Commercial Rule of Law

6

in its 2017 Special 301 Report, due to concerns including “widespread infringing activity” as well as problematic “[s]tructural impediments to civil and criminal enforcement.”⁸⁸ In 2016, 88 percent of counterfeit imports seized by the U.S. Department of Homeland Security reportedly were from China (52 percent) and Hong Kong (36 percent).⁸⁹ In December 2016, the USTR re-listed Taobao, a subsidiary of the Alibaba Group and the largest online shopping website in China by merchandise volume, as a “notorious market” due to “the large volume of allegedly counterfeit and pirated goods available and the challenges rights holders experience in removing and preventing illicit sales.”⁹⁰ In December 2016, the National People’s Congress issued a draft PRC E-Commerce Law for public comment that, according to AmCham, may make it more difficult for trademark owners to obtain the removal of online listings for goods with infringing trademarks on e-commerce platforms.⁹¹

During this reporting year, the Chinese government also took actions that, according to some legal experts, could strengthen intellectual property protection. In December 2016, the China Trademark Office revised the Trademark Review and Examination Standards,⁹² and in January 2017, the Supreme People’s Court (SPC) issued provisions on administrative trademark litigation.⁹³ Some legal experts noted that the revised standards and SPC provisions could provide greater protection in China against bad faith trademark filings.⁹⁴ The SPC, in a case decided in December 2016 prior to its issuance of the provisions, ruled partially in Michael Jordan’s favor in a series of administrative trademark disputes over a Chinese company’s use of the American basketball star’s name in China.⁹⁵

DUE PROCESS CONCERNS FOR BUSINESSPEOPLE

Despite official reports of progress in judicial transparency,⁹⁶ certain cases involving Chinese and foreign businesspeople detained or investigated this past year highlighted ongoing transparency and due process concerns. The Bureau of Consular Affairs of the U.S. Department of State’s country information for China notes that “[t]he Chinese legal system can be opaque and the interpretation and enforcement of local laws arbitrary. The judiciary does not enjoy independence from political influence.”⁹⁷

Arbitrary Detention of Sandy Phan-Gillis

On April 25, 2017, the Nanning Intermediate People’s Court in Nanning municipality, Guangxi Zhuang Autonomous Region, reportedly sentenced American businessperson Sandy Phan-Gillis to three years and six months’ imprisonment on the charge of espionage in a closed trial.⁹⁸ On April 29, Chinese authorities deported Phan-Gillis to the United States.⁹⁹ In March 2015, Chinese state security agents had detained Phan-Gillis as she traveled from Zhuhai municipality, Guangdong province, to Macau.¹⁰⁰ In June 2016, the UN Working Group on Arbitrary Detention found that Chinese authorities had arbitrarily detained Phan-Gillis.¹⁰¹ At a Commission hearing, Jeff Gillis, Phan-Gillis’s husband, asserted that Chinese authorities tortured his wife and denied her “many of the rights she is entitled to under Chinese and international law.”¹⁰² Gillis noted that “Sandy was not allowed to speak with her lawyer for well over a year. She was not charged with a crime for well over a year. For about the first year and a half, her monthly 30-minute visits with the U.S. Consul were supervised by agents of China State Security, the very people who tortured her.”¹⁰³

The cases of three prominent executives of Chinese firms, Xiao Jianhua, Guo Wengui, and Wu Xiaohui, highlighted the risk that businesspeople face when suspected of corruption or when dealing closely with corrupt officials.¹⁰⁴ In January 2017, unidentified security personnel reportedly abducted Xiao, a Canadian citizen, from a hotel in Hong Kong and detained him at an unknown location believed to be in mainland China.¹⁰⁵ In April 2017, after Guo alleged corruption involving family members of Chinese government officials,¹⁰⁶ Interpol reportedly issued a “red notice” at the request of the Chinese government seeking Guo’s provisional arrest and extradition.¹⁰⁷ In June 2017, Chinese authorities reportedly detained Wu Xiaohui, the chairman of Anbang Insurance, on undisclosed grounds.¹⁰⁸ The Hong Kong-based newspaper South China Morning Post described “Wu’s Anbang” as “one of the most powerful and well-connected players on the domestic and overseas capital markets.”¹⁰⁹ In 2014, Anbang purchased the Waldorf Astoria hotel in New York for US\$1.95 billion.¹¹⁰ [For more information on the Party and government’s anticorruption efforts, see Section III—Institutions of Democratic Governance.]

FOREIGN EXCHANGE CONTROLS

Although in previous years the Chinese government intervened to devalue the yuan and thereby unfairly promote Chinese exports, recent government interventions had the goal of preventing a rapid depreciation of the yuan, according to an April 2017 report by the U.S. Department of the Treasury.¹¹¹ The report notes that the Chinese government needs to demonstrate that its lack of intervention to devalue the yuan “over the last three years represents a durable policy shift . . .”¹¹² The U.S. Department of the Treasury and the American Chamber of Commerce in China expressed continuing concerns regarding transparency of foreign exchange interventions and capital control regulations.¹¹³

Commercial Rule of Law

UNEVEN ENFORCEMENT OF FOOD SAFETY REGULATIONS

Chinese officials continued to emphasize the importance of food safety this past year, as several food safety concerns came to light and exposed ongoing regulatory challenges. In March 2017, Premier Li Keqiang described the effort to strengthen food safety regulation as requiring “the utmost rigor.”¹¹⁴ According to analysis published by the Paulson Institute in April 2017, however, “microbiological hazards remain unchecked, supply chain management is weak, and policies are uncoordinated across disparate levels of the government.”¹¹⁵ According to the China Food and Drug Administration, in 2016, authorities punished violators of food safety regulations in 181,000 cases.¹¹⁶ Chinese and international media reported on a number of food safety scandals in China, including those affecting soy sauce¹¹⁷ and milk powder.¹¹⁸ In describing a scandal in Tianjin municipality involving counterfeit soy sauce made with industrial salt and unsafe tap water that was “unfit for human consumption,” a Renmin University professor said “the fact that these small food processors were able to churn out fake products worth hundreds of million [sic] of yuan undetected for years shows what little local authorities have done to weed out the problem of poor-quality food” and that it “underscores how weak law enforcement is in fighting food safety violations.”¹¹⁹ In October 2016, new food safety measures took effect, requiring online platforms to establish a system for examining vendor credentials and product quality.¹²⁰ According to an American law firm’s analysis, the new measures may make it easier for companies to determine the source and stop the sale of counterfeit food products by imposing liability and disclosure requirements on online platforms.¹²¹

The American Chamber of Commerce in China noted that the existence of “complex compliance concerns” due to the “opaque nature of Party influence on government and weak regulatory transparency”¹²² and “inconsistency in [the government’s] interpretation of policies, laws, and regulations, and in standards for law enforcement” created difficulties for food companies operating in China.¹²³ For example, in October 2016, the Jiading District Market Supervision and Management Bureau in Shanghai municipality reportedly revoked the food production license and issued an additional 24 million yuan (US\$3.55 million) in fines to Shanghai Husi and its U.S. parent company, OSI Group, for a July 2014 food safety incident.¹²⁴ In 2016, OSI Group had criticized the judgment in the related criminal case as “inconsistent with the facts and evidence,” claiming authorities had recognized that the case was “never” about food safety, but was influenced by accusations made in misleading media reports.¹²⁵

The U.S. and Chinese governments’ trade negotiations during this reporting year included a focus on food safety in the beef and poultry trade.¹²⁶ In June 2017, the Chinese government permitted the import of American beef into China for the first time since 2003, when imports were stopped due to concerns over mad cow disease in the United States.¹²⁷ In June 2017, the Food Safety and Inspection Service of the U.S. Department of Agriculture (USDA) published a proposed rule to permit the import of “poultry products from birds slaughtered in [China]” based on a determination that

