

Introduction: Trade, Politics, and the Business Climate in China

Forty years ago, China was one of the world's poorest countries, with 80 percent of its population having a daily income of less than one dollar per day and an adult literacy rate of one-third.¹ Under Maoist China, the system was based upon communist ideology—totalitarian, egalitarian, and poor. Relatively speaking, China in the mid-1970s had virtually no legal system and few laws and regulations in comparison with developed countries at that time. Private business did not exist.

When Deng Xiaoping came to power in 1978 following the death of Mao Zedong and the end of the Cultural Revolution, he set into motion reforms to privatize agriculture and industry and relax price controls, welcomed foreign investors on a restricted basis, and attempted to decentralize economic and political decision-making. Thereafter, the country's average annual growth rate increased to approximately 8 to 10 percent per year, and in several peak years, the economy grew by 13 percent.² Today, literacy is

1. The People's Republic of China has the highest population of any country in the world. As of the end of 2012, China has over 1.354 billion people, which represents one-fifth of the entire world population. CHINA STATISTICAL PRESS, CHINA STATISTICAL YEARBOOK 2012, *available at* <http://www.stats.gov.cn>.

2. China's GDP annual growth rate averaged 9.18 percent from 1989 until 2013, reaching an all-time high of 14.20 percent in December of 1992 and a record low of 3.80 percent in December of 1990. Economic growth in China was 7.8 percent in 2012, 9.3 percent in 2011, 10.4 percent in 2010, 9.2 percent in 2009, and 9.6 percent in 2008. The risks of economic growth of less than 5 percent (the need to "grow rich before growing old") may impact stability and stir public discontent, which could lead to a challenge to Party rule. Chinese consumer confidence was at 59.9 percent in early 2009 (down by 4.5 points from mid-2008), and urban household spending in China was up 9.2 percent in the third quarter of 2009. As a comparison, China households spent US\$1.5 trillion in 2008, while U.S./EU consumers spend more than \$9.5 trillion per year into the global economy. Per capita disposable income in the United States was \$35,486 in 2008, versus \$2,270 in China. The annual disposable income per capita for urban households in China increased from RMB1,701 in 1991 to RMB21,810 in 2011. This is equivalent to a 12.8 times increase. Industrial output, the backbone of China's manufacturing-heavy

94.3 percent compared with 20 percent in 1950, consumption has increased exponentially, and the poverty rate has declined to roughly 12 percent of the population (from 84 percent in 1981) according to the World Bank.

China's growth has been fueled by foreign direct investment (FDI), with China continuing to be a worldwide top destination for investment. The utilized nonfinancial FDI in China has increased at a rate of 18 percent each year over the past 20 years and peaked in 2011 (from US\$3.2 billion in 1988, to \$45.5 billion in 1998, to \$92.4 billion in 2008, to \$116 billion in 2011). China witnessed an increase in FDI in 2008 on the expectation of growth and appreciation of its currency. However, as a result of the economic downturn and other economic forces, FDI decreased in 2012 by 3.7 percent from 2011 to US\$111.7 billion. In addition, the number of new companies established in China decreased in 2012 by 10.06 percent from 2011 to 24,925. In 2012, most FDI was directed to second- and third-tier cities, and FDI in the services sector increased by 49.9 percent in 2012 (which is up from 24 percent in 2008).³

Notwithstanding the economic downturn, China is still the top FDI destination worldwide for 13 years in a row.⁴ At the same time, the outbound investment of Chinese companies surged 63.6 percent in 2008 to US\$40 billion and is anticipated to increase as China uses its foreign exchange reserves to acquire more resources and technology to drive its domestic demand and growth.⁵ In 2008 and 2009, the Chinese government increased the number

economy, accelerated to 13.9 percent in September from 12.3 percent in August 2009. Fixed-asset investment (FAI) in China's urban areas grew by 26.5 percent in 2009, but the growth was driven by infrastructure projects, and not from foreign companies.

3. See generally X. Zhou, *China FDI Shows Full-Year Decline as Economic Expansion Slows*, BLOOMBERG NEWS, Jan. 16, 2013 (reporting decline in FDI in 2012 over 2011); L. Chiang & K. Yao, *China FDI Inflows Quicken in July Despite Slowing Growth*, REUTERS, Aug. 23, 2013 (reporting increase in summer of 2013 over prior years with a 11.4 percent increase in FDI from the United States and 58.3 percent increase from Germany). FDI in the services sector increased in the first seven months of 2013, up 15.8 percent year-on-year and accounting for 49.9 percent of total FDI inflows during the period. FDI in the manufacturing sector declined 2.4 percent year-on-year in the same period, comprising 41.2 percent of the total. The opening of the services sector by the government reflects the increase in capital flows, while the increase in labor and operational costs is a reason for the decrease in manufacturing FDI. See L. Jiabao, *FDI Quickens in July as Economy Steadies*, CHINA DAILY, Aug. 24, 2013 (reporting increase in FDI for 2013 and specifically in the services sector).

4. In March 2009, MOFCOM eased investment rules in a bid to revive and maintain FDI inflows during the economic downturn (e.g., provincial governments were authorized to approve foreign investments worth up to \$100 million without seeking ministry-level approval—this applies to business start-ups, acquisitions of domestic firms, and expansion of production capacity by automakers).

5. The State-Owned Assets Supervision and Administration Commission of the State Council (SASAC) adopted a regulation effective May 1, 2012, that is designed to better regulate and supervise the overseas investments by centrally administered state-owned enterprises (SOEs). The new regulation restricts an SOE from investing in a sector that is not its core business, and requires approval from the SASAC to invest in areas that are outside its core business. SOEs have experienced significant losses in overseas investments that were deemed to be risky and outside their core competency. Since the deep pocket is the national-level government, more scrutiny of SOE overseas investment is likely to take place going forward. On August 9, 2012, the National Development and Reform Commission

of overseas buying missions to the United States, EU countries, and other parts of the world.⁶

In addition to an increase in FDI, U.S. exports to China have also risen significantly since 2001, particularly with respect to telecommunications, power generation, oil and gas exploration, chemicals, aircraft, fertilizer, wheat/cereal products, and construction machinery. U.S. firms are also pursuing a number of developing markets in China, including professional services, pharmaceuticals, automotive components, automotive production machinery, medical equipment and devices, clean technology and clean energy, infrastructure, and transportation-related equipment (e.g., subway and railroad, airport equipment). The trade deficit in goods with China at the end of 2011 was \$295.4 billion, an 8.2 percent increase (\$22.4 billion) over 2010. The U.S. goods trade deficit with China accounted for 41 percent of the overall worldwide U.S. goods trade deficit in 2011. Trade in services with China (exports and imports) totaled \$36 billion in 2011 with services exports of \$25 billion and services imports of \$11 billion. The services trade surplus with China was \$13 billion in 2011.⁷

(NDRC) issued an announcement further relaxing the approval procedures for outbound investment; specifically, the NDRC provides that applications will no longer be required for overseas resource development projects with an investment valued at less than \$30 million, or for nonresource development projects with an investment of less than \$10 million. The objective of the new rule is to encourage outbound investment by Chinese enterprises. In February 2012, the NDRC announced that applications for resource projects with an investment of up to \$300 million and for nonresource projects with an investment of up to \$100 million may be approved by provincial and municipal-level authorities. Approval is not required at the national level. Private investment in outbound mergers and acquisitions still remains small in comparison to the huge international investments by SOEs. In 2011, outbound investment by non-state-owned enterprises increased to 44 percent of China's total outbound overseas investment. The NDRC's steps to relax outbound investments will encourage more privately held PRC companies to expand their brands in the international market and to acquire and integrate technology and resources from abroad.

6. PRC foreign exchange reserves amounted to \$3.82 trillion as of the end of 2013 (up from \$2.4 trillion as of 2009), much of which is used to buy U.S. Treasury bonds, making China the biggest single creditor of the USG. See Ministry of Commerce, <http://www.mofcom.gov.cn>.

7. For current and historical trade statistics, see the website of the U.S. Census Bureau at <http://www.census.gov> or the U.S. Trade Representative at <http://www.ustr.gov>.

Exports: China was the third-largest goods export market for U.S. products in 2013. Exports to China from the United States totaled \$108 billion in 2013, \$110 billion in 2012, \$103 billion in 2011, \$91 billion in 2010, \$69.4 billion in 2009, and \$69.7 billion in 2008. U.S. goods and services trade with China totaled \$539 billion in 2011. Exports totaled \$129 billion; imports totaled \$411 billion. The U.S. goods and services trade deficit with China was \$282 billion in 2011. China is currently our second-largest goods trading partner with \$503 billion in total (two ways) goods trade during 2011. Goods exports totaled \$104 billion; goods imports totaled \$399.3 billion. The U.S. goods trade deficit with China was \$293 billion in 2013, \$315 billion in 2012, and \$295 billion in 2011. Trade in services with China (exports and imports) totaled \$36 billion in 2011 (preliminary data). Services exports were \$25 billion; services imports were \$11 billion. The U.S. services trade surplus with China was \$13 billion in 2011. U.S. exports to China accounted for 7.0 percent of overall U.S. exports in 2011. The top export categories (two-digit HS) in 2011 were as follows: machinery (\$12.2 billion), miscellaneous grain, seed, fruit (soybeans) (\$10.7 billion), electrical machinery (\$10.1 billion), vehicles (\$6.8 billion), and aircraft (\$6.4 billion). U.S. exports of agricultural products to China totaled \$18.9 billion in 2011, the second-largest U.S. agricultural export market. Leading categories include soybeans (\$10.5 billion), cotton (\$2.6 billion), hides and

The worldwide recession has had an impact on China's imports and exports. In January 2009, China's exports declined 17.5 percent from 2008; by August 2009, exports had declined by 23 percent from 2008. U.S. exports inbound to China have increased since 2001; however, worldwide imports into China declined in first quarter of 2009 by 43.1 percent. Over half of China's imports are raw materials used to produce goods for exported products; thus, imports are a leading indicator of China's exports. China's shrinking importation of foreign goods and commodities has negatively impacted the economies of its neighbors in Asia. For example, Taiwan's exports declined by 44 percent (60 percent decline in exports to the PRC), South Korea's exports declined by 33 percent, and Singapore's exports declined by 52 percent in January but rose by 8 percent in February 2009. The decline in China's exports has forced thousands of factories and job sites to close, and has caused job losses for over 20 million migrant workers (or 13–15 percent of the migrant worker population). Notwithstanding the decrease in exports in early 2009, however, both imports and exports increased in the latter part of 2009 and the beginning of 2010 as the Chinese economy rebounded.

In late 2008, China launched a number of economic stimulus initiatives to drive economic growth including policies encouraging domestic consumption, which increased in January 2009 by 24.5 percent over 2008. The PRC domestic stimulus package is valued at US\$586 billion (RMB4 trillion) and involved infrastructure spending (up 33 percent in December 2008, compared with 16 percent during the first half of 2008); subsidies and tax cuts to bolster various industries (automotive, steel, and textiles); and spending initiatives focused on energy efficiency, social programs, the health care system, agricultural subsidies, drinking water projects, and earthquake reconstruction. The stimulus programs also resulted in the introduction of "buy local" policies, including a policy statement adopted by the National Development

skins (\$1.2 billion), and coarse grains (\$843 million). U.S. exports of private commercial services (i.e., excluding military and government) to China were \$24.7 billion in 2011 (preliminary data), 17 percent (\$3.6 billion) more than 2010 and 393 percent greater than 2000. It is up 357 percent since 2001. Other private services (business, professional, and technical services and education services), travel, and the royalties and license fees categories accounted for most of U.S. services exports to China.

Imports: China was the United States' largest supplier of goods imports in 2013. U.S. goods imports from China totaled \$402 billion in 2013, \$425 billion in 2012, \$399.3 billion in 2011, a 9.4 percent increase (\$34.4 billion) from 2010, and up 299 percent since 2000. It is up 290 percent since 2001. U.S. imports from China accounted for 18.1 percent of overall U.S. imports in 2010. The five largest import categories in 2011 were electrical machinery (\$98.7 billion), machinery (\$94.9 billion), toys and sports equipment (\$22.6 billion), furniture and bedding (\$20.5 billion), and footwear (\$16.7 billion). U.S. imports of agricultural products from China totaled \$4.0 billion in 2011, the fifth-largest supplier of agricultural imports. Leading categories include processed fruit and vegetables (\$949 million), fruit and vegetable juices (\$559 million), snack foods (including chocolate) (\$203 million), and spices (\$123 million).

& Reform Commission on May 26, 2009, which mandates that Chinese domestic companies should receive contracts for government stimulus projects unless Chinese companies are unable to deliver certain technical goods at a reasonable price or within a reasonable amount of time. To maintain stable growth in various export-oriented industries such as textiles and garments, the government also adopted as part of its economic stimulus plan a series of policies providing for an increase in export tax rebates, postponement or reduction of social security contributions, support for working capital, and other financial support.⁸ The government has also adopted policies that encourage indigenous innovation, often at the expense of foreign companies and foreign-developed technology.⁹ In an effort to move up the technology

8. Stimulus Plan Regarding the Adjustment and Development of the Textile Industry (issued by the State Council on April 24, 2009). The Textile Stimulus Plan was implemented from 2009 to 2011 and encourages the merger and restructuring of textile companies, personnel recruitment, and other support and incentives.

