

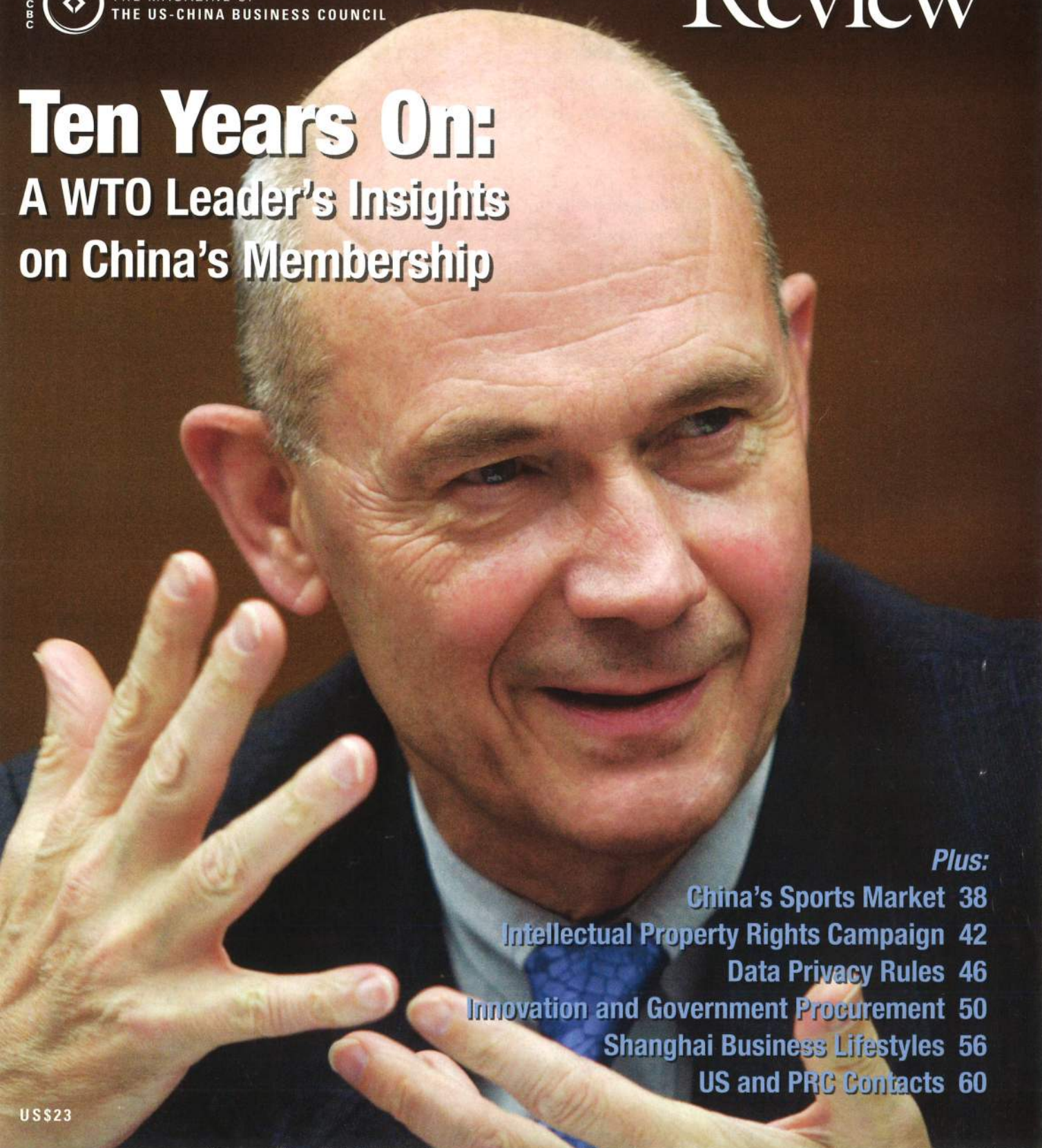
SPECIAL WTO ANNIVERSARY ISSUE

The China Business Review

October–December 2011

 THE MAGAZINE OF
THE US-CHINA BUSINESS COUNCIL

Ten Years On: A WTO Leader's Insights on China's Membership



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China Foto Press

China's trade with the world has skyrocketed since the country joined the World Trade Organization (WTO).

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US Trade Representative Ron Kirk

US Ambassador to China Gary Locke

US-China Business Council Chair Muhtar Kent

China Council for the Promotion of International Trade Chair Wan Jifei

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Web Exclusive

CBR's China Deal Database (www.chinabusinessreview.com/china-business) allows subscribers to search business deals and investments by company, industry, type, and date from 2000 to present.

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WTO Director-General/
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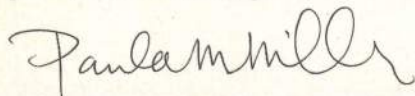
Letter from the Editor

As the tenth anniversary of China's World Trade Organization (WTO) accession draws near, the focus of this special *CBR* issue is the country's WTO membership. In this issue, WTO Director-General Pascal Lamy discusses how China's membership has affected the country and the world. James Bacchus, a former chair of the WTO Appellate Body, former US congressman, and current chair of Greenberg Traurig LLP's Global Practice, offers a view of how China has boomed during its WTO membership and how the country must still address key problems. Wang Yong, professor in the School of International Studies and director of the Center for International Political Economy at Peking University, describes how people in China perceive the WTO and globalization. US-China Business Council (USCBC) President John Frisbie states that China's WTO entry has been the most important global economic event in nearly 40 years, but that more work needs to be done. And US and PRC government and business leaders commemorate China's WTO anniversary with special messages.

Many global trade and investment issues overlap with WTO concerns. In the feature section of the magazine, Brad Williams and Danielle Mihalkanin of Baker Botts LLP discuss the effectiveness of China's recent campaign to counter intellectual property rights infringement. USCBC staff report on China's efforts to delink indigenous innovation and government procurement policies. In addition, Tom Antisdell and Tarek Ghalyani—directors at AlixPartners, LLP—discuss the effect of unclear data privacy regulations on data collections and investigations.

To round off the issue, Matt Beyer, associate director at North Head, discusses how foreign companies can better tap into China's sports market. And Wm. Patrick Cranley, director of development at the Johns Hopkins University-Nanjing University Center for Chinese and American Studies and a long-time Shanghai resident, shares tips for business professionals on living in Shanghai.

Meanwhile, stay tuned for the January–March 2012 *CBR*, which will feature articles on travel and tourism in China. We always welcome reader comments on the magazine. If you have suggestions for stories or improvements to the magazine, please e-mail publications@uschina.org.



Paula M. Miller

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Transportation



China's rail sector has suffered in recent months. The country has slowed its ambitious high-speed rail program after a fatal collision in July between two high-speed trains in Wenzhou, Zhejiang. Prior to the crash, the high-speed train between Beijing and Shanghai was beset by a string of malfunctions and delays that heightened passenger frustrations.

The country's investment in railways contracted 2.1 percent in the first seven months of the year compared to the same period in 2010.

Data from the Shanghai Clearing House showed that Chinese rail companies made ¥4.3 billion (\$670 million) in the first half of 2011, but recorded more than ¥2 trillion (\$313 billion) in debt.

A PRC Ministry of Railways report showed that state-owned rail companies suffered a loss of ¥3.8 billion (\$593 million) in the first quarter of 2011. Media reports indicate that rail companies then earned a profit of ¥8.1 billion (\$1.3 billion) in the second quarter of the year. The ministry stated that price increases in raw materials and diesel were the main reasons for first quarter losses.

During the Mid-Autumn Festival in September, passengers made nearly 1.4 million high-speed train trips each day, up 36.5 percent over 2010. Roughly 23.4 million passengers traveled by rail during the festival, up 19.3 percent over last year. Airlines began selling one-

way tickets for as low as ¥360 (\$56) as a response to competition from the Beijing-Shanghai high-speed train line, which charged ¥555 (\$87) for one-way fares. Following a series of train malfunctions on the Beijing-Shanghai line, domestic airlines dropped such discounts and expect to regain market share as travelers consider air travel a more reliable option.

The China Taxicab and Livery Association estimates that China's rental car market will reach 400,000 vehicles and generate \$2.8 billion in yearly revenue by 2015. The largest rental car company in China today is China Auto Rental, which has a fleet of 22,000 cars in 58 cities.

Water



The PRC government will boost investment in urban water facilities over the next five years. The Ministry of Housing and Urban-Rural Development expects investment in urban water facilities to reach ¥500 billion (\$78.1 billion) to ¥600 billion (\$93.7 billion) from 2011 to 2015. According to the China Urban Planning and Design Institute, most of the 4,000 water plants in China use relatively outdated technology.

The PRC government also aims to increase its waste water treatment capacity. China currently treats about 76.9 percent of its urban wastewater. The government

plans to conserve water and meet demand by building more than 2,000 water treatment plants and upgrading roughly 2,000 water plants in expanding towns and urban areas.

The PRC Ministry of Finance said that starting in July local governments must use 10 percent of their land sales revenues to develop water conservancy projects. The projects should address the agricultural production problems posed by inadequate irrigation facilities. The State Flood Control and Drought Relief Headquarters stated that a drought that started in July has caused a water shortage

for 4.8 million people across multiple provinces in China. The drought has stressed the need for enhanced water management.

The PRC Ministry of Water Resources began a nationwide, three-month water consumption investigation in the energy-intensive services sector this September. The goal is to decrease water waste and stop water theft. The ministry will subsequently set water quotas by region and industry to maximize water efficiency and reduce annual water consumption to no more than 670 billion m³ by 2020.

Education

Expanding access to education has become a key goal for the PRC government. According to the Outline for the Development of Chinese Women (2011–20), issued by the State Council in August, the government aims to provide compulsory education to 95 percent of girls by 2020. The document also reports the government will strive to enroll 90 percent of girls in high school and 40 percent of girls in college within the next 10 years.

The PRC Ministry of Finance recently announced that the central government will inject an additional ¥7.9

billion (\$1.2 billion) to fund rural education. The government already planned to spend ¥39.2 billion (\$6.1 billion) on rural education this year. The fund will be used to improve infrastructure and learning facilities in rural schools.

Ethnic minority children will also receive more educational opportunities. The PRC government released in August the Outline for the Development of Chinese Children (2011–20), which aims to improve compulsory education for ethnic minority children by increasing the number of teachers certified to teach in ethnic minority areas.



According to the PRC Ministry of Education, roughly 96 percent of China's vocational school graduates were employed in 2010, highlighting the increasing demand for workers with technical skills.

A senior ministry official also noted that more than 79 percent of last year's vocational school graduates found jobs with their school's help.

Foreign Brands



In China, foreign brands often enjoy a better reputation than domestic brands, according to recent media reports. Xinhua News Agency reported that Chinese companies lose \$92 billion a year due to lack of credibility, of which one-third of the loss comes from consumers' lack of trust in the quality of Chinese goods.

The Boston Consulting Group (BCG) estimates that middle-class households in China—whose annual incomes exceed \$11,400—are expected to increase from 50 million households in 2010 to 140 million by 2020. During this period, analysts predict fashion sales in China will triple—increasing from \$60 billion to \$200 billion. China will account for 30 percent of the global fashion

market's growth over the next five years, according to estimates. China's current consumer spending level is equal to that of developed nations, with some consumers under 25 years old spending more than 40 percent of their disposable income on fashion, according to the BCG report.

Chinese consumers are familiar with many foreign clothing brands from international trips, foreign movies and TV shows, and Western celebrities. This awareness translated into strong sales for H&M Hennes & Mauritz AB, which entered the China market in 2009. Using per store sales, H&M's China sales rank seventh out of the 15 countries in which the company operates.

US Companies in China Feel the Heat from Anticorruption Push

Kyle Sullivan

US and PRC government officials have been paying closer attention to US companies' business activities in China, as regulators in both countries have stepped up anticorruption measures in recent years. Officials from the US departments of Justice and State and the Securities and Exchange Commission (SEC) traveled to China this summer to meet with their counterparts from the PRC Ministry of Supervision to strengthen bilateral cooperation in the battle against corruption. The discussions focused on how the United States has implemented and enforced the US Foreign Corrupt Practices Act (FCPA) and encouraged the PRC government to improve enforcement of its own rules and regulations that govern corruption.

China strengthens rules against corruption

Amid these bilateral discussions, the PRC government has been improving China's anticorruption rules. In February, the Standing Committee of the National People's Congress revised the PRC Criminal Law to prohibit PRC-based companies and individuals from bribing foreign government officials. Loosely modeled after Article 16 of the United Nations Convention against Corruption and the antibribery provisions of the FCPA and UK Antibribery Law, the amendment forbids the act of giving "money or property" to any foreign government or public international organization official in exchange for receiving an improper commercial benefit. PRC judicial opinions—including the 2008 Opinions on Application of the Law in Commercial Bribery Cases—have defined "property" as any tangible or intangible good that can be quantified with a monetary value, such as gift cards, travel expenses, and meals. Penalties for violating the PRC Criminal Law's antibribery provisions can include imprisonment or detention of up to three years, depending on the amount paid in bribes, as well as financial penalties.

Investigations result in significant fines

The US Department of Justice (DOJ) and the SEC, the regulatory bodies that enforce the FCPA, have initiated more investigations of US companies in China in recent years. Though it is difficult to quantify the increase in cases levied against US companies in China, DOJ and SEC have charged 25 companies and more than 50 individuals worldwide since 2009, according to statistics compiled by law firm Paul, Hastings, Janofsky and Walker LLP. Those figures starkly contrast with the number of convictions during the first 20 years after FCPA's enactment in 1977. During that time, only 17 companies and 33 individuals were prosecuted for FCPA

violations. Investigations increased in China because of several factors, including greater interaction between US and PRC law enforcement agencies, increased use of reporting hotlines by Chinese citizens, and more voluntary disclosures from US companies.

US agencies recently concluded several cases involving US-based or US-listed companies in China. For example, DOJ and SEC closed a case this year against a subsidiary of US-based Maxwell Technologies, Inc. for violating the FCPA's antibribery provisions. DOJ and SEC collectively levied fines against Maxwell that amounted to roughly \$15 million.

Best practices to prevent corruption

To avoid PRC legal action against China-based entities, their employees, suppliers, or downstream vendors, US companies that operate in or sell to China should familiarize themselves with the FCPA as well as China's Criminal Law and PRC anticorruption legislation. Greater understanding of these measures will allow companies to educate their employees about China's efforts to prevent corruption and bribery and to better inform internal compliance staff. Companies should conduct pre-emptive due diligence on potential business partners, suppliers, or agents prior to entering any contractual agreement with such parties. Finally, companies should be cognizant of red flags such as unusual payment patterns and whether a government official strongly encourages a potential partnership. 完

Kyle Sullivan (ksullivan@uschina.org.cn) is a manager of Business Advisory Services for the US-China Business Council (USCBC) in Shanghai. This article is adapted from a report that first appeared in China Market Intelligence, USCBC's members-only newsletter.

Background on the US Foreign Corrupt Practices Act (FCPA)

The FCPA prohibits US-based companies, US-listed companies, and US citizens from offering, or promising to offer, unlawful payments to foreign, non-US government officials in exchange for new business opportunities or retaining existing business contracts. Government officials are defined as any officer or employee of a foreign government, a foreign-controlled international organization, or any department or entity acting in an official capacity. In China, employees of state-owned enterprises, which play a significant role in the PRC economy, are considered foreign government officials under FCPA rules.

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Event Wrap Up

BEIJING

August

Roundtable Discussion with Vice Presidents Joe Biden and Xi Jinping
See p.11.

September

Welcome Luncheon with US Ambassador to China Gary Locke
The US-China Business Council (USCBC) and the American Chamber of Commerce in China co-hosted a luncheon welcoming Ambassador Locke, who delivered remarks about the US-China economic and commercial relationship.

NEW YORK

September

Luncheon Honoring PRC Minister of Foreign Affairs Yang Jiechi
USCBC and the National Committee on US-China Relations co-hosted a luncheon honoring PRC Minister of Foreign Affairs Yang Jiechi, who was in New York to head China's delegation to the opening of the United Nations General Assembly.

ONLINE

August

Webinar on Export Controls Reform

Larry Christensen, Millard Chevalier member, discussed proposed changes to rules governing the US export control system. USCBC, the Brazil-US Business Council, and the US-India Business Council co-hosted the webinar.

SHANGHAI

July

Luncheon on Energy Conservation and Electricity Shortages
Officials from the Shanghai Economic and Information Technology Commission discussed Shanghai's industrial development, industrial sector energy conservation efforts, and government funds for energy-efficiency improvement programs.

August

Luncheon on China Human Capital
Tower Watson CEO John Haley discussed China's human resources market and the implications for multinational corporations' human resources strategies in China.

September

Welcome Reception for US Consul General Robert Griffiths
USCBC and the American Chamber of Commerce-Shanghai co-hosted a welcome reception for Griffiths, the new consul general of the US Consulate in Shanghai.

Breakfast Program with USCBC President John Frisbie
Frisbie briefed members on current viewpoints in Washington, DC, and USCBC's advocacy work in China on market access concerns. He also discussed the Obama administration's China policy and opportunities to advance member company concerns.

WASHINGTON

July

Seminar on Investing in the United States
USCBC and the China Council for the Promotion of International Trade presented a seminar for Chinese companies on investing in the US market. The seminar, hosted by Mayer Brown LLC, covered foreign investment issues including approval, financing, and public relations considerations.

Briefing with US Department of Commerce General Counsel Cameron Kerry
USCBC and the US Chamber of Commerce co-hosted a roundtable briefing with Kerry, who solicited feedback from US companies and industry representatives about obstacles affecting business in China.

Briefing with PRC Intellectual Property Rights (IPR) Attaché Chen Fuli

Dr. Chen, IPR attaché at the PRC Embassy in Washington, DC, spoke to USCBC members about China's recent IPR protection campaign and China's future IPR plans.

Debriefing on the Joint Commission on Commerce and Trade (JCCT)

2011 Mid-Year Review
Assistant US Trade Representative (USTR) for China Claire Reade and Deputy Assistant Secretary of Commerce for Asia Craig Allen discussed the outcomes of the JCCT mid-year review. USCBC, the US Chamber of Commerce, and the Coalition of Service Industries co-hosted the debriefing.

Briefing on IPR in China and US Policy

USCBC and the National Bureau of Asian Research co-sponsored a briefing for the US-China Working Group on China's IPR regime, the relationship between China's IPR strategy and its indigenous innovation policies, and the implications for US industry and decisionmakers. US-China Working Group Co-Chairs Reps. Rick Larsen (D-WA) and Charles Boustany (R-LA) and IPR specialists spoke at the event.

Upcoming Events

CHICAGO, IL

Breakfast Briefing on Current Issues in US-China Trade
October 6, 2011

WASHINGTON, DC

Gala 2011

December 7, 2011

For more information on USCBC or its events, visit www.uschina.org.

August

Briefing on World Trade Organization (WTO) Dispute Settlement
Timothy Reif, USTR general counsel, updated companies on the status of WTO dispute settlement cases between the United States and China.

September

Briefing on China's New Foreign Bribery Law
General Counsel Cameron Kerry discussed the implications of China's new foreign bribery law and its potential impact on US and global businesses. Sidley Austin LLP, USCBC, the US Chamber of Commerce, and Transparency International-USA cosponsored the event.

Issues Luncheon with Export-Import (Ex-Im) Bank of the United States Chair and President

Ex-Im Bank Chair and President Fred Hochberg discussed the bank's priorities and how it can help US companies meet their export goals.

Vice Presidents Biden, Xi Attend Roundtable Co-Hosted by USCBC

US and PRC Vice Presidents Joe Biden and Xi Jinping met with senior business leaders from both countries at a roundtable co-hosted by the US-China Business Council (USCBC), the China Council for the Promotion of International Trade, and the American Chamber of Commerce in China on August 19 in Beijing. Representatives from USCBC member companies—including USCBC Chair and the Coca-Cola Co. Chairman and CEO Muhtar Kent and USCBC Board Director and Caterpillar Inc. Group President Richard Lavin—discussed foreign direct investment and market access barriers, cooperative partnerships between Chinese and US companies, intellectual property rights (IPR) protection, and creating jobs in the United States.

Xi stressed the need to reinforce confidence in financial markets and China's goal of seeking a proper balance between growth and managing inflation.