China's "poultry slaughter inspection system is equivalent" to that in the United States.¹²⁸ A U.S. non-profit organization recommended that USDA withdraw the proposed rule because "China's food safety system is simply too weak to ensure that poultry exports are safe to eat."¹²⁹

Outbound Investment and Regional Trade Partnerships

During this reporting year, the Chinese government continued to provide significant financial incentives to promote outbound investment, raising concerns that the Chinese government's lack of transparency in commercial dealings and its preferential treatment of state-owned enterprises (SOEs) may have an even greater impact on foreign markets than it has to date. In May 2017, a total of 29 foreign heads of state or government¹³⁰ and representatives from over 130 countries¹³¹ gathered in Beijing municipality at the first global forum on the Chinese government's Belt and Road (B&R) Initiative.¹³² The initiative consists of a "belt" on land from China to Europe, as well as a "road" of shipping routes from China through Southeast Asia to India and Europe, and the Chinese government envisions global "participation."¹³³ Several European Union member countries raised concerns about transparency shortcomings and a lack of social and environmental safeguards¹³⁴ in the joint communiqué issued after the forum.¹³⁵ SOEs have played a leading role in B&R infrastructure projects;¹³⁶ since the announcement of B&R in 2013, 47 central SOEs have participated in 1,676 B&R infrastructure projects.¹³⁷ For example, the SOE China Communications Construction announced US\$12.6 billion in new projects in 2016, a reported 10 percent of total new B&R projects announced.¹³⁸ Two American researchers described the B&R Initiative as "a game-changing plan to bring about the next stage of globalization," noting that Chinese authorities plan for approximately US\$1 trillion in concessionary loans for infrastructure projects through state-owned policy banks.¹³⁹

During this reporting year, the Chinese government played a key role in multilateral financial institutions. For example, the China-led Asian Infrastructure and Investment Bank (AIIB) played a significant role in international financing, reportedly approving over US\$1.7 billion in loans in 2016.¹⁴⁰ The AIIB also co-financed projects with other multilateral banks, including the World Bank¹⁴¹ and the Asian Development Bank (ADB).¹⁴² A U.S. human rights organization noted that in projects co-financed by the AIIB and the World Bank, ADB, or other multilateral financial institutions, "the social and environmental standards or safeguard policies of those institutions are likely to apply."¹⁴³

Notes to Section III—Commercial Rule of Law

¹ China became a member of the World Trade Organization (WTO) on December 11, 2001. A list of members and their dates of membership is available on the WTO website. World Trade Organization, “Protocols of Accession for New Members Since 1995, Including Commitments in Goods and Services,” last visited 5 June 17.

² Information on China’s participation in the World Trade Organization (WTO), including principal accession documents, schedules, trade policy reviews, and dispute case documents, can be found on the WTO website. China’s commitments are detailed in these documents, as well as in WTO agreements applicable to all members, including the General Agreement on Tariffs and Trade and the Trade-Related Aspects of Intellectual Property Rights. World Trade Organization, “WTO Legal Texts,” last visited 5 June 17. See also U.S. Government Accountability Office (GAO), “World Trade Organization: Analysis of China’s Commitments to Other Members,” October 2002, 12–13. The GAO analysis found that China had made 685 WTO commitments, including 77 transparency-related commitments, 57 commitments related to laws and regulations, and 67 nondiscrimination-related commitments.

³ World Trade Organization, Protocol on the Accession of the People’s Republic of China, WT/L/432, 10 November 01, Part I, 3. See also China’s Compliance With WTO Commitments, Hearing of the U.S. Trade Representative Office, 5 October 16, Written Testimony of the US–China Business Council, Submitted on September 21, 2016, in Response to the Office of the U.S. Trade Representative’s Request for Comments and Notice of Public Hearing Concerning China’s Compliance With WTO Commitments, Federal Register, Vol. 81, No. 158 (16 August 16), 54646–47.

⁴ World Trade Organization, Protocol on the Accession of the People’s Republic of China, WT/L/432, 10 November 01, Part I, 9(1). See also Julia Ya Qin, “The Challenge of Interpreting ‘WTO-Plus’ Provisions,” Wayne State University Law School, Legal Studies Research Paper Series, No. 09–18, 2 July 09, 4–5.

⁵ World Trade Organization, Protocol on the Accession of the People’s Republic of China, WT/L/432, 10 November 01, Part I, 2(A)2, 2(C)1, 2(D)1; U.S. Government Accountability Office, “World Trade Organization: Analysis of China’s Commitments to Other Members,” October 2002, 31.

⁶ Office of the U.S. Trade Representative, “2016 Report to Congress on China’s WTO Compliance,” January 2017, 11–14; U.S. Chamber of Commerce, “Made in China 2025: Global Ambitions Built on Local Protections,” 2017, 6–8; China’s Compliance With WTO Commitments, Hearing of the U.S. Trade Representative Office, 5 October 16, Written Testimony of the US–China Business Council, Submitted on September 21, 2016, in Response to the Office of the U.S. Trade Representative’s Request for Comments and Notice of Public Hearing Concerning China’s Compliance With WTO Commitments, Federal Register, Vol. 81, No. 158 (16 August 16), 54646–47.

⁷ Wilbur Ross, “American Genius Is Under Attack From China,” Financial Times, 14 August 17; Nigel Cory, Information Technology & Innovation Foundation, “RE: Comments in Response to Executive Order Regarding Trade Agreements Violations and Abuses,” 31 July 17, 10; Office of the Press Secretary, The White House, “Presidential Memorandum for the United States Trade Representative,” 14 August 17.

⁸ “President Xi’s Speech at Opening of the ‘Belt and Road’ International Cooperation Forum” [Xi Jinping zai “yidai yilu” guoji hezuo gaofeng luntan kaimushi shang de yanjiang], Xinhua, 14 May 17; “Full Text of President Xi’s Speech at Opening of Belt and Road Forum,” Xinhua, 14 May 17. At the opening of the Belt and Road forum, Xi pledged that China would contribute an additional 100 billion yuan (US\$14.5 billion) to the Silk Road Fund, as well as additional funding by the China Development Bank and the Export-Import Bank of China. See also Nadege Rolland, China’s Eurasian Century? Political and Strategic Implications of the Belt and Road Initiative (Seattle: National Bureau of Asian Research, 2017), 101–4; Tom Hancock, “China Encircles the World With One Belt, One Road Strategy,” Financial Times, 3 May 17; Li-Wen Lin, “A Network Anatomy of Chinese State-Owned Enterprises,” European University Institute, Robert Schuman Centre for Advanced Studies, February 2017, 8; Greg Levesque, “China’s Evolving Economic Statecraft,” The Diplomat, 12 April 17.

⁹ U.S. Chamber of Commerce, “Made in China 2025: Global Ambitions Built on Local Protections,” 2017, 6–8, 11, 40; Robert D. Atkinson et al., Information Technology & Innovation Foundation, “Stopping China’s Mercantilism: A Doctrine of Constructive, Alliance-Backed Confrontation,” 16 March 17, 1–3; Office of the U.S. Trade Representative, “2016 Report to Congress on China’s WTO Compliance,” January 2017, 36.

¹⁰ American Chamber of Commerce in the People’s Republic of China, “2017 American Business in China White Paper,” April 2017, 4, 10, 12, 38, 46, 48, 82, 98. Based on a survey of American Chamber of Commerce in China (AmCham) members, AmCham found that for the second consecutive year “inconsistent regulatory interpretation and unclear laws” was the top business challenge.