9. On November 15, 2009, the Ministry of Science and Technology (MOST), the National Development and Reform Commission (NDRC), and the Ministry of Finance jointly issued the Notice on the Promulgation of the 2009 National Indigenous Innovation Products Accreditation Program, which required enterprises registered in China to apply for accreditation of indigenous innovation products (hereinafter “Notice 618”). This accreditation program implements the Measures for the Administration of the Accreditation of National Indigenous Innovation Products issued in November 2006 (hereinafter “Measures”), which were intended to carry out the National Science and Technology Development Middle- to Long-Term Plan for 2006–2020. The Measures authorized MOST to establish and publish a catalogue of accredited products that would be given priority in government procurement, including infrastructure construction financed by the government. In addition to other industry-related policies, product manufacturers were to receive priority treatment in the accreditation of “high-tech companies.” According to the Measures, the applicant for accreditation is required to be a legal entity incorporated in China and must be the owner of the intellectual property of the product (i.e., patents, nonpatented technology and know-how, copyrights, and trademarks), as well as any trademark used on the product. MOST is the agency with jurisdiction to approve the applications for accreditation and publish the catalog of the accredited products. Once approved, accreditation is valid for two to four years and may be renewed. Notice 618 required that all applications to be included in the accredited products catalogue be filed by December 10, 2009. MOST initiated the accreditation program in 2008 on a pilot basis involving domestic owned or controlled companies based in national high-technology industrial zones. Pursuant to Notice 618, the accreditation program for 2009 will apply on a national level and focus on six high- and new-technology fields including computers and application equipment, communications products, modern office equipment, software, new energy and new energy devices, and high-efficiency and energy-saving products. In addition to restating the requirements of the Measures—including the criteria that the products be sourced from domestically owned intellectual property rights—the application guidelines attached to Notice 618 further require that the use, disposal, and improvements by the applicant of the intellectual property involved in the underlying product must not be subject to foreign restrictions, and any trademark used must be first registered in China and must not be restricted by related foreign brands. Notice 618 and the accreditation program have raised serious concerns of domestic favoritism and protectionism among non-Chinese multinational companies that may be excluded from the benefits of the Chinese government’s procurement and stimulus plans. The real concern is that this circular is a reflection of the actual ongoing and growing practice—namely, that the government has been aggressively promoting the purchase of domestic technology over foreign-developed technology (or even hybrid technology developed partly in China and partly overseas)—and that Notice 618 made the policy official (although the PRC government publicly claims that they are showing no favoritism and the accreditation process is voluntary). Secondly, the list of six categories of technology is very broad and overinclusive, and it is unclear as to what specific products or services may or may not be included in the accreditation program. Furthermore, it remains to be seen whether additional products and services will be added to the program in the future. Finally, the short timeline for participation in the program is unmanageable for most companies (the release of Notice 618 on November 15, 2009, was a mere 25 days from the deadline for submitting an application,

value chain, the State Council in 2009 adopted policies to support the development of technology outsourcing operations in 20 pilot cities throughout China.¹⁰ The incentives granted under the policies include a series of financial subsidies and funding support for equipment purchases and operational expenses and preferential tax treatment to promote the growth of services outsourcing.

A. China/WTO Agreements

In addition to China's open-door policies encouraging FDI, the Mainland's entry into the World Trade Organization (WTO) has helped to fuel its economic growth and development as well as triggered law reform. As background, in November 2001, the 140 member countries of the WTO agreed to a set of documents outlining the terms pursuant to which China would be admitted as a member of the WTO (the "China/WTO Agreement"). China accepted the WTO's membership invitation by filing its Notice of Accession on November 11, 2001, and formally became a WTO member on December 11, 2001.¹¹

December 10, 2009). This short fuse on compliance raises questions concerning the fairness and transparency of the accreditation program. On December 10, 2009, a coalition of business organizations and chambers raised their concerns about the program with the leadership of the Chinese government. The United States and other trading partners formally protested the accreditation process as discriminatory. Although the Measures remain on the books, China subsequently agreed not to maintain any rules that provide government procurement preferences for goods or services based on the location where the intellectual property is owned or was developed and agreed to delink its innovation policies from the provision of government procurement preferences.

10. Notice Regarding Administration of Funds for the Development of International Service Outsourcing Businesses in 2009 (Circular No. 44, issued by MOFCOM and the MOF on January 15, 2009); Notice Regarding Tax Preferential Treatment for Technologically Advanced Services Co. (Circular No. 63, issued by MOFCOM, MOST, MOF, NDRC, and SAT and effective January 1, 2009). Technologically advanced services enterprises are entitled to reduced enterprise income tax of 15 percent, a deduction for employee education expenses of 8 percent of salaries (up from 2.5 percent), business tax exemption, and other incentives. The 20 pilot cities are Beijing, Tianjin, Shanghai, Chongqing, Dalian, Shenzhen, Guangzhou, Wuhan, Harbin, Chengdu, Nanjing, Xian, Jinan, Hangzhou, Hefei, Nanchang, Changsha, Daqing, Suzhou, and Wuxi. *See also* Reply of the General Office of the State Council on Issues concerning Promoting the Development of the Service Outsourcing Industry (*Guo Ban Han* [2009] No. 9); Notice of Ministry of Commerce of the People's Republic of China on Forwarding the Reply of the General Office of the State Council on Issues concerning Promoting the Development of the Service Outsourcing Industry (*Shang Zi Han* [2009] No. 4, promulgated by the Ministry of Commerce, on January 22, 2009).

11. *See generally* M. Dudek & A. Wang, *China's Long WTO March*, CHINA L. & PRAC., Apr. 2001. The WTO Agreements consisted of the Protocol of Accession, the Report of the Working Party, and the Market Access Schedules. The WTO China Annexes include Annex 1A: Information to be Provided by China in the Context of the Transitional Review Mechanism; Annex 1B: Issues to Be Addressed by the General Council in Accordance with Section 18.2 of China's Protocol of Accession; Annex 2A1: Products Subject to State Trading (Import); Annex 2A2: Products Subject to State Trading (Export); Annex 2B: Products Subject to Designated Trading; Annex 3: Nontariff Measures Subject to Phase Elimination; Annex 4: Products and Services Subject to Price Controls; Annex 5A: Notification pursuant to Article XXV of the Agreement on Subsidies and Countervailing Measures [i.e., List of Subsidies]; Annex 5B: Subsidies to be Phased Out; Annex 6: Products Subject to Export Duty; and Annex 7: Reservations by WTO Members.

China's WTO membership confirms China's policy of ongoing economic reform and is indicative that China has no intention of returning to the once-planned economy that dragged the country to economic stagnation. The China/WTO Agreement, which subjects China to the WTO's rule-based system of international trade and commercial dealings, is the result of over 20 years of economic and legal reform that commenced in 1979.

Membership in the WTO is a reciprocal arrangement. While China must grant national treatment and nondiscrimination to foreign suppliers of goods, WTO member countries like the United States are prohibited from placing an embargo on Chinese goods, discriminating with regard to tariff rates, or imposing unilateral sanctions. Thus, a foreign investor in China need not fear the impact of the annual ups and downs of political relations between China and the United States triggered by the annual most-favored-nation debate.¹²

After World War II, China, by and through the Nationalist government, was an original party to the 1947 General Agreement on Tariffs and Trade (GATT). When the Communist government in China came to power in 1949 (after the Nationalist government fell and sought refuge in Taiwan), it withdrew from GATT because it was no longer willing to honor the tariff concessions and open trade obligations of the trade agreement. In 1986, the People's Republic of China applied to reactivate its membership. In 1995, after being informed that it could not resume its membership, China notified the WTO that it would apply for accession to the World Trade Organization under Article XII of the Marrakesh Agreement Establishing the WTO. As a result, China was required to go through the time-consuming process applicable to new WTO members.

The WTO entry process first required that China prepare and submit a memorandum covering all WTO-related criteria of its trade and economic policies. From 1995 to 2001, China provided the WTO with detailed information concerning its policies, which was submitted to a Working Party of WTO member country representatives.¹³ The purpose of the WTO Accession Working Party (hereinafter the "Working Party") was to draft and

12. Prior to membership in the WTO, China's most-favored-nation (MFN) status with the United States was subject to annual review and renewal by the U.S. government. The annual review process was a source of tension between the pro-China business lobby and those opposed to open trade with China as a result of several sensitive issues such as weapon sales, human rights violations, aggression toward Taiwan, trade imbalances, and other reasons. The Congressional-Executive Commission on China (CECC) has released a number of reports critical of China's human rights practices and security-related issues. For copies of the reports, testimony, and other materials, *see* <http://www.cecc.gov>.

13. In 1987, the Working Party for China was first formed to evaluate China's request to resume its GATT membership. In 1995, the original Working Party was converted to a WTO Accession Working Party when China applied for membership under Article XII of the WTO Agreement.

negotiate a Protocol of Accession (POA), which includes the binding terms and conditions applicable to China's accession to the trade organization.¹⁴ The POA contains commitments and clarifications as to matters that may be covered by WTO Agreements. The POA also includes a *Report of the Working Party*, in which the Working Party addresses how China's laws and regulations and rules conform to the WTO agreements and obligations. The *Report of the Working Party* includes specific "commitment paragraphs," which are concessions made by China to gain admission to the WTO, as well as Market Access Schedules for agricultural goods, manufacturers, and services sectors.¹⁵

The Market Access Schedules, which comprise a comprehensive set of schedules setting forth timetables for market entry, are based upon the bilaterally negotiated agreements between China and various WTO members. If one country was able to negotiate favorable terms with China, such terms applied to all member countries and, in the event of a conflict, the most favorable concession terms applied to all members. The key bilateral agreements include the November 15, 1999, U.S./China Agreement¹⁶ between the United States and China and the May 15, 2000, EU/China Agreement between the European Union and China.¹⁷ The various bilateral agreements have been compiled into two schedules: China's Schedule of Concessions and Commitments on Goods¹⁸ and China's Schedule of Specific Commitments on Services.¹⁹

In addition to being a Geneva-based international organization, the WTO is a compilation of over 60 separate trade agreements, protocols, and

14. The Protocol requires that China be subject to all WTO Agreements on accession (December 11, 2001), unless otherwise noted in the Agreement. Most of the exceptions are outlined in the Annexes attached to the Protocol.

15. In contrast to the Protocol of Accession, which is relatively short and describes how the WTO Agreements will be applied to China, the *Report of the Working Party* is a detailed examination and evaluation of China's trade and foreign investment system. The *report* outlines the questions of the Working Party member country representatives and China's responses thereto, explaining how China's existing legal system conforms to WTO Agreement obligations. In some situations, China provided information and evidence that its current laws and regulations already conformed to WTO requirements, while in other instances China recognized the need to change its laws and outlined its formal commitments as to how the system would be amended.

16. The United States played a critical role in negotiating China's accession to the WTO and was the first country to execute a bilateral agreement with China. The U.S./China WTO Agreement covered all agricultural products, industrial goods, and services sectors. The EU/China WTO Agreement covers those specific areas as well as products that were of key significance to the European Union.

17. The agreement with Mexico was the final bilateral agreement reached with China. In this regard, China agreed to allow Mexico to extend its current countervailing duties on 1,300 Chinese products for six years. A number of the Working Party member countries were not willing to grant China full WTO rights. These reservations, from countries like Mexico, the Czech Republic, Poland, and the EU, are listed in Annex 8, together with timetables for the phasing out of these restrictions.

18. Document WT/ACC/CHN49/Add.1. See the website of the World Trade Organization at <http://www.wto.org> for copies of all WTO documents.

19. Document WT/ACC/CHN/49/Add.2.

understandings that bind the member countries. In general, these agreements, protocols, and understandings set forth a rule-based system for international trade, intellectual property protection, and foreign direct investment. Of most critical importance are GATT, the General Agreement on Trade in Services (GATS), and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).²⁰

China's accession to the WTO requires that it adhere to all of these agreements in force on the date of accession (December 11, 2001), each of which constitutes a legally binding international obligation and supersedes any conflicting domestic (national or local) legislation. The Protocol further states that the China/WTO Agreements are to be registered under the provisions of Article 102 of the Charter of the United Nations, which represents its binding nature as an international obligation of all member countries.

The China/WTO Agreements set forth three types of commitments required for China's membership to the WTO including specific tariff reductions, market access for services, and commitments outlining the steps China will take to comply with its treaty obligations.

1. China's Commitment: Tariff Reductions

The tariff reduction commitments are set forth in China's Schedule of Concessions and Commitments on Goods.²¹ As agreed upon in the China/WTO Agreements, industrial tariffs decreased from an overall average of 24.6 percent in 1997 to an overall average of 9.4 percent by 2006. For industrial products, tariffs decreased to 7.1 percent with the majority of tariff cuts fully implemented by 2004. For agricultural products, tariffs were reduced from an overall average of 31.5 percent to 14.5 percent (by January 2004). In 2009, the average tariff level for inbound agricultural products was approximately 15.2 percent, while the average tariff for industrial goods was approximately 8.9 percent. With a reduction of tariffs, foreign goods manufacturers have been able to import goods into China more cost effectively than in prior years.