He also stressed China's commitment to areas such as IPR protection and equal treatment for products under government procurement.

Biden stressed that competition is healthy and that the Obama administration welcomes Chinese direct investment in the United States, which helps create US jobs. Biden said he was encouraged by China's 12th Five-Year Plan (2011–15) and the goal of developing a more consumer-based economy, but he still had concerns about market access for US companies.

At a pre-meeting session, US executives provided Biden with an overview of the business environment in China, describing issues such as the draft Catalogue Guiding Foreign Investment in Industry and market access barriers, IPR protection, concerns about a level playing field for Chinese and foreign companies, and China's forthcoming political transition.



Vice Presidents Biden and Xi hold a roundtable with business leaders at the Beijing Hotel in August.



Biden expressed his confidence in financial markets and the US economy at the roundtable.



Gala 2011

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To Further Sino-US Trade and Economic Cooperation and Achieve Mutual Benefit through China's Continued Opening

PRC Minister of Commerce Chen Deming



This year marks the tenth anniversary of China's accession to the World Trade Organization (WTO). A decade ago, facing multiple difficulties and grave challenges head on, the Chinese government made a broad commitment regarding trade in goods, services, and intellectual property rights and became a member of the WTO. Over the past 10 years, China has firmly pursued reform and opening policies, actively participated in global competition and cooperation, and implemented all of its obligations and commitments in good faith. With an improved market economy system and remarkable growth, China has contributed enormously to the world's prosperity and stability.

In the decade following China's accession to the WTO, China and other economies, including the United States, have complemented each other's advantages and shared benefits. During the decade since then, Sino-US trade volume soared from \$80.5 billion to \$385.3 billion, up by 379 percent. Currently, the United States is China's

second-largest export market and major source of inbound investment, while China stands as the third and fastest-growing export market for the United States. In the past 10 years, bilateral trade and economic cooperation created millions of jobs for China and the United States. China has become a main source of global earnings for many US businesses. Even in 2008 and 2009 when the international financial crisis was most severe, over 70 percent of US-funded enterprises surveyed in the Chinese mainland remained profitable. Meanwhile, the US investment has played a positive role in promoting China's economic restructuring and scientific and technological innovation.

It is true that Sino-US trade and economic relations still have much room for improvement. To address US concerns over the trade imbalance and IPR protection and China's concerns over US export controls and investment barriers, both sides need to have greater courage and determination. We need to discard stereotypes and prejudices against one another, to increase the level of openness, promote bilateral trade and economic cooperation, and make joint endeavors in times of difficulty. Only in this way can our two great nations achieve common prosperity.

在深化对外开放中 发展互利共赢的中美经贸合作

商务部部长陈德铭

今

年是中国加入世界贸易组织十周年。十年前，中国政府克服了诸多困难和严峻挑战，在货物、服务、知识产权等领域做出广泛承诺，多方努力，成为世贸组织的一员。十年来，中国坚定不移推行改革开放，积极参与全球竞争合作，全面履行各项义务和承诺，市场经济体制进一步完善，经济发展取得显著成就，为世界的繁荣和稳定做出重要贡献。

加入世贸组织的十年是中国同包括美国在内的各经济体优势互补、利益共享的十年。10年间，中美贸易由805亿美元增加到3853亿美元，增长379%。目前，美国是中国第二大出口市场和主要投资来源地。中国是美国第三大出口市场，也是美国增长最快的出口市场。过去10

年，双边经贸合作为中美两国均创造了数以百万计的就业机会。中国已成为许多美国企业全球利润的主要来源地。即使在国际金融危机冲击最为严重的2008和2009年，仍有超过70%的美资企业在中国大陆实现了盈利。同时，美国在中国大陆投资对中国经济结构调整、科技创新也发挥了积极促进作用。

不可否认，中美经贸关系仍有巨大的提升空间。美方关注的贸易不平衡、知识产权保护等问题，中方关注的对华出口管制、投资壁垒等问题，都需要双方拿出更大的勇气和决心，摒弃成见与偏见，进一步提高开放水平，积极主动地推进双边经贸合作，为两个伟大民族共克时艰、共同繁荣而携手努力。

A Message from the US Trade Representative

Ambassador Ron Kirk



Ten years ago, China acceded to the World Trade Organization (WTO), achieving this success because of economic reformers within the Chinese government and key trading partners such as the United States. Since then, China has taken many impressive steps to reform its economy and has risen to become a top global trader.

In the initial years after joining the WTO, China implemented a set of sweeping WTO accession commitments, including reducing tariffs, eliminating non-tariff barriers that denied national treatment and market access for goods and services imported from the United States and other WTO members, and making legal improvements in intellectual property protection and in transparency. These actions helped lift hundreds of millions of Chinese out of poverty and deepened China's integration into the international trading system, facilitating and strengthening China's rule of law and economic reform. Trade also expanded dramatically between China and its many trading partners. In 2001, China was our ninth-largest export market, but by 2010, China had become our third-largest export destination behind Canada and Mexico, and a significant source of US jobs and growth for US exporters.

A decade later, the United States is working to build on our strong relationship with China and our solid track record of frank, productive, results-oriented dialogue. Today, we face many serious challenges stemming from China's slowed market liberalization and deferred structural reform—precisely when China's own economic transition requires those processes to be accelerated. Problems often seem to stem from China's pursuit of

industrial policies that rely on trade-distorting government intervention intended to promote China's domestic industries, particularly ones dominated by state-owned enterprises.

For example, some indigenous innovation policies discriminate by pressuring foreign companies to move their technologies to China or sell them to Chinese partners. China also promotes "national champions" through policies that create distortions in global markets. Other challenges are equally concerning; serious problems with intellectual property rights enforcement in China deprive our innovators of billions of dollars and hamper China's drive to become a truly innovative society. In addition, when China joined the WTO, it committed to join the WTO Agreement on Government Procurement as soon as possible, but it has yet to make this market opening opportunity a reality. Another challenge facing China and its trading partners is to develop a realistic path forward in the Doha Round and to explore ideas that will strengthen the WTO as an institution.

Rule of law, transparency in government regulation, control of corruption, and an open market economy are critical pillars for strong economic development and healthy participation in the global trading system. China's WTO negotiators took major steps to strengthen these pillars when China joined the WTO. Realizing the promise of those commitments will strengthen China and the WTO system, the critical infrastructure supporting fair global trade conditions for China's stakeholders, and the United States. The progress achieved through China's market openings under WTO rules should serve as powerful motivation to work constructively within these rules to increase our countries' and the world's prosperity.

美国贸易代表瑞恩·柯克大使致辞

十年前，中国加入了世界贸易组织，这项成就之所以能够实现，中国政府内的经济改革者和美国等关键贸易伙伴功不可没。从那以后，中国为改革本国的经济迈出了许多令人惊叹的步伐，跃居成为全球首要贸易国之一。

中国在加入世贸组织后的最初几年内落实了一整套范围广泛的入世承诺，包括削减关税，取消阻碍来自美国和其它世贸成员的进口产品和服务得到国民待遇与市场准入的非关税壁垒，并改进法律以加强知识产权保护和透明度。这些行动帮助了数亿中国人摆脱贫穷，加深了中国与国际贸易体系的融合，并促进和加强了中国的法治和经济改革。中国和许多贸易伙伴之间的贸易也长足扩展。在2001年，中国是美国的第九大出口市场，而到了2010年，中国已成为美国的第三大出口目的地，仅次于加拿大和墨西哥，并成为美国就业机会和美国出口增长的重要源泉。

十年过后，美国正在努力加强与中国的牢固关系并加强我们两国之间一向固有的坦率、富有成效并注重结果的对话。今天，我们面临着许多重大挑战，这些挑战来自中国市场开放步伐的减缓和结构性改革的推迟，而同时中国自身经济转型恰恰要求加快这些进程。问题似乎经常出自中国对某些产业政策的追求，这些产业政策依靠扭曲

贸易的政府干预，试图扶持中国国内产业，特别是那些国有企业居主导地位的产业。

例如，某些自主创新政策具有歧视性，这些政策给外国公司施加压力，让他们把自己的技术转移到中国或出售给中国合作伙伴。中国还通过在全球市场造成扭曲的政策来扶持“全国领军企业”。其它挑战同样令人关注；中国在知识产权执法方面存在的严重问题，使我们的创新者损失数十亿美元，这同时也阻碍着中国建设真正的创新型社会的努力。此外，中国入世时曾承诺尽快加入世贸组织政府采购协议，但至今仍未把开放政府采购市场的机会化作现实。中国及其贸易伙伴面临的另一项挑战是在多哈回合谈判中制定出一条现实的前进路线并探索加强世贸组织机制的设想。

法治、政府监管透明度、遏制腐败以及开放的市场经济是经济强劲发展和健康参预全球贸易体系的关键支柱。中国的世贸谈判人员在入世时迈出了重大步骤来加强这些支柱。落实那些已经承诺的保证将会加强中国的实力并加强世贸组织体系，该体系是支持中国的利益相关方及美国在全球拥有公平贸易环境的关键性基础架构。中国通过在世贸组织规则下开放市场所取得的进步应当成为一个强大动力，鼓励在这些规则之内展开建设性的努力，增进美中两国以及全世界的繁荣。

A Message from the US Ambassador to China

Gary Locke



In the 10 years since it acceded to the World Trade Organization (WTO), China has joined the ranks of the world's trading superheavyweights, and its own market has become a major driver of global growth. It has evolved from merely a hot investment destination for multinationals to become a major investor in markets worldwide and home to its own leading global companies. It has learned that the legal tools for settling trade disputes and addressing unfair trade practices can be used to protect China's own interests. Never in its history has China's stake in the global economy or the world's stake in China's economy been so great. And the cornerstone of this healthy interdependence is the rules-based international trading system organized under the WTO.

Skeptics in the United States and China at the time of accession would find it hard to argue now that the past decade's explosion of bilateral trade and investment has not contributed to both countries' prosperity. America's exports to China have risen faster than to any other major market during this period, and China has shot up from our ninth-largest export destination to our third largest, behind only our neighbors Canada and Mexico. During the deep recession of 2009, our goods exports to the world sank 18 percent, but our exports to China held steady. US investors in China now produce overwhelmingly for the Chinese market, not for export back to America.

Our overall goods trade deficit with China, \$273 billion in 2010, is huge and must be addressed. But it must also be put into perspective: Recent studies suggest that US businesses have more to gain than Chinese businesses from the sale of certain popular "made in China" electronic products, such as the iPad, and that only a fraction of US consumer spending

goes to imports from China, with most goods and services purchased coming from our own country.

China has benefitted no less. Its own exports to the world have surged since accession, from \$266 billion in 2001 to nearly \$1.6 trillion in 2010 by China's own data. Joining the WTO provided a roadmap for China's reformers to rework the economy and strengthen the competitiveness of Chinese firms through lower tariffs, a reduction in non-tariff barriers, and fewer investment barriers. Some in China feared that sectors such as the auto industry would wilt under foreign competition, but even as foreign brands increased sales (in 2010, General Motors sold more cars in China than in the United States), Chinese brands gained market share in China and are starting to become players overseas. It seems competition only made them stronger and thus should not be feared.

As China's leaders confront their self-assigned task of turning the economy from reliance on investment and exports to domestic consumption, renewed openness is the answer, especially in emerging industries and the services sector that will create jobs and spur consumption. This would help temper the trade frictions that have grown in recent years as a result of China's industrial policies and resurgent protectionism. It would assure China's trading partners that China is assuming responsibility commensurate with its weight in the global economy. And it would help put China on a path toward sustainable growth that benefits more of its own citizens. We look forward to working with our Chinese counterparts and American stakeholders to rekindle this spirit and promote the healthy interdependence that is vital to the prosperity of both our nations.

美国驻华大使致词

骆家辉

加入世界贸易组织10年来，中国已跻身于世界超级贸易大国之列，而其本国市场也成为全球增长的一个主要驱动力。中国已从单纯的多国公司投资热门目的地转变为全球市场的一个主要投资方，并拥有自己的全球领导企业。中国也已学到解决贸易纠纷和处理不公平贸易行为的法律工具可以被用来保护中国自身利益。在中国历史上，中国经济对全球的意义从来没有如此重大，全球经济对中国的意义也从来没有如此重大。这种良性依存关系的基石则是由世贸组织领导建立的以规则为基础的国际贸易体系。

中国入世时一些在美中两国的质疑者如今已很难辩称：过去10年来爆炸性增长的双边贸易和投资对两国的繁荣无所贡献。在这段时期，美国对华出口的增长速度超出对其它任何主要市场，而中国从我国第九大出口目的地跃居为第三大，仅次于我们的近邻加拿大和墨西哥。在2009年经济严重衰退期间，我国全球出口总量下跌了18%，但其中对华出口却保持了稳定。美国投资者在华生产的产品如今绝大多数都投放于中国市场而不是返回美国。

我国对华总体货物贸易逆差在2010年为2730亿美元，数额巨大，不容忽视。但对此我们也必须有全面的认识：最近的研究显示，美国公司从销售iPad等某些“中国制造”的热门电器产品中所获取的利益可能大于中国公司，而且美国消费者

的开支只有很小比例用于从中国进口的产品，消费者购买的产品与服务多数来自我们本国。

中国同样受益匪浅。中国的全球出口总量在入世后飞速增长，按照中国自己的数据，从2001年的2660亿美元上升到2010年的近16000亿美元。加入世贸组织为中国的改革者提供了路线图：通过降低关税、减少非关税壁垒和投资壁垒来调整经济并增强中国公司的竞争力。中国国内有些人曾害怕本国公司会顶不住外国竞争压力，例如汽车行业，然而，即使外国品牌的销售量确实有所增加(2010年，通用汽车公司在中国的轿车销售量超过了美国市场)，中国品牌的国内市场份额仍然得以扩大，并开始在海外施展身手。显然竞争只是使他们更为强大，因而并不值得畏惧。

中国领导人正面对自己所赋予的任务，努力将本国经济从投资和出口导向型转向国内消费导向型。而这一过程中所遇问题的答案就在于更新开放领域，特别是在那些创造就业并刺激消费的新兴产业和服务领域的开放。这将有助于减少近年来因中国的产业政策和重新抬头的保护主义而有所增加的贸易摩擦，将促使中国的贸易伙伴相信中国正在承担与其在全球经济中所具份量相应的责任，也将帮助中国走向一条可持续增长的道路，更多地造福本国公民。我们盼望和我们的中国同事以及美国利益相关方共同努力，重新激发开放精神并推动对两国繁荣具有重要意义的健康依存关系的发展。

A Message from the Chair of the US-China Business Council

Muhtar Kent, Chairman and Chief Executive Officer, The Coca-Cola Company



As chairman of the US-China Business Council (USCBC), it is my pleasure to commemorate the tenth anniversary of China's entry into the World Trade Organization (WTO). This remains a positive, landmark event in China's development, the US-China commercial relationship, and for the global economy.

In the decade since China's accession to the WTO, total US exports to China have climbed 468 percent—rising from \$16.2 billion in 2000 to \$91.9 billion in 2010. This growth has positioned the United States as China's largest trading partner and dramatically outpaced the rest of the world, where US exports have increased just 55 percent.

The success we've seen to date is due largely to China's many efforts to join the international trading system and become more integrated in the global economy. Since entering the WTO, China has lowered tariffs dramatically, opened sectors

to foreign investment where it was previously prohibited, continued to implement reforms aimed at separating government from business, and reviewed and revised thousands of laws to ensure it conforms to WTO rules.

As the United States' second-largest trading partner continues to grow its economy, we must continue to work with China's government and business leaders to strengthen our ties and ensure there is support in the United States and China for our business partnerships. In areas such as intellectual property rights, government transparency, government licensing procedures, or others where US companies hope for further progress, it is important that we see win-win solutions so companies in both countries can fully realize the benefits brought by WTO entry.

On behalf of USCBC's member companies, we congratulate China on its remarkable achievements of the past decade. We look forward to working closely with China to achieve even greater progress in the decades to come.

美中贸易全国委员会董事会主席致辞

穆泰康

可口可乐公司 董事长兼首席执行官

我

谨以美中贸易全国委员会(USCBC)主席的名义喜贺中国加入世界贸易组织(WTO)十周年。中国入世对中国的发展、美中商业关系以及全球经济仍然是一件积极并具有里程碑意义的大事。

中国入世十年来,美国对中国的出口总额攀升了468%,从2000年的162亿美元增至2010年的919亿美元。这使美国成为中国最大的贸易伙伴,增长步伐远远超过世界其它地区,在此期间,美国对其它地区的出口仅增加了55%。

我们迄今所目睹的成功主要来自中国为加入国际贸易体系并加深融入全球经济所付出的诸多努力。入世以来,中国大力降低了关税,开放了很多从前禁止外资参与的行业,继续落实政企分开

改革并审议和修改了数以千计的法律以确保符合世贸组织规则。

随着美国第二大贸易伙伴的中国经济不断增长,我们必须和中国政府与商界领袖继续合作,加强联系,并确保我们的商业伙伴关系在美中两国都得到支持。在知识产权、政府透明度、政府审批许可证程序或其它美国公司希望看到进一步改进的领域,重要的是,我们要期望双赢的解决办法,使两国公司都能全面实现加入世贸组织所带来的益处。

我们谨代表USCBC的成员公司,祝贺中国在过去十年间所取得的惊人成就。我们盼望着和中方密切合作,在今后几十年的岁月里取得更加巨大的进步。

A Message Regarding China's Tenth WTO Anniversary

Wan Jifei, Chairman, China Council for the Promotion of International Trade and the China Chamber of International Commerce



The 10 years since China joined the World Trade Organization (WTO) have truly flown. This decade has seen China's fastest growth and most dramatic reforms and has seen China open more widely to the outside world and participate actively in international competition and cooperation. Moreover, this decade has seen China share its

prosperity with the rest of the world, achieve win-win outcomes, and make its greatest contribution ever to global economic growth. Looking back at all these remarkable achievements, the business sectors in China and the United States have profoundly experienced the changes WTO membership has brought to both China and the world.

In the 10 years since China's accession to the WTO, China's fundamental experience has been to integrate the spirit of the WTO into its reform and opening policy to promote development through opening, stimulate growth through competition, and improve fairness through rules. China has conscientiously implemented its WTO commitments—completing its largest-scale tariff concessions and its greatest number of legal reviews ever, and effectively lowering market

access thresholds. These measures have further improved China's market economic system and the fairness of its competitive environment—both of which have helped China's reform and opening at its initial stage of establishing and enforcing rule of law.

Looking toward the future, China will continue to deepen its reforms and actively participate in global market competition. China will also more actively participate in the revision of international economic and trade rules and the reform of global economic governance, and the country will assume international responsibilities that are commensurate with its role. China will work together with other countries to address global challenges and will make even greater contributions to world economic growth.

As the *China Business Review* publishes its special edition commemorating the tenth anniversary of China's WTO entry, I would like to extend our warmest congratulations on behalf of both the China Council for the Promotion of International Trade and the China Chamber of International Commerce. We hope that the *China Business Review* will continue to work hard to promote Sino-US economic and trade relations, and we wish the magazine even more success in its future endeavors.

中国入世贸十周年致辞

中国国际贸易促进委员会，中国国际商会会长万季飞

时

光荏苒，中国加入世界贸易组织已经十年了。这十年是中国发展最快、改革力度最大的十年，也是中国扩大开放、积极参与国际竞争与合作的十年，更是中国与世界各国分享繁荣、实现共赢、对世界经济增长贡献最大的十年。回首辉煌成就，中美两国工商界对入世给中国和世界带来的变化有着最深切的感受。

入世十年，中国的基本经验是把世贸精神融入改革开放，以开放促发展、以竞争促成长、以规则促公平。中国认真兑现入世承诺，完成了最大幅度的关税减让和最大规模的法律整理工作，有效降低了市场准入门槛，使中国的市场经济体制更加完善，

竞争环境更加公平，中国的改革开放事业也初步实现了规则化、法制化。

展望未来，中国将深化改革开放，积极参与国际市场竞争。我们还将更加积极地参与世界经贸规则修订和全球经济治理改革，承担符合自身角色的国际责任，与世界各国共同应对全球性挑战，为世界经济增长做出更大的贡献。

值此《美中商贸评论》庆祝中国入世十周年特别专刊出版之际，我谨代表中国国际贸易促进委员会、中国国际商会致以热烈的祝贺。希望《美中商贸评论》在推动中美经贸关系发展方面多做合作，也祝《美中商贸评论》越办越好！

Thoughts on the Tenth Anniversary of China's WTO Accession

Wang Xinkui, Chair of the Board of Trustees and
President of the Shanghai WTO Affairs Consultation Center



It has been 10 years since China acceded to the World Trade Organization (WTO). China's bid to seek WTO membership from 1985 to 2001 was an arduous and gradual process of integrating into the global economic system. Notably, since a series of market-oriented economic reforms in 1994, China's integration into the world economy has accelerated, ushering in a period of fast economic expansion marked by a sharp surge of foreign direct investment in its export-oriented manufacturing, a dramatic boost in its imports and exports, and a rapid increase in its GDP.