¹¹ Chinese Communist Party Central Committee, Decision on Certain Major Issues Regarding Comprehensively Deepening Reforms [Zhonggong zhongyang guanyu quanmian shenhua gaige ruogan zhongda wenti de jue ding], issued 12 November 13, sec. 1(2); State Council, Circular Regarding Certain Measures on Expanding Further Openness and Active Utilization of Foreign Investment [Guowuyuan guanyu kuoda duiwai kaifang jijin liyong waizi ruogan cuoshi de tongzhi], issued 17 January 17; “President Xi’s Speech to Davos in Full,” World Economic Forum, 17 January 17; “President Xi Jinping’s Keynote Speech at the Opening of the Annual World Economic Forum in 2017” [Xi Jinping zhuxi zai shijie jingji luntan 2017 nian nianhui kaimu shi shang de zhuzhi yanjiang], Xinhua, 18 January 17; State Council, “Report on the Work of the Government,” 16 March 17; State Council, “Government Work Report” [Zhengfu gongzuo baogao], 16 March 17.

¹² Office of the U.S. Trade Representative, “2016 Report to Congress on China’s WTO Compliance,” January 2017, 2; American Chamber of Commerce in China, “2017 American Business

in China White Paper,” April 2017, 4; European Union Chamber of Commerce in China and Roland Berger, “European Business in China: Business Confidence Survey 2017,” May 2017, 39.

¹³See, e.g., The Broken Promises of China’s WTO Accession: Reprioritizing Human Rights, Hearing of the Congressional-Executive Commission on China, 1 March 17, Written Statement Submitted by Michael R. Wessel, President, The Wessel Group, Commissioner, U.S.-China Economic and Security Review Commission; Office of the U.S. Trade Representative, “2016 Report to Congress on China’s WTO Compliance,” January 2017, 4–5; World Trade Organization, Trade Policy Review Body, Trade Policy Review, China, Minutes of the Meeting, WT/TPR/M/342, 26 September 16, 33–34. See also WTO: Will China Keep Its Promises? Can It? Hearing of the Congressional-Executive Commission on China, 6 June 02, Written Statement Submitted by Susan S. Westin, Managing Director, International Affairs and Trade, U.S. General Accounting Office, 3–4.

¹⁴World Trade Organization, Protocol on the Accession of the People’s Republic of China, WT/L/432, 10 November 01, Part I, 2(A)(2), 3.

¹⁵“Li Keqiang Speech With Foreign Delegates at 2017 China Annual Development Forum” [Li keqiang huijian chuxi zhongguo fazhan gaoceng luntan 2017 nian nianhui de jingwai daibiao bing zuotan], Xinhua, 20 March 17; “China’s Door Opens Wider to Outside World: Premier,” Xinhua, 21 March 17; World Trade Organization, Trade Policy Review Body, Trade Policy Review, China, Minutes of the Meeting, Addendum, WT/TPR/M/342, 28 October 16, 208–9, 377; World Economic Forum, “President Xi’s Speech to Davos in Full,” 17 January 17; Ma Si, “Regulator Says Made in China 2025 Is Fair,” China Daily, 13 March 17; “China Internet Regulator Says Cyber Security Law Not a Trade Barrier,” Xinhua, 31 May 17.

¹⁶Office of the U.S. Trade Representative, “2017 National Trade Estimate Report on Foreign Trade Barriers,” March 2017, 80, 86, 89–90; U.S. Chamber of Commerce, “Made in China 2025: Global Ambitions Built on Local Protections,” 2017, 6–8; Robert D. Atkinson et al., Information Technology & Innovation Foundation, “Stopping China’s Mercantilism: A Doctrine of Constructive, Alliance-Backed Confrontation,” March 2017, 1–3.

¹⁷Yi-Zheng Lian, “China, the Party-Corporate Complex,” New York Times, 12 February 17; James McGregor, “How Trump Can Win With China,” Foreign Policy, 3 February 17; Yuhua Wang, “Relative Capture: Quasi-Experimental Evidence From the Chinese Judiciary,” Social Science Research Network, 7 December 16, 21–23; Mark Wu, “The ‘China, Inc.’ Challenge to Global Trade Governance,” Harvard International Law Journal, Vol. 57, No. 2 (Spring 2016), 283–84, 295. Wu described the Chinese government’s “various mechanisms to advantage Chinese firms over their foreign competitors” and the “close links between the Chinese Party-state and Chinese enterprises, both state-owned and private . . .” Bureau of Economic and Business Affairs, U.S. Department of State, “Investment Climate Statements for 2017: China,” last visited 17 July 17; Office of the U.S. Trade Representative (USTR), “2016 Report to Congress on China’s WTO Compliance,” January 2017, 168. USTR reported that: “Many U.S. companies in 2016 continued to express serious concerns about the independence of China’s judiciary. In their experience and observation, Chinese judges continue to be influenced by political, government or business pressures, particularly outside of China’s big cities.”

¹⁸Office of the U.S. Trade Representative, “2017 National Trade Estimate Report on Foreign Trade Barriers,” March 2017, 80.

¹⁹World Economic Forum, “President Xi’s Speech to Davos in Full,” 17 January 17.

²⁰American Chamber of Commerce in the People’s Republic of China and Bain & Company, “China Business Climate Survey Report,” January 2017, 30.

²¹Office of the U.S. Trade Representative (USTR), “2016 Report to Congress on China’s WTO Compliance,” January 2017, 11–17. Industrial policies of concern that USTR identified included secure and controllable requirements for information and communications technologies, indigenous innovation, export restraints, subsidies, excess capacity, and value-added tax. See also Robert D. Atkinson et al., Information Technology & Innovation Foundation, “Stopping China’s Mercantilism: A Doctrine of Constructive, Alliance-Backed Confrontation,” March 2017, 4; European Union Chamber of Commerce in China, “China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces,” 7 March 17, 1.

²²State Council, “Made in China 2025” [Zhongguo zhizao 2025], 19 May 15.

²³Keith Bradsher and Paul Mozur, “China’s Plan To Build Its Own High-Tech Industries Worries Western Businesses,” New York Times, 7 March 17; State Council, “Made in China 2025” [Zhongguo zhizao 2025], 19 May 15, sec. 3(3). See also European Union Chamber of Commerce in China, “China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces,” 7 March 17, 9.

²⁴U.S. Chamber of Commerce, “Made in China 2025: Global Ambitions Built on Local Protections,” March 2017, 26, 34; European Union Chamber of Commerce in China, “China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces,” March 2017, 1, 15–16, 39–40.

²⁵Office of the U.S. Trade Representative, “2017 National Trade Estimate Report on Foreign Trade Barriers,” March 2017, 90; Internet Association, “National Trade Estimate Report Comments on Digital Trade Barriers,” October 2016, 32–33.

²⁶Office of the U.S. Trade Representative, “2017 National Trade Estimate Report on Foreign Trade Barriers,” March 2017, 90.

²⁷Internet Association, “National Trade Estimate Report Comments on Digital Trade Barriers,” October 2016, 32–33.

²⁸American Chamber of Commerce in the People’s Republic of China and Bain & Company, “2017 China Business Climate Survey Report,” January 2017, 47.

²⁹American Chamber of Commerce in Shanghai, “2017 China Business Report,” July 2017, 10.