2. China's Commitment: Market Access for Services

With respect to market access for services, China agreed to open various services sectors based on a timetable of commitments. Under the Marrakesh

20. The Patent Law, Copyright Law, and Trademark Law were amended prior to China's accession to WTO, and generally conform to TRIPS. Much work still needs to be done in the implementation and enforcement of China's intellectual property laws.

21. Document WT/ACC/CHN49/Add.1. See generally *China Begins Cutting Average Tariff Rate to 10.4%*, XINHUA NEWS AGENCY, Jan. 2, 2004, available at <http://www.xinhuanet.com>.

Agreement of 1994, WTO member countries are required to commit to gradual opening of services through negotiations every five years under GATS. The negotiations between the member states and China in regard to market access to the services industry were contentious. While most developed countries, including the United States and EU countries, demanded greater access to China's services industry, China's negotiators had requested developing country status, which would have allowed China to keep its services industry effectively closed to foreign participation.²² After years of debate, member countries conditioned their respective bilateral agreements on specific commitments from China to open its telecommunications, insurance, banking, securities, audio-visual, and professional services sectors.²³

China's Schedule of Specific Commitments on Services in Annex 9, Part II of the Working Party Report (Access Schedule) contains specific commitments in regard to the opening of various services sectors and outlines the phase-in period with regard to how and when the sectors will be opened. The following sections briefly outline the market access commitments made by China.

a. Automobiles and Automotive Industry

All restrictions on the types and models of cars produced locally were lifted two years after accession. Motor vehicle joint ventures may be approved at the provincial level if under \$60 million after one year, \$90 million after two years, and \$150 million after four years from accession. China agreed to allow nonbank foreign financial institutions to be able to provide financing for all forms of motor vehicles. Upon accession, the 50-percent maximum foreign ownership for engine joint ventures was lifted; wholly foreign-owned production of engines is now allowed.²⁴

22. During negotiations, China requested that it be treated as a developing country rather than a developed country. The difference is that China would have been given greater flexibility if considered a developing country. Although the per capita income of its people justified treatment as a developing country, it was the view of the United States and the EU that China's strong GDP, foreign trade (over \$350 billion in 2000), and successful foreign investment program did not justify treatment as a developing country. The Working Party granted China a measure of developing country status (such as in agriculture and the phase-in of its full WTO compliance), but in most areas, the Working Party asked and expected full compliance as required of developed countries.

23. GATS requires members to open their services sectors, but GATS participation by WTO member countries is not mandatory. As a consequence, many WTO members have not opened their services industries to foreign participation.

24. See generally W. Yi, *China's WTO Compliance and Foreign Investment in the Auto Industry*, CHINA L. & PRAC., Feb. 2003. For a discussion of the automobile finance rules, see *infra* Chapter 11, "Financial Regulation," § D.3.

b. Banking and Financial Institutions

China committed to imposing only “prudential” measures in regard to the licensing of foreign-invested banks; namely, that there will be no economic needs test or quantitative limits on licenses. Within five years of accession, all nonprudential measures restricting ownership and operation of foreign financial institutions were required to be phased out. Upon accession to the WTO, China agreed to eliminate all geographic or customer restrictions for foreign currency business, and agreed that the local renminbi currency business would be phased in on a regional basis, and would be required to be free from all geographic restrictions five years after accession. Foreign operators were permitted to provide local currency services to Chinese enterprises two years after accession, and to all Chinese customers five years after accession (2006).²⁵

c. Construction and Engineering

China agreed to allow for majority foreign-owned joint ventures in the construction industry upon accession, and wholly foreign-owned construction enterprises after three years (December 2004).²⁶

d. Distribution, Trading Rights, and Retail Services

Prior to entry into the WTO, China jealously guarded trading rights issued to state-run import/export companies, which stifled competition for imports and reduced domestic companies’ access to export markets. Trading rights have gradually been extended to a much wider range of companies, including Chinese domestic companies, as part of China’s market reforms. Under the amendment to the Foreign Trade Law adopted in 2004, all individuals, legal entities, and organizations may participate in foreign trade.²⁷

Within one year after accession (December 2002) foreign investors were allowed to establish joint ventures with minority interests to engage in the wholesale business of most imported and domestically produced goods (with the exception of certain commodities listed in Annex 2 such as books, newspapers, magazines, pharmaceuticals, pesticides, chemical fertilizers, processed oil, and crude oil). Two years after accession (December 2003)

25. See generally C. Wei, M. De Sombre, & H. Zhang, *China Post-WTO Reforms in Financial Services: Achievements and Challenges*, CHINA L. & PRAC., Mar. 2003.

26. For a discussion of the laws and regulations concerning the construction industry, see *infra* Chapter 5, “Foreign Investment Guidelines and Industry-Specific Regulations,” § B.5; Chapter 7, “Contract Law,” § B.7; and Chapter 8, “Tender Law and Government Procurement.”

27. Foreign Trade Law of the People’s Republic of China (2004 Revision) (issued by the Standing Committee of the National People’s Congress on April 6, 2004, and effective on July 1, 2004, as Order of the President of the People’s Republic of China No. 15 [2004]). For an analysis of the foreign trade law, see *infra* Chapter 7, “Contract Law,” § B.10.

foreign-majority ownership of joint ventures with trading rights was allowed, and wholly foreign-owned enterprises were allowed effective three years after accession (December 2004). After five years (December 2006), foreign enterprises were allowed to distribute certain restricted products such as chemical fertilizers, processed oil, and crude oil.

In June of 2003, the Ministry of Commerce and General Administration of Customs jointly issued a notice allowing free-trade zones (FTZs) in Shanghai (Waigaoqiao), Shenzhen (Futian, Shatoujiao, and Yantian), Tianjin, and Xiamen (Xiangyu) to grant trading rights to enterprises in those zones.²⁸ Under the FTZ Trading Rights Notice, enterprises in the four FTZs are authorized to enjoy the same treatment as the non-FTZ enterprises in the same regions with respect to the right to freely import and export goods. The provisions are designed to provide FTZ enterprises with more freedom to trade goods with non-FTZ entities and to dispense with the need to use a trade agent for transactions with domestic companies outside the zones.

Effective June 1, 2004, the Ministry of Commerce (MOFCOM) promulgated regulations addressing the activities of foreign-invested enterprises (FIEs) in the commercial and distribution sector.²⁹ The FIE Commercial Sector Regulations specify the standards by which foreign-invested commercial enterprises may conduct retail, wholesale, franchise, or commission agency business.

e. Health Care: Medical and Dental Services

Upon accession in December 2001, China agreed to allow qualified foreign operators the right to provide medical and dental services through foreign-majority-owned joint venture hospitals or clinics “with quantitative limitations in line with China’s needs.” However, China provides that the majority of medical personnel of joint venture hospitals or clinics be Chinese nationals, although foreign doctors are permitted to provide “short-term medical services” after obtaining authorization from the relevant government authorities.³⁰

28. Notice on Trial Work Granting Import and Export Rights to the Enterprises in the Four FTZs (issued by MOFCOM and GAC in June 2003) [hereinafter the “FTZ Trading Rights Notice”]. See generally W. Fu, *Establishment & Operation of WFOEs in Free Trade Zones*, CHINA L. & PRAC., June 2003.

29. Regulations for the Administration of Foreign-Invested Enterprises in the Commercial Sector (issued by the Ministry of Commerce on April 16, 2004, and effective on June 1, 2004, as MOFCOM Order No. 8 [2004]) [hereinafter the “FIE Commercial Sector Regulations”].

30. The Access Schedule defines “short-term service” as six months with the possibility of another six-month extension. For an analysis of the regulations of foreign investments in hospitals and clinics, see *infra* Chapter 5, “Foreign Investment Guidelines and Industry-Specific Regulations,” § B.15.

f. Insurance Services

China's WTO obligations provide that China will allow foreign insurers selling non-life insurance to establish joint ventures with 51 percent ownership upon accession. After two years (December 2003), they were allowed to establish wholly foreign-owned branches with "no form of establishment restrictions." Foreign life insurance companies are permitted to establish joint ventures with 50 percent ownership upon accession.

Foreign insurance brokerage firms of large-scale commercial risks (including reinsurance and international marine, aviation, and transport insurance and reinsurance) were allowed to establish joint ventures with foreign equity to a maximum of 50 percent ownership upon accession; 51 percent after three years; and after five years, wholly owned subsidiaries were authorized. China has further committed to seven new insurance licenses, five for life insurance and two for non-life insurance companies, and an additional two foreign insurance companies have been allowed to establish in a second city.³¹

g. Foreign-Produced Films

Pursuant to its WTO commitments, China agreed to increase the quota on imports of foreign films to 20 films per year (up from ten per year in 2001).³²

h. Pharmaceuticals

Foreign investors were allowed to engage in the wholesale distribution and retail sales of pharmaceutical products within three years of China's accession to the WTO (December 2004). However, China has reserved the right to exercise price controls over certain imported and domestically produced pharmaceuticals.³³

31. For information concerning China's WTO commitments in the insurance industry, see the website of the China Insurance Regulatory Commission (CIRC) at <http://www.circ.gov.cn>. On December 18, 2002, CIRC issued a press release outlining the progress made to date concerning market access in the insurance industry. For a discussion of China's insurance laws and regulations, see *infra* Chapter 12, "Insurance Law and Regulation."

32. See *White House Gets China to Open Market to U.S. Movies*, REUTERS, Feb. 18, 2012. The U.S. Trade Representative reached an agreement with China that would allow 50 percent more U.S. films into the Chinese market, requiring China to permit 14 premium format films (IMAX, 3D) to be exempt from the 20 film import quota, for a total of 34 films per year. In addition, the USTR worked out an arrangement whereby the box office revenues of foreign studios would increase to 25 percent from 13 percent. For an analysis of the entertainment industry and opportunities for Sino-foreign film production, see *infra* Chapter 5, "Foreign Investment Guidelines and Industry-Specific Regulations," § B.10.

33. For a discussion of the pharmaceutical industry and drug regulations in China, see *infra* Chapter 13, "Consumer Protection," § G.

i. Professional Services: Law Firms and Accounting Firms

Upon China's accession to the WTO, foreign-owned accounting firms were authorized to provide taxation and management consulting services and were no longer required to have a local Chinese partner. Foreign-owned law firms were allowed to provide expanded legal services and to establish a presence in multiple cities.³⁴

j. Telecommunications Services

Pursuant to the Access Schedule, upon accession, foreign investors could hold a maximum 25 percent share in mobile voice and data services communications; after one year, a 35 percent stake; and after three years, a 49 percent stake. With respect to value-added services such as Internet, paging, and other services, foreign operators could hold 30 percent ownership in companies located in Beijing, Shanghai, and Guangzhou upon accession. Two years after accession, geographic restrictions were lifted and foreign ownership interest could be up to 50 percent. Foreign operators in fixed-line and long distance services could hold a 25 percent stake after three years and 49 percent after six years.³⁵

3. China's Commitments: Treaty Obligations

In addition to China's agreement with respect to tariff reductions and market access for services, the China/WTO Agreement also addresses China's treaty obligations. The WTO treaty obligations, which consist of 60 separate treaties, agreements, and understandings that create a rule-based system of trade law developed over 50 years since the original negotiations, became applicable to China upon accession. The following are the most important agreements under WTO.

a. Agreements on Trade in Goods

The agreements on trade in goods are numerous and address a variety of trade-related matters including, but not limited to, the following: (1) WTO

34. For a discussion of the rules governing foreign law firms and accountants in China, see *infra* Chapter 5, "Foreign Investment Guidelines and Industry-Specific Regulations," §§ B.1, B.19.