China's experience in its WTO accession indicates that for a large transitional and developing economy such as China, market-based reforms and integration into the global economy are not only a major force in facilitating economic transition, but they are also a prerequisite for socioeconomic modernization. We are firmly convinced of this.

In the decade following China's entry into the global trade body, the Shanghai WTO Affairs Consultation Center has maintained close contact and cooperation with the US-China Business Council. We believe that the relationship between our two non-governmental organizations will, in the years to come, continue to serve as an indispensable bridge for Sino-US trade and investment.

中国加入世贸十周年评论

上海WTO事务咨询中心理事长兼总裁
王新奎

中国加入WTO转眼已经十年了。从1985年到2001年，中国争取加入WTO的过程是一个经济体制艰难转型和逐步融入经济全球化的过程。特别是1994年中国启动一系列市场经济体制的改革以后，中国加速融入经济全球化，出现了以出口为导向的制造业外商直接投资大量进入、进出口贸易规模迅速扩大、GDP快速增长的经济扩张期。

中国入世的历程说明，像中国这样一个发展中的、处于经济体制转型阶段的大型经济体，坚定

不移地实行市场化的经济体制改革、融入全球经济全球化进程不仅是推动中国经济转型的重要动力来源，而且是实现中国经济和社会现代化的必要条件，对此我们坚信不疑。

在中国加入WTO以来的10年中，我们上海WTO事务咨询中心与美中贸易全国委员会之间一直保持着紧密的交流与合作关系。我们相信，在今后，我们之间的交流与合作关系仍然是中美两国之间在贸易和投资领域一座不可或缺的民间交流与沟通的桥梁。

Ten Years of WTO Membership: Gains for China and the US, but More Must Be Done

John Frisbie



This column is adapted from a speech US-China Business Council (USCBC) President John Frisbie delivered at a panel with PRC Minister of Commerce Chen Deming and Ambassador to the PRC Permanent Mission to the WTO Yi Xiaozhun during the April 2011 Bo'ao Forum for Asia. The forum is held annually in Hainan, China, and it brings together top Chinese officials, including PRC President Hu Jintao; foreign leaders; and Chinese and overseas executives.

The US-China Business Council (USCBC) was established soon after President Nixon's visit to China and is now in its 38th year. Throughout this time, USCBC has sought the expansion of the US-China economic and commercial relationship on a mutually beneficial basis. In my view, the most important economic event during our 38 years of existence has been China's entry into the World Trade Organization (WTO). USCBC was a strong supporter of China's WTO entry and a strong voice in the United States on the importance of China's WTO entry to the US economy.

China's WTO entry agreement set out a series of market opening measures that China was obligated to implement over a period of roughly five years. China made great efforts to achieve these openings. For example, it had to review and revise thousands of laws, regulations, and administrative processes to comply with its WTO commitments.

Benefits to US-China commercial relations

China has clearly benefited from its WTO entry. China's foreign trade has grown rapidly, and foreign investment has poured into the country. This trade and investment has created jobs, helped to raise incomes, and contributed to China's extraordinary economic growth.

China's WTO entry also has clearly benefited American companies. As a result of the significant market openings mandated by the entry agreement, American companies enjoy far greater market access than they did 10 years ago. China has

- Cut import tariffs by nearly 40 percent;
- Virtually eliminated import licenses and quotas;
- Relaxed many—but not all—ownership restrictions on foreign businesses in China; and
- Allowed foreign companies to participate in many sectors in which they were previously prohibited.

These changes have greatly impacted the US-China trade relationship. US imports from China have been rising quickly as China has replaced traditional Asian suppliers. But US exports to China have also increased rapidly since China's WTO entry, jumping from more than \$19 billion in 2001 to nearly \$92 billion in 2010.

China is now the third-largest market for US exports, after only Canada and Mexico—both neighbors with which the United States has free-trade agreements. As China continues its economic development and increases domestic demand, American manufacturing and services companies should be able to increase their sales and operations in China, bringing real economic benefit to the United States.

But there is another positive aspect of China's WTO entry: dispute settlement. WTO membership brings a neutral, third-party dispute settlement mechanism that de-politicizes trade disputes. Both the United States and China have used the WTO to resolve trade cases that they have been unable to resolve through bilateral discussions and negotiation. This is a positive development, one that USCBC supports and encourages.

Challenges to bilateral commercial relations

At the same time, there are areas in which further work must be done for China to be a more fully integrated member of the WTO. In general, the main areas of concern are

- Inadequate protection of intellectual property rights;
- The need for greater transparency in formulating laws and regulations, in government decisionmaking, and in the setting of product and technology standards;
- Incomplete market openings and foreign ownership restrictions, particularly in certain service sectors; and
- Innovation, government procurement, and technology transfer policies that have captured the attention of foreign companies in the United States, Europe, and Asia over the past year or so.

The next 10 years

As we look forward to China's next 10 years in the WTO and work to build a durable, mutually beneficial trade relationship, we should keep two points in mind.

The first is the rise in protectionist voices that we are hearing today in both the United States and China. We must ensure that the opponents of trade and investment do not use "economic security" for protectionist purposes. Neither side will benefit from protectionist measures, and those of us who

Letter from the President

support trade and investment must continue to speak to policymakers and the general public in both countries about the benefits of trade and investment to our respective economies. At the same time, we must demonstrate that dialogue and engagement can successfully resolve problems, so that protectionist measures can be avoided.

Second, as we recognize and applaud the great achievements China has made in its first 10 years of WTO membership, it is important to think about the next 10 years. To take its economic development to the next level, to move to an economy that depends less on exports and fixed-asset investment and more on domestic consumption, to create innovative, world-class companies, China will have to make even more changes. The terms of China's WTO entry agreement 10 years ago cannot be the end of the story. Services sector reforms and market openings, innovation and technology transfer policies that are based on global best

practices, and a level playing field for Chinese and foreign companies are all areas that will be crucial to China's continued economic growth, job creation, and the development of a more balanced economy incorporating greater domestic consumption.

The first decade of change resulting from China's WTO entry is just the beginning. China has achieved much in a short period, but it will need to make more adjustments to integrate fully into the world economy. Such integration is the best way for China to achieve long-term economic growth and prosperity, as well as to ensure a mutually beneficial commercial relationship between the United States and China for decades to come. USCBC is committed to working with China to meet this goal, just as we have for the past 38 years. 完

John Frisbie is president of the US-China Business Council.

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SURVEY ON CHINA'S WTO MEMBERSHIP

As the tenth anniversary of China's World Trade Organization (WTO) entry nears, the *China Business Review (CBR)* is polling its readership on the significance of China's WTO membership. The input of those who have been tracking China's trade and investment environment is crucial.

We thank you for taking the time to complete this brief survey, which will close on December 1, 2011. To complete the survey online, visit www.uschina.org/survey/survey.php?sid=41. You may also fax the questionnaire below to 202-833-9027 or mail it to *The China Business Review*, 1818 N Street, NW, Washington, DC 20036, USA.

Survey respondents will be entered into a drawing to win a free one-year subscription to the *CBR*.

1. Was China's 2001 World Trade Organization (WTO) entry relevant to your company's operations and objectives in China?

- ☐ Yes.
☐ No.
☐ Our primary objectives concern issues outside the scope of China's WTO accession agreements.

2. What changes have you noticed in China's business environment since the country joined the WTO?

3. What is the most significant WTO commitment that China has implemented?

4. What is the most significant WTO commitment that China has failed to implement or to implement fully?

5. Please give China an overall grade in its efforts to implement WTO commitments to date.

- ☐ Excellent ☐ Poor
☐ Good ☐ Don't know/NA (Does not affect my company)
☐ Fair

6. How has China's WTO membership affected US-China trade?

- ☐ It has helped boost US-China trade significantly
☐ It has helped boost US-China trade somewhat
☐ It has not affected US-China trade
☐ It has negatively affected US-China trade
☐ Don't know/NA (Does not affect my company)

7. To what degree has China's WTO entry made it a more responsible global stakeholder?

- ☐ China has become a significantly more responsible global stakeholder
☐ China has become a slightly more responsible global stakeholder
☐ There has been no change
☐ China has become a less responsible global stakeholder
☐ Don't know/NA (Does not affect my company)

8. How long has your company been actively engaged in business in or with China?

- ☐ <5 years
☐ 5-10 years
☐ 11-20 years
☐ >20 years

9. Which category best describes your firm or division's China business?

- ☐ Primary industries (agriculture, resource extraction, mining, etc.)
☐ Manufacturing
☐ Services
☐ Other, please specify:

--

10. Where is your company's headquarters located? (Choose one)

- ☐ United States
☐ Other country, please specify:

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11. Please include your e-mail address:

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World Trade Organization (WTO) Director-General Pascal Lamy says China's WTO entry has had a significant impact on the country's economic and trade growth.

China's Role in the WTO

On the tenth anniversary of China's World Trade Organization entry, WTO Director-General Pascal Lamy highlights the significance of the country's membership.

Established in 1995, the World Trade Organization (WTO) is the only global international organization that manages trade rules between countries. By providing a forum for governments to negotiate trade agreements and settle trade disputes, the organization aims to help governments solve their trade problems. The WTO is a rules-based, membership-driven organization with 153 member countries. China joined the WTO on December 11, 2001.

*To mark the tenth anniversary of China's WTO entry, WTO Director-General **Pascal Lamy** recently discussed China's role in the WTO with CBR Editor **Paula M. Miller**. The fifth director-general of the WTO, Lamy began his first four-year appointment in September 2005 and his second four-year term in September 2009. He was commissioner for trade at the European Commission in Brussels, Belgium, from 1999 to 2004.*

The first 10 years of China's WTO membership coincided with remarkable economic and trade growth in the country. How much of the boom can be directly tied to China's WTO membership?

Lamy: This is a very difficult question to answer. What we know is that from 2001 to 2010, China's exports rose nearly 6 times to roughly \$1.57 trillion, while imports rose by nearly the same order of magnitude to \$1.39 trillion.

Surely, the market access that China received as a result of its accession to the WTO contributed to its trade performance. Lower tariffs on imports would have stimulated purchases of foreign goods as well. But other factors have helped. The reforms that China undertook as part of its accession process have improved economic efficiency and boosted growth. Membership in the WTO also provided foreign investors with assurances that China was part of a system of international rules and disciplines. In addition, foreign investors found a huge domestic market in which to offer their goods and services. Inflows of foreign direct investment rose exponentially from practically zero in the early 1990s to \$108 billion in 2009. This is important because more than half of China's exports come from subsidiaries or

China's WTO entry has also facilitated greater South-South trade [trade between developing countries]. Today South-South trade comprises more than 20 percent of global trade, and this figure is rising rapidly. In 2010, for example, total trade by developing countries expanded by around 17 percent (compared to 13 percent for developed countries). In 2011, WTO economists forecast an overall trade expansion of 6.5 percent, with general trade by developing countries to all trading partners expanding by 9.5 percent—far higher than the 4.5 percent predicted growth in the developed world. So in terms of trade expansion and shifting trade flows, China's accession has had a dramatic impact. Other developing countries—such as Brazil, India, South Africa, and Indonesia—are also rising rapidly and exuding greater influence in the WTO arena. This rise of developing countries—with China at its center—has changed the balance of power within the WTO.

Having another trade power in the WTO has also led to some frictions. China, for instance, is the third most active participant in the WTO's dispute settlement process, after the United States and the European Union.

Just as the WTO has had a significant impact
on the development of China's economy,
China's accession has made the organization stronger.

branches of foreign-owned companies in China. Sales of these affiliates increased from \$10 billion in 1990 to \$545 billion in 2009. So, defining precisely the impact of China's WTO accession is difficult, but undoubtedly the contribution to China's growth has been significant.

What has China's WTO membership meant for the global trading system?

Lamy: Just as the WTO has had a significant impact on the development of China's economy, China's accession has made the organization stronger. Surely, the accession contributed to China becoming the world's largest exporter of merchandise goods and the second-largest importer of such goods. This latter point is important because the crisis that hit the global economy in 2008–09 led to a severe contraction of the economies of Western Europe and North America. With those markets consuming less, exporters needed to look to other countries for export growth. This was true of US, Japanese, and European exporters, but it was also true of developing country exporters. China picked up a great deal of slack, and this was an important factor in keeping the global recession from widening and deepening.

What are some of the most significant trade-related changes you have seen China make during its WTO membership? What is the most significant WTO commitment that China has implemented?

Lamy: There have been a great many such changes. Among the significant changes are the expansion of trade from foreign-owned subsidiaries and branches, China's role in the center of the increasingly large global supply and production chain, and the country's move up the value chain in terms of production. China's labor costs are rising and its minimum wage is scheduled to double by 2015. Even now, China's labor costs are higher than most other developing countries in Asia—only Malaysia's and Thailand's are higher. This means that Chinese companies are starting to look to other locations to produce their goods. Chinese textile investment in Africa and Bangladesh is growing rapidly, for instance.

In terms of commitments that China has undertaken, I would not want to rate them in order of significance, but agreeing to implement a tariff schedule in which the average tariff on manufactured goods is 9 percent [down from 24 percent before China's WTO accession] and the average

tariffs on agriculture imports is 15 percent [down from 24.6 percent before China's WTO accession] was highly significant. These figures are much lower than those of many other developing countries and the farm tariff rate is even below that of many developed countries.

What are the most significant WTO commitments that China has failed to implement or to implement fully?

Lamy: As a neutral director-general it is not for me to assess this. China has done really well in terms of implementing its long list of commitments. But no country is above criticism. Our trade policy review [TPR] mechanism provides the opportunity for WTO members to assess and criticize the trade policies of those under review. China, as one of the four largest traders, has a TPR review every two years. What I can say is that members have complained about certain services sectors not being open sufficiently and that intellectual property rights [IPR] protection needs to be improved.

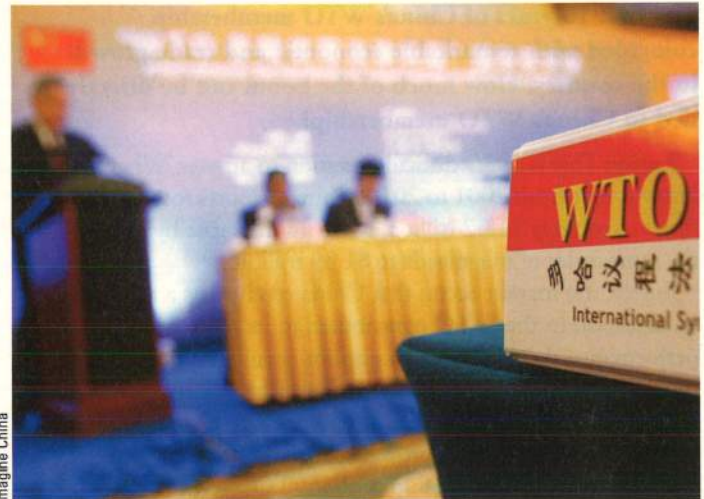
How does China compare to other WTO members as a user of trade remedy measures, such as antidumping and countervailing duties?

Lamy: China refrained from using trade remedies in the first few years of its WTO accession. In recent years, however, we have seen the frequency increase. China is among those countries that initiated the most antidumping investigations. In 2009, China ranked fifth among WTO members in the initiation of antidumping actions. In 2010, China ranked sixth, but the number of initiations in 2010 (8 cases) was much lower than in 2009 (17 cases). Of course, there is a distinction between cases initiated and final measures applied. It is clear that China has become a frequent user of trade remedy instruments.

It is also clear that in 2009 and 2010 China was by far the biggest target of antidumping investigations (77 investigations in 2009 and 43 in 2010) and countervailing measures (13 measures in 2009 and 6 in 2010) applied to allegedly subsidized Chinese exports.

China offered its second bid to join the WTO Government Procurement Agreement (GPA) last year. Though the second bid was considered better than its initial 2007 offer, some issues remain. When do you think China will join the GPA, and what are the greatest barriers it faces in seeking to do so?

Lamy: I never make predictions on timing for matters such as this, but I guess the sooner the better. China has made initial offers and is now preparing a revised one. Becoming part of the GPA is part of the commitments taken by China upon accession. And it is a win-win scenario: Good for China because it will get value for its money in public purchases, and good for the rest of the



Imagine China

WTO membership because it will give countries access to China's huge public procurement market. In terms of barriers, perhaps one complicating element is China's vast size and complex web of national, provincial, and local procurement practices and policies.

China's formal WTO accession also made it a signatory to other agreements, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Despite China's accession to that agreement, however, IPR protection remains a highly contentious issue between China and other countries. How would you evaluate China's progress on IPR since joining the WTO, and what role do you envision TRIPS and the WTO playing in future IPR progress?

Lamy: As we know, intellectual property enforcement poses significant challenges to many countries. China is a huge country, with many decisions in the hands of provincial and municipal authorities. It is therefore not difficult to imagine the challenges of IPR enforcement. My own sense is that China has improved its IPR protection and enforcement recently, but I also believe that more can be done. I believe this is a sentiment shared by the Chinese government itself—an important reason for this is the fact that protecting IPR is also in China's own interest. China is rapidly developing patents, trademarks, and copyrights of its own. As a means of encouraging innovation and invention, incentives are required. This means the inventor needs the assurance that he or she will retain ownership rights and that if it is a success, the inventor will benefit.

As to your last question, I see the TRIPS agreement as a big step forward in the overall IPR progress. And I believe WTO members will continue to review and improve the TRIPS agreement's provisions to keep up with the rapid development in technology.

Recently, many observers in the United States have focused on the role of state-owned enterprises and "state-supported enterprises" in China's economy. Chinese companies often benefit from preferences such as favorable financing regardless of their ownership structure, however. What role does the WTO have in addressing these types of benefits that affect whether there is a level playing field in China?

Lamy: The WTO has specific agreements that spell out the manner in which subsidies can be used. Generally speaking, the rule is that subsidies cannot undermine the position of foreign competitors in either China or third-country markets. As to the specifics of the Chinese situation, this has been a subject of dispute settlement activity so as a matter of prudence I will refrain from comment.

important as well. As far as the negotiating function of the WTO, and in particular the Doha Round, the picture looks less clear. We are witnessing an impasse in the negotiating role of the WTO. This impasse is evident between developed and emerging economies. Developed countries believe that emerging economies must make further contributions. Emerging economies believe further concessions should not mean aligning themselves with developed countries. It is important that we examine together the causes that have led to this situation and the role we think the WTO should play in the twenty-first century.

What role do you think sub-global trade agreements such as the Asia-Pacific Economic Cooperation (APEC) play in shaping the WTO agenda?

Lamy: APEC has played an important role in support of the WTO and the Doha Development Agenda. In the case

As a key player in the WTO, other countries have high expectations for China, and I hope China will continue to play a constructive role in the evolution of the WTO.

What do you expect to see from the next 10 years of China's WTO membership? What role do you envision China playing in the continued evolution of the WTO and the world trading system the WTO helps to arbitrate?

Lamy: China will continue to grow and its influence will expand. This much is true. China is unique, and in some ways it resists conventional definition. It is a developing country with world-class cities on its coast that offer everything you could find in a developed country. China is the world's largest exporter and second-largest economy, but average income is still far below that of advanced economies. Wages are rising and people are prospering, but 36 million households remain below the poverty line. Due to this complexity, it is of vital importance for China to think that its role in the multilateral trading system, with its newly gained strength, also comes with new responsibilities. As a key player in the WTO, other countries have high expectations for China, and I hope China will continue to play a constructive role in the evolution of the WTO. It is in China's fundamental interest to do so.