³⁰Computer & Communication Industry Association, “Comments of Computer & Communications Industry Association Regarding Foreign Trade Barriers to U.S. Exports for 2017 Reporting,” 27 October 16, 2, 6. See also Office of the U.S. Trade Representative, “United States Seeks Detailed Information on China’s Internet Restrictions, 19 October 11; California First Amend-

Commercial Rule of Law

ment Coalition, “CFAC Briefing Paper: China’s Internet Measures Violate Its WTO Obligations,” 19 November 07, 1.

³¹Office of the U.S. Trade Representative, “2016 Report to Congress on China’s WTO Compliance,” January 2017, 158.

³²See, e.g., “Apple Takes Down Apps Used by Chinese To Scale ‘Great Firewall.’” Radio Free Asia, 31 July 17; “Amazon’s China Partner Bans Use of VPNs by Customers Amid Ongoing Crackdown,” Radio Free Asia, 2 August 17; “‘This Time Appears Different’: China’s Web Users Fear Losing Tools To Bypass Censorship,” Agence France-Presse, reprinted in Hong Kong Free Press, 6 August 17; Paul Mozur, “China’s Internet Censors Play a Tougher Game of Cat and Mouse,” New York Times, 3 August 17. See also UN Office of the High Commissioner for Human Rights, Mandate of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye, OL OTH 16/2017, 4 August 17. Special Rapporteur David Kaye wrote a letter to Apple CEO Tim Cook that asked, *inter alia*, whether “Chinese authorities issue[d] a request or demand, formal or informal, to remove the subject APPs from the app store?”; “[w]hat legal analysis led Apple to believe that it would be required by Chinese law to remove the subject applications . . .”; whether “Apple object[ed] to or otherwise resist[ed] the application of Chinese law . . .”; and, whether Apple took “into account international instruments such as the UN Guiding Principles on Business and Human Rights or the Global Network Initiative’s Principles on Freedom of Expression . . .”

³³“‘This Time Appears Different’: China’s Web Users Fear Losing Tools To Bypass Censorship,” Agence France-Presse, reprinted in Hong Kong Free Press, 6 August 17.

³⁴*Ibid.*

³⁵“Amazon’s China Partner Bans Use of VPNs by Customers Amid Ongoing Crackdown,” Radio Free Asia, 2 August 17.

³⁶PRC Cybersecurity Law [Zhonghua renmin gongheguo wangluo anquan fa], passed 7 November 16, effective 1 June 17. See also Paul Mozur, “China’s Internet Controls Will Get Stricter, to Dismay of Foreign Business,” New York Times, 7 November 16; Sophie Richardson, “Beijing Adds Veneer of Legal Legitimacy on Censorship,” Cipher Brief, 11 December 16.

³⁷Cyberspace Administration of China, Measures for Security Assessment of Outbound Transmission of Personal Information and Important Data (Draft for Solicitation of Comments) [Geren xinxi he zhongyao shuju chujing anquan pinggu banfa (zhengqiu yijian gao)] 11 April 17, art. 9. See also “China Releases Draft Rules To Implement Requirements on Outbound Data Transmission,” Baker McKenzie, 19 April 17.

³⁸Eva Dou, “China Moves To Further Tighten Regulation of Digital Information,” Wall Street Journal, 11 April 17; “Chinese Draft Cyber Law Requires Security Assessment for Companies Exporting Data,” Bloomberg, reprinted in South China Morning Post, 11 April 17.

³⁹American Chamber of Commerce in the People’s Republic of China, “2017 American Business in China White Paper,” April 2017, 264.

⁴⁰Letter from ACT | The App Association et al. to Office of the Leading Small Group for Cyberspace Affairs, Chinese Communist Party Central Leading Group for Cyberspace Affairs, Cyberspace Administration of China, reprinted in China Trade Extra, 15 May 17, 2.

⁴¹Liu Zhen and Wendy Wu, “China Gives Businesses 19 Months To Comply With Controversial Cross-Border Cyber Data Rules,” South China Morning Post, 1 June 17; Sui-Lee Wee, “China’s New Cybersecurity Law Leaves Foreign Firms Guessing,” New York Times, 31 May 17. See also Samm Sacks, “China’s Cybersecurity Law Takes Effect: What To Expect,” Lawfare (blog), 1 June 17.

⁴²Thilo Hanemann et al., Rhodium Group and National Committee on U.S.-China Relations, “Two-Way Street: 2017 Update, US-China Direct Investment Trends,” May 2017, 15, 36. See also Jennifer M. Harris, “Chinese Investment in the United States: Time for New Rules?” Lawfare (blog), 11 April 17.

⁴³State Council, Circular Regarding Certain Measures on Expanding Further Openness and Active Utilization of Foreign Investment [Guowuyuan guanyu kuoda duiwai kaifang jiji liyong waizi ruogan cuoshi de tongzhi], issued 17 January 17; United States Information Technology Office, “Foreign Investment Opportunities Expand in 2017,” 22 January 17.

⁴⁴National Development and Reform Commission and Ministry of Commerce, Foreign Investment Industrial Guidance Catalogue (2017 Revision) [Waishang touzi chanye zhidao mulu (2017 nian xiuding)], issued 28 June 17, effective 28 July 17.

⁴⁵*Ibid.*; Laney Zhang, Law Library of Congress, “China: Catalog of Foreign Investment Industries Updated,” Library of Congress, Global Legal Monitor, 7 August 17.

⁴⁶National Development and Reform Commission and Ministry of Commerce, Foreign Investment Industrial Guidance Catalogue (2017 Revision) [Waishang touzi chanye zhidao mulu (2017 nian xiuding)], issued 28 June 17, effective 28 July 17, sec. 2, items 20–26; National Development and Reform Commission and Ministry of Commerce, Foreign Investment Industrial Guidance Catalogue (2015 Revision) [Waishang touzi chanye zhidao mulu (2015 nian xiuding)], issued 10 March 15, effective 10 April 15, sec. 11, items 25–31.

⁴⁷European Union Chamber of Commerce in China, “Revised Foreign Investment Catalogue Falls Short of Expectations,” 5 July 17. See also European Union Chamber of Commerce in China and Roland Berger, “European Business in China: Business Confidence Survey 2017,” 31 May 17, 8, 39. The European Chamber of Commerce survey found that 40 percent of respondents anticipated that “regulatory barriers” would increase over the next five years, while only 15 percent responded that they thought regulatory barriers would decrease over the next five years.

⁴⁸American Chamber of Commerce in the People’s Republic of China, “2017 American Business in China White Paper,” April 2017, 8, 16. See also Ian Talley, “U.S. Treasury Secretary Mnuchin: China Bilateral Investment Treaty ‘On Our Agenda,’” Wall Street Journal, 6 June 17.

⁴⁹“Five Trends To Watch in Business and Human Rights in 2017,” Freshfields Bruckhaus Deringer, 6 March 17. See also Lorenzo Cotula, International Institute for Environment and Development et al., “Rethinking Investment Treaties To Advance Human Rights,” September 2016,

9; Patrick Dumberry and Gabrielle Dumas Aubin, “How To Incorporate Human Rights in Bilateral Investment Treaties?” International Institute for Sustainable Development, Investment Treaty News, 22 March 13.

⁵⁰World Trade Organization, Protocol on the Accession of the People’s Republic of China, WT/L/432, 10 November 01, Part I, 9.1.

⁵¹See, e.g., Office of the U.S. Trade Representative, “2016 Report to Congress on China’s WTO Compliance,” January 2017, 13.