35. See also Telecommunications Business Catalogue (issued on February 21, 2003, by the Ministry of Information Industries, and effective April 1, 2003). The Telecom Business Catalogue amends the standards for various telecom-related business and clarifies terms used in prior regulations to be consistent with WTO. See also *infra* Chapter 6, "Information Technology, Telecommunications, and Software Development." In May 2013, the Ministry of Industry and Information Technology (MIIT) released a draft revised Telecommunications Business Catalogue for public comment and this draft marks the first revision to the 2003 catalogue. The catalogue is an important document as it lists the telecommunications business sectors in which services provider may operate. Anticipated changes in the revised catalogue include an expansion of the scope of information services businesses to keep up with technological developments and market realities.

member states convert nontariff barriers concerning agricultural commodities to tariffs only (i.e., Agreement on Agriculture); (2) laws governing food safety, animal or plant health, and similar regulations be based upon objective and scientific data (i.e., Agreement on the Application of Sanitary and Phytosanitary Measures); and (3) laws governing direct foreign investment afford national treatment and be transparent within two years of accession unless there is a recognized exception (i.e., Agreement on Trade-Related Investment Measures, or TRIMs).

b. Agreements on Trade Facilitation

The agreements on trade facilitation clarify the scope of the General Agreement on Tariffs and Trade and include (1) the Agreement on Implementation of Article VII of the GATT (Customs Valuation)³⁶ and (2) the Agreement on Import Licensing Procedures.³⁷

c. Protocol of Accession: Matters Specific to China

The Protocol of Accession includes the binding terms and conditions applicable to China's accession to the trade body and clarifications as to matters that may be covered by WTO Agreements. Several issues raised in the Protocol include the following commitments:

36. The Customs Valuation Agreement sets forth rules to unify the standards and procedures for customs valuation and recognizes in hierarchical order the five WTO-approved methods to determine the customs value of imported goods. The first method of valuation is the transaction value, followed by several other valuation methods such as the identical goods transactions method, the similar goods transactions method, the deductive method, and the computed method. To meet its commitments to abide by the Customs Valuation Agreement, China adopted the Measures of the Customs of the People's Republic of China for the Examination and Approval of the Dutiable Value of Import and Export Goods (promulgated and effective on January 1, 2002, by the General Customs Administration as Customs Order No. 95) [hereinafter the "Customs Valuation Measures"]. The Customs Valuation Measures recognize that the dutiable value of imported goods shall be examined and determined by Customs on the basis of the transaction price of the goods and shall include the freight, relevant expenses, and insurance incurred before the unloading of the goods at the port of discharge in the PRC. Also, the transaction price of the import goods shall mean the price actually paid or payable by the buyer for purchasing the goods and shall have been adjusted according to Articles 4 and 5 of the Measures. The Measures also specify proper methods for the calculation of freight, relevant expenses, and insurance in the dutiable value of import and export goods, and also discuss legal liabilities and certain supplementary provisions. The Customs Valuation Measures supersede the Measures of the Customs of People's Republic of China for the Examination and Approval of Dutiable Value of Import and Export Goods implemented September 1, 1992, and the Measures of the Customs of People's Republic of China for the Examination and Approval of Dutiable Value of the Goods Imported for Processing Trade implemented October 1, 1999. The 2002 Customs Valuation Measures were amended in 2006. See Measures of the Customs of the People's Republic of China for the Assessment and Determination of Dutiable Value of Import and Export Goods (promulgated by the General Administration of Customs on March 8, 2006, and effective May 1, 2006, as Customs Order No. 148 [2006]). For a discussion of customs rules and regulations, see *infra* Chapter 15, "Customs and Trade Regulations."

37. The Agreement on Import Licensing is designed to simplify import licensing procedures by providing for transparency of regulatory standards and procedures, application submission timetables, and standards for the protection of confidential information. Member countries may elect to have either automatic or nonautomatic licensing.

1. *Administration of the Trade Regime.* Upon accession, China agreed to apply a uniform administration of its trade regime throughout the entire country, including the Special Economic Zones border trade regions, minority autonomous areas, and other special zones.³⁸ China agreed to apply or administer its trade laws in a uniform, impartial, and reasonable manner, and local and provincial authorities are bound by WTO obligations. China also agreed to establish a mechanism under which individuals and enterprises can bring to the attention of the government instances of “non-uniform application of the trade regime.” China further agreed that only published laws, regulations, and other measures will be enforceable against WTO member countries and agreed to establish designated judicial tribunals that are empowered to make a prompt and impartial review of administrative actions affecting trade in goods and services.³⁹
2. *Nondiscrimination.* China agreed that foreign individuals, foreign enterprises, and FIEs in China shall receive treatment that is “no less favorable” than domestic individuals and enterprises. This principle is referred to as “national treatment” and prohibits discrimination between foreign products/services and domestic products/services. The WTO also prohibits discrimination between trading partners. This principle is also known as most-favored-nation treatment and applies with respect to (1) the procurement of inputs, goods, and services and (2) prices and availability of transportation, energy, telecommunications, and utility resources.⁴⁰
3. *Nontariff Barriers.* Nontariff barriers to trade have been a problem for importers for many years and significantly impact trade. The

38. The licensing organizations and the licensing procedures for services industry participants are required to be published in an official publication. Upon accession, the policy of allowing an application only after an applicant is notified that it may apply was terminated. Fees charged to issue licenses are now based on the administrative costs of providing the license, and not the value of the license itself. Applicants are now provided with written notice of the reasons for a rejection of their application, and reapplication is now allowed. Upon approval of a license, the applicant may commence business operations upon registration with the State Administration of Industry and Commerce; the effective date of a business license may not be postponed without justification. In August 2003, the Standing Committee of the 10th NPC adopted the Administrative Licensing Law, which came into effect on July 1, 2004. The law is consistent with international practice and addresses the concerns of transparency in the licensing process and the elimination of administrative barriers to trade. *See generally New Licensing Law Cuts Through Gov't Red Tape*, CHINA DAILY ONLINE, Nov. 7, 2003.

39. Upon accession, China committed to provide translations to member countries into one or more of the official languages of the WTO of all laws, regulations, and other measures pertaining to trade in goods, services, TRIPs, or foreign exchange.

40. With respect to the “no less favorable” language, the WTO Agreements do not require that foreign and domestic enterprises be treated the same. China is only required to treat foreign enterprises “no less favorably” than domestic enterprises. As a result, it is permissible to allow China to provide preferential tax treatment for an FIE, although it would not be permissible to provide a domestic enterprise with a tax break without granting the same treatment to FIEs.

most prevalent forms of such barriers are the import licensing system, quota allocations, and specific tendering requirements. After accession to the WTO, China committed to phase out these requirements before or no later than the end of 2006. Annex 3 lists all products subject to licensing, quota, or tendering requirements and lists the timetable for when such barriers must be eliminated. China further agreed to report annually to the WTO's Committee on Import Licensing those commodities that continue to require import licenses, and agreed to justify why such licensing remains necessary.⁴¹ Additionally, China agreed that, in accordance with TRIMs, several requirements imposed on FIEs would be eliminated, including all foreign exchange balancing obligations, local content rules, and export performance requirements.⁴²

4. *Price Controls*. Upon accession, China agreed to eliminate most price controls and to continue to implement a system of market pricing, except for those products listed in Annex 4 of the Protocol. Price controls will continue to apply to certain state-controlled commodities such as tobacco, natural gas, and pharmaceuticals. Guidance price controls, whereby the government adopts a suggested or reference price and allows enterprises to price their products within 5 to 15 percent of the guidance price, will continue to apply to certain specified commodities such as grain, vegetable oil, sugar, processed oil, fertilizers, silkworm cocoons, and cotton. Under the WTO, China is allowed to continue to use guidance pricing for some services sectors such as transport, commission agents (trademark, advertising, tax, and bidding), financial services, residential housing, and medical services.
5. *Subsidies*. Under the Agreement on Subsidies and Countervailing Measures (SCM Agreement), China is required to notify the WTO of all subsidies granted by the government. Annex 5A of the Protocol of Accession acts as China's formal notification under the SCM Agreement and describes the subsidies granted by the PRC government to domestic producers. Annex 5B (Subsidies to be Phased Out)

41. Since joining WTO, MOFCOM has annually released a catalogue of goods subject to import license requirements. See Announcement on Releasing the 2013 Catalogue of Goods Subject to Automatic Import License Administration (issued by the Ministry of Commerce on December 10, 2012, and effective January 1, 2013, as MOFCOM Announcement No. 94 [2012]).

42. See generally N. Leigh, *Local Content Requirements After China's WTO Entry*, CHINA L. & PRAC., Jan. 2002.

describes the subsidies that will be eliminated and the timetable for doing so.⁴³

6. *Taxes on Imports and Exports.* Upon accession, China agreed that all export taxes other than those listed in Annex 6 of the Protocol of Accession would be abolished. Annex 6 lists products subject to an export tax at the average rate of 20 percent. By agreement, foreign-invested enterprises have been granted the right to receive a rebate on export value-added tax (VAT) in a similar fashion as domestic enterprises.⁴⁴
7. *Technical Barriers to Trade.* As part of its WTO commitments, China agreed to publish all technical barriers to trade including all formal or informal technical regulations, standards, or conformity assessment procedures applied to imported goods. Upon accession, China was required to bring these standards into compliance with the Agreement on Technical Barriers to Trade.⁴⁵ The technical standards apply to both foreign and domestic products, and all producers are subject to a single inspection organization.
8. *Right to Trade.* Prior to 2001, only a limited number of domestic companies had the right to import and export goods. These companies were divided by industry sector in order to bar trading companies in particular sectors from importing goods outside their approved industries. With the exception of certain commodities, over a three-year period after accession, such trading rights were extended to all enterprises in China, allowing them to trade in all goods.⁴⁶

43. China reserves the right to subsidize certain enterprises, while gradually eliminating the subsidies. China listed its subsidies in Annex 5A of the Agreement; they vary from elevation of poverty programs to the encouragement of high-technology projects.

44. Adjustment of the Rates of Export Tax Rebate Circular (promulgated jointly by the Ministry of Finance and the State Administration of Taxation on October 13, 2003). See generally Notice on Relevant Issues concerning the Administration of Tax Rebate (Exemption) for Export Goods (issued by the State Administration of Taxation on May 31, 2004, and effective on June 1, 2004, as SAT Order No. No. 64 [2004]).

45. See generally Z. Huanxin, *Technical Standards Updated to Suit WTO*, CHINA DAILY, Apr. 2, 2004 (quoting Li Zhonghai, director of China's Standardization Administration: "Any Chinese national compulsory standards that fail to conform with the legitimate objectives stated in the WTO/TBT will be either abolished or revised"). The Standardization Administration maintains its own website and solicits comments for national standards. See <http://www.sac.gov.cn>.

46. The exceptions to the right to trade are outlined in Annex 2, where China reserves the right to control imports of grain, vegetable oil, tobacco, crude and processed oil, and chemical fertilizers and the export of tea, rice, corn, tungsten, processed oil, silk, cotton yarn, and antimony. During the three-year transition period of 2001–2004, certain products could be traded only by approved import/export companies, including commodities such as natural rubber, timber, acrylics, and steel. Crude and processed oil were liberalized so that quotas are increased by 15 percent per year and are assigned to independent enterprises. For a discussion of trading rights, see *infra* Chapter 5, "Foreign Investment Guidelines and Industry-Specific Regulations," §§ B.13.

B. China's WTO Compliance Record

There are many governments and organizations, such as the U.S.-China Business Council, the U.S. Council for International Business, the U.S. Chamber of Commerce, and the American Chamber of Commerce China, that are actively monitoring China's compliance with its WTO obligations.⁴⁷ After 12 full years of WTO membership (2001–2013), most observers acknowledge that China has made good efforts to meet its commitments under the WTO, but much progress is still needed to fully institutionalize and implement its obligations. Specific problem areas since 2001 include complicated import licensing procedures for agricultural products; cumbersome quota allocation procedures; adoption of new sanitary and phytosanitary measures that target imports of soybeans; high registered capital requirements for foreign services firms (i.e., banking, insurance, logistics, and telecom services) to establish a presence or branch offices; delayed promulgation and implementation of automobile finance regulations; continued preferential treatment of border trade and domestically produced integrated circuits; failure to enforce intellectual property rights, lack of transparency in enforcement proceedings, and inadequacy of penalties imposed on infringing parties; and problems with China Customs concerning valuation and new emphasis on revenue collection that is precipitated by tariff reductions under WTO. In 2009, the U.S. Trade Representative (USTR) reported that China appears to have retreated from certain market access reforms including the introduction of “buy China” policies, restrictive export quotas and duties on raw materials, standards in telecom that are unfair to U.S. companies, the adoption of a Postal Law that favors domestic firms and excludes foreign express delivery companies, transparency issues, and industrial policies restricting access to the market such as the subjective

47. For a review of China's WTO compliance record, see the various reports published by the U.S.-China Business Council (<http://www.uschina.org>), the annual white paper published by the American Chamber of Commerce China (<http://www.amchamchina.org>), and the reports to Congress by the U.S. Trade Representative (<http://www.ustr.gov>). See generally CHINA'S IMPLEMENTATION OF ITS WORLD TRADE ORGANIZATION COMMITMENTS: AN ASSESSMENT BY THE U.S.-CHINA BUSINESS COUNCIL, OCTOBER 2, 2009; CHINA'S IMPLEMENTATION OF ITS WORLD TRADE ORGANIZATION COMMITMENTS: AN ASSESSMENT BY THE U.S.-CHINA BUSINESS COUNCIL, SEPTEMBER 15, 2008; CHINA'S IMPLEMENTATION OF ITS WORLD TRADE ORGANIZATION COMMITMENTS: AN ASSESSMENT BY THE U.S.-CHINA BUSINESS COUNCIL, SEPTEMBER 27, 2007; CHINA'S IMPLEMENTATION OF ITS WORLD TRADE ORGANIZATION COMMITMENTS: WRITTEN TESTIMONY BY THE U.S.-CHINA BUSINESS COUNCIL, SEPTEMBER 28, 2006; CHINA'S IMPLEMENTATION OF ITS WORLD TRADE ORGANIZATION COMMITMENTS: WRITTEN TESTIMONY BY THE U.S.-CHINA BUSINESS COUNCIL, SEPTEMBER 14, 2005; CHINA'S IMPLEMENTATION OF ITS WORLD TRADE ORGANIZATION COMMITMENTS: WRITTEN TESTIMONY BY THE U.S.-CHINA BUSINESS COUNCIL, SEPTEMBER 7, 2004; CHINA OPERATIONS 2003, CHINA'S WTO MEMBERSHIP IN THE SECOND YEAR: WRITTEN TESTIMONY BY THE U.S.-CHINA BUSINESS COUNCIL, SEPTEMBER 10, 2003. See generally R. Murphy, *Filling the Glass Half Full: The WTO and Structural Reform in China*, CHINA L. & PRAC., Oct. 2003; J. Walton, *WTO: China Enters Year Three*, CHINA BUS. REV., Jan. 2004.