What major developments do you see in the WTO's future, and when do you expect the Doha Round (the current trade negotiation round of the WTO) to end?

Lamy: I believe that the WTO's work in surveillance and monitoring and its dispute settlement activity will remain vibrant and active in the coming years. The WTO's coordinating role in the Aid for Trade program will remain

of APEC, it's clear that the roles of this group and the WTO are complementary. One good example of this is trade facilitation where APEC has done some very good work in streamlining and harmonizing customs procedures. This has led to faster clearance times, more trade, and faster growth.

There are some 300 regional, plurilateral, and bilateral preferential trade agreements in place at the moment that differ in nature and content. As we have said in our recently released World Trade Report, governments enter into preferential trade agreements (PTA) such as this for a variety of reasons, but what is increasingly evident is that seeking preferential tariff treatment alone cannot explain the PTAs. Nearly 85 percent of world trade takes place at the WTO tariff rate rather than a lower PTA rate... It is clear, however, that such forums are being used to develop regional rules and regulations, and that this web, or noodle bowl, of regulations can confuse many entrepreneurs who find the cost and hassle of trading under so many different sets of rules simply not worth it. This explains why an Asian Development Bank survey found that only a quarter of businesses surveyed actually used the trade preferences available to them.

Having said all this though, it is evident that as long as the Doha Round continues to struggle, governments will seek to open markets through other means. Eventually we will have to move from co-existence with PTAs to greater coherence. Meanwhile, it is crucial to gain a better understanding of what these agreements contain by making full use of the WTO transparency mechanism.

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China Foto Press

Wishing for prosperity: China's economy has expanded rapidly since the country joined the World Trade Organization, but regional disparities remain.

China's Continuing Need for the WTO

China's WTO membership can help the country achieve economic reforms and greater prosperity.

James Bacchus

The advantages of World Trade Organization (WTO) membership have helped accelerate China's historic return to global economic prominence in the past 10 years. Since entering the WTO in 2001, China has benefited from WTO rules that lower tariff and nontariff barriers to trade for all WTO members and that prevent WTO members from engaging in trade discrimination against each other. Basic WTO rules that require non-discriminatory "national treatment" and "most-favored-nation treatment" for the traded products of WTO members benefit China worldwide. Without the legal entitlements and the legal protection of these rules, China's export boom might have gone bust, and Chinese exports would likely have been targeted worldwide for discriminatory protectionism.

Though China's WTO membership has helped boost its economy, the global financial crisis that began in 2008 and continues with a sluggish global recovery has shown that China can no longer depend on selling low-value-added goods to Western consumers for economic growth. For China's economy to expand, the country must climb the global ladder of comparative advantage. China must rely much less on exports and much more on domestic demand from an expanding middle class of consumers. Chinese membership in the WTO has already helped begin this process by facilitating openness and increasing competition in the country's economy. Conscientious compliance by China with WTO rules can accelerate the additional reform and restructuring within China that can help rebalance the country's economy. WTO membership will be even more essential for China's continued economic growth over the next decade.

China has made remarkable economic progress, but challenges remain

China's economy has risen rapidly—by opening and connecting with the complex supply chains of the wider world—since former PRC leader Deng Xiaoping's decision to open the Chinese economy to market forces in 1978. China has been one of the world's most successful economies, growing at an annual rate of at least 8 percent per capita since entering the WTO in 2001. Buoyed by hard work and benefiting from relatively low wages, China has risen to become the world's leading exporter and the world's second-largest economy after the United States. Once among the world's poorest countries, China now has nearly \$3 trillion in foreign exchange reserves, including at least \$1.1 trillion in the debt obligations of the United States.

Though the people of China can be proud of their economic accomplishments, the country still faces enormous challenges. For example, several million citizens have emerged from poverty in China, but in 2009 roughly 150 million Chinese were still living in extreme poverty on less than \$1.25 per day, according to the World Bank. The country lacks national social safety net, pension, and universal health insurance systems, and millions of new jobs are needed every year just to keep up with an increasing population. Rising prices are contributing to increasing wages, and thus to the loss of the lower labor cost advantage that has helped fuel much of China's rise in the global economy. The PRC government's efforts to create jobs and economic growth while fighting inflation are complicated by numerous fundamental institutional challenges, including overly-aggressive lending by state-run banks, local government debt totaling 27 percent of GDP, uncompetitive state-owned enterprises, and China's overall national economic regulation and governance structure.

For all its phenomenal growth, China's \$5.8 trillion economy remains, for now, roughly one-third the size of the United States' \$14.6 trillion economy—and China's population is more than four times larger than the US population. According to the International Monetary Fund, the per capita income in the United States was roughly \$47,000 in 2010—still more than six times the per capita income of about \$7,500 in China. Moreover, the per capita income of China's economically developed coast is several times that of the underdeveloped interior. China cannot hope to narrow significantly its remaining income gap with the United States and other long-developed countries without domestic rebalancing. To expand its economy further, PRC officials have said that China must shift from an export-led to a consumption-based economy. Many of the economic reforms needed to make this shift involve opening China

much more to foreign competition and to permitting foreign participation on equal terms in the Chinese economy. More openness will result from concerted compliance with China's treaty obligations as a WTO member.

Commitment to WTO processes

The general view among WTO members is that China has acted responsibly as an emerging leader in the organization

and has largely complied with WTO rulings. This may be because the basic benefits of WTO membership for China are clear to PRC leaders. Chinese products that face lower trade barriers in other countries because of WTO membership boost Chinese exports and thus contribute to Chinese prosperity. Without the benefits of WTO membership, many Chinese products would face far higher tariffs—taxes at the border that would diminish the competitiveness of Chinese products in foreign markets—as well as an array of discriminatory non-tariff barriers to trade that are illegal under WTO rules. In addition, the mandatory WTO dispute settlement process protects China from

unfair discrimination in trade by enforcing the international rule of law. China's first case in the WTO—a dispute in which China and other countries successfully challenged illegal restrictions on steel imports imposed by the United States in 2003—is just one example where China has prevailed in WTO dispute settlement.

Yet some at the highest levels of the PRC government seem hesitant to embrace the broader benefits of WTO membership despite the enormous potential for WTO rules to assist with China's economic transition. The PRC government is slow to implement some obligations and refrains from implementing others. For example, the government has refused to permit foreign companies to provide electronic payment services for credit card and other consumer transactions in China, despite China's clear obligation to permit free competition in such services under the WTO treaty. In numerous aspects of commerce, the openness, transparency, and fundamental fairness mandated by WTO rules can help the Chinese economy open further to the wider world. This can help create the freer and more open society that is essential to the establishment of an innovative value-added Chinese economy.

Policy concerns

In many ways, China continues to open its economy. Yet some of the PRC government's recent actions—such as restricting exports and implementing indigenous innovation policies that favor domestic industry—have caused foreign traders and investors to fear that China may be rigging the laws against them. In a number of critical arenas relating to WTO obligations and extending beyond WTO obligations, renewed state intervention

Quick Glance

- World Trade Organization membership has helped boost China's economy, but the country still faces many economic challenges.
- The PRC government must make further market reforms to rely less on exports and more on its rising middle-class consumers.
- Discriminatory policies—such as domestic innovation and government procurement policies—may weaken China's efforts to move up the global value chain.

seems to have supplanted market-oriented reforms, and China seems to have shifted away from a commitment to freer trade and investment toward a policy of protectionism.

Protectionism can seize market share for the moment, but it does not guarantee lasting value-added growth and is ultimately self-defeating. Protectionism insulates domestic producers from the incentivizing spur of competition and denies them the advantages of efficiencies and innovations that are supplied by foreign trade and investment. For example, US manufacturers have argued that trade barriers against Chinese steel and other imports have kept the US steel, auto, and other industries that use steel in their production from being as competitive as they could be.

China is certainly not the only country that boosts its domestic enterprises. The United States and others have likewise flirted with a sort of economic nationalism after the global financial crisis. Economically, critics have argued that the US government's "Buy American" policies can be as self-defeating as the PRC government's "Buy Chinese" policies. Protectionism would be especially harmful to China now because it would undermine China's attempts to shift toward an advanced and innovative economy based on domestic consumption and value-added production. Chinese workers and companies would also find it more difficult to move up the global competitive value chain.

The PRC government should focus on actions and inactions that may discriminate against foreign commerce and that, though intended to strengthen China, actually weaken China's ability to move up the global value chain. Some examples of self-defeating policies, which have far-reaching WTO implications, follow.

Government procurement

Government purchases account for about 20 percent of China's GDP. A decade ago, China agreed to be bound by WTO rules that forbid discrimination in government procurement, but China has still not signed the WTO Agreement on Government Procurement. The PRC government recently agreed to eliminate some catalogues that granted preferences to indigenous innovation products during government procurement, but concerns about discriminatory practices in government procurement remain (see p.50). China's economic transition will not be advanced by favoring higher-priced and lower-quality domestic providers over lower-priced and higher-quality foreign providers in China's government purchases. Many foreign government officials and companies hope China will sign the government procurement agreement soon.

Domestic innovation

The PRC government has engaged in efforts to create value-added growth by favoring strategic industries that promote indigenous innovation. The government in late 2010 released a plan to develop seven strategic industries to drive economic growth over the next 10 years. The plan encourages domestic innovation in industries such as biotechnology, energy

efficiency, information technology, and new-energy vehicles. Not only are many of these efforts to prop up inefficient state-owned enterprises inconsistent with WTO rules, they are also inconsistent with China's aim of creating comparative advantage. The innovation needed to take China up the global value chain is much more likely to occur in an environment with the free exchange of ideas—one that includes the fair and equal treatment of foreign trade and investment.

Intellectual property rights (IPR)

Despite clear WTO commitments, foreign companies and foreign IPR holders complain that the PRC government mainly offers lip service in response to pleas to protect foreign IPR. They stress that occasional crackdowns are no substitute for consistent enforcement. Pirated and counterfeited goods are rampant in China, and pirating and counterfeiting employ millions of Chinese. But China can move up the global value chain and improve its overall standard of living only by vigorously upholding WTO rules that require the enforcement of patents, trademarks, copyrights, and other IPR.

Export restructuring

China's future as a value-added economy will not be served by an increasing array of taxes, quotas, and other restraints on exports of rare earth elements and other vital raw materials. Many of these restrictions may violate WTO rules and are inconsistent with China's own voracious hunger for a host of raw materials and basic commodities needed to fuel growth. Perhaps more than any other country, China depends on imports of basic commodities and raw materials—iron, oil, coal, soy, and much more. If China is free to impose such export restrictions, its trading partners may also wish to do the same, which may hurt China in the long run.

WTO disputes

Continuing to resist protectionism by complying with WTO rules and enhancing WTO commitments can help China immeasurably in making the shift up the global value chain. A number of China's recent policy initiatives raise serious legal issues under WTO rules that invite recourse by other WTO members to dispute settlement. For example, Japan, the United States, and the European Union have stated that they will consider pursuing WTO dispute settlement if China continues policies that restrict exports of rare earth elements essential to manufacturing many high-tech products. In July 2010, the PRC Ministry of Commerce capped export quotas on China's rare earth minerals for the second half of 2010—reducing exports by 72 percent over the same period in 2009. Binding dispute settlement decisions could compel China to reconsider the discriminatory aspects of the rare earth restrictions and other recent initiatives under legal threat of economic sanctions by other WTO members.

Continued on page 62



Chinese views of the World Trade Organization have been shaped by the country's economic success during the last 10 years.

WTO Accession, Globalization, and a Changing China

The views of the Chinese government and public have changed over the years, but most Chinese believe the country's World Trade Organization membership has benefited China.

Wang Yong

When assessing China's World Trade Organization (WTO) membership, it is helpful to examine the past 10 years in the context of major world trends, such as globalization. It is also important to explore the relationship between China and the multilateral trading system and the implications of WTO membership on

China's ongoing economic and social transformations. Though China has faced problems as it has opened to world trade, the overall gains from WTO membership have exceeded the losses. Because of China's rapidly rising interests in an open global trading system, the country's support of the WTO will likely remain strong in the next decade.

Public perception of the WTO

Many people in China have changed their views of the WTO over the years. In the 1980s, many Chinese viewed the General Agreement on Tariffs and Trade (the precursor to the WTO) and the WTO as “clubs of the rich,” in which wealthy, developed countries imposed rules on poor, weak developing nations. Negotiations over the terms of China’s WTO accession took more than 15 years, but the drawn-out negotiations served as a driver of market-oriented reforms and helped educate the public and the government about the multilateral trading system. To ease the overall doubts about the long-term benefits of the multilateral trading system, the Chinese government and academia made many efforts to educate the public, including publishing several thousand books about WTO rules. The government also modified more than 2,300 national laws and regulations to adapt to WTO commitments, while localities modified or canceled 190,000 related local laws and regulations, to improve policy transparency and ensure conformity with WTO rules.

Rapid economic growth has been the most convincing factor in reshaping popular opinions of the WTO, however. Since China joined the WTO in 2001, the country’s gross domestic product (GDP) has increased at an average rate of more than 10 percent per year, and China has become one of the largest trading nations. In 2000, the last full year before China joined the WTO, China was the world’s seventh-largest exporting country and the eighth-largest importing country. In 2010, China became the world’s largest exporter and second-largest importer of goods.

Investment activity also showed a similar surge after WTO accession, with China becoming one of the hottest destinations for foreign direct investment (FDI). In the post-WTO accession decade, China attracted \$653.1 billion in FDI, with an average increase of 9.5 percent a year. In 2010, FDI coming to China reached \$105.7 billion, nearly 1.3 times the 2000 level. At the same time, the country began to emerge as a major world investor. In 2010, Chinese outbound investment reached \$67.8 billion, with accumulated outbound investment totalling more than \$300 billion dollars (see p.34). China has become a big creditor nation as well. For example, China has purchased more than \$1 trillion in US Treasury bonds, becoming the US government’s largest creditor.

Analysts generally consider China’s WTO accession and corresponding integration into the global economy as two of the most important factors that contribute to China’s rapid economic growth. Past surveys have shown that the notion of the WTO as a “public good” has become more widespread in China since the country’s 2001 WTO accession. The public

now considers the WTO as one of the most widely recognized international organizations in China, along with the United Nations and the World Health Organization.

Concerns about opening up

Though recognized as beneficial to China’s economic development, the WTO regime and globalization have raised questions for many people in China. For example, some government officials and analysts have argued for a better balance between the objectives of free trade and development and between WTO members from developed countries and developing countries. Through the rapid growth of processing trade, China is positioned between developed and developing countries, in that it shares some trade concerns with both groups. In the eyes of PRC officials, a more open trade regime will help maintain export competitiveness. At the same time, however, China sees the need to accommodate WTO developing nations’ requests to further development objectives.

Impact of the global financial crisis

The global financial crisis has also changed the PRC government’s perception of the risks and benefits of being a player in the global economy. For example, when export demand fell, PRC leaders realized that China must transition away from an export-led growth model and develop a more domestic-demand driven economy. To deal with declining external demand, the PRC government implemented a stimulus package that totalled ¥4 trillion (\$626 billion) over three years and allowed China to maintain a high economic growth rate in 2009 (9.2 percent) and 2010 (10.4 percent).

The financial crisis also sparked increased desire by developing countries in the WTO to press for more balanced international institutions to rectify the disproportionate influence of some large-trading countries in the international economic governance system. Many observers in China believe that the West, and the United States in particular, has a dominant influence within international economic institutions such as the International Monetary Fund, the World Bank, and the WTO—with developing countries largely underrepresented. To help stabilize the global economy, many Chinese believe that China should continue to press for reforms of international economic institutions that will benefit all, which includes increasing the representation of developing countries within these institutions.

Commitment to regional cooperation and multilateral regimes

Though China is committed to multilateralism through the WTO, the country increasingly has been engaged in different forms of regional cooperation in East Asia and

Quick Glance

- Since China’s 2001 World Trade Organization (WTO) entry, many Chinese have changed their views of the WTO and now see the organization and globalization in a better light.
- The PRC government has some concerns about the global trading system—and China’s trading partners have some concerns about the country’s participation in the WTO.
- Given the PRC government’s goals of advancing China as a global player, the country will likely open its markets further.

elsewhere, following the examples of the European Union, the United States, and many developing countries. Before the Asian financial crisis in 1997, China was sensitive to sovereignty issues and somewhat sceptical of regional cooperation. The Asian financial crisis, however, encouraged PRC leaders to adopt a more proactive approach to such cooperation. China has now reached 10 free-trade agreements (FTAs) with 31 countries and areas, with the China-Association of Southeast Asian Nations FTA the most prominent. China's 12th Five-Year Plan (2011–15) defines regional cooperation as a top priority of foreign economic relations. This latest emphasis on regional cooperation has developed as a response to competitive liberalization in other regions of the world—to help developing countries catch up to developed countries.

Chinese academics tend to interpret China's regional cooperation in more comprehensive perspectives. Some academics believe such cooperation serves as a form of insurance, by absorbing some of the risks of the global economic and business cycles. Others believe it is a useful tool to enhance security relations among neighboring countries, because regional cooperation cultivates mutual trust and common interests. Regional cooperation is also seen as a way to increase China's voice and influence in the international community.

In general, officials and academics in China do not believe regionalism conflicts with multilateralism if the regional FTAs help to liberalize trade and investment. Many PRC officials perceive, however, that the best way for countries to liberalize trade is for all WTO members to work together to strengthen the multilateral trading system and benefit all players.

China's role in the WTO

PRC leaders and analysts argue that China's membership in the WTO has expanded the universality of WTO membership and strengthened the multilateral trading system. As the second-largest economy and a major trading nation, China's WTO membership—and governing of its economic activities by WTO norms—supports the organization.

China's role in the WTO will be shaped by its association with other developing countries, including emerging economies. Since the PRC government views China as part of the developing world, the government believes multilateral trade talks, including in the WTO's current round of trade negotiations, should more thoroughly consider the needs of developing countries. Some of the specific needs include more trade for development and intellectual property rights (IPR) terms that support public health. The PRC government believes developed and developing members must reach a consensus on how to balance the concerns of development with the goals of opening more markets.

Criticisms of China as a global player

Many of China's trading partners have raised issues with China's participation in global trade. For example, some

trading partners are concerned about China engaging in "protectionist" measures while it aims to restructure its growth model. Foreign companies complain that the PRC government boosts domestic companies and gives domestic companies an unfair advantage in China's government procurement market (see p.50). Global players also complain that the PRC government is not doing enough to protect IPR—mainly that enforcement of IPR rules is inconsistent and weak.

Despite these complaints, FDI statistics indicate that China remains an attractive destination for foreign investment. Also, recent policies show that the government is working to improve China's trade and investment environment. For example, in recent months PRC leaders have been more responsive to international business complaints about regulations that link indigenous innovation with government procurement and have been loosening such regulations. The government also launched a special nine-month IPR protection campaign (see p.42). In recent years, the PRC government has aimed to avoid violating WTO rules while implementing measures to restructure China's growth model and contribute to global rebalancing.

Greater transformation ahead

China's economic rise in the last 30 years is not an isolated event. Many Chinese attribute the country's economic gains to the pragmatic spirit of the political leadership, the creative and industrious spirit of Chinese people, and the contribution of international capital, talent, and management.

China's WTO accession has had a huge impact on the country, however, fostering tremendous transformation and expanding the country's participation in the global economy. The prospect of greater economic and social transformation is unfolding, particularly if the PRC government extends its support to the expanding private sector in China. Chinese society has also come to demand greater governmental accountability and increased regulatory transparency. Though uncertainties remain, China will move into a future that shares more political and economic values and practices with the rest of the world.

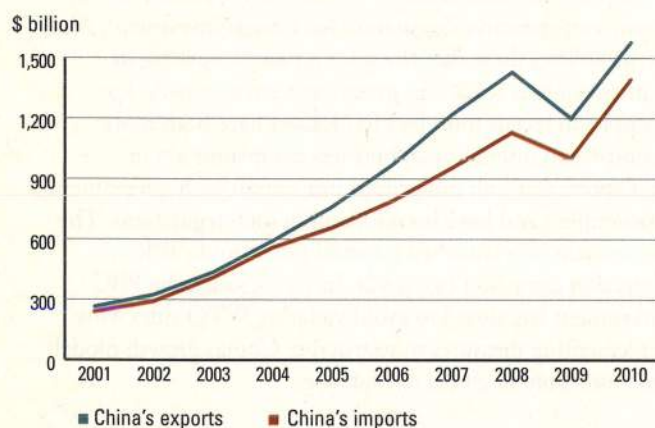
In the next decade, analysts expect China to be integrated more fully with the global economy. To ensure the world market remains open to Chinese exports and investment, China will open the country further, based on WTO rules. And, as time goes on, it is likely that China will start to play a larger role in exercising responsible WTO leadership. A more open, diverse, and prosperous China will make a greater contribution to world peace and development. 完

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Since its WTO entry, China has become

China's trade with the world has surged, with import volumes closely following exports.