⁵²“Xi Stresses Unwavering Party Leadership of State-Owned Enterprises at National State-Owned Enterprises Party-Building Work Meeting” [Xi Jinping zai quanguo guoyou qiye dang de jianshe gongzuo huiyi shang qiangdiao: jianchi dang dui guoqi de lingdao bu dongyao], Xinhua, 11 October 16; Zhou Xin, “Communist Party the Top Boss of China’s State Firms, Xi Jinping Asserts in Rare Meeting,” South China Morning Post, 13 October 16; W. Raphael Lam and Alfred Schipke, International Monetary Fund, “Getting China’s ‘Trusted Sons’ Back Into Shape,” 27 April 17; Keith Zhai, “China Mulling Higher Pay for State-Owned Company Executives, Source Says,” Bloomberg, 9 May 17.

⁵³Office of the U.S. Trade Representative, “2016 Report to Congress on China’s WTO Compliance,” January 2017, 13; Office of the U.S. Trade Representative, “Obama Administration Files WTO Complaint on China’s Subsidies to Aluminum Producers,” 12 January 17; Philip Blenkinsop, “EU Sets Steel Import Duties To Counter Chinese Subsidies,” Reuters, 9 June 17.

⁵⁴Office of the U.S. Trade Representative, “2016 Report to Congress on China’s WTO Compliance,” January 2017, 13. See also Brian Spegele and John W. Miller, “China Continues To Prop Up Its Ailing Factories, Adding to Global Glut,” Wall Street Journal, 9 May 16; Greenpeace, “Despite Claims of Cuts, China Sees Steel Operating Capacity Increase in 2016, Air Quality To Suffer,” 13 February 17.

⁵⁵Simon Lester and Huan Zhu, Cato Institute, “It’s Time To Negotiate a New Economic Relationship With China,” 4 April 17; Michael Komesaroff, Center for Strategic and International Studies, “Make the Foreign Serve China: How Foreign Science and Technology Helped China Dominate Global Metallurgical Industries,” 10 March 17, 1, 18–20.

⁵⁶See, e.g., Office of the U.S. Trade Representative, “Obama Administration Files WTO Complaint on China’s Subsidies to Aluminum Producers,” January 2017; Michael Komesaroff, Center for Strategic and International Studies, “Make the Foreign Serve China: How Foreign Science and Technology Helped China Dominate Global Metallurgical Industries,” 10 March 17, 2, 16; “How Chinese Overcapacity Hits American Workers,” Economist, 15 June 17.

⁵⁷American Chamber of Commerce in the People’s Republic of China, “2017 AmCham China White Paper: American Business in China,” 2017, 4; World Trade Organization, Trade Policy Review Body, Trade Policy Review, China, Minutes of the Meeting, Addendum, WT/TPR/M/342/Add.1, 28 October 16, 423. See also Chinese Communist Party Central Committee, Decision on Certain Major Issues Regarding Comprehensively Deepening Reforms [Zhonggong zhongyang guanyu quanmian shenhua gaige ruogan zhongda wenti de jue ding], issued 5 November 13, sec. 1(2).

⁵⁸See, e.g., Henry Sanderson and Henry Foy, “Call To Tackle China’s Soaring Aluminium Output,” Financial Times, 19 March 17.

⁵⁹Greenpeace East Asia and Beijing Custeel E-Commerce Co., Ltd., “Research Report on Overcapacity Reduction in China’s Steel Industry,” 3 March 17, 5–6. See also Song Yingge, “China’s Steel Output Gains in 2016,” Shanghai Daily, 21 January 17; Liang Qian and Zhang Jiagang, “NDRC: Soaring Steel Prices Unsustainable, Next Year Continue Cutting Capacity” [Faguiwei: gang jia baozhang buke chixu mingnian jixu channeng], Economic Information Daily, 10 November 16; Michael Lelyveld, “China’s Steel Output Climbs Despite Cuts,” Radio Free Asia, 30 May 17.

⁶⁰World Trade Organization, DS511, China–Domestic Support for Agricultural Producers, last visited 15 June 17; Office of the U.S. Trade Representative, “United States Challenges Excessive Chinese Support for Rice, Wheat, and Corn,” September 2016.

⁶¹World Trade Organization, DS519, China–Subsidies to Producers of Primary Aluminum, last visited 15 June 17; Office of the U.S. Trade Representative, “Obama Administration Files WTO Complaint on China’s Subsidies to Aluminum Producers,” January 2017.

⁶²World Trade Organization, Committee on Subsidies and Countervailing Measures, Request From the United States to China Pursuant to Article 25.10 of the Agreement, G/SCM/Q2/CHN/71, 19 April 17, 1–6.

⁶³Ibid., 8–584.

⁶⁴World Trade Organization, Trade Policy Review Body, Trade Policy Review, China, Minutes of the Meeting, Addendum, WT/TPR/M/342/Add.1, 28 October 16, 427; World Trade Organization, Report on the Working Party on the Accession of China, WT/ACC/CHN/49, 1 October 01, para. 334.

⁶⁵World Trade Organization, Committee on Subsidies and Countervailing Measures, Request From the United States to China Pursuant to Article 25.10 of the Agreement, G/SCM/Q2/CHN/71, 19 April 17, 1.

⁶⁶Office of the U.S. Trade Representative, “2016 Report to Congress on China’s WTO Compliance,” January 2017, 21–22; Robert D. Atkinson et al., Information Technology & Innovation Foundation, “Stopping China’s Mercantilism: A Doctrine of Constructive, Alliance-Backed Confrontation,” March 2017, 24.

⁶⁷W. Raphael Lam and Alfred Schipke, International Monetary Fund, “Getting China’s ‘Trusted Sons’ Back Into Shape,” 27 April 17; Sea-Jin Chang and Sandy Yuan Jin, “The Performance of State Owned Enterprises in China: An Empirical Analysis of Ownership Control Through SASACS,” National University of Singapore (NUS), NUS Business School, Centre for Governance, Institutions & Organisations, 2016, 8.

⁶⁸National Bureau of Statistics of China, “Number of Business Entities by Region and Status of Registration (2015),” China Statistical Yearbook 2016, 2016, Table 1–8.

⁶⁹Ibid., Table 1–7.

Commercial Rule of Law

⁷⁰W. Raphael Lam and Alfred Schipke, International Monetary Fund, “Getting China’s ‘Trusted Sons’ Back Into Shape,” 27 April 17. See also Curtis J. Milhaupt and Mariana Pargendler, European Corporate Governance Institute, “Governance Challenges of Listed State-Owned Enterprises Around the World: National Experiences and a Framework for Reform,” April 2017, 47–48.

⁷¹National Bureau of Statistics of China, “Main Indicators of State-Holding Industrial Enterprises by Region,” China Statistical Yearbook 2016, 2016, Table 13–5; Ministry of Finance, State-Owned Assets Supervision and Administration Commission, “2016 January–December State-Owned Enterprises and State-Holding Enterprises Economic Developments” [2016 nian 1–12 yue quanguo guoyou ji guoyou konggu qiye jingji yunxing qingkuang], 26 January 17. Chinese government reporting on profits of state-owned and state-invested enterprises refers to both state-owned enterprises and state-holding companies as “state-owned enterprises.”

⁷²W. Raphael Lam and Alfred Schipke, International Monetary Fund, “Getting China’s ‘Trusted Sons’ Back Into Shape,” 27 April 17. See also Jay H. Bryson, “Are SOEs a Millstone Around China’s Neck?” Wells Fargo Securities, 18 May 16. Bryson reported that at the end of 2014, bank loans to SOEs totaled almost 50 percent of total business loans and 30 percent of all loans in China.