national economic security review that must be conducted for acquisitions involving domestic companies and brands.⁴⁸ In 2011 and 2012, the USTR found that several problem areas continued to effect China's WTO compliance record including export restraints, government subsidization, inappropriate use of trade remedy laws, indigenous innovation policies, technology transfer initiatives, serious problems with intellectual property rights enforcement including in the area of trade secrets, China's slow movement toward accession to the WTO Government Procurement Agreement (GPA), and continued market access barriers and discrimination against foreign enterprises in numerous sectors of China's economy.⁴⁹

With respect to transparency issues, the government has taken some steps to ensure that import laws and regulations are distributed to the public for comment. As an example, MOFCOM issued regulations on November 25, 2003, providing that any MOFCOM-issued regulation or administrative policy is required to be distributed to the public for comment prior to promulgation if the proposed regulation is important to the interests of citizens, legal persons, and other organizations. With the exception of regulations deemed to be confidential under state secrecy standards, MOFCOM is required to publish the draft regulatory proposals through three channels: the MOFCOM official website, the *MOFCOM Gazette*, and the *International Business Daily*, which is affiliated with MOFCOM. MOFCOM is also the first PRC government agency to use the Internet for public debate concerning law and policy issues in China.⁵⁰ More effort must be made, however, to eliminate

48. See U.S. TRADE REPRESENTATIVE, 2009 REPORT TO CONGRESS ON CHINA'S WTO COMPLIANCE (Dec. 2009), available at <http://www.ustr.gov>.

49. In a 2012 report, the USTR summarized:

In 2012, a wide range of Chinese policies and practices continued to generate significant concerns among U.S. stakeholders. Major issues included China's export restraints, government subsidization, inappropriate use of trade remedy laws, indigenous innovation policies, technology transfer initiatives, serious problems with intellectual property rights enforcement, including in the area of trade secrets, and China's slow movement toward accession to the WTO Government Procurement Agreement (GPA). In addition, market access barriers and discrimination against foreign enterprises could still be found in numerous sectors of China's economy.

U.S. TRADE REPRESENTATIVE, 2012 REPORT TO CONGRESS ON CHINA'S WTO COMPLIANCE (Dec. 2012), <http://www.ustr.gov>.

In 2011, the USTR summarized:

In 2011, the prevalence of interventionist policies and practices, coupled with the large role of state-owned enterprises in China's economy, continued to generate significant concerns among U.S. stakeholders. Major issues included China's indigenous innovation policies, serious problems with intellectual property rights enforcement, and China's slow movement toward accession to the WTO Government Procurement Agreement, as well as continued market access barriers and discrimination against foreign enterprises in numerous sectors of China's economy.

U.S. TRADE REPRESENTATIVE, 2011 REPORT TO CONGRESS ON CHINA'S WTO COMPLIANCE (Dec. 2011), <http://www.ustr.gov>.

50. See <http://www.mofcom.gov.cn>.

inefficient bureaucratic procedures and improve transparency in government.⁵¹ Furthermore, while the government has adopted or amended many laws to meet its WTO obligations, the leadership must take steps to actually implement and enforce the laws and regulations that are promulgated.

The obstacles to full implementation of WTO obligations are protectionism, lack of understanding of obligations, lack of resources, and, in some cases, a lack of political will.⁵² Since 2004, the United States has filed a number of complaints with the WTO against China (independently or jointly with other signatory countries) with respect to a broad range of issues. Under WTO dispute settlement procedures, the United States and China are required to engage in informal consultations within 30 days in an attempt to resolve a pending issue. If consultations are unsuccessful, a signatory has the right to request that the WTO establish a dispute resolution panel to examine the issues at any time after 60 days from the request for consultations. It is left for observation as to whether China will continue to deliver on its important outstanding WTO commitments as well as abide by WTO decisions.⁵³ A summary of several cases initiated by the United States against China is instructive in this regard:

51. In an interesting development concerning transparency in 2004, the Ministry of Public Security ordered police officials to issue press releases and to hold frequent news conferences with the media to “promote transparency in police affairs.” Traditionally, police officials would ignore the media—especially the foreign media. The rule became effective in January 2004, and police were required to issue their first press release before January 22, 2004, the first day of the Chinese New Year. See generally *Chinese Police to Open up to Media Questions*, XINHUA NEWS AGENCY, Jan. 2, 2004; *China Orders Police to Issue News Releases, Talk to Media*, DOW JONES NEWSWIRES, Jan. 2, 2004.

52. The U.S.-China Bilateral Agreement with respect to China’s entry into the WTO provides as a protective measure that if imports from China surge at any time for a particular product, there are mechanisms for trade consultations to resolve the issue. If negotiations are unsuccessful, the United States may impose restrictions on importation of the product to prevent market disruption.

53. China maintains that it has complied with its obligations under the WTO. In August 2002, the Chinese government claimed that it had finished a review of 2,300 laws and regulations, of which 830 laws were abolished and 325 were amended. The government also claimed that it was in compliance with its tariff reduction obligations, that the average tariff was approximately 12 percent, and that Customs had reduced tariffs for 5,332 items. The government also noted that it had established the WTO Notification & Enquiry Center, which received over 350 inquiries in its first six months of operation and sent out over 200 notices in response to the inquiries on various trade-related issues. Press Release, *Chinese Embassy to United States, Spokesperson Xie Feng* (July 22, 2002). See also *China Honors All WTO Entry Commitments: Ministry of Commerce*, XINHUA, July 20, 2010; People’s Republic of China, Information Office of the State Council, *China’s Foreign Trade* (Dec. 7, 2011) (PRC government report providing that “[b]y 2010, all of China’s commitments made upon entry into the WTO had been fulfilled. China’s earnest efforts are commended by the majority of the WTO members. The Chinese government received three trade policy reviews from the WTO in 2006, 2008, and 2010, respectively. The WTO’s basic principles, such as non-discrimination, transparency, and fair competition, have been included in China’s laws, regulations, and related systems. A deeper understanding of concepts such as market orientation, opening up, fair competition, the rule of law and intellectual property rights has been achieved among the Chinese people, promoting the further opening up of the national economy and more improvements to the market economy.”), available on the official website of the Chinese Embassy in Washington, D.C. at <http://www.china-embassy.org/eng/zt/bps/t943740.htm>.

VAT Rebates for Domestic Semiconductors. In March 2004, the United States filed a WTO complaint against China alleging that VAT rebates granted to domestic semiconductor producers discriminated against imported semiconductors. At issue was the effective VAT rate of 3 percent imposed upon exports (after rebates) versus 17 percent for imports. The United States and China resolved the case during the consultation phase.⁵⁴

Antidumping Duty Case on Kraft Linerboard. In January 2006, the United States informed China that it would initiate a request for WTO consultations with respect to China's imposition of antidumping duties on kraft linerboard. The United States maintained that the process by which antidumping duties were imposed on U.S. kraft linerboard in September 2005 violated rules on transparency and were based upon insufficient evidence for the determination of injury and causation. The parties resolved the dispute in early 2006 when China eliminated the antidumping order after an administrative review.

Automotive Parts Local Content Requirements. In March 2006, the United States, the EU, and Canada initiated a case with the WTO challenging China's regulations that impose de facto local content requirements in the auto sector through discriminatory assessments on imported auto parts. The WTO panel agreed that China's regulations were inconsistent with its WTO obligations, and the PRC agreed to revise the regulations.

Tax Measures: Export Subsidies and Import Substitution Subsidies. In February 2007, the United States and Mexico initiated a WTO dispute against China challenging several tax measures that, in effect, provided export subsidies and import substitution subsidies prohibited under WTO rules. Following establishment of a WTO panel to hear the case, China eliminated all of the prohibited subsidies.

Intellectual Property Rights Issues. The United States requested WTO dispute settlement consultations in April 2007 with respect to certain measures pertaining to the protection and enforcement of intellectual property rights. The WTO panel established to hear the dispute issued its final report in January 2009, finding that a Chinese law limiting the enforceability of copyrights before works obtain censorship approval and

54. The U.S. government initiated the case against China at the WTO on March 18, 2004, alleging that China's value-added tax (VAT) refund policy unfairly discriminates against imported semiconductors and integrated circuits. For a press release and a copy of the WTO petition, see <http://www.ustr.gov>.

China's handling of border enforcement seizures were in violation of WTO standards. The WTO panel also clarified the standards relating to the criminal enforcement of intellectual property rights.

Market Access Restrictions on Copyright-Intensive Products. In April 2007, the United States filed a WTO complaint concerning market access restrictions in China on copyright-intensive products. At issue were China's restrictions on the importation and distribution of films for theatrical release, DVDs, music, books, and journals. China argued that its restrictions on importation of the products were justified by an exception related to the protection of public morals and claimed that while it had made commitments to allow foreign enterprises to partner in joint ventures with Chinese enterprises to distribute music, those commitments did not cover the electronic distribution of music. China also claimed that its restrictions on films, DVDs, and certain types of sound recordings were consistent with China's WTO obligations regarding the right to import because those products were not goods and not subject to accession commitments. A WTO panel ruled in December 2009 that China's importation restrictions on these products were inconsistent with its obligations and found that restrictions based upon the protection of morals were without merit.

Export Subsidies for China Brands. In December 2008, the United States, Mexico, and Guatemala initiated a WTO dispute against China challenging more than 70 central and subcentral government measures and regulations granting improper export subsidies to Chinese-produced goods in violation of WTO rules. At issue were policies and programs amounting to export subsidies that promoted increased worldwide recognition and sales of famous Chinese brands. Chinese enterprises designated by MOFCOM or the Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) as "famous" or as a "China name brand product" were entitled to various government preferences including financial support based upon exports. The parties resolved the issues in December 2009 after China confirmed that it would eliminate the export subsidy practices.

Financial Information Services. In March 2008, the United States requested consultations with China with respect to certain administrative regulations and measures with respect to financial information services and service suppliers. The U.S. claims that China requires foreign financial information suppliers to supply their services through an entity designated by Xinhua News Agency (Xinhua). China also requires, as a condition for license

renewal, that foreign financial information suppliers to provide Xinhua with detailed and confidential information concerning their financial information services, their customers, and their foreign suppliers. The United States contends that these and other requirements and restrictions accord less favorable treatment to foreign information services and service suppliers than that accorded to Chinese financial information services suppliers. On December 4, 2008, China and the United States reached an agreement resolving this dispute and China agreed to take corrective steps.

Export Restrictions on Raw Materials. In June 2009, the United States and the EU filed a WTO complaint citing unfair trade practices by China as a result of its restriction of competitors' access to raw materials. The United States challenged the Chinese with respect to a number of measures including export quotas that unnecessarily restrict the volume of material that can be exported from China; export duties that raise the export price for raw materials; and other export restraints, including export licensing, minimum export price requirements, and export quota administration procedures that limit eligible exporters or require exporters to pay substantial fees for the right to export these materials. The complaint was filed on behalf of U.S. producers of steel, aluminum, and chemicals, and accused China of restricting exports of various materials including zinc and coke (key components for making steel) and establishing export quotas, duties, and other restraints. These actions allegedly inflated global prices of those products, giving an unfair edge to Chinese manufacturers that use the materials in making a broad range of products. China's export restraints on raw material inputs create unfair competitive advantages for downstream Chinese manufacturers and exporters in markets around the world. Because China is a leading world source of raw materials, export quotas can also raise world market prices for these inputs. Moreover, the duties that China places on exports of the inputs further contribute to increased world prices. The Chinese government maintains that trade rules allow it to place restrictions on the subject materials, which also include magnesium and yellow phosphorus, because they are exhaustible natural resources of the country. A WTO panel found in July 2011 that the export duties and export quotas that China maintains on various forms of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, and zinc constitute a breach of WTO rules and that China failed to justify those measures as legitimate conservation measures, environmental protection measures, or short supply measures. The panel also found that China's imposition of minimum export price, export licensing, and export quota administration requirements on these materials, as well as China's failure to publish certain

measures related to these requirements, is inconsistent with WTO rules, and the PRC government agreed to adopt the recommendations and rules of the WTO Dispute Settlement Body in a reasonable amount of time.