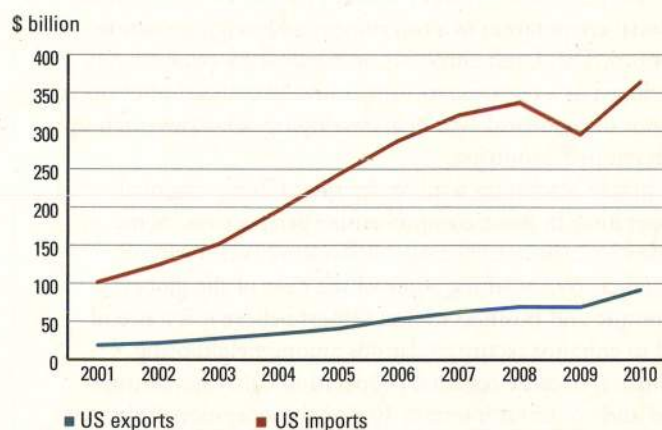
China's Trade with the World, 2001–10 (\$ billion)



Source: PRC General Administration of Customs, *China's Customs Statistics 2011*

US-China trade has steadily increased since China joined the WTO.

US Trade with China, 2001–10 (\$ billion)



Source: US Census Bureau

The United States has more than doubled its exports of top goods to China.

US Exports to China, 2001 and 2010 (\$ billion)

HS#	Commodity	2001	2010	% change
85	Electrical machinery and equipment	3.4	11.5	238.2
84	Power generation equipment	4.1	11.2	173.2
12	Oil seeds and oleaginous fruits	1.0	11.0	1,000.0
88	Aircraft and spacecraft	2.4	5.8	141.7
90	Optics and medical equipment	1.2	5.2	333.3
39	Plastics	0.8	4.8	500.0
87	Vehicles, excluding rail	0.2	4.5	2,150.0
28, 29	Inorganic and organic chemicals*	0.5	4.5	800.0
47	Pulp, paper, and paperboards	0.3	3.0	900.0
74	Copper	0.3	2.9	866.7

Notes: Ranked by top 10 exports in 2010; HS = harmonized system;

*Calculated by USCBC

Source: US International Trade Commission (ITC)

US imports from China have also increased substantially since China entered the WTO.

US Imports from China, 2001 and 2010 (\$ billion)

HS #	Commodity	2001	2010	% change
85	Electrical machinery and equipment	19.7	90.8	360.9
84	Power generation equipment	13.7	82.7	503.6
61, 62	Apparel*	6.4	28.8	350.0
95	Toys, games, and sports equipment	12.2	25.0	104.9
94	Furniture	7.5	20.0	166.7
64	Footwear	9.8	15.9	62.2
39	Plastics	3.2	9.6	200.0
72, 73	Iron and steel*	2.3	8.4	265.2
42	Leather and travel goods	3.9	7.5	92.3
90	Optics and medical equipment	2.8	7.0	150.0

Note: Ranked by top 10 imports in 2010; *Calculated by USCBC

Source: ITC

a major player in global trade

China's exports of ships, vehicles, and power-generation equipment have grown dramatically since 2001.

China's Top Exports, 2001 and 2010 (\$ billion)

HS#	Commodity	2001	2010	% change
85	Electrical machinery and equipment	51.3	388.8	657.9
84	Power-generation equipment	33.6	309.8	822.0
61, 62	Apparel*	32.4	121.1	273.8
72, 73	Iron and steel*	8.3	68.1	720.5
90	Optics and medical equipment	6.4	52.1	714.1
94	Furniture	7.6	50.6	565.8
28, 29	Inorganic and organic chemicals*	7.5	43.2	476.0
89	Ships and boats	1.9	40.3	2,021.1
87	Vehicles, excluding rail	4.8	38.4	700.0
64	Footwear	10.1	35.6	252.5

Notes: Ranked by top 10 exports in 2010; *Calculated by USCBC

Source: PRC General Administration of Customs, *China's Customs Statistics 2011*

China's imports of certain industrial byproducts and vehicles have risen by more than 1,000 percent.

China's Top Imports, 2001 and 2010 (\$ billion)

HS #	Commodity	2001	2010	% change
85	Electrical machinery and equipment	55.9	314.4	462.4
27	Mineral fuel and oil	17.5	188.7	978.3
84	Power-generation equipment	40.6	172.3	324.4
26	Ores, slag, and ash	4.2	108.6	2,485.7
90	Optics and medical equipment	9.8	89.8	816.3
39	Plastics	15.3	63.7	316.3
28, 29	Inorganic and organic chemicals*	10.6	58.2	449.1
87	Vehicles, excluding rail	4.5	49.5	1,000.0
74	Copper	4.9	46.1	840.8
72, 73	Iron and steel*	13.0	34.5	165.4

Note: Ranked by top 10 imports in 2010; *Calculated by USCBC

Source: PRC General Administration of Customs, *China's Customs Statistics 2011*

The United States, Japan, and Hong Kong were China's top trade partners in 2010.

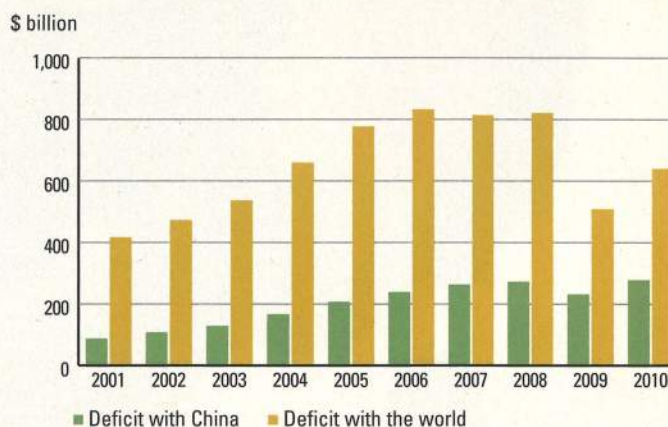
China's Top Trade Partners, 2010

Rank	Total trade	Imports from	Exports to
1	United States	Japan	United States
2	Japan	South Korea	Hong Kong
3	Hong Kong	Taiwan	Japan
4	South Korea	United States	South Korea
5	Taiwan	Germany	Germany
6	Germany	Australia	The Netherlands
7	Australia	Malaysia	India
8	Malaysia	Brazil	United Kingdom
9	Brazil	Thailand	Singapore
10	India	Saudi Arabia	Italy

Source: PRC General Administration of Customs, *China's Customs Statistics 2011*

The US trade deficit with China has roughly tripled over the last decade.

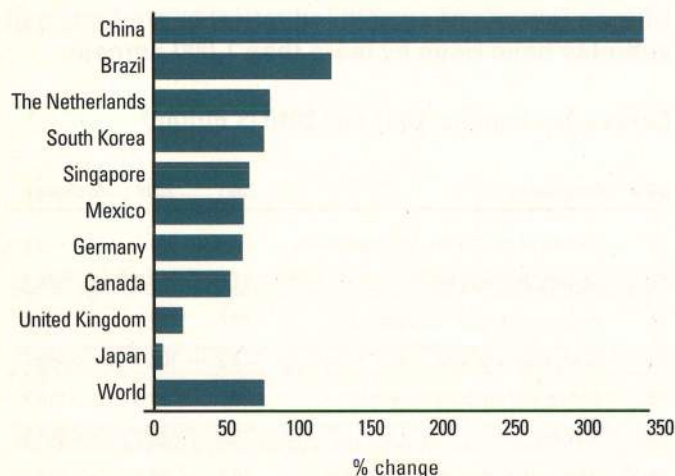
US Trade Deficit with China in Goods, 2001–10 (\$ billion)



Source: US Census Bureau

**US exports to China far outpace
US export growth in other markets.**

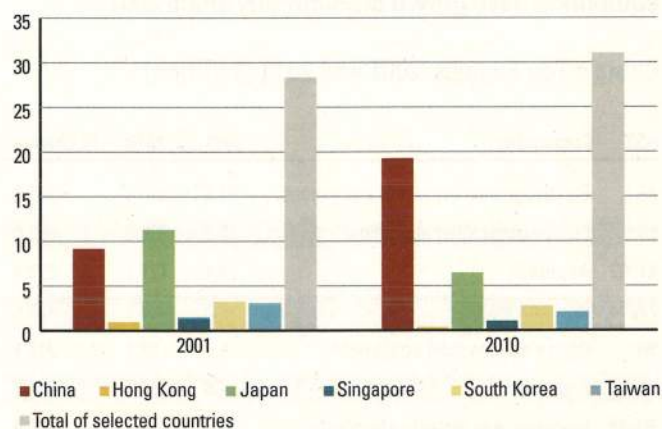
US Export Growth to Top Markets, 2001–10



Ranked by top 10 exports in 2010
Source: ITC

**While US imports from other East Asian
economies have dropped, imports from China
have compensated for the decline.**

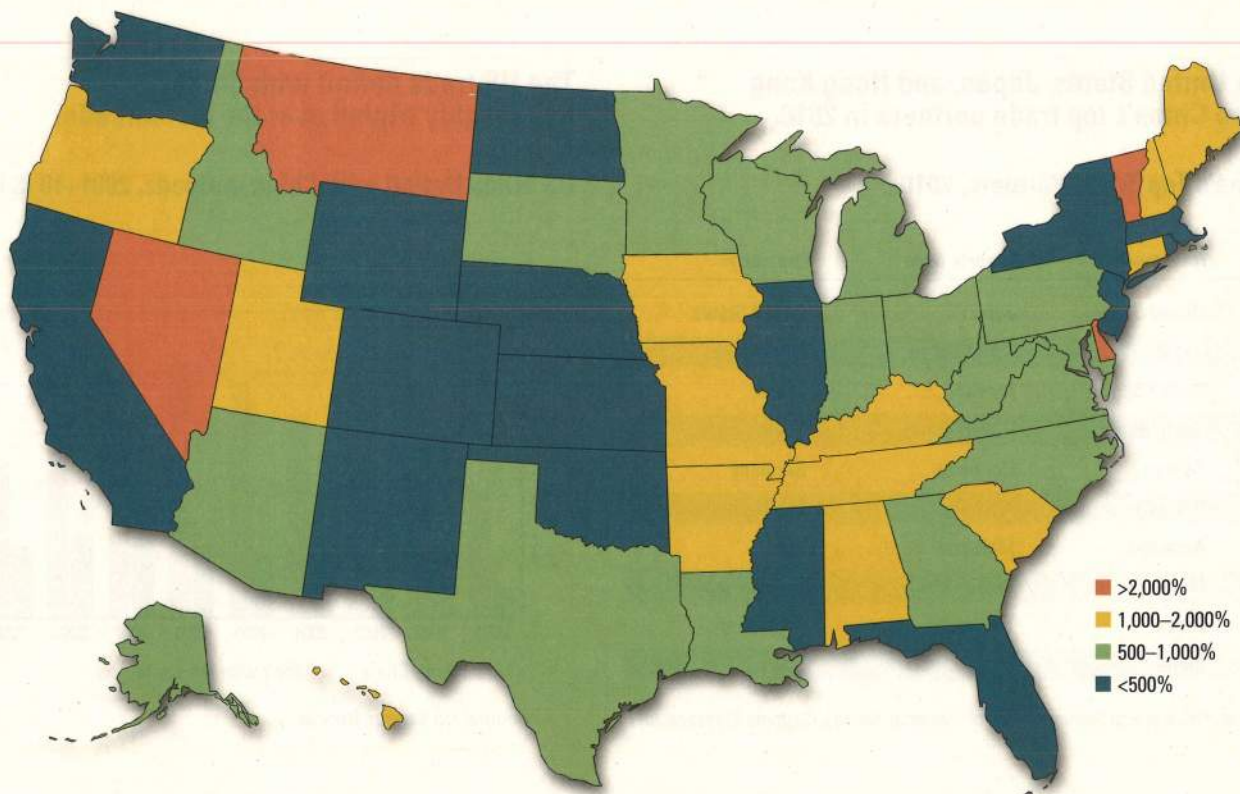
**US Goods Imports from Selected Economies
(% of total US imports)**



Source: ITC

Most US states have seen dramatic rises in exports to China over the last decade.

State-by-State Growth in Goods Exports to China, 2000–10



Source: US Department of Commerce; US-China Business Council, *US Exports to China by State, 2000–10*

Foreign direct investment (FDI) in China has more than doubled since 2001.

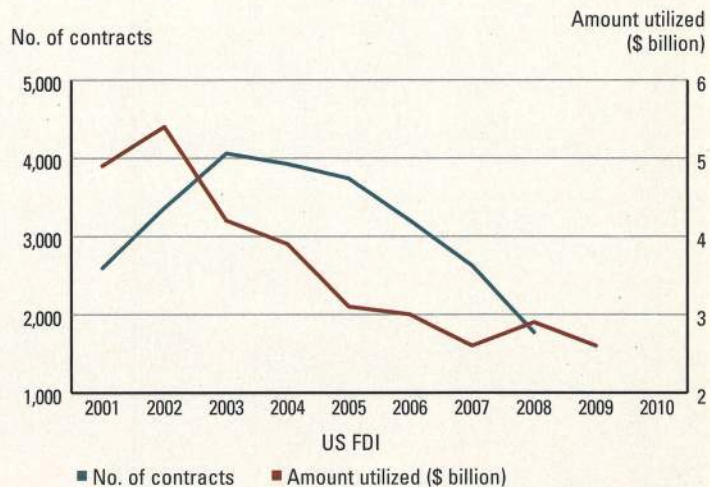
Foreign Direct Investment in China, 2001–10

Year	No. of contracts	Amount utilized (\$ billion)
2001	26,140	46.9
2002	34,171	52.7
2003	41,081	53.5
2004	43,664	60.6
2005	44,019	72.4
2006	41,496	72.7
2007	37,892	83.5
2008	27,537	108.3
2009	23,435	90.0
2010	27,406	105.7
% change 2001–2010	4.8	125.4

Source: PRC Ministry of Commerce (MOFCOM)

US investment in China dropped between 2002 and 2008.

US FDI in China, 2001–08

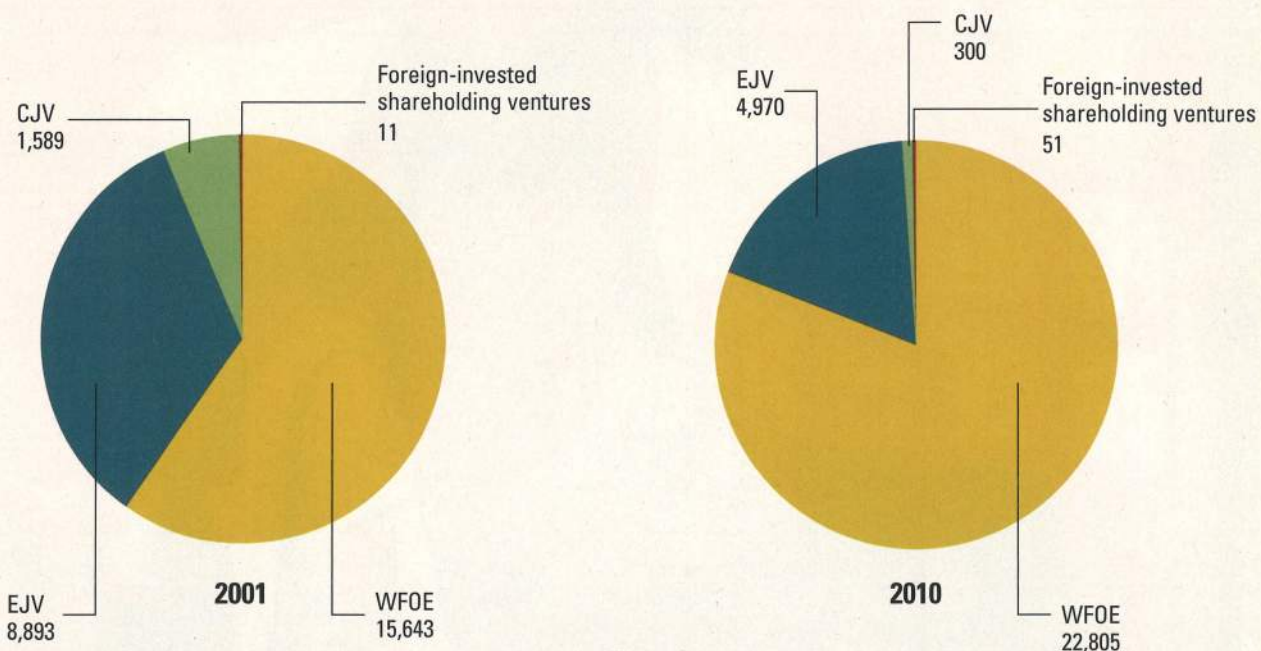


Notes: Certain data for 2009 and 2010 is unavailable.

Source: MOFCOM

As the investment environment has liberalized and matured, more foreign investors have set up wholly owned subsidiaries in China.

No. of FDI Projects by Investment Vehicle Type, 2001 and 2010



Note: EJV = equity joint venture; CJV = cooperative joint venture; WFOE = wholly foreign-owned enterprise

Source: MOFCOM

Re-Thinking the Game Plan

With China's sports industry in flux, foreign companies have more investment opportunities in the sector.

Matt Beyer



Chinese tennis star Li Na rose to fame outside of China's traditional sports-training system, causing authorities to consider system reforms.

On a steamy afternoon this summer in Beijing, members of the sports press, the old guard of China's basketball coaching community, and select high-ranking PRC General Administration of Sport officials bid farewell to Yao Ming, the now-former center who played for the National Basketball Association's (NBA) Houston Rockets, at a grandiose retirement ceremony. While Yao was honored for his individual accomplishments, posters emphasizing team spirit and glory for country donned the walls as they have for years. Despite the surroundings, no one questioned that Yao—an international megastar—deserved the attention.

Though Chinese media mourned Yao's departure from the NBA as if basketball in China was dead, the same media outlets were tracking and following the trials and tribulations of the NBA lockout in the United States and its potential opportunities for the Chinese sports industry. Because the NBA lockout will likely delay the upcoming NBA season, foreign companies will have food for thought on how to tap the sports market in China, where there are as many business opportunities as there are challenges.

Professional sports is a highly regulated industry in China, but the PRC government is committed to opening it more to the private sector. The government also aims to expand the industry to improve people's fitness, provide positive social activity outlets, provide world-class entertainment, and create national champions. Companies that help China use sports to boost physical fitness among youths, create profitable sporting events, and develop elite domestic talent will receive strong government support to help raise sports standards in China.

China's sports system

Yao's retirement has forced China's sports regulators to re-evaluate their role, which primarily has been to drive a system that aims to win Olympic gold medals. In China, sports officials and coaches select prospective athletes at a young age and place them into specialized training schools, where they are isolated and focus almost completely on repetition-based training regimens. Outside of this system, few Chinese citizens participate in recreational sports, and spectator-sport culture is generally nationalistic, complemented by entertainment elements surrounding the game.

The current Chinese system dominates in sports such as gymnastics and diving, but it has limited success in team sports, despite many Chinese stars playing professionally in overseas leagues. In basketball, China's best performances in the 2004 and 2008 Olympic Games earned them eighth place in the world. And the Chinese national soccer team, currently ranked 73 in the world, is an object of derision. PRC Vice President Xi Jinping, who is most likely to become

China's next president, has identified the reform of Chinese soccer as a top soft power priority.

From a business perspective, the government regards sports as a cultural industry; from a political perspective, the government sees sports as an educational tool. Patriotism is at the core of sports. Even if an elderly Chinese person does not follow track and field, he will cheer for Liu Xiang, one of China's top track and field athletes, because Liu has been lifted up as a national hero for his 2004 Athens gold medal. In contrast to the Chinese entertainment industries (particularly film in recent years) that have gained significant private funding and

international attention, Chinese domestic sports are playing catch-up.