⁷³See, e.g., Ing. Jan Bejtkovský, “State Capitalism in China: The Case of the Banking Sector,” Proceedings of the International Academic Research Conference on Small & Medium Enterprises, 2–4 August 16, 7; “China’s State Firms Borrow Cheaply,” Economist, Daily Chart (blog), 23 November 16.

⁷⁴Wojciech Maliszewski, “Resolving China’s Corporate Debt Problem,” International Monetary Fund, IMF Working Paper, October 2016, 7–8. See also “China’s Uncannily Stable Growth Versus the Price of Reform,” Economist, 19 October 16.

⁷⁵“Xi Stresses Unwavering Party Leadership of State-Owned Enterprises at National State-Owned Enterprises Party-Building Work Meeting” [Xi Jinping zai quanguo guoyou qiye dang de jianshe gongzuo huiyi shang qiangdiao: jianchi dang dui guoqi de lingdao bu dongyao], Xinhua, 11 October 16; Zhou Xin, “Communist Party the Top Boss of China’s State Firms, Xi Jinping Asserts in Rare Meeting,” South China Morning Post, 13 October 16.

⁷⁶Curtis J. Milhaupt and Mariana Pargendler, European Corporate Governance Institute, “Governance Challenges of Listed State-Owned Enterprises Around the World: National Experiences and a Framework for Reform,” April 2017, 46–48; Mark Wu, “The ‘China, Inc.’ Challenge to Global Trade Governance,” Harvard International Law Journal, Vol. 57, No. 2 (Spring 2016), 283–84.

⁷⁷World Trade Organization, Trade Policy Review Body, Trade Policy Review, China, Minutes of the Meeting, Addendum, WT/TPR/M/342/Add.1, 28 October 16, 399.

⁷⁸“Xi Stresses Unwavering Party Leadership of State-Owned Enterprises at National State-Owned Enterprises Party-Building Work Meeting” [Xi Jinping zai quanguo guoyou qiye dang de jianshe gongzuo huiyi shang qiangdiao: jianchi dang dui guoqi de lingdao bu dongyao], Xinhua, 11 October 16; Zhou Xin, “Communist Party the Top Boss of China’s State Firms, Xi Jinping Asserts in Rare Meeting,” South China Morning Post, 13 October 16.

⁷⁹Xiao Yaqing, “Deepening the Reform of State-Owned Enterprises; Stronger, More Outstanding, Larger State-Owned Enterprises” [Shenhua guoqi guozi gaige zuo qiang zuo you zuo da guoyou qiye], Study Times, reprinted in State-Owned Assets Supervision and Administration Commission of the State Council, 16 June 17; Wendy Wu, “How the Communist Party Controls China’s State-Owned Industrial Titans,” South China Morning Post, 17 June 17.

⁸⁰Curtis J. Milhaupt and Mariana Pargendler, European Corporate Governance Institute, “Governance Challenges of Listed State-Owned Enterprises Around the World: National Experiences and a Framework for Reform,” April 2017, 46.

⁸¹Gregor Stuart Hunter and Steven Russolillo, “Now Advising China’s State Firms: The Communist Party Writes Itself Into Company Law,” Financial Times, 15 August 17.

⁸²Gregor Stuart Hunter and Steven Russolillo, “Now Advising China’s State Firms: The Communist Party,” Wall Street Journal, 14 August 17.

⁸³Yi-Zheng Lian, “China, the Party-Corporate Complex,” New York Times, 13 February 17; The Broken Promises of China’s WTO Accession: Reprioritizing Human Rights, Hearing of the Congressional-Executive Commission on China, 1 March 17, Written Statement Submitted by Michael R. Wessel, President, The Wessel Group, Commissioner, U.S.-China Economic and Security Review Commission, 3.

⁸⁴Chinese Communist Party Central Committee Organization Department, “2015 Report on Communist Party Statistics: Communist Party Members Totaled 88.758 Million” [2015 nian zhongguo gongchandang dangnei tongji gongbao: dangyuan zongshu wei 8875.8 wan ming], 30 June 16.

⁸⁵World Trade Organization, Protocol on the Accession of the People’s Republic of China, WT/L/432, 10 November 01, Part I, 2(A)(2).

⁸⁶American Chamber of Commerce in the People’s Republic of China, “2017 American Business in China White Paper,” April 2017, 12.

⁸⁷Ibid.

⁸⁸Office of the U.S. Trade Representative, “2017 Special 301 Report,” April 2017, 1, 28. See also U.S. Chamber of Commerce, “2017 Special 301 Submission,” 9 February 17, 6.

⁸⁹Office of International Trade, U.S. Customs and Border Protection, U.S. Department of Homeland Security, “Intellectual Property Rights Seizure Statistics, Fiscal Year 2016,” 25 January 17, 14.

⁹⁰Office of the U.S. Trade Representative, “2016 Out-of-Cycle Review of Notorious Markets,” December 2016, 12. See also Michael Schuman, “A Small Table Maker Takes on Alibaba’s Flood of Fakes,” New York Times, 18 March 17; “Alibaba Urges Tougher Counterfeiting Laws, Enforcement & Penalties,” Alizila, 27 February 17. Alibaba Group claimed itself to be “a victim of counterfeiting,” posting a statement that asserted criminals escape punishment, and noting

that in 2016, Alibaba had provided Chinese authorities with 4,495 criminal leads, but that those leads had only led to 33 convictions.

⁹¹American Chamber of Commerce in the People's Republic of China, "2017 American Business in China White Paper," April 2017, 92; National People's Congress, PRC E-Commerce Law (Draft) [Zhonghua renmin gongheguo dianzi shangwu fa (cao'an)], 27 December 16, reprinted in Ministry of Commerce, China Sourcing, 29 December 16, art. 34.

⁹²China Trademark Office, State Administration of Industry and Commerce, "Trademark Review and Examination Standards" [Shangbiao shencha ji shenli biaozhun], December 2016.

⁹³Supreme People's Court, Provisions on Certain Issues Related to Trials of Administrative Cases Involving the Grant and Confirmation of Trademark Rights [Zuigao renmin fayuan guanyu shenli shangbiao shouquan quequan xingzheng anjian ruogan wenti de guiding], issued 10 January 17, effective 1 March 17.

⁹⁴Mark Cohen, "2017 Opens With More Positive Trademark Developments," China IPR (blog), 12 January 17; "New Changes in Examination Standards and Provisions of Trademark Cases," Kangxin, 13 March 17; Paul Ranjard, "What To Expect From the SPC's New Trademark Judicial Interpretation?" Wan Hui Da Peksung, last visited 15 June 17. See also Hudson Lockett, "China's Top Court Bars Deceptive Use of Celebrity Names in Trademarks," Financial Times, 11 January 17; "SAIC: Online Marketplaces' Trademark Infringement and Counterfeit Goods Problem Relatively Serious, Key Points of Management" [Gongshang zongju: wangluo shichang shangbiao qinquan jiamao jiao yanzhong xi guanli zhongdian], China News Service, 25 April 17.

⁹⁵Liu Jing, "Supreme People's Court Announces Judgment in 10 Related 'Jordan' Trademark Administrative Disputes" [Zuigao renmin fayuan gongkai xuanpan "qiaodan" shangbiao zhengyi xingzheng jiu fen 10 jian anjian], Supreme People's Court, 9 December 16; "Michael Jordan Partly Wins Trademark Lawsuit," Xinhua, 8 December 16; Sui-Lee Wee, "Michael Jordan Owns Right to His Name in Chinese Characters, Too, Court Rules," New York Times, 7 December 16.

⁹⁶See, e.g., Supreme People's Court, "Judicial Transparency by People's Courts," 14 March 17. See also Jerome A. Cohen and David Wertime, "A Crack of Daylight Enters Chinese Court Proceedings," Foreign Policy, Tea Leaf Nation (blog), 12 October 16.