Chicken “Broiler” Products. On August 2, 2013, the WTO adopted a dispute settlement panel report in favor of the United States, holding that China’s imposition of duties on U.S. chicken “broiler” products violates international trade rules. China’s prohibitive duties imposed in September 2009 caused a steep decline in exports of U.S. broiler products to China. MOFCOM imposed antidumping and countervailing duties on these products on September 26, 2010, and August 30, 2010, respectively. The antidumping duties ranged from 50.3 percent to 53.4 percent for the U.S. producers who responded to MOFCOM’s investigation notice, while MOFCOM set an “all others” rate of 105.4 percent. In the CVD investigation, MOFCOM imposed countervailing duties ranging between 4.0 percent and 12.5 percent for the participating U.S. producers and an “all others” rate of 30.3 percent.

On September 20, 2011, the United States requested dispute settlement consultations with China concerning the conduct and results of MOFCOM’s antidumping and countervailing duty investigations. After consultations proved unsuccessful, the United States requested that the WTO establish a panel to hear U.S. claims that China violated numerous procedural and substantive obligations under the WTO’s Antidumping Agreement and Agreement on Subsidies and Countervailing Measures. In its report, the panel found in favor of the United States on nearly all U.S. claims. Specifically, with regard to MOFCOM’s substantive errors, the panel found that China breached its WTO obligations by levying countervailing duties on U.S. producers in excess of the amount of subsidization; relying on flawed price comparisons for its determination that China’s domestic industry had suffered injury; unjustifiably declining to use the books and records of two major U.S. producers in calculating their costs of production; failing to consider any of the alternative allocation methodologies presented by U.S. producers and instead using a weight-based methodology resulting in high dumping margins; improperly allocating distinct processing costs to other products inflating dumping margins; and allocating one producer’s costs in producing nonexported products to exported products creating an inflated dumping margin; and improperly calculating the “all others” dumping margin and subsidy rates.

With respect to procedural failings in the MOFCOM investigations, the panel found that China breached its WTO obligations by denying a hearing request during the investigation; failing to require the Chinese industry to provide nonconfidential summaries of information it provided to

MOFCOM; failing to disclose essential facts to U.S. companies including how their dumping margins were calculated.

Grain-Oriented Flat-Rolled Electrical Steel. On October 18, 2012, the WTO ruled in favor of the United States in a dispute with China over the imposition of duties on U.S exports of grain-oriented flat-rolled electrical steel (GOES). On June 9, 2009, China initiated separate antidumping duty (AD) and countervailing duty (CVD) investigations on GOES from the United States. On April 10, 2010, China issued final determinations of dumping, subsidization, and injury, along with a notice of imposition of antidumping and countervailing duties. At the request of the United States, the WTO established a panel in March 2011 to examine China's AD/CVD investigation on GOES from the United States.

The United States alleged that China improperly initiated the CVD investigation of several U.S. laws. The United States also challenged the manner in which China conducted its AD/CVD investigation, alleging that China violated numerous procedural and due process obligations, thus, impairing the ability of the United States and U.S. companies to defend their interests. The United States also alleged that China's finding of injury to its domestic industry was unsupported by the evidence on the record. A WTO panel sided with the United States in a report circulated in June 2012.

On October 18, 2012, the WTO rejected China's appeal and upheld the panel's findings of defects in China's determination that U.S. exports caused adverse price effects. The Appellate Body also upheld panel findings that China failed to disclose essential facts and failed to explain its determination. In particular, China did not appeal panel findings that China initiated countervailing duty investigations with respect to several alleged programs based on insufficient evidence; failed to provide nonconfidential summaries of Chinese submissions containing confidential information; calculated the subsidy rates for U.S. companies in a manner unsupported by the facts; calculated the "all others" subsidy rate and dumping margin without a factual basis; failed to disclose essential facts and failed to explain its calculation of the "all others" subsidy rate and dumping margin; and made unsupported findings that U.S. exports caused injury to China's domestic industry.

C. U.S./China Trade and Political Relations

The relationship between the United States and China has, since at least 1989, been characterized as difficult at best, and many issues remain ongoing concerns and potential flashpoints in the relationship. This is especially true

following the worldwide economic recession, which has emboldened the Chinese leadership to take a much more aggressive posture toward the United States and other trading partners. Although cross-straits relations improved significantly in 2008 and 2009, continued tension is created by U.S. military equipment sales to Taiwan and China's rhetoric threatening to attack Taiwan if the country moves closer to declaring independence; the lack of restraint is met with consternation by the U.S. government, notwithstanding the U.S. policy agreeing to the "one China" principle.⁵⁵ Similarly, China's military modernization and defense expenditures (a 10.7 percent increase in defense spending in 2013 over 2012, or US\$114.3 billion) cause heightened concern to both the United States and China's Asian neighbors, in addition to allegations of state-encouraged computer espionage and cyber attacks.⁵⁶ China has also been accused of aggressive worldwide acquisition of energy resources through relationships with rogue and outcast states (i.e., Sudan and Iran). Proliferation of weapons and weapons-related technology is also an ongoing concern, and various U.S. agencies have sanctioned Chinese companies for violations of a range of proliferation activities. Human rights issues have also been a concern, primarily with respect to arbitrary detentions, crackdowns on use of the Internet for benign political dissension, detentions of labor activists and victims protesting the government's shoddy construction that caused unnecessary deaths in the May 2008 Sichuan earthquake,

55. As the threatening rhetoric increases, so does the ongoing economic integration between Taiwan and the Mainland. In 2010, the bilateral trade exceeded \$110 billion (up from \$30 billion in 2002) and the cumulative investment from Taiwan to China exceeded \$150 billion (up from \$50 billion in 2002). It is also estimated that over 750,000 Taiwanese resided in China for more than 180 days in 2007 (including management personnel, workers, and retirees). Over 900,000 tourists from Mainland China (out of 4 million) visited Taiwan in 2009. It is left for observation as to whether the increased economic linkages will continue to ease the political stalemate. See <http://www.trade.gov.tw>. See also *Historic Taiwan-China Trade Deal Takes Effect*, BBC, Sept. 12, 2010. In 2010, China and Taiwan signed the Economic Co-operation Framework Agreement (ECFA), designed to cut tariffs on 539 Taiwanese exports to China and 267 Chinese products entering Taiwan. It is anticipated that the ECFA will increase bilateral trade and help create 260,000 jobs and boost economic growth by as much as 1.7 percent in Taiwan.

56. Chinese defense spending had increased by an average of 12.9 percent annually since 1989 when Beijing launched an ambitious army modernization program. The military budgets for the following years reflect the increase: 2000 (\$14.6 billion); 2001 (\$17 billion); 2002 (\$20 billion); 2010 (\$77.9 billion); 2011 (\$106.4 billion); 2013 (\$114.3 billion). See U.S. DEPARTMENT OF DEFENSE, 2013 MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA (May 2013) (DOD's annual report to Congress, which covers China's security and military strategies; developments in China's military doctrine, force structure and advanced technologies; the security situation in the Taiwan Strait; U.S.-China military-to-military contacts and the U.S. strategy for such engagement; and the nature of China's cyber activities directed against the Defense Department). See generally BRYAN KREKEL, CAPABILITY OF THE PEOPLE'S REPUBLIC OF CHINA TO CONDUCT CYBER WARFARE AND COMPUTER NETWORK EXPLOITATION (Oct. 9, 2009), available at <http://www.uscc.gov>; U.S. DEPARTMENT OF DEFENSE, ANNUAL REPORT TO CONGRESS: MILITARY POWER OF THE PEOPLE'S REPUBLIC OF CHINA 2009 (Mar. 2009), available at <http://www.defense.gov>; 2009 REPORT TO CONGRESS OF THE U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION (Nov. 2009), available at <http://www.uscc.gov>.

crackdowns in China's restive regions such as Tibet and Xinjiang, and constraints on religious freedom under the guise of quashing cult activities or terrorism.⁵⁷ At the same time, China has played a constructive role in mediating the conflict on the Korean peninsula by hosting trilateral and six-party talks with the United States, China, North Korea, and other players in Asia.

On the economic front, the trade deficit with China and the value of Chinese currency continue to be a source of tension and debate between the United States and China. A few comments on the renminbi value and trade deficit issues are instructive.

1. Valuation of the Renminbi: Chinese Currency Issue

The value of Chinese currency (the renminbi (RMB), whose basic unit is the yuan) is an ongoing contentious political issue between the United States and China, notwithstanding that the RMB has appreciated by 12.6 percent since June 2010. As background, from the mid-1990s to 2005, China set the value of the RMB within a narrow range to the dollar, which, in effect, acts as a fixed exchange rate. PRC policy is to hold the RMB exchange rate steady (or allow for gradual appreciation), which has resulted in large foreign exchange reserves. The renminbi rose substantially from 2005 to 2008, under pressure from the United States and other governments, before holding steady during the financial crisis between 2008 until mid-2010. Many critics believe that China is purposefully undervaluing the RMB to bolster the already competitive position of low-priced Chinese goods, thus making them even cheaper in overseas markets. Critics in the United States and other countries believe that an undervalued RMB subsidizes Chinese goods and other

57. See U.S. Department of State, *2012 Human Rights Report: China (includes Tibet, Hong Kong, and Macau)*, in 2012 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (Apr. 19, 2013), available at <http://www.state.gov>. The State Department's 2012 Human Rights Report relating to China provides:

Human rights related issues included a crackdown on human rights activists, increasingly harsh repression in ethnic Tibetan and Uighur areas, greater efforts to censor online expression, and onerous restrictions on the operations of civil society. Individuals and members of groups seen as politically sensitive by the authorities continued to face tight restrictions on their freedom to assemble, practice religion, and travel. Efforts to silence some political activists and public interest lawyers increased, and authorities continued widespread use of extralegal measures including enforced disappearance, "soft detention," and strict house arrest, as well as the systemic use of laws to silence dissent and punish individuals—and their relatives and associates—for attempting to exercise the fundamental freedoms of expression, assembly, and association. Public interest law firms that took on sensitive cases continued to face harassment, disbarment of legal staff, and closure. In the Tibetan Autonomous Region, authorities increased repression and restrictions on religious freedom and the number of Tibetans committing self-immolation continued to rise.

countries are urging China to adjust the exchange rate to push the RMB value higher.⁵⁸

China claims that it is managing its currency and monetary policy in a manner to deter speculators and avoid deflation as experienced in Japan and Hong Kong. China fears (based upon the experience of other Asian economies during past financial crises) that a floating exchange rate could be manipulated by speculation and international currency fluctuations and lead to a financial crisis. A revaluation of the RMB may also accelerate deflation, which has been a historical problem. Moreover, China's banking system is immature and unprepared to manage a financial crisis that could possibly spiral out of control, with a historical nonperforming loan portfolio of 35 to 50 percent of the gross domestic product. The China Banking Regulatory Commission was only formed in early 2003 and is still trying to gain experience as a regulatory agency and develop the tools to better supervise China's banking system.⁵⁹

Consumers in the United States buy Chinese-made goods because they are low cost to begin with, and not because of the decline in currency value. The RMB value is really not determined by trade, but by the inflow and retention of foreign capital. What China needs to do is to encourage the use of its foreign exchange reserves and greater market access.

PRC officials, including the heads of both the People's Bank of China (PBOC) and the Ministry of Finance (MOF), have promised greater flexibility in valuing the RMB for years, and realize that there are advantages to flexibility. However, it is unlikely that they will take specific action other than to encourage more Chinese citizens and companies to invest overseas or buy foreign goods or increase the band around which the RMB fluctuates

58. The currency issue has led to the introduction of a series of legislation in the U.S. Congress designed to counter the impact of the RMB value. Several legislative proposals would require the United States to unilaterally assess an across-the-board tariff against Chinese products unless China floats or revalues the RMB to an acceptable level. See A. Lowrey, *China Curbs on Currency Still an Issue*, N.Y. TIMES, May 2, 2012; D. Leonhardt, *As China's Currency Rises, U.S. Keeps Up Its Pressure*, N.Y. TIMES, Feb. 15, 2012; J. Chen & B. Cao, *Yuan Strengthens Most Since 2005 After China Signals End to Peg*, BLOOMBERG NEWS, June 21, 2010. See also U.S. DEPARTMENT OF THE TREASURY OFFICE OF INTERNATIONAL AFFAIRS, REPORT TO CONGRESS ON INTERNATIONAL ECONOMIC AND EXCHANGE RATE POLICIES (May 25, 2012):

China resisted very strong market pressures for RMB appreciation, reflected in the substantial accumulation of foreign currency reserves. Over that period, China's real effective exchange rate exhibited persistent and substantial undervaluation, although the extent of misalignment appears to have narrowed since the RMB resumed its appreciation against the U.S. dollar in June 2010.

From June 2010, when China moved off its peg against the dollar, through May 15, 2012, the RMB appreciated by a total of 8.0 percent against the dollar, and by 12.5 percent bilaterally on an inflation-adjusted basis. Since China initiated currency reform in July 2005, the RMB has appreciated 40 percent bilaterally against the dollar after adjusting for inflation.

59. For a discussion of China's banking system and the role of the China Banking Regulatory Commission, see *infra* Chapter 11, "Financial Regulation."

and allow it to settle within a slightly higher range. Since mid-2005, the band around the RMB has been widened (or set at a “managed floating rate”), and the end result has been a gradual appreciation of the RMB.