Exceptions exist, however, such as professional tennis player Li Na—Nike, Inc.'s current gold mine in China, who until recently was the domestic sports industry's *persona non grata*. The tattooed legend-in-the-making fought for the right to choose her own coach and practice away from official sports authorities. This caused many in the system to ostracize her. Her victory in the 2011 French Open forced even the most conservative system stalwarts to consider reform of the state training system.

Quick Glance

- China's sports industry is highly regulated and underdeveloped.
- The PRC government has welcomed foreign companies to help boost certain aspects of the country's sports industry.
- Companies that can expand recreational sports, create profitable sports facilities, and improve publicity are in demand.

Profitable Chinese champions

Yao became China's first number one draft pick in a major international sports league such as the NBA. A country where soccer was the dominant sport quickly focused on basketball shortly after the Houston Rockets grabbed Yao in June 2002. According to a 2003 Chinese press report, 72 percent of men aged 25–42 identified themselves as NBA fans, and 52 percent of that demographic watched at least one NBA game per week. A 2008 *New York Times* article reported the NBA had more than 450 million fans in China. Riding in the wake of the Yao phenomenon, the NBA ramped up its presence in China by adding more than 100 employees across the country and creating NBA China, a separate entity from the NBA headquartered in New York.

The NBA has not been the only sponsor to profit from the Yao phenomenon. Nike's China revenues rose from around \$200 million in 2002 (the year Yao was drafted) to \$1 billion in 2008. Other international apparel brands, such as Adidas and Reebok (Yao's apparel sponsor), have also profited from the NBA, bringing their signed star athletes to China for annual tours during the offseason. Chinese brands have caught on quickly, with Li Ning Co. Ltd.—an athletic shoe and apparel company founded in 1990 by former Chinese Olympic gymnast Li Ning—signing Cleveland Cavaliers player Damon Jones in 2006 and Miami Heat megastar Shaquille O'Neal soon after. The Chinese sportswear company Peak Sports Products Co., Ltd. quickly followed, and it now sponsors 14 NBA players. But the largest deal by

far went to Anta Sports Products Ltd. in 2010, when Boston Celtics player Kevin Garnett broke his "lifetime" contract with Adidas to sign on with Anta.

Yao cashed in as well, taking the top spot on the Forbes China Celebrity List each year from 2005 to 2010. He has represented multiple brands, including Apple, Bank of China, China Life, China Unicom, Oreo, and Pepsi.

Observers can draw two conclusions from the Yao phenomenon. First, Chinese champions sell big. If a Chinese player can obtain star status in a league with diehard NBA basketball fans or English Premier League soccer fans, people will idolize them and corporate dollars will follow. Second, though Yao's emergence on the sports scene was largely due to the state sports authority's careful planning, China's market-oriented reforms are driving the industry into a new era where stars will come from outside the government system.

The direction of change

Following the release of China's 12th Five-Year Plan (FYP, 2011–15) in May 2011, the PRC General Administration of Sport released its own five-year plan. The sports administration's plan aims to raise the share of China's GDP spent on the sports industry from less than 0.5 percent (\$23 billion) to 0.7 percent (\$62 billion) over the period. Commentators often contrast China's sports industry's share of GDP to that of the United States, which is 2.8 percent (\$414 billion). The composition of sports industry spending also differs between China and the United States. The value of China's sports industry is made up mostly of sporting equipment and apparel production (71 percent), which is export driven. Retail sales (9 percent), ticket sales (7 percent), and recreational league fees (4.5 percent) remain relatively insignificant. In the United States, sporting good sales (50 percent), recreational participation fees (22 percent), and sports medicine (13 percent) make up the lion's share of the industry's value.

China's sports leadership and a select group of central government bodies will focus on expanding the sports services sector aggressively over the next five years as part of the sports administration's 12th FYP. Related goals are to create a participation-oriented domestic sports culture and provide high-quality sports products to China's rising group of consumers with disposable income. The PRC government has welcomed foreign companies to help with these initiatives. Top priority items include management of recreational activities and sports facilities and sponsorship.

Expanding recreational sports to foster a Chinese sports culture

Sports play an underappreciated role in China's educational system. For instance, over the last 15 years, changing eating habits have had a dramatic influence on the figures of Chinese youth. This phenomenon is not unique, however. Young people in the United States are supersizing, despite the strong sporting culture in their country. But

China's health risks could increase, since physical education classes have been replaced by hours of desk work preparing for competitive exams.

Two of the PRC State Council's main goals are to make education more well-rounded, which includes integrating sports into children's lives for exercise, and to develop new professional talents. Many of the 4 million sports-related jobs that the government aims to create over the next five years will help reach these objectives. Companies that support programs integrating education and sports will receive a welcoming ear—and in many cases generous funding—from central and local government authorities. The State Council has launched "a national fitness program" for the 12th FYP period, which encourages companies and communities to engage in physical activity. Chinese and foreign businesses that get behind such policy initiatives and organize mass sports events to engage Chinese people are encouraged. For example, in recent years the Chinese sports brand Anta has held an annual long-distance race. Because it matches government fitness objectives, Liu Peng, the minister of the General Administration of Sport, took part in last year's race as a symbol of the government's support. These types of events can also increase a company's brand value and may be regarded as corporate social responsibility activities.

Creating profitable sports facilities in China

According to the General Administration of Sport, in 2007, China had 812,118 sports facilities, 63 percent of which met PRC government standards to be considered official sports facilities. Out of all the sports venues, only 3.4 percent registered profits: 2.8 percent made profits of ¥100,000 (\$15,626) or less, 0.5 percent made profits of ¥100,000–¥500,000 (\$15,626–\$78,126), and only 0.1 percent of the entire group made more than ¥500,000 per year.

With a glut of facilities functioning as black holes for government funding, the government is on a mission to make these facilities self-sufficient—and profitable. Making facilities available to local recreational leagues could provide revenue to most small facilities. In 2007, 26.8 percent of facilities were open for public use, however, making the execution of this plan a challenge.

Usage restrictions are likely to change, as the PRC government looks to foreign companies to provide management solutions for China's numerous sports facilities. This will include general operations advising, maintenance and renovation consulting, and event management and booking. Though companies have struck notable deals in Beijing and Shanghai—including sponsorship of the MasterCard Center and Mercedes Benz Arena, both managed by US-based Anschutz Entertainment Group—these deals are just the tip of the iceberg. Companies that can localize effectively will be able to take advantage of many opportunities. The construction of new venues on par with international standards will require multinational

corporations' (MNCs) design and management expertise that is not yet produced by domestic manufacturers.

Leveraging athletes and events for publicity

China's sports authorities consider the country's top athletes, many of which are Olympians, precious resources and are hesitant to relinquish control of the athletes to outside parties—especially foreign companies. This is slowly changing as the PRC government recognizes the need for MNCs to invest in athletes and sports events. For example, New York-based sports and media heavyweight IMG (formerly International Management Group) sponsored Li Na in her rise to fame. Team Yao is also a mix of local and overseas Chinese and foreign players.

The government also hopes athletic marketers will bring the athletes they represent together with corporate sponsorship resources to hold large-scale athletic events. Since China experienced the success of the 2008 Beijing Olympics and the 2010 Asian Games in Guangzhou, the PRC government's desire to hold large-scale sporting events has only increased. The government will support foreign companies that can bring Chinese athletes major deals and organize global-scale sports events. Ambitious local governments will be increasingly keen to explore new opportunities to feature their jurisdictions in internationally recognized events.

Training agents

The PRC government is focused on standardizing the sports agency industry, and the General Administration of Sport held its first-ever national sports agent certification exam in January 2011. Though market opportunities continue to expand for Chinese athletes, officials are concerned about the current unregulated nature of athlete management, where "agents" with no credentials endanger the careers and personal finances of athletes. The PRC government will welcome foreign agencies with strong legacies of successful athlete management in the United States and Europe to help raise the marketing values of China's domestic athletes and raise a class of professional Chinese agents.

Positive partnerships are key

As long as the sports industry is highly regulated, aligning business strategy with the government's political and developmental goals is key to any plan to tap the market. MNCs should position themselves as partners for China's sports industry to facilitate a sports culture and develop Chinese talent. Advising local partners on how to best leverage China's sports resources as part of a marketing strategy will be important to gain trust and a long-term market presence.

MNCs are seen as the ambassadors of sports culture from abroad in China, partly because they have been more willing

to spend big to use athletes to engage consumers. It is important to realize that the days when a company could export a popular foreign athlete to China to sell products by having the athlete stand in front of a screaming crowd with a logo backdrop are coming to an end as consumer demands for two-way brand engagement rise. For example, many NBA fans in China are no longer content to just watch interviews on TV to see their favorite players. Internet companies such as Sina and its micro-blog platform are leading the way by getting NBA players online and in live daily chat sessions with their fans (see the *CBR*, January–March 2011, p.28).

Forming a platform for meaningful exchanges between Chinese and American athletes could boost PRC officials' status and endear companies to the Chinese people. With the current NBA lockout in effect, many people are exploring various theories on how to leverage the opportunity to bring NBA stars to China. It may be exciting to think of LeBron James dribbling down the court in Hangzhou, Zhejiang, but in the interest of protecting the long-term development of the Chinese Basketball Association (CBA), the government has announced that no players under contract with an NBA team can sign with the CBA. This is different to the Euroleague, as well as other global leagues, which are allowing "NBA outs" for NBA players to return to the NBA when the current lockout is resolved. Though the lockout could have brought big name players to China and record ticket sales, the PRC government was not interested in foreign players using the CBA to make quick money and leave. Some analysts suggest that an effective alternative plan would be to organize a mini-league of star NBA players and China's top domestic talent playing side-by-side in a series of exhibition games across China. This plan would give fans the opportunity to see NBA players up close and on primetime TV. Local governments, especially in second-tier cities hungry for international entertainment events, would likely welcome the attention to their cities and could leverage such events to raise the profiles of local companies throughout China and abroad. It would also be an easy decision for any NBA players or MNCs looking to raise their profiles among China's basketball fans to sign on.

Though Yao's announcement may have been one of China's biggest sports stories for 2011, the domestic sports industry is developing rapidly and filled with opportunity. The PRC government will continue to encourage companies that position the use of sports to improve the daily lives of Chinese people. 完

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PRC officials confiscated millions of dollars' worth of counterfeit goods in its recent campaign, but companies worry that intellectual property enforcement activities will slow now that the campaign has ended.

China's Special Campaign to Combat IPR Infringement

Now that China's recent intellectual property rights enforcement campaign has ended and the government has tallied initial results, companies question how long the positive impact will last.

Brad Williams and Danielle Mihalkanin

PRC Premier Wen Jiabao introduced a campaign to combat intellectual property rights (IPR) infringement in China in fall 2010. Running from October 2010 to June 2011, the Special Campaign to Combat IPR Infringement and the Manufacture and Sales of Counterfeit and Shoddy Commodities aimed to crack down on a broad range of infringing activities, such as producing and distributing counterfeit goods, pirating audio-visual media, and trading infringing goods.

Through the campaign, the PRC government sought to strengthen foreign investors' confidence in IPR protection and improve the domestic intellectual property environment. Many companies wondered, however, whether the campaign would offer concrete solutions and solve IPR protection problems in the long term, or whether it would only provide short-term results. Despite PRC government reports that cite the benefits of the campaign, time may be the true test of the effectiveness of this latest effort to protect IPR in China.

IPR and innovation plans support science and technology development

As the campaign is part of a larger national IPR plan, the campaign is best understood in the context of that larger plan and other earlier IPR initiatives.

China released its Medium- and Long-Term Plan for Science and Technology Development (MLP) in January 2006. A massive and complicated initiative, the plan focuses on turning China's economy into a technology powerhouse by 2020 and a global leader in science and technology by 2050. China's MLP includes long-term policy goals, such as promoting domestic innovation through preferential government procurement and financing schemes, as well as upgrading Chinese firms' innovative capacity (see p.50). China's special campaign, indigenous innovation policies, and the National Patent Development Strategy (2011–20, NPDS) are all key initiatives within China's MLP.

The special IPR campaign and other aspects of China's MLP seem to have competing interests, however. Through the campaign, the PRC government sought to improve the IPR landscape for foreign and domestic companies. In contrast, many observers believe that other initiatives within China's MLP either seek to limit foreign companies' ability to sell products that incorporate intellectual property developed outside of China, or to appropriate that intellectual property from foreign companies in exchange for market access to China. Many aspects of the MLP, when juxtaposed with the special campaign, undermine China's IPR credibility by calling into question the viability of the special campaign.

Indigenous innovation policies

Central to China's MLP are its indigenous innovation policies. Through the indigenous innovation policy framework, China seeks to emerge as a technology powerhouse by enacting industrial policies that promote innovation produced in China. Such policies include Chinese technical standards that differ from accepted global industry standards within the information and communications fields, strict technology transfer policies and joint-venture requirements, preferential lending, and antimonopoly laws.

The foreign business community is watching these measures closely. Some US companies believe China's indigenous innovation policies create new barriers to US foreign direct investment and exports to China. In reports issued in October 2010 and May 2011, the International Trade Commission (ITC) discussed the potential effects of indigenous innovation policies on US firms. According to the ITC, only 3.5 percent of intellectual property-intensive firms with business in China reported material losses in sales or profits due to the country's indigenous innovation policies during 2007–09. But in 2009, 29 percent of US IPR-intensive

firms in China, which made up 67 percent of sales in China, reported concerns with the country's indigenous innovation policies. Though losses due to indigenous innovation may seem insignificant compared with more quantifiable losses as a result of piracy and counterfeit goods, many foreign entities think that China's indigenous innovation policies constitute unfair trade practices and retard innovation in China.

National Patent Development Strategy

Since the PRC government initially enacted its first patent law in 1984 and formed China's State Intellectual Property Office (SIPO) in 1985, many major patent-law developments have occurred. In November 2010, SIPO released the NPDS, a long-term plan for enhancing China's core competitiveness through the patent system and its resources. The NPDS also seeks to create a favorable international environment for patents and to combine protecting innovation with safeguarding public interests. SIPO plays an important role in promulgating IPR protection rules and participating in IPR infringement litigation, and the office will be integral to the special campaign having a lasting effect in China.

The special campaign

Though the special campaign was originally scheduled to end in March, the State Council extended the campaign until June 2011. The campaign occurred in three phases:

Quick Glance

- China wrapped up a busy nine-month crackdown on counterfeit goods in June 2011.
- The special campaign led to many arrests and seizures of counterfeit and pirated goods.
- Foreign companies welcome the stepped-up IPR protection, but question whether IPR enforcement and the positive impact of the campaign will endure.

mobilization (October 2010); implementation (November 2010–February 2011); and acceptance and inspection (March–June 2011). The special campaign focused on copyright, patent, and trademark protection by targeting products—including audiovisual materials, auto parts, books, mobile phones, pharmaceuticals, software, and seeds—in the agricultural, high-tech, and entertainment industries.

The campaign had several goals that ranged across many sectors. It aimed to

- Increase source control of production by investigating illegal printing and copying of publications, software, and music;
- Enhance market supervision and administration;
- Intensify IPR protection of imports and exports on the Internet;
- Intensify criminal and judicial IPR enforcement;
- Urge governmental bodies nationwide to use genuine software; and
- Enhance promulgation of IP protection by implementing a national strategy and educating the public.

PRC government reports on the special campaign—and foreign response

Official PRC government reports claimed the special campaign was a huge success, though government officials stress that IPR enforcement activities within China will be ongoing. The State Council Information Office (SCIO) states that extraordinary achievements were made during the nine-month special campaign. An online achievement exhibition highlights many of the successes that China proclaimed as a result of the campaign, including protecting IPR, combating the production and sale of fake goods, and implementing legalized software in government offices throughout the country (see box at right). Regulators have made a few regulatory and judicial changes, including issuing a 2010 State Council notice that requires budget allocation for legitimate software purchases by government agencies. In January 2011, the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security also issued the Opinions on Handling Several Issues in Intellectual Property Criminal Cases, which appear to modify proof requirements in copyright infringement cases involving multiple copies of works. Though foreign corporations and trade associations welcome these developments, many remain skeptical about whether recent activity levels will be maintained now that the campaign has ended.

SCIO reports that during the special campaign administrative agencies across the country investigated 156,000 cases of IPR infringement and the manufacture and sale of pirated goods worth ¥3.4 billion (\$532.2 million), closed more than 9,130 illegal plants making pirated and counterfeit goods, and shut down 12,854 underground factories. Reportedly, Chinese police forces arrested 9,031 suspects. Chinese courts adjudicated nearly 80 percent of the cases they received, according to SCIO.

Promoting IPR Achievements

The PRC government officially launched a new website (<http://ipr.cntv.cn>) on July 11 to promote the results of its recent nine-month campaign against intellectual property rights (IPR) infringement and counterfeiting. The website highlights the PRC government's efforts to crack down on counterfeiting, promote the concept of IPR, and meet recent commitments on software legalization.

Among the touted results:

- Enforcement agencies filed 156,000 cases related to piracy and IPR infringement involving ¥3.4 billion (\$532.2 million);
- Officials investigated thousands of trademark infringement cases and destroyed fake drug production facilities;
- Criminal courts heard 2,492 cases, adjudicating 1,985 of these cases; and
- Government agencies purchased 176,763 sets of legitimate software.

The PRC government says further campaigns will seek out counterfeit agricultural materials, medicine, foods, and famous brands.

—CBR staff

Though these numbers seem spectacular, they are perhaps out of context. Without full details or statistics about prior efforts or a breakdown by region or type of crime, it is unclear whether China has improved its enforcement efforts through the special campaign or whether these results represent the status quo or similar results found in past campaigns.

Nonetheless, it is encouraging to see the PRC government target problematic IPR sectors. For example, counterfeit pharmaceuticals originating from China are a global health concern as infringing products manufactured in China are often low quality. Through the special campaign, China reports that it has made an effort to reduce illegal sales of counterfeit pharmaceuticals, including medicines sold illegally through online websites. Though it seems that China has stepped up its enforcement operations, including conducting raids of criminal manufacturing sites and making arrests, PRC law still requires proof that violations in any counterfeit activity exceed threshold values before any action is taken by authorities beyond arrest. Such criminal thresholds thwart prosecution and may prevent meaningful changes in the long run for all industries that are affected by piracy in China.

With respect to online piracy, SCIO reported that as of June 2011, authorities had disposed of 1,148 cases involving online infringement piracy as a direct result of the special campaign, with 466 of these cases given administrative penalties and 66 cases transferred to judicial authorities. Further, China's media have reported more than 200 website closures and suspensions of online business licenses due to IPR infringement.

With regard to music piracy in particular, the special campaign has had some positive effects, according to the International Intellectual Property Alliance. During the special campaign, stepped-up enforcement activities by the PRC government shut down some websites offering pirated music or forced them to suspend access to infringing media. Specifically, in November 2011, officials shut down the music portals Qishi.com and 5474.com and subjected the site operators to fines and criminal sentences. One of the Qishi.com operators was sentenced to five years imprisonment and fined ¥1.5 million (\$234,750). Though it is unknown whether the crackdown on the websites is permanent or temporary, in December 2010, the PRC Ministry of Culture issued a notice claiming that illegal websites would be shut down if they did not acquire approval or register at provincial cultural departments. And in January 2011, one of the largest perpetrators, VeryCD, reportedly disabled all links to infringing music and movie content, perhaps as a direct response to the government notice. Again, it is unclear whether this is a permanent move, or an action carried out under the pressure of the special campaign.

Despite some successes in music piracy enforcement, the music industry estimates that it has suffered extensive losses in China due to online piracy, market access restrictions, or other discriminatory measures. In tandem with criminal enforcement measures, the music industry has had mixed results in civil infringement suits against Chinese companies. For example, in early 2010, international record companies lost an infringement suit against Baidu, Inc., a NASDAQ-traded Chinese web services company. The music industry estimated it lost \$581 million related to Baidu alone in China from 2006–07.

Beyond online and music piracy, pirated goods remain prevalent in China, even after the completion of the special campaign. Recently, Chinese media reported about a fake Apple Inc. store, highlighting the fact that despite China's recent efforts to eliminate piracy in China, fake goods are still prevalent throughout the country. In response to the publicity surrounding these fake Apple stores, PRC authorities promptly closed two of the five reported outlets that lacked the proper permits and were using the Apple trademark without permission.