⁹⁷Bureau of Consular Affairs, U.S. Department of State, "China," last visited 15 June 17. See also Dan Harris, "China Debts and Layoffs and Hostage Situations," China Law (blog), 3 June 17. Harris believes that the number of foreigners being held hostage in China due to business disputes is likely increasing.

⁹⁸Chris Buckley, "China Sentences Phan Phan-Gillis, U.S. Businesswoman, in Spying Case," New York Times, 25 April 17; Chun Han Wong and Charles Hutzler, "China Convicts U.S. Businesswoman of Spying," Wall Street Journal, 25 April 17. For more information on Phan-Gillis, see the text box "Disappearance and Arbitrary Detention of an American Businesswoman" in CECC, 2016 Annual Report, 6 October 16, 255.

⁹⁹Dui Hua Foundation, "Dui Hua Welcomes Return of Sandy Phan-Gillis to the United States," 28 April 17; Chris Buckley, "China Departs American Woman Convicted on Spying Charge," New York Times, 29 April 17.

¹⁰⁰Bridget Johnson, "Houston Businesswoman Marks Second Year Unjustly Detained in China," PJMedia, 20 March 17; "Free Sandy," Houston Chronicle, 27 March 17.

¹⁰¹UN Human Rights Council, Opinion No. 12/2016 Concerning Phan (Sandy) Phan-Gillis (China), Opinions adopted by the Working Group on Arbitrary Detention at its Seventy-Fifth Session, 18–27 April 2016, A/HRC/WGAD/2016/12, 22 June 16, para. 21. See also Edward Wong, "China Violated Rights of Detained American, U.N. Panel Says," New York Times, Sinosphere (blog), 7 July 16.

¹⁰²The Broken Promises of China's WTO Accession: Reprioritizing Human Rights, Hearing of the Congressional-Executive Commission on China, 1 March 17, Written Statement Submitted by Jeff Gillis, Husband of American Businesswoman Sandy Phan-Gillis, 2.

¹⁰³Ibid., 3. See also Letter from Julia Frifield, Assistant Secretary, Legislative Affairs, U.S. State Department, to Christopher Smith, House of Representatives, 2 December 15. According to the U.S. State Department, the Chinese government's restrictions on communication between U.S. consular officials and Phan-Gillis were "inconsistent" with China's obligations under the U.S.-China Consular Convention.

¹⁰⁴Minxin Pei, "Chinese Tycoon's Disappearance Foreshadows Showdown in Beijing," Nikkei Asian Review, 6 February 17; Scott Cendrowski, "Billionaire's Disappearance in Hong Kong May Be Part of China's Anti-Corruption Campaign," Fortune, 6 February 17; Jun Mai and Nectar Gan, "China Confirms Tycoon Guo Wengui Wanted by Interpol," South China Morning Post, 20 April 17; Lucy Hornby, "Chinese Crackdown on Dealmakers Reflects Xi Power Play," Financial Times, 9 August 17; "Analyst: The Detention of Anbang's Wu Xiaohui Is Not Without Risk" [Fenxi renshi: anbang wu xiaohui bei ju bu wu fengxian], Voice of America, 16 June 17.

¹⁰⁵Minxin Pei, "Chinese Tycoon's Disappearance Foreshadows Showdown in Beijing," Nikkei Asian Review, 6 February 17; Scott Cendrowski, "Billionaire's Disappearance in Hong Kong May Be Part of China's Anti-Corruption Campaign," Fortune, 6 February 17.

¹⁰⁶Michael Forsythe, "Greater Corruption in China? A Billionaire Says He Has Evidence," New York Times, 17 April 17. See also Human Rights in China, "Gao Wenqian: Guo Wengui's Explosive Revelations and Xi Jinping's Dilemma," 18 May 17.

¹⁰⁷Jun Mai and Nectar Gan, "Interpol Issues Red Notice for Chinese Tycoon Guo Wengui 'At Beijing's Request' After Corruption Claim Report," South China Morning Post, 20 April 17; Jun Mai and Nectar Gan, "China Confirms Tycoon Guo Wengui Wanted by Interpol," South China Morning Post, 19 April 17.

¹⁰⁸Keith Bradsher and Sui-Lee Wee, "Why Did China Detain Anbang's Chairman? He Tested a Lot of Limits," New York Times, 14 June 17; Xie Yu, "Murky Waters Surrounding Wu Xiaohui and Anbang," South China Morning Post, 8 July 17; Lucy Hornby, "Chinese Crackdown on Dealmakers Reflects Xi Power Play," Financial Times, 9 August 17.

¹⁰⁹Xie Yu, "Murky Waters Surrounding Wu Xiaohui and Anbang," South China Morning Post, 8 July 17.

Commercial Rule of Law

¹¹⁰ Ibid.; Henny Sender, “Anbang’s Wu Xiaohui Pays the Price for Defying Beijing,” *Nikkei Asian Review*, 22 June 17.

¹¹¹ Office of International Affairs, U.S. Department of the Treasury, “Report to Congress: Foreign Exchange Policies of Major Trading Partners of the United States,” 14 April 17, 3. The U.S. Department of Treasury report notes that a rapid devaluation of the yuan would result in “negative consequences for the United States, China, and the global economy.” See also Brad W. Setser, “So, Is China Pegging to the Dollar or to a Basket?” *Council on Foreign Relations, Follow the Money (blog)*, 9 April 17.

¹¹² Office of International Affairs, U.S. Department of the Treasury, “Report to Congress: Foreign Exchange Policies of Major Trading Partners of the United States,” 14 April 17, 15.

¹¹³ Ibid.; American Chamber of Commerce in the People’s Republic of China, “2017 American Business in China White Paper,” April 2017, 166, 364. See also Brad W. Setser, “So, Is China Pegging to the Dollar or to a Basket?” *Council on Foreign Relations, Follow the Money (blog)*, 9 April 17.

¹¹⁴ State Council, “Report on the Work of the Government,” 15 March 17; “Li Keqiang: Food and Drug Safety Affects Public Health, Regulation Requires the Utmost Rigor” [Li keqiang: shipin yaopin anquan shiguan renmin jiankang, bixu guan de yaneryouyan], *Jilin Food and Drug Administration*, 7 March 17; Kathleen McLaughlin, “China Pledges To Cut Pollution and Boost Food Safety,” *Science*, 6 March 17.

¹¹⁵ John Kojiro Yasuda, Paulson Institute, “Paulson Policy Memorandum: Meeting China’s Food Safety Challenge,” 4 April 17, 1.

¹¹⁶ Wang Xiaodong, “Stronger Steps on Safety of Food Set,” *China Daily*, 28 February 17.

¹¹⁷ Zhou Dongxu and Li Rongde, “Tianjin Probes Counterfeit Ring That Produced Toxic Soy Sauce,” *Caixin*, 19 January 17; Alice Yan, “China’s Latest Food Scandal: ‘Leftovers, Industrial Salt’ Used To Make Fake-Branded Food,” *South China Morning Post*, 16 January 17.

¹¹⁸ Viola Zhou, “19 Arrested for Selling Hundreds of Tonnes of Expired Milk Powder in China,” *South China Morning Post*, 24 October 16.

¹¹⁹ Zhou Dongxu and Li Rongde, “Tianjin Probes Counterfeit Ring That Produced Toxic Soy Sauce,” *Caixin*, 23 January 17.