2. U.S./China Trade Deficit

The issue of China’s trade deficit with the United States is a complicated statistical concept that is equally misunderstood, misinterpreted, and used for political purposes.⁶⁰ In 2012, the U.S. trade deficit in goods with China was \$315.1 billion. This was up significantly from 2011, when the trade deficit was \$295.4 billion. The trade deficit exists despite the fact that U.S. exports to China were the highest in history. In 2012, the United States exported \$110.6 billion in goods, an all-time record. Exports in 2011 were only \$103.9 billion. While the deficit with China actually increased every year from 2002–2012 (but for a decrease in 2009), the trade deficit also declined for other Asian economies such as South Korea, Japan, and Taiwan. This is because a significant amount of manufacturing has shifted from these countries to China, and the U.S. trade deficit equation is likely to change again as Japan, Singapore, Taiwan, and South Korea continue to shift their production to the Mainland. More and more cars, semiconductors, appliances, and so on are being produced in China at the expense of other former production centers in Asia.

Moreover, most imported merchandise from China (90 percent) is substitutes for merchandise from other low-wage countries such as Mexico, Malaysia, Vietnam, and Indonesia. Imports from China include low-tech electrical machinery, toys, apparel, and footwear. Less than 10 percent of imports from China compete directly with U.S.-produced goods. The end result is that U.S. consumers benefit from the ability to purchase low-cost, low-tech goods from China.

Moreover, the only way that China will increase its imports from the United States to reduce the trade deficit is to continue to liberalize trade in goods and services. Among other things, *effective* market access is needed to provide U.S. business with the platform to tap the commercial opportunities in China.

60. The U.S. government reported that the trade deficit between the United States and China was \$103.1 billion (2002), \$124.1 billion (2003), \$162.2 billion (2004), \$202.2 billion (2005), \$234.1 billion (2006), \$258.5 billion (2007), \$268.0 billion (2008), \$226.8 billion (2009), \$273.0 billion (2010), \$295.4 billion (2011), and \$315.1 billion (2012). See www.census.gov for U.S./China trade statistics.

D. Political Reform and Participatory Government

Many observers believe that as China continues its ongoing economic and legal reform, political or democratic reform must naturally follow. The growing middle class and increase in international communications has placed pressure on the government to be more responsive to the attention of citizens' concerns. While modest in form, there are recent examples of democratic reform in China, such as permitting village elections and establishing a professional staff within the National People's Congress (NPC), which are designed to make the government more accountable and representative of the people and not solely the Party. At the Chinese Communist Party study session on September 29, 2003, President Hu Jintao stated that China must strengthen "the socialist democratic system" and continue to move toward the rule of law in China.⁶¹ At the 17th National Congress of the Communist Party in October 2007, in his two-hour speech to the Party Congress, Hu emphasized the importance of greater democracy in party affairs (and mentioned the word "democracy" over 60 times). While Hu's reference to democracy clearly referred to the need for inner-party democracy, the Communist Party's internal movement toward more transparency and accountability is a positive move toward more universal pluralism in China. This top-down discussion on inner-party democracy is setting the stage to allow internal factions to operate in the open and in a manner that fosters healthy competition from party members with different ideas and dissenting views, and would provide a level of checks and balances within the party to rein in corruption and to restore legitimacy. The logical result is that the development of factions will foster political reform and a multiparty system. To be successful, the factions need to operate with transparency and in the open, and in a way that allows for genuine freedom of expression. Equally important, the development of, and respect for, the rule of law is an essential precondition for a transition to sustainable democratization. Hu's statements are indicative that the survival of the CCP in the long term will depend on whether the system provides for greater citizen participation and voice in government policy than in the past. In time, the government will need to take steps to allow further citizen participation in government and enhanced accountability, or risk being alienated from the populace. That said, the Communist Party continues to micromanage China's political and judicial affairs, and continues to be hesitant to take steps to institute reform. In January 2014, President Xi Jinping emphasized

61. THE U.S.-CHINA BUS. COUNCIL, CHINA OPERATIONS 2003, CHINA ANALYSIS: CHINESE POLITICS UPDATE 44.

that the Party will continue to play a “greater role . . . in guiding the country’s political and legal affairs.”⁶²

E. Business Climate and Meeting the Challenges

In addition to relaxing the standards for FDI over the past 35 years, the government has encouraged the growth of the private sector and has taken steps to reform its state sector. In December 2004, the PRC government adopted a constitutional amendment that provides that the “lawful private assets” of citizens are “inviolable.”⁶³ Under the amendment, the government is committed to protecting both private wealth and inheritance rights. While the amendment grants the government the right of expropriation of private property rights, it also requires that compensation be provided to private property owners. In contrast, the prior version of the Constitution emphasized that public property is not only inviolable but “sacred.” The amendment is designed to provide legal basis for the protection of private property rights for the first time in China since the commencement of the

62. An example of how the Party continues to micro-manage reform is with respect to improvements to the judiciary. At the Communist Party’s Third Plenum in November 2013, there was much talk about judicial reform and moving in a direction to improve the independence and objectivity of the courts. The Third Plenum communiqué called for “the establishment of an impartial and authoritative socialist judicial system.” Reform of the courts is in response to the public’s demands for greater accountability of the judiciary, which has been the subject of many public complaints over systemic corruption, unfair judgments, local protectionism, and aggressive interference by Party-driven special interests. The judicial reform envisioned by the Party is selective reform; meaning, they will crackdown on the most blatant forms of corruption and allow an undefined degree of independence so long as accountability to the Party takes priority. The reason for this half-hearted approach to judicial reform is the mantra of preserving social stability. The cloud of political influence and interference will always hinder true justice. See Lubman, *Quashing Expectations for Rule of Law in China*, WALL ST. J., Jan. 14, 2014; Lubman, *China Will Struggle to Walk the Talk on Legal Reform*, WALL ST. J., Dec. 3, 2013.

63. See generally C. Hutzler, *China to Protect Private Property in Constitution*, WALL ST. J., Dec. 22, 2003; *China Legislature Proposes Amendment for Private Property Rights*, DOW JONES NEWSWIRE, Dec. 22, 2003. The official Chinese news agency, Xinhua, states that the amendments would put private property “on an equal footing with public property.” The amendments were adopted at the March 2004 NPC meeting. Another amendment enshrined in the Constitution the “Three Represents” theories of Jiang Zemin, providing that the party must represent the interests of the business community and entrepreneurs, as well as the working class. Jiang’s theory is accepted as official party policy. See generally *Constitution to Embrace “Three Represents” and Private Property*, XINHUA NEWS AGENCY, Dec. 22, 2003, available at <http://www.xinhuanet.com>; *Constitutional Amendments to Have Far-Reaching Influence*, XINHUA NEWS AGENCY, Dec. 28, 2003, available at <http://www.xinhuanet.com>; *Amended Constitution Published* (Mar. 16, 2004), available on the website of the Supreme People’s Court at <http://www.chinacourt.org>. The 2004 amendments to the Constitution also confirm state support for human rights; provide that compensation shall be paid to property owners for any expropriation of land by the state; change the references to “martial law” to “state of emergency”; and recognize that delegates to the NPC from special administrative regions (e.g., Hong Kong SAR and Macao SAR) may be elected. See *The U.S.-China Business Council, NPC Concludes: Enacts 14 Amendments, Approves Work Report*, CHINA MKT. INTELLIGENCE, Mar. 18, 2004. Article 13 of the Constitution was amended to provide that the “lawful private property of citizens shall not be violated. The state shall protect private property rights and inheritance rights of citizens in accordance with the law. The state may, in the public interest, expropriate or requisition private property of citizens in accordance with the law and shall provide compensation therefore.” Under Article 33, the following clause was added: “The state respects and preserves human rights.”

Communist era in 1949. The protection of private property is considered essential to continuing to push forward with China's economic reforms. Such changes are meant to bring China's legal framework in line with its increasingly capitalist economy and were also made in response to its WTO obligations. Entrepreneurs, who are playing an increasingly critical role in job growth, have been lobbying for constitutional protection. However, the amendment does not elevate the status of private property to the same status as state-owned property, which will continue to maintain a dominant role in the economy.⁶⁴

The Chinese government continues to be engaged in institutional reform in order to make government more efficient and cost effective. In 2008, the NPC created a number of "super ministries" on energy, transportation, industries, and environmental protection, among other areas. Hand in hand with institutional reform, China continues to dismantle its cradle-to-grave system that has financially stifled the state sector for years. In this regard, the government issued a joint opinion in April 2002 designed to improve the competitiveness and financial standing of state-owned enterprises (SOEs) by reducing their social services obligations.⁶⁵ The basic national policy continues to concentrate on economic reform so as to raise the living standard of the Chinese people.⁶⁶

64. The development of legal standards supporting individual property rights has also made significant gains in the past few years with the adoption of the Property Rights Law in 2007, which further recognize and strengthen individual property rights to both moveable and real property. In 2008, the government also adopted land registration measures that provide for unified and consistent registration procedures for land-related transactions, the goals of which are to improve land transfers and protect the interests of landowners, purchasers, and lenders.

65. Opinions on Advancing Separation of Social Service Functions from State-Owned Enterprises (promulgated April 2002 jointly by the State Economic and Trade Commission, Ministry of Finance, Ministry of Education, Ministry of Health, Ministry of Labor and Social Security, and Ministry of Construction). The order applies only to SOEs owned by governments at the provincial level or below, and not to the larger SOEs, which are under the direct supervision of the central government. The order emphasizes that existing subsidies for housing, medical care, and other services are required to be reflected in workers' salaries. The order requires that within three years of promulgation, the social service organizations (schools, hospitals, housing, and other service departments) owned and operated by provincial SOEs are to be separated from the parent enterprises. Social service organizations owned and operated by SOEs in less-developed areas are granted a five-year time period to separate from the parent enterprises. The order does not set deadlines for SOEs located in rural areas. Educational facilities separated from their parent SOEs are to be transferred to local governments. Former parent companies and local governments are required to provide operating funds to separated institutions for the first three to five years. After five years, local governments will provide all funds. SOE hospitals may either operate independently, merge with other existing facilities, or close. Other SOE service departments, such as housing and utility maintenance services, must form for-profit companies providing services to the public after separating from their parent companies. Though this plan to reform SOEs is a step forward, it will be difficult to implement. Hundreds of thousands of SOE employees will face reassignment, and many of them will lose their jobs. And the plan will not succeed without massive amounts of funding. *See also* OECD WORKING GROUP ON PRIVATIZATION AND CORPORATE GOVERNANCE OF STATE OWNED ASSETS, STATE OWNED ENTERPRISES IN CHINA: REVIEWING THE EVIDENCE (Jan. 26, 2009).

66. *See News Conference with Xie Feng, Chinese Embassy Spokesperson*, FED. NEWS SERV., July 22, 2002. In 2002, the GDP per capita of China was \$800, which is one-fourth of Japan's.

The State Council Legislative Affairs Office has over 100 new laws and amendments in the pipeline for 2013–2014. Moreover, a broad range of new basic laws that impact foreign investors have been adopted in recent years including, but not limited to, the Anti-Monopoly Law, Labor Contract Law, Property Law, Tort Law, Bankruptcy Law, Enterprise Tax Law, and various other regulations, rules, and explanatory circulars in a broad range of areas. Various key agencies engaged with trade and commerce, environmental protection, taxation, competition, consumer protection, product quality, and so forth have adopted scores of regulations governing various aspects of their respective jurisdictions. In addition, the Supreme People's Court has taken a more activist role and adopted many judicial interpretations to guide the courts in the implementation of the laws including those concerning choice of law, civil procedure, evidence, trial practice, company and corporate practices, contract law, labor disputes, bankruptcy, intellectual property, secured interests, technical contracts, construction contracts, securities litigation, arbitration, and real property–related disputes. The orders of the Supreme People's Court help fill the gaps with respect to crucial aspects of the law and aid the courts in management of cases with respect to certain substantive legal issues. Thus, since 1979, and specifically post-WTO, China has engaged in prolific legislative and regulatory activity and has enacted new laws and issued regulations, orders, rules, and explanatory circulars that impact foreign parties' operations, including laws affecting foreign investment, securities and corporate governance, financial reform, labor relations, foreign exchange control, and customs and taxation. The PRC leadership is repeatedly promulgating and amending laws and regulations on a reactive basis, which leads to compliance questions, regulatory turf wars, and inconsistent application. In addition, many laws and regulatory measures are based upon underlying policy statements that reflect the government's priorities, objectives, and attitudes toward foreign investment and economic development. The continuing legal reform in China adds to the unpredictability of operating in the PRC, and the best protection is to carefully and continually monitor the legal and political environment.