According to China's National Copyright Administration, China also made notable achievements during the special campaign to ensure that government agencies use copyrighted software. As of the end of May, PRC authorities reported that legal software had been implemented in each of its 135 central governmental agencies and that central government agencies spent a total of ¥140.9 million (\$22.1 million) to purchase 176,763 legitimate software packages. Reportedly, PRC authorities have also mandated that central and local government agencies list the copyrighted software

purchases in the fiscal budget and that authorities audit all of the purchases to verify the software's authenticity.

Though these reports are promising, it is important to note that PRC authorities have issued other mandates regarding the authenticity of government software in the past. China made a similar commitment in the 2005 and 2006 US-China Joint Commission on Commerce and Trade meetings to complete software legalization within all government agencies by the end of 2005. By 2009, no permanent plan was in place and the commitment had not been met. To date, the rate of illegal software use in China as a whole remains extremely high, at an estimated 78 percent, with an estimated commercial value at \$7.8 billion, according to the Business Software Alliance. The 2011 Special 301 Report published by the Office of the US Trade Representative also suggests that China's reported numbers may be inaccurate. For example, the 301 Report notes that the software industry sees "no discernable increase in legitimate software sales to date." Furthermore, one company noted in the report that legal software purchases by the PRC government have been focused on "low-end and pirated domestic software."

Next steps

Though Chinese reports boast significant achievements through the special campaign, the foreign response to these purported successes has been more tepid in questioning the significance of the reported statistics and whether China is truly committed to improving its IPR protection over time. Foreign corporations and trade associations believe that the special campaign has produced some regulatory and judicial changes, as well as strengthened enforcement activities, but many remain skeptical about whether the current changes will continue. As such, looking beyond the special campaign, only time will tell whether China will follow through on its commitments to ensure use of legal software, hold intellectual property violators on the Internet or otherwise accountable, and refrain from implementing indigenous innovation policies that discriminate against foreign products.

The increasing investment opportunities and risks in China highlight the importance of foreign corporations having a comprehensive China IPR strategy. To stay competitive, companies must plan to proactively manage their IPR risks, such as by using the Chinese patent system to procure and enforce their IPR in China. 完

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Imagine China

Draft data privacy guidelines specifically forbid collection of certain categories of personal information, such as data related to race, religious beliefs, health, and sex life.

The Challenge of Conducting Data Collections and Investigations under Unclear Data Privacy Rules

Draft data privacy guidelines provide some regulatory clarity but would add new hurdles for companies collecting data in China.

Tom Antisdell and Tarek Ghalayini

The protection of personal data is a hot topic on many legislative agendas as lawmakers around the world attempt to catch up with the dramatic rise in electronically stored personal information and the explosion of new data collection technologies. The situation in China is no different, and PRC officials are in the early stages of figuring out how to handle the issue.

To date, PRC authorities have not implemented a comprehensive privacy framework that governs the collection, use, and transfer of personal information (*geren xinxi*) in their country (see the *CBR*, July–August 2002, p.36). For companies that collect and review personal electronic information during the ordinary course of business (such as law and accounting firms that conduct

investigations and online marketers that study consumer habits), understanding China's data privacy regulations presents a mission-critical challenge. Though the state of affairs in this area is still in flux, recent developments indicate that China's emerging privacy regulations may end up being more stringent than comparable laws enacted in the West.

Electronic data and the legal discovery process

Litigation and investigation professionals are seeing a significant rise in the number of cases that involve the collection and processing of electronic information originating from China. This increase is a byproduct of the large number of multinational corporations with operations and associated data in China, as well as the rising number of Chinese companies that are subject to foreign legal jurisdiction as a result of their overseas operations. For example, in the United States alone, 25.5 percent of all federal securities class-action lawsuits filed in the first half of 2011 were brought by investors in China-based companies that obtained listing on US stock exchanges through reverse mergers. A reverse merger is an alternative to an initial public offering (IPO) whereby a private company acquires a publicly listed company, thus bypassing the standard IPO process. In recent years, this has been a popular method for Chinese companies to attain listing on US exchanges. Reverse mergers are now under considerable scrutiny, and in fact the US Securities and Exchange Commission issued a bulletin in June 2011 that urges investors to exercise caution when investing in these companies. In order to comply with and provide discovery and investigation services for lawsuits arising out of reverse mergers and other international disputes with a connection to China, US law and accounting firms must access data sourced from China. As a result, many firms are now experiencing firsthand the challenges of collecting, exporting, and reviewing evidence stored in China.

Legal and investigative professionals have long considered China to be the "Wild West" of evidence collection because it lacks clear data privacy use and transfer regulations. Unlike the United States, European Union, and other jurisdictions that have more mature protocols around this area, China lacks a regulatory framework to govern data privacy, collection, transfer, and processing. Though pieces of the PRC Constitution, Criminal Law, and Tort Law touch on certain data privacy issues, current PRC laws dealing with data privacy are piecemeal at best, and in reality they provide little concrete guidance to practitioners.

An eye on the new draft guidelines

Developments earlier this year indicate that the situation may be changing soon. On January 30, 2011, China circulated a draft of its most detailed framework yet for governing the storage, collection, transfer, and processing of electronic information from computer networks. The Information Security Technology Guidelines for Personal Information Protection (the "guidelines") were issued as draft voluntary national standards (*guobiao*) and thus do not have the force of a full compulsory law. Nevertheless, the guidelines have enough detail to provide valuable insight into how China may intend to implement its own version of data privacy regulation.

Anyone involved in gathering or reviewing data sourced from China should pay careful attention to these draft

guidelines and plan to adjust operations accordingly as these or similar guidelines become solidified. The guidelines include measures that would change the way in which firms and companies store, collect, export, analyze, and otherwise use electronic information stored in China. Highlights of the guidelines and examples of how certain provisions would impact practitioners follow.

Personal information

These guidelines broadly define personal information as any electronic data that can be collected and processed, that by itself, or in combination with other information, could disclose the identity of an individual.

The phrase "in combination with other information" makes it almost impossible to know what is considered personal information. For example, would an employee's job title be considered personal

information because it could be combined with the employer's organizational chart and employee list to identify the individual?

The guidelines specifically forbid collection of certain categories of personal information, such as data related to race, religious beliefs, health, and sex life. As such, these types of material would need to be screened out during the collections process to ensure compliance.

Confidentiality

Under the guidelines, data handlers are required to keep all personal information confidential.

Informed and specific consent

According to the guidelines, no one can collect or process information unless the data subject provides informed, specific consent. This provision could limit the ability of investigative professionals to gather data without

Quick Glance

- Many companies find it challenging to collect, export, and review evidence stored in China because of the country's unclear data privacy guidelines.
- Draft data privacy guidelines that China issued earlier this year provide insight into how the government may implement future data privacy regulations.
- As the draft guidelines move toward review and finalization, companies and law firms should consider how they will develop the right internal control procedures, workflows, and technology to prevent violations.

disclosing to the data subjects exactly why their information is being gathered. It seems unlikely that a target of a US Foreign Corrupt Practices Act or other type of investigation would voluntarily consent to the collection of evidence proving wrongdoing.

Data subjects may also later withdraw consent and request that data processors stop processing personal information and delete it. This means that data processors would need to be prepared to delete material belonging to data subjects who withdraw their consent even after data has been previously collected in accordance with the guidelines.

In addition, data handlers must obtain further express consent from the data subject for any transfers to third parties after the initial collection. The data transferor must disclose the identity of the transferee as part of this consent process.

Minors

Specific and restrictive regulations apply to any information related to minors under the age of 16. If a minor's information is inadvertently collected, data handlers must immediately halt the data collection.

Data export

Such data cannot be transferred out of China, presumably even between corporate affiliates, unless expressly permitted by law or by relevant governmental authority.

This provision would preclude the export of data to other countries for use in investigations and litigation and would also impede the routine intra-company transfer of data between a company's offices in China and abroad.

Reading between the lines

Though the draft guidelines shed some light on a murky legal area, the lack of detail (or any accompanying implementing legislation), means that many questions remain unanswered. Practitioners need to pay close attention to and understand the boundaries of "personal information" and the interplay between the guidelines and existing PRC law.

For example, even if the guidelines are implemented as drafted, practitioners must also watch out for other potentially relevant regulations, such as China's State Secrets Law (see the *CBR*, January–March 2011, p.40). The State Secrets Law acts as a catch-all over the existing framework

Legal and investigative professionals have long considered
China to be the "Wild West" of evidence collection
 because it lacks clear data privacy use and transfer regulations.

It is common in China for company employees to store family-related and other non-commercial information (such as personal photos and e-mails) on company computer systems, resulting in corporate data storage systems that often include information related to minors under the age of 16. The product of such an intermingled corporate data environment is that data handlers must identify and cull out this information as part of the collections process to ensure that otherwise compliant information collections do not run afoul of the guidelines.

Data collection tools

The guidelines specifically outlaw surreptitious data collection tools that operate without the data subject's knowledge. This provision would ban compliance tools that screen e-mail content for company human resource and legal violations, certain forensic evidence collection technologies, and cookies that track online users across the Internet without their express consent.

and would presumably function the same way vis-a-vis the proposed draft guidelines. Specifically, even if practitioners comply with all other privacy regulations, the State Secrets Law can prevent anyone from collecting, reviewing, or transporting data out of China if it is deemed to contain a state secret, which, much like "personal information," is also broadly defined.

How to aim at a moving target?

With the state of regulation in flux and great variance in legal interpretation, current operational practices fall along a wide spectrum. Many multinational law firms and companies accustomed to certain Western practices that focus on data protection regardless of where the data lies (thus lacking restrictions on data movement) simply operate as they would in the West. Others, uncertain of their ability to export their own data back out of China, have operations designed around storing as little data there as possible, which can interfere with business

efficiency. As the guidelines move toward further review, finalization, and implementation, companies and law firms should start thinking about how they will develop the right internal control procedures, workflows, and technology to prevent violations during the ordinary course of business.

If implemented in a form that is close to the current draft, the guidelines would drastically alter how companies conduct their affairs in China. For example, the process of obtaining specific, informed consent from all data custodians prior to collection, and then again for any future transfers, would vastly lengthen the time required for China-based data collection and review projects. Any transfer of data to a party that differs from the one who collected it (which is common in US litigation and investigations where productions are made to various co-counsel, opposing sides, and regulatory authorities) would need to be pre-approved before the transfer could take place. It may be difficult to meet deadlines if a key requirement of data production lies beyond the producing party's control. Furthermore, if such consent is withheld to begin with, data handlers would not be able to

Some analysts believe that the current guidelines are indicative of the privacy pendulum swinging too far in the opposite direction—that the PRC government is creating the foundation for a framework that is too restrictive to be effective and quite difficult to comply with. Though it is too early to predict exactly when and in what form the guidelines or their related privacy framework will be promulgated, a few worst-case scenarios can be imagined if they are implemented in their current form.

For example, the guidelines could result in companies not wanting to store any data in China for fear of having to comply with these and the other related regulations. Data located in China would be virtually out of reach to extra-territorial courts and regulatory authorities, which would impede the ability of Chinese companies to operate in foreign markets. Disputes involving data created or stored in China would be challenging, if not impossible, to adjudicate, given the difficulties involved in collecting the necessary evidence. This could cause investors to avoid Chinese-related securities and

Anyone involved in gathering or reviewing data sourced from China should pay careful attention to these draft guidelines and plan to adjust operations accordingly as these or similar guidelines become solidified.

collect any data from that custodian—and someone with data damaging to himself or herself might be unlikely to provide such permission.

Under the guidelines, data handlers would need to use strict filtering and blocking technologies during the collection process, so that data related to minors and other heightened protection categories would not be collected. In addition, data processing providers would need to be prepared to stop processing and delete the data of any subject who withdraws a previously given consent. US and other foreign practitioners would likely need to use China-based data centers for forensic and investigative work, as China has no existing legal mechanism to allow for data transfer out of the country, which is a requirement for export under the guidelines. Practitioners should pay careful attention as the guidelines get flushed out to ensure that they are in compliance with all applicable regulations.

businesses as no recourse would be available for deals that turn sour.

PRC authorities have reportedly received many comments on the draft guidelines, and most interested parties are hopeful that the government will ultimately enact a set of clear and reasonable privacy regulations. Though practitioners would welcome clarity with regard to China's data privacy governance, they hope that the PRC government creates a reasonable and workable system—one that strikes a balance between protecting an individual's right to privacy and not unduly interfering with commerce and the flow of business critical information.

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Foreign companies are concerned about PRC domestic innovation policies that may unfairly favor Chinese companies.

Domestic Innovation and Government Procurement Policies

New developments indicate China is moving to delink its innovation and government procurement policies.

US-China Business Council staff

Indigenous innovation, a policy concept that the PRC government developed to boost the creation and commercialization of home-grown ideas and technology, is an integral component of PRC technology and economic development policies. Top PRC leaders view it as one way to bring industrial transformation and economic benefits to China. First announced in 2006, the PRC government has subsequently incorporated the concept into a range of policies and regulations, including those related to intellectual property (IP), standards, taxation, and government procurement. In late 2009 and early 2010, several key PRC regulators released a series of measures designed to create a product catalogue that would grant preferences to indigenous innovation products during the government procurement process.

Though many countries share China's goals of promoting innovation and economic development, indigenous innovation programs that encourage discriminatory practices are problematic for foreign companies and inconsistent with international best practices. The PRC government has seemed responsive to such concerns from the business community and foreign governments. PRC President Hu Jintao announced during his January 2011 trip to the United States that innovation policies would not be linked to government procurement, and PRC officials pledged to eliminate the use of indigenous innovation product catalogues at all levels of government procurement at the May 2011 Strategic and Economic Dialogue (S&ED). Regulatory developments in June and August have shown that China is working to meet these commitments. More work must be done to fully realize both pledges, however.

Policy development

Several PRC government agencies are responsible for developing and implementing indigenous innovation policies.

■ **The State Council Leading Group on Science, Technology, and Education** is comprised of representatives of major ministries and government offices, such as the Ministry of Finance (MOF), National Development and Reform Commission (NDRC), Ministry of Science and Technology (MOST), Ministry of Industry and Information Technology (MIIT), Ministry of Commerce, and the Chinese Academy of Social Sciences, among others. Led by Premier Wen Jiabao, this group is responsible for assessing and approving major policies and strategies on science and technology (S&T) and coordinates relevant departments and localities to implement key tasks and projects.

■ **MOST** is responsible for leading the reform of China's S&T system and formulating S&T strategies, policies, laws, and regulations. Responsible for China's overall innovation

strategy, MOST and its provincial and local branches authorize indigenous innovation products and develop related product catalogues.

■ **NDRC** is the PRC government's chief ministry-level macroeconomic planning body. NDRC sets China's long-term national economic development agenda, from which ministries devise and implement their own policies. Importantly, S&T and innovation are outgrowths of these long-term economic development policies.

■ **MOF** oversees government procurement and sets the basic criteria for products the government buys. Procurement is a core component of the strategy to boost domestic production of high-tech and innovative products. Government purchases guarantee a funding stream to the companies that make these products, which may be untested in the marketplace. MOF also oversees the State Administration of Taxation, which is responsible for creating preferential tax programs that foster research and development (R&D).

■ **MIIT** is responsible for the regulation of electronics and information product manufacturing. It also crafts and implements China's industrial policies, of which innovation is an essential component.

Quick Glance

■ The PRC government has endorsed the development of indigenous innovation, a policy concept to boost domestic ideas and technology, in recent years.

■ Some indigenous innovation policies have given domestic enterprises preferential treatment in China's government procurement process.

■ After receiving complaints from foreign trading partners, the PRC government has begun to delink indigenous innovation policies from the government procurement process.

Policy implementation

At the center of China's indigenous innovation drive is the Medium- and Long-Term National Plan for Science and Technology Development (2006–20) and a follow-up document on its supporting policies. The State Council released both of these policy plans in 2006. The plan and its supporting policies formally introduced the concept of indigenous innovation into China's national industrial policy and laid out goals to

- Develop a system to evaluate and qualify indigenous innovation products;
- Establish a system to use government funds to buy indigenous innovation products; and
- Give preferential treatment in the government procurement process to indigenous innovation products.

In addition, indigenous innovation has received an increasingly prominent place as a part of broader Chinese development strategies. It was a component in China's 11th Five-Year Plan (FYP, 2006–10), and it received prominent mentions in China's most recent draft 12th FYP (2011–15). That draft included "supporting technological progress and innovation"—through "strengthening indigenous innovation capacity"—as one of the guiding ideologies for the coming five-year period.

What qualifies as an indigenous innovation product?

At the end of 2006, MOF, MOST, and NDRC jointly released Trial Administrative Measures on the Accreditation of

National Indigenous Innovation Products, which defined the kinds of products eligible to receive indigenous innovation status. In these measures, a qualified product was to

- Be produced by an enterprise that had full ownership of IP in China via its own technological innovation activities; or the Chinese enterprise, work unit, or citizen had, by legal means, obtained the China IP rights or usage rights;
- Have a trademark that was owned by a Chinese company and was registered in China;
- Embody a high degree of creativity and innovation—for example, a product that used core technologies or improved product functions by applying new technologies; and
- Offer a high degree of reliability with certification from the China National Certification Administration or its provincial branches.

Though the three agencies invalidated these measures in August 2011, the measures helped indicate how the government viewed indigenous innovation products. Accredited products eventually were to be listed in product catalogues that governments at various levels were to use to guide their procurement decisions.

Based on such guidance, some provincial and municipal governments have since developed product catalogues, which include lists of products accredited as indigenous innovation. Very few products made by foreign companies were included in these provincial lists. For example, based on the US-China Business Council's (USCBC) review of the 523 products listed in Shanghai's 2009 catalogue of indigenous innovation products for government procurement (now invalidated), only two were made by foreign-invested enterprises (FIEs) and both of these were from Chinese-foreign joint ventures with majority Chinese ownership. Reviews of Nanjing and Beijing catalogues showed similar trends.

Moreover, some of these catalogues either explicitly or implicitly restrict domestically made products from other provinces. For example, Wuhan's catalogue is largely comprised of local products from Wuhan and surrounding Hubei Province, though the catalogue does not explicitly limit eligibility to local products.

Main advantage: Preference in government procurement

The primary benefit conferred upon products that receive indigenous innovation recognition has been preference in government procurement. China's vast government bureaucracy at the central and local levels presents substantial commercial opportunities across a wide range of industry sectors.

In addition to granting priority in government procurement, China's 2006 Selected Supporting Policies for the Medium and Long-Term National Plan for Science and Technology Development favor indigenous innovation products in price-based bidding. Article 23 of the plan states that during the price-based bidding process, if the price of an indigenous innovation product is higher than others, the

company making the product may reduce the price in its bid; if the price is not higher than other products, the government agency must procure the indigenous product. In addition, several articles of the 2007 Evaluation Measures on Indigenous Innovation Products for Government Procurement, which were invalidated in June 2011, awarded indigenous innovation products special treatment:

- Article 13 provided that indigenous innovation products be given preference at a margin of 5–10 percent if price was the sole determining factor.
- Article 14 stated that indigenous innovation products would enjoy an additional 4 to 8 percent boost in their technical and price evaluations if comprehensive evaluation methods were used. These comprehensive methods weighed technical merit and other technology-related factors with the product price to create an overall score, which was used to select the most competitive products.
- Article 24 called for establishing a government system for initial purchasing and ordering that would encourage the commercialization of products with indigenous innovation accreditation. The government would purchase the first set of innovative products created by domestic enterprises, universities, and research institutes if the products were thought to have future wide-market potential.

Recent policies

Since 2009, a series of PRC government agencies released various documents that relate to indigenous innovation, raising questions and concerns from FIEs and prompting a response from US and other foreign industries.

Notices on central-level indigenous innovation catalogue

MOE, MOST, and NDRC released in November 2009 application procedures and a notice that outlined provincial responsibilities for a proposed central-level indigenous innovation catalogue. Four of the six areas identified for inclusion in the indigenous innovation catalogue were information technology-related: computers, communication, office equipment, and software. The remaining areas were related to new-energy equipment and energy-efficient products. Foreign company concerns center on Section IV of the application procedures, which reiterates conditions, including patent and trademark ownership requirements, that would likely exclude foreign companies' products from qualifying.