¹²⁰ China Food and Drug Administration, Measures on Investigating and Punishing Illegal Conduct Related to Online Food Safety [Wangluo shipin anquan weifa xingwei chachu banfa], issued 13 July 16, effective 1 October 16. See also “New Rule Stresses Online Platforms’ Responsibility in Food Safety,” *Xinhua*, 29 September 16.

¹²¹ Courtney Diem Macintosh and Andrew Sim, “New Online Food Trading Safety Measures Introduced in China,” *Baker McKenzie*, 1 October 16; China Food and Drug Administration, Measures on Investigating and Punishing Illegal Conduct Related to Online Food Safety [Wangluo shipin anquan weifa xingwei chachu banfa], issued 13 July 16, effective 1 October 16, arts. 18, 39–43.

¹²² American Chamber of Commerce in the People’s Republic of China, “2017 American Business in China White Paper,” April 2017, 48.

¹²³ Ibid., 238. See also European Union Chamber of Commerce in China, “European Business in China Position Paper 2016/2017,” 2016, 181. The European Chamber reported that, “Unclear laws and regulations and inconsistent interpretation and enforcement of the laws have opened up food regulation to further potential risks.”

¹²⁴ John Ruwitch, “Shanghai Watchdogs Fine OSI and Unit Over Meat Scandal,” *Reuters*, 3 October 16. See also Shanghai Municipality Food and Drug Administration, “Shanghai Municipality Announcement of List of Operators and Related Responsible Staff Who Violated Food and Medicine Manufacturing Rules” [Shanghai shi shipin yaopin yanzhong weifa shengchan jingyingzhe yu xiangguan zeren renyuanyan zhongdian jianguan mingdan gonggao], 2 June 17.

¹²⁵ OSI Group, “OSI Group February 1, 2016 Statement,” 1 February 16. See also “SPC and CCTV Jointly Introduce the Selection Results for the ‘Ten Significant Cases Advancing Rule of Law in 2016’” [Zuigaofa yangshi lianhe kaizhan “2016 nian tuidong fazhi jincheng shi da anjian” pingxuan jieguo jixiaoxiao], *Supreme People’s Court*, 20 April 17; US-China Business Council, “Food Safety in China: What US Companies Are Bringing to the Table,” November 2016, 8. The US-China Business Council noted that member companies had reported concerns about exaggerated media reporting and disgruntled employees providing misleading photographs to the media.

¹²⁶ See, e.g., U.S. Department of Commerce, “Joint Release: Initial Results of the 100-Day Action Plan of the U.S.-China Comprehensive Economic Dialogue,” 11 May 17; Maria Godoy, “Chinese Chicken Is Headed to America, but It’s Really All About the Beef,” *NPR*, 12 May 17.

¹²⁷ “U.S. Beef Debuts in China After 14 Years, May Help Balance Trade,” *Bloomberg*, 30 June 17; Dominique Patton, “Chinese Ready To Tuck Into U.S. Beef Imports After 14-Year Wait,” *Reuters*, 29 June 17.

¹²⁸ Food Safety and Inspection Service, U.S. Department of Agriculture, “Eligibility of the People’s Republic of China (PRC) To Export to the United States Poultry Products From Birds Slaughtered in the PRC,” 9 CFR Part 381, RIN 0583-AD64, *Federal Register*, Vol. 82, No. 115 (16 June 17), 27625–29.

¹²⁹ Food & Water Watch, “Food & Water Watch Urges USDA To Cancel Proposal To Import Poultry From China,” 15 August 17; Wenonah Hauter, Food & Water Watch, “RE: Docket No. FSI-2016-0002,” 15 August 17. See also Lucy Hornby, “China’s Love of US Chicken Feet Proves a Recipe for a Perfect Trade,” *Financial Times*, 14 August 17; Maria Godoy, “Chinese Chicken Is Headed to America, but It’s Really All About the Beef,” *NPR*, 12 May 17.

¹³⁰ “Joint Communiqué of Leaders Roundtable of Belt and Road Forum,” *Xinhua*, 15 May 17.

¹³¹ “China Focus: World’s Major Economies Present at B&R Forum,” *Xinhua*, 15 May 17; Anthony Kuhn, “For China’s ‘New Silk Road,’ Ambitious Goals and More Than a Few Challenges,” *NPR*, 16 May 17.

¹³² “Joint Communiqué of Leaders Roundtable of Belt and Road Forum,” *Xinhua*, 15 May 17. See also National Development and Reform Commission et al., “Vision and Actions on Jointly

Building Silk Road Economic Belt and 21st-Century Maritime Silk Road” [Tuidong gong jian sichou zhi lu jingjidai he 21 shiji haishang sichou zhi lu de yuanjing yu xingdong], March 2015; Nadège Rolland, *China’s Eurasian Century? Political and Strategic Implications of the Belt and Road Initiative* (Seattle: National Bureau of Asian Research, 2017), 119–20; Joshua Eisenman and Devin T. Stewart, “China’s New Silk Road Is Getting Muddy,” *Foreign Policy*, 9 January 17.

¹³³ National Development and Reform Commission et al., “Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road” [Tuidong gong jian sichou zhi lu jingjidai he 21 shiji haishang sichou zhi lu de yuanjing yu xingdong], March 2015, sec. II. See also Tom Hancock, “China Encircles the World With One Belt, One Road Strategy,” *Financial Times*, 3 May 17; “The Economist Explains: What Is China’s Belt and Road Initiative?” *Economist*, 15 May 17.

¹³⁴ Angela Stanzel, European Council on Foreign Relations, “China’s Belt and Road—New Name, Same Doubts?” 19 May 17; Elias Glenn et al., “Update 2—Germany Demands More Free Trade Guarantees on China Silk Road Plan—Minister,” *Reuters*, 14 May 17.

¹³⁵ “Joint Communiqué of Leaders Roundtable of Belt and Road Forum,” *Xinhua*, 15 May 17.

¹³⁶ State-Owned Assets Supervision and Administration of the State Council, “Transcript of State Council Information Office Press Conference on the Situation of State-Owned Enterprises Participation in Joint Construction of the ‘Belt & Road’” [Guoxinban zhongyang qiye canyu “yidai yilu” gong jian qingkuang fabuhui shilu], 9 May 17; Wu Gang, “SOEs Lead Infrastructure Push in 1,700 ‘Belt and Road’ Projects,” *Caixin*, 9 May 17.

¹³⁷ *Ibid.*

¹³⁸ Summer Zhen, “China To Build Colombo CBD Under ‘Belt and Road Initiative,’” *South China Morning Post*, 10 May 17; Celia Chen and Peggy Sito, “Here’s How Li Ka-shing Dominates Trade Along the Belt and Road Initiative,” *South China Morning Post*, 12 May 17.

¹³⁹ Joshua Eisenman and Devin T. Stewart, “China’s New Silk Road Is Getting Muddy,” *Foreign Policy*, 9 January 17.

¹⁴⁰ Asian Infrastructure Investment Bank, “AIIB Celebrates Its First Anniversary; Launches Its 2017 Agenda,” 16 January 17.

¹⁴¹ World Bank, “World Bank and AIIB Sign Cooperation Framework,” 23 April 17. As of April 2017, the AIIB and World Bank had co-financed five projects.

¹⁴² Asian Development Bank, “ADB Approves Second Cofinancing With AIIB To Boost Natural Gas Output, Transmission in Bangladesh,” 21 November 16.

¹⁴³ Inclusive Development International, “Making Inroads: Chinese Infrastructure Investment in ASEAN and Beyond,” 2016, 5–6. See also Sara Hsu, “How China’s Asian Infrastructure Investment Bank Fared Its First Year,” *Forbes*, 14 January 17.