American business remains committed to China and highly optimistic about the long-term outlook, although the immediate short-term outlook is influenced by current economic realities. In a survey conducted by the China-based American business community in 2013, 78 percent of respondents expressed optimism about their two-year outlook. In terms of profitability, China remains a profitable environment compared to other economies with over 40 percent of the survey respondents stating that operating margins in China are better than the global average for their companies. The majority

of U.S. companies in China are focused on domestic market opportunities; hence, 70 percent of respondents (up from 51 percent in 2007) indicate they are in China to produce or source goods and services domestically for the Chinese market, rather than for export. A majority of respondents view China as potentially losing its competitive advantage due to rising costs in the major cities, and specifically labor costs which have increased substantially. The 2013 survey indicated that the percentage of respondents that listed China among the top-three priority markets declined by 11 percent over 2012, although 68 percent still ranked China at or above their top-three investment priorities.⁶⁷

The key challenges for U.S. companies investing in or exporting to China include labor costs and a shortage of qualified employees and management; unclear and ambiguous regulations; overlapping and contradictory rules; the lack of uniform nationwide application of rules; the lack of transparency; the need for an accessible and predictable rules-based system; inconsistent regulatory interpretation and implementation (given that regulatory challenges are systematic impediments to market access); bureaucracy;⁶⁸ corruption;

67. See Am. Chamber of Commerce China, China Business Climate Survey Report 2013 (2013), available at <http://www.amchamchina.org>. AmCham-China's survey in 2009 reported that 63 percent of respondents expressed optimism about their two-year outlook and 81 percent of respondents expressed long-term optimism in China's business environment. In terms of profitability, for 2008, 74 percent of respondents report being "profitable" or "very profitable," and the longer a company has operated in China, the more likely it is to have been profitable in 2008. The majority of U.S. companies in China are focused on domestic market opportunities; hence, 66 percent of respondents (up from 51 percent in 2007) indicate they are in China to produce or source goods and services domestically for the Chinese market, rather than for export. A majority of respondents view China as potentially losing its competitive advantage due to rising costs in the major cities. However, 91 percent of respondents have no immediate plans to relocate or divest from China, and a significant number of respondents are exploring the opportunity to expand in the second and third-tier cities. See Am. Chamber of Commerce China, China Business Climate Survey Report 2009 (2009), available at <http://www.amchamchina.org>.

68. The government is moving in a direction to make the corporate formation and supervision process more user-friendly. Two key changes are expected to happen in the near future. The first is the abolishment of the registered capital requirement, which has been a source of frustration for foreign investors and especially small to medium-sized enterprises that seek to capture the market opportunities. Secondly, the government plans to reform the current annual *inspection* process, which requires that all enterprises in China go through a detailed review process every year and at the risk of losing a business license, to become an annual *reporting* process. These changes are intended to make life easier for enterprises, including foreign investors. On October 25, 2013, Premier Li Keqiang presided over an executive meeting of the State Council, launching the reform of the registration system and specifically the registered capital requirements for the purpose of reducing start-up costs and to support small to medium-sized enterprises. According to the discussion at the meeting, the anticipated reform includes (1) a relaxation of registered capital registration conditions; (2) change of enterprise's annual *inspection* system to an annual *reporting* system and the establishment of a fair and uniform inspection system; and (3) relaxing market player residence (place of business) registration requirements on the basis of facilitating registration as well as standardization and systematization, which shall be specified by the local governments. Separately, the State Council will promote the development of an enterprise credit system to replace the registered capital requirements that were initially adopted to force investors to inject the required capital to protect creditor rights. The anticipated reform will also promote the use of a subscribed capital registration system versus a paid-up registered capital system, to reduce the cost of starting a business.

the lack of effective judicial remedies and the lack of an independent judicial system. Most importantly, foreign companies are increasingly wary of China's industrial policy trends, which tend to promote local champion companies, support local industry and workers, restrict foreign investment and acquisitions, and promote innovation policies that are unfair to foreign intellectual property holders. China will continue to be an attractive destination of FDI but, in order to bolster the confidence of investors, it must continue to quickly make progress with respect to the recognition of the rule of law in which property rights are fully respected; to promote and enforce corporate governance standards to ensure that company practices are transparent and responsive to investors' interests; to take aggressive steps to halt corruption and economic crimes; to continue to reform China's banking regulatory system and decrease the high volume of its nonperforming loan portfolio, while moving toward a more flexible policy on the convertibility of the RMB; and to continue to meet and adhere to full compliance with WTO market access and other trade obligations, and to do so on a uniform basis nationwide.

Overall, it is important for foreign business in China to closely monitor government policy trends and priorities since policy drives law reform and business opportunities. In addition to monitoring legislative and regulatory activities, it is also important to monitor institutional reform and leadership changes and trends. It is also important to appreciate and understand that China's legal system is a *work in progress* and to be patient and flexible. Yet, exercising patience with China's ongoing law and economic reforms does not mean that a foreign investor should leave its corporate values at home. Most American companies that are successful in China have brought with them their corporate best practices, which are usually acceptable in China. Foreign investors should set the bar high but "China-tize" company compliance practices with respect to customs and taxation, employment and personnel practices, health and safety, environmental practices, privacy rights, and business ethics. Equally important is the need to be flexible in China's dynamic business environment. Some things relevant in the 1980s and 90s may not be relevant today—many of the laws and practices of the past are out of sync with China's new economy, and investors should be prepared to adjust from prior arrangements and understandings. Moreover, some things that are relevant today may not be relevant in the future—many of the laws and practices in the future will be affected by China's ongoing reform, and it is critical to anticipate and plan for change. Having said this, some things will always be relevant in doing business in China, such as the drive of China's people to be accepted as respected members of the international community; a strong desire to do things in China's own way (or with Chinese

characteristics) given the sensitivities stemming from past foreign intervention and a perceived history of unequal treaties and extraterritorial treatment; and the cautious embracing of the concept of the “rule of law” in light of cultural acceptance for the “rule by man,” which takes its genesis from the autocratic systems of Confucianism, feudalism, warlordism, foreign subjugation, and Communism that have historically controlled Chinese society.

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Since the first edition in 1999, the purpose of the *China Law Deskbook* has been to provide practitioners, corporate counsel, academics, and government attorneys involved in China with a current and concise guide concerning the laws issued by the National People’s Congress (NPC) of the People’s Republic of China, the NPC’s Standing Committee, the State Council, and the various Chinese government ministries that promulgate administrative measures affecting the China operations of foreign investors. The *China Law Deskbook* is organized by broad topic categories and provides a summary of the critical legal issues for FIEs, including corporate organizational structure, industry-specific regulatory matters, tax issues, labor and employment, financial regulation, contracts, liquidation and bankruptcy, customs and the importation process, intellectual property protection, land use, the protection of the environment and natural resources, mediation and arbitration, litigation, and special rules for zones and administrative regions.

Chapter 2 addresses the historical development of China’s contemporary legal system. It starts with an analysis of the philosophical influences from Classical China, including Confucian tradition, Daoism, and Legalism. This chapter then analyzes the role the Western powers had on the development of China’s legal system. Finally, Chapter 2 explores the impact of the political theories of Marxism-Leninism and Mao Zedong Thought on China’s legal system.

Chapter 3 is a summary of Chinese legislative and regulatory institutions and their functions, including a discussion of recent institutional reorganization initiated by the Chinese government. Chapter 3 also provides an overview of the Chinese judicial system, as well as a discussion concerning the role and status of the legal profession in the PRC. This chapter concludes with a discussion of the “rule of law” in China and the forces affecting China’s ability to develop a legal system that is consistent, precise, and independent from political interference.

Chapter 4 addresses the various organizational structures available to FIEs for establishing a presence in China. It describes the laws and regulations governing representative offices, branch offices, equity joint ventures,

cooperative enterprises, wholly foreign-owned enterprises, joint venture trading companies, holding or investment companies, companies limited by shares, limited liability companies, BOTs (build, operate, and transfer), service centers, and partnership arrangements. This chapter also summarizes the procedures for establishing an FIE in China, as well as the proper format for articles of association and feasibility studies.

Chapter 5 addresses the regulatory environment for industry-specific sectors, including services and manufacturing.

Chapter 6 is a summary of the laws and regulations pertaining to the information technology, telecommunications, and software development industries.

Chapter 7 is a summary of the laws and regulations governing contractual relationships in China. It addresses a number of key laws that affect the rights and obligations of contracting parties, including the Civil Law, the Secured Interests Law, and the Contract Law. This chapter also analyzes the requirements for specialized contracts including sales of goods contracts, loan contracts, lease agreements, construction contracts, contracts for works of hire, agency contracts, and technology contracts such as technology development contracts, technology transfers, and technical service contracts.

Chapter 8 is a review of China's tender and procurement systems, which impact foreign contractors and suppliers of goods under government contracts. This chapter analyzes the Tender Law, which governs the public and private bidding process, and the Procurement Law, which governs how government agencies are permitted to purchase goods and services.

The taxation of FIEs in China is covered in Chapter 9. This chapter addresses the rules governing foreign enterprise income tax and turnover taxes such as the business, consumption, and value-added taxes imposed by the Chinese government. Chapter 9 also briefly discusses the enforcement efforts of China's taxation authorities.

China's Labor Law and personnel management rules are addressed in Chapter 10. This chapter addresses the rights and obligations of employers and employees, the wage and hour rules, registration requirements for expatriate employees, worker rights protection, and dispute resolution in the labor context.

Chapter 11 discusses a broad range of issues affecting the regulation of domestic and foreign-funded financial institutions. This chapter analyzes the rules governing the use and control of foreign exchange, including the registration requirements to hold and exchange foreign currency. Chapter 11 further addresses the accounting requirements for FIEs, as well as the auditing laws and joint annual review procedures imposed upon foreign-funded operations.

Chapter 12 addresses the laws and regulations of China's insurance industry.

Chapter 13 is a summary of the laws concerning product quality, consumer protection, advertising, pricing, and unfair competition. The chapter also addresses the regulatory environment for the food, pharmaceutical, and medical device industries. The chapter describes the administrative sanctions and penalties that may be imposed if a business operator fails to comply with China's consumer protection laws.

Chapter 14 provides an analysis of China's intellectual property laws, including the laws and regulatory measures concerning the protection of copyrights, trademarks, and patents. Chapter 14 also analyzes the enforcement mechanisms and remedies available to the owners of intellectual property, including customs protection against infringing imports and exports.

Chapter 15 provides an analysis of China's customs laws, including classification, valuation, import licenses, inspection and entry, bonded areas and warehouses, and customs enforcement. This chapter also summarizes the standards and administrative procedures under China's trade remedies laws, such as regulations on dumping and subsidies and import safeguard measures.

Chapter 16 addresses the rules concerning the regulation of securities trading, public offerings, and securities markets. This chapter analyzes the mechanisms and agencies responsible for supervising the Chinese stock market, including the regulations governing domestic (A-shares) and foreign capital shares (B-shares).

Chapter 17 summarizes the laws and regulations governing land use, commercial land development, and natural resources.

Chapter 18 addresses the environmental protection laws of China, including the laws on the control of solid waste, water, and air pollution; regulations requiring environmental impact assessment reporting; and standards for clean production. As China undergoes considerable infrastructure development fueled by foreign investment, the government has adopted standards to control the exploitation of its resources and minimize the impact on the environment.

Chapter 19 addresses mergers, acquisitions, and divisions, including an explanation of antimonopoly and competition law issues in Chinese mergers and acquisitions.

Chapter 20 covers China's bankruptcy law, including creditors' remedies and procedural steps for petitioners. This chapter also addresses the liquidation standards for FIEs that terminate and dissolve prior to the expiration of their stipulated term.

Chapter 21 concerns the mediation and arbitration of business disputes in China. This chapter analyzes the procedural rules concerning arbitration

before the China International Economic and Trade Arbitration Commission (CIETAC) and the procedures for the enforcement of CIETAC arbitral awards in China and the United States.

Chapter 22 addresses the rules and procedures for litigation in the people's courts in China.

Chapter 23 discusses the criminal liability for officers and directors of FIEs under China's Criminal Law, including crimes involving FIE registration, stock transactions, intellectual property rights, environmental damage, and industrial accidents. This chapter also briefly discusses the prohibitions and penalties under the U.S. Foreign Corrupt Practices Act (FCPA) and China's criminal laws for illegal payment activities in China. Chapter 23 also addresses the standards for the detention of foreigners in criminal and civil matters.

Chapter 24 describes the laws establishing the special economic zones, open cities, and coastal areas, including foreign investment incentives and preferential treatment for FIEs. This chapter also analyzes the Joint Declaration between the PRC and Great Britain and the Basic Law of the Hong Kong Special Administrative Region (HKSAR).

Appendix A provides a number of sample contracts and other sample documents for FIEs. Appendix B sets forth a selective list of publications, as well as a comprehensive list of current and active websites that provide a wide range of information concerning China. Finally, Appendix C outlines contact information for U.S. and Chinese government resources, bar associations, international organizations, and other resources that maintain information concerning China's legal and business environment. All of the appendices are available in hard copy as part of the Second Edition of the China Law Deskbook, or online at <http://www.chinalawdeskbook.com>.

The China Law Deskbook is intended to be a historical and general overview of the laws of the People's Republic of China and is not designed as a comprehensive analysis of China's legal system. The Deskbook is provided to readers as a general guide and cannot and should not be construed as legal advice. Further, the laws and regulations cited throughout the Deskbook are not intended to be an exhaustive list of the laws, regulations, and rules affecting foreign business in China. Readers are advised to consult with legal counsel, tax advisors, and other professionals with respect to China-related transactions. The dynamics of China's legal system require constant monitoring in order to ensure that the laws, regulations, and the practice are current.