In April 2010, MOE, MOST, and NDRC released a revised draft notice that addressed some foreign-company concerns about the November notice. The Draft Notice Regarding the Launch of the National Indigenous Innovation Product Accreditation Work for 2010 detailed requirements that products must satisfy to be eligible for national indigenous innovation product accreditation. The scope of the policy covered the same six product areas outlined in the November notice but made positive changes to the November proposal:

■ **Intellectual property and licensing** The April notice appeared to relax requirements governing IP ownership in China to allow indigenous innovation accreditation for products with foreign IP that had been licensed for use in China.

■ **Trademark registration** The notice modified requirements for trademark registration and no longer required trademarks and brands to be registered first in China. Instead, applicants must have had exclusive rights to the product's trademark, or have had the right to use the trademark, in China.

■ **Technology requirements** To qualify for inclusion in the product list, a product must have possessed technologies that were proven effective in conserving energy, reducing pollution, and raising energy efficiency, or had "substantially" improved on an original product's structure, quality, material, craftsmanship, or performance.

Though analysts considered the revised accreditation requirements a step forward, several significant issues in

that the government wants domestic companies to develop. In addition to offering tax and financing incentives, the catalogue gives priority to domestic manufacturers of the listed equipment types in accrediting their products as national indigenous innovation products. These manufacturers can also receive preferential financing for product commercialization and be included in government-related R&D plans for S&T products. Some analysts speculated that listed equipment types might be incorporated into any future national-level catalogue for government procurement of indigenous innovation products.

Many of the equipment types listed in the catalogue are being imported or developed by FIEs in China. Though the catalogue does not explicitly exclude FIEs from receiving indigenous innovation product accreditation, its reference to indigenous innovation product catalogues and to recently released qualification criteria that effectively exclude FIEs from the forthcoming national catalogue raise concerns.

Many of China's trading partners wish to
encourage China to pursue its innovation policies
in a manner consistent with international best practices.

China's indigenous innovation policies remained. In particular, the notice did not address the use of product lists or their link to government procurement preferences. The proposed changes to the National Indigenous Innovation Product qualification criteria also did not answer questions about the relationship between the national product list and provincial and local product lists. Some provincial and local lists were compiled based on discriminatory accreditation criteria, including IP ownership and import substitution requirements that often differ from province to province. Finally, though the accreditation criteria no longer mention import substitution (a strategy that aims to replace imports with locally produced goods) as a policy goal, the notice did not appear to change the November notice's application form. The form asked whether an applicant's product can substitute for imports, a strong signal that import substitution is a goal.

Catalogue of industrial equipment products for development

To boost China's domestic equipment manufacturing industry, MIIT, MOF, MOST, and the State Asset Supervision and Administration Commission in December 2009 released an industrial equipment product catalogue

At the December 2010 US-China Joint Commission on Commerce and Trade meeting, PRC negotiators agreed to revise China's major equipment catalogue in 2011 and publish a draft for public comment. Government officials also stated that the revised catalogue would not be used for import substitution, the provision of export subsidies, or otherwise discriminate against foreign suppliers. As *CBR* went to press, however, PRC officials had not yet released a draft catalogue.

Draft implementing regulations for PRC Government Procurement Law

The State Council's Legislative Affairs Office in January 2010 released draft Implementing Regulations for the Government Procurement Law—rules that outline the scope, responsibility, conditions, format, procedures, and requirements for government procurement in China. In a positive development, the draft defines domestic products, projects, and services in a way that appears to include FIEs.

Article 10 of the draft implementing regulations defines what constitutes a domestic product under the 2002 PRC Government Procurement Law, such that a "domestic product" is one "made within China's borders and for which domestic manufacturing costs exceed a certain percentage of

the final price.” This definition should allow FIE products that pass a local content threshold, which apparently will be applied equally to Chinese-owned companies, to qualify as domestic for government procurement purposes. The draft, however, does not confirm the percentage of domestic content that is required to qualify as domestic.

Article 10 also states that government procurement for projects and services will apply to Chinese nationals, Chinese legal persons, or other Chinese organizations. Because FIEs have legal-person status under existing PRC laws, this definition indicates that projects and services provided by these FIEs should be treated as “domestic” for government procurement.

In addition, these regulations provide a threshold for the price preference to be given to domestic products and services. Many countries allow or require government entities to preferentially procure domestically produced items unless they are “unreasonably” expensive compared to a competing import. The draft regulations define “unreasonable commercial terms” to mean that the price of domestic goods, projects, or services is at least 20 percent higher than those of non-domestic competition. If a domestic offering meets this definition, it should not receive preference in procurement.

Article 9 of the implementing regulations gives preference in government procurement to energy-saving and environmental-protection products, indigenous innovation products, products made by small- and medium-sized enterprises, and products made in minority ethnic areas, such as Xinjiang. The article is significant because it states that qualifying products should either be given priority or mandatory purchase preferences, without further clarification. Foreign companies are concerned about this article, because the existing and proposed qualification criteria effectively exclude FIE participation.

At the May 2011 S&ED, PRC officials committed to revise the draft implementing regulations, particularly Article 9. This builds on previous statements that future rules would afford equal treatment to all innovation products produced in China by FIEs and Chinese-invested enterprises alike. As *CBR* went to press, however, no further details about the revision have emerged.

Draft administrative measures for procurement of domestic products

MOF in May 2010 released draft administrative measures for procurement designed to clarify a few key terms, particularly terms regarding domestic content, mentioned in the January 2010 implementing regulations. According to Article 6, a “domestic product” is one “made within China’s borders, where the domestic production cost ratio in the final product exceeds 50 percent.” This ratio is calculated using the product’s final production cost and the value of those production materials not sourced from China. This definition permits FIEs manufacturing

in China to participate in government procurement and provides greater efficiency and transparency for companies and regulators.

Article 9, however, states that all production materials for which the source cannot be proved are assumed to be non-Chinese, raising questions about how manufacturers can and should prove the origin of their production materials. In addition, the regulations do not provide specific carve-outs or exemptions for particular sectors (such as software), as many other national government procurement programs do. This causes companies to question whether the measures allow China’s government procurement regime to be flexible enough to handle procurement of an array of product types.

Notice eliminates some key measures linking innovation to procurement

A June 2011 MOF notice voided, from July 1, three measures that linked innovation and procurement. The three measures—all passed in 2007—made up an important part of the PRC regulatory framework that promotes government procurement of indigenous innovation products. The measures include

- The Evaluation Measures on Indigenous Innovation Products for Government Procurement, which described advantages—such as preferential prices and extra consideration in technology and quality evaluations—that accredited indigenous innovation products could enjoy in the government procurement process;
- The Administrative Measures on Budgeting for Government Procurement of Indigenous Innovation Products, which required government entities to prioritize purchases of accredited indigenous innovation products and laid out rules and procedures for such procurement; and
- The Administrative Measures on Government Procurement Contracts for Indigenous Innovation Products, which encouraged government entities to use state procurement contracts to promote indigenous innovation and called on such entities to provide preferential contract terms for indigenous innovation products.

In addition, MOF, MOST, and NDRC released a circular in July 2011 that invalidated 2006 trial measures on accrediting indigenous innovation products. The circular reduces the certainty that China will release a national indigenous innovation catalogue.

Circular invalidates trial measures on product accreditation

Provincial and municipal-level governments have responded to central-level policies by suspending or eliminating indigenous innovation product accreditation. In at least one case—in Shanghai—the local government formally eliminated its indigenous innovation product catalogue. In other cases, finance bureaus in Fujian, Jiangxi, Shandong, and Tianjin called on relevant agencies

to suspend local rules or to follow central-level directives without the elimination of the catalogues. Other provinces, notably Jiangsu, have also indicated that they are following and studying central-level directives and their impact on local policies.

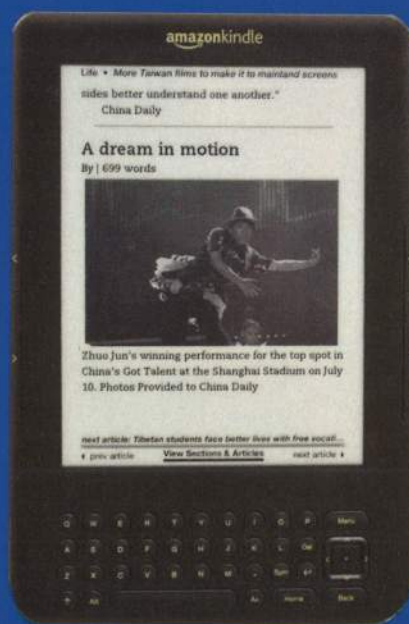
Looking forward

These steps suggest that central and local governments are beginning to implement President Hu's January pledge to delink China's innovation and procurement policies. More needs to be done, however, to fully implement that pledge. For example, recent USCBC research states that 22 provincial and local governments have released catalogues of indigenous innovation products, and 31 provincial and local governments have released accreditation rules that link innovation and procurement. In addition to delinking innovation and procurement in remaining catalogues and rules, the government must also revise the proposed PRC Government Procurement Law Implementing Regulations.

Furthermore, many of China's trading partners wish to encourage China to pursue its innovation policies in a manner consistent with international best practices. Foreign companies state that China should promote and strengthen innovative capacity through a combination of strong IP rights protection and internationally accepted means, such as nondiscriminatory tax incentives and R&D support programs. These tools are used widely by the world's most successful, innovative economies. 完

The US-China Business Council (USCBC), publisher of the CBR, is the leading organization of US companies engaged in business with the People's Republic of China. Founded in 1973, USCBC provides extensive China-focused information, advisory and advocacy services, and events to more than 230 US corporations operating in the United States and throughout Asia. This article is adapted from USCBC's Issues Brief: China's Domestic Innovation and Government Procurement Policies.

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Life in the Big City

Wm. Patrick Cranley

"China Business Lifestyles" is a new CBR department in which foreign business professionals write about their daily experiences living in specific Chinese cities. For information about possible submissions, e-mail publications@uschina.org.



Shanghai offers an active nightlife, along with peaceful parks and vibrant neighborhoods.

China Business Lifestyles

Often considered the most exciting and cosmopolitan city in China, Shanghai is big, fast-paced, and complex. The bright lights, tall buildings, and sheer scale of this city of 23 million people can dazzle and disorient the newcomer. But because Shanghai offers almost infinite choices, everyone can build a lifestyle that fits their tastes and find friends that share their passions.

Where to live in Shanghai

Perhaps the most important choice a newcomer must make when moving to Shanghai is where to live. In today's housing market, consumers face a wide variety of choices and prices. Some expatriates choose to live in areas with high concentrations of foreigners, but others go out of their way to find homes in neighborhoods with few foreigners. Some expats prefer a suburban "gated community" with single-family homes or a gleaming apartment with a river view, while others prefer a cozy walk-up apartment tucked away in a traditional Shanghai-style lane neighborhood.

Shanghai offers almost infinite choices,
and everyone can build a lifestyle that fits their tastes
and find friends that share their passions.

The newcomer's budget and commuting preferences will largely determine the choice of location. To live in a suburban high-end "compound" (gated community), a car is imperative, as some commutes can be lengthy. Downtown dwellers, who face a range of residential choices—from bohemian to opulent, get around quickly and efficiently with a mixture of taxis, subways, buses, and bicycles. It all comes down to personal preference. My wife and I love historic architecture and prefer public transportation, so the choice to live in the former French Concession was easy for us.

Our neighborhood has a wonderful sense of community. During a walk to the local wet market—where the fish, meat, and vegetables are much fresher than those found in any supermarket—we often stop to chat with neighbors, pet dogs out for a stroll with their owners, or study the architectural details of the 1930s-era houses that abound in the area. Shanghai people have a reputation within China as being arrogant and aloof, but we have found them to be extremely friendly, welcoming, and trustworthy.

The members of my family feel comfortable in our neighborhood in part because we speak Chinese, but the language can make even the most mundane errand a real challenge for many new arrivals.

Holing up in an expatriate compound, where English-speaking staff make life easier, is a choice that many transplants make. But if newcomers are outgoing, adaptable, and patient,

living in a mostly-Chinese neighborhood can make their Shanghai experience more memorable and meaningful.

For those with children, schooling will also factor into housing decisions. Fortunately, the number of international schools in Shanghai has increased rapidly over the past 10 years. But international schools can be expensive, so a family's school choice may be determined by their budget and whether their employer will pick up some or all of the bill.

Cuisine

China's most affluent city boasts an enormous number of restaurants of all kinds. Diners can choose from many kinds of Chinese food, or opt for Western and Asian restaurants from inexpensive to exorbitant. Shanghai cuisine is not known as one of China's best, but it includes a number of standout dishes, including *kaofu* (wheat gluten braised in sweetened soy sauce), *tipang* (slow-cooked pork rump), and *mixian* (stir-fried amaranth).

Generally, we choose to cook for ourselves, which is healthier and cheaper than eating in restaurants. But many busy people find themselves ordering food to be delivered to their doorsteps.

Leisure

To work off all that good food, diners will need to exercise. Aside from some excellent gyms and swimming pools, Shanghai offers many sports options, from tennis, squash, and rock climbing to soccer, rugby, and cricket leagues. The city hosts a chapter of the Hash House Harriers ("the drinking club with a running problem"), and several cycling groups for bikes and bikers of all kinds. For those who prefer to watch sports, Shanghai boasts a professional soccer team (Shanghai Shenhua) and a professional basketball franchise (the Shanghai Sharks, owned by former National Basketball Association phenomenon Yao Ming). The Tennis Professional Association Masters Tennis Cup and the Shanghai Grand Prix are annual fixtures, and big-screen televised sports can be enjoyed at several sports bars.

The availability of quality international entertainment in Shanghai has also greatly expanded in recent years. The Shanghai International Film Festival takes place at various venues every June and attracts big-name stars to the city. The Shanghai International Literary Festival takes place over three weekends in March, when more than 60 well-known and

emerging authors from around the world converge to share their insights with rapt audiences at M on the Bund and the Glamour Bar. Throughout the year, many art galleries host exhibitions and the Shanghai Grand Theatre, Shanghai Oriental Arts Center, and Shanghai Center Theatre hold performances. Performances of local versions of Chinese opera, storytelling, comedy acts, and contemporary theater play throughout the year.

Shanghai's club scene is the most vibrant in China. The JZ Club is considered China's best jazz spot, while the nearby Cotton Club is renowned for its blues performances.

The House of Blues and Jazz covers both genres, depending on the night. Mao Live House is a dedicated and well-equipped rock venue. The young clubbing set can also choose from many venues in which to enjoy DJs spinning subgenres of nightclub electronic dance music.

Shanghai boasts a few interesting Chinese temples, including the Jade Buddha Temple and the City God Temple. The city, however, has no monuments from the imperial era. Instead, Shanghai has historical sites related to 19th century China trade, the late Qing reform period, the Republican era (1911–49), and the birth, growth, and

Shanghai Favorites

Restaurants

Fulton Place

570 Yongjia Road, Unit 111
(at the front of Surpass Court)
www.fultonplace.cn

This cosy neighborhood place serves beautifully crafted drinks and creative modern dishes.

Guyi Hunan

89 Fumin Road
T: 86-21-6249-5628

This restaurant offers authentic Hunan cuisine and a lively atmosphere.

Lynn

99 Xikang Road (around the corner from Shanghai Centre, Nanjing West Road)
T: 86-21-6247-0101

Lynn serves mostly Shanghai cuisine and offers a wine list, good service, and a beautiful room.

Madison

18 Dongping Road, 3/F
(near Wulumuqi Road)
T: 86-21-6437-0136
www.madisoninshanghai.com
Chef Austin Hu is at the forefront of modern Chinese-Western fusion. Creative and tasty.

M on the Bund

5 The Bund, 7/F
(corner of Guangdong Road)
T: 86-21-6350-9988
www.m-restaurantgroup.com/mbund
This is the restaurant that started the Bund renaissance a dozen years ago.

Bars

El Coctel

47 Yongfu Road, 2/F
T: 86-21-6433-6511
www.el-coctel.com

This lounge takes drinks very seriously. It's best to arrive early, before it gets smoky.

Glamour Bar

5 The Bund, 6/F (at Guangdong Road)
T: 86-21-6350-9988
www.m-theglamourbar.com
A bar for grown-ups, it offers great service and killer views. The bar also hosts literary, musical, and arts programs.

Live Music

House of Blues and Jazz

60 Fuzhou Road (near the Bund)
T: 86-21-6323-2779
www.houseofbluesandjazz.com
A proper *boite* just off the Bund, it features top-notch imported bands on three-month contracts.

JZ Club

46 Fuxing West Road
T: 86-21-6431-0269
www.jzclub.cn
The New York-style jazz club features new acts all the time.

Gym

Ambassy Club

1500 Central Huaihai Road
T: 86-21-6437-9800
www.ambassyclub.com.cn
Featuring a modern workout space that overlooks a beautiful 1920s mansion, the club offers indoor and outdoor pools and a spa.

Food shopping

City Shop

New World Department Store
939 Huaihai Middle Road
T: 86-21-6232-7070
www.cityshop.com.cn
The store offers a pretty good selection of imported meats, cheeses, wine, dry goods, canned goods, and baguettes.

Wulumuqi Road Wet Market

Between Fuxing Road and Anfu Road
A proper Chinese fresh fish, meat, and produce market, of the kind that is getting scarce in downtown Shanghai.

Parks

Fuxing Park

The junction of Fuxing Middle Road and Chongqing South Road (South Gate)
The former "French Park" is one of the most active parks in the city and has the best morning tai chi scene in town.

Hengshan Park

2 Guangyuan Road (at Hengshan Road)
Watch the older park goers practice ballroom dancing across from the newer, much larger Xujiahui Park.

victory of the Chinese Communist Party, which was founded in Shanghai in 1921.

Weather considerations

Shanghai has a lot going for it, but before relocating, potential residents should consider the city's weather. Though the thermometer seldom drops below freezing, the year-round humidity makes Shanghai's winters clammy and uncomfortable and the summers almost intolerable. On the bright side: Shanghai does not suffer from the earthquakes that strike northern and western China, and it is only

mildly affected by the typhoons that ravage southern China.

In Shanghai, residents learn to savor the lovely spring and autumn weather. And during the rest of the year, we remind ourselves how lucky we are to live in one of the most stimulating and livable cities in the world. 完

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Bakeries

Baker & Spice

195 Anfu Road, 1/F
T: 86-21-5404-2733
www.bakerandspice.com.cn
More than a neighborhood bakery, it is also where moms, singles, and entrepreneurs mix and mingle.

House of Flour

Shanghai Centre,
1376 Nanjing West Road, 1/F; or
30-1 Sinan Road at Huaihai Road
T: 86-21-6093-2058
www.houseofflour.com
House of Flour is serious about cakes, breads, and other baked goods.

Sports Bars

Big Bamboo, Jing An Branch

132 Nanyang Road
(behind Shanghai Centre)
T: 86-21-6256 2265
www.bigbamboo.cn
Big Bamboo offers limitless beverages and countless flat-screen TVs for broadcasts of your favorite sports.

The Camel Sports Bar

1 Yueyang Road
T: 86-21-6437-9446
www.camelsportsbar.com
Best bet for sports fans whose tastes include rugby, soccer, and Aussie Rules.

Museums

Shanghai Municipal History Museum

2 Lujiazui East Road (at the base of the Oriental Pearl TV Tower)
T: 86-21-5879-3003
www.historymuseum.sh.cn
See the government's official interpretation of Shanghai history in this well laid-out museum.

Shanghai Natural History Museum

260 Yan'an East Road
T: 86-21-6321-3548
Rush to see this old-fashioned museum before it is replaced by a high-tech version. It is a real time capsule.

Movie Theaters

Grand Theatre

300 Renmin Avenue
T: 86-21-6386-8686
www.shgtheatre.com
A real Shanghai art deco treasure, the theater was built at the height of the golden age of cinema.

Shanghai International Film Festival (SIFF)

T: 86-21-6253-7115
www.siff.com
Though it's not quite the Cannes International Film Festival, SIFF provides a month of global cinema in Shanghai.

UME Theatre, Xintiandi

5/F South Block Xintiandi Plaza
No. 6, Lane 123, Xingye Road
T: 86-21-6373-3333, x807
www.ume.com.cn

This is the Shanghai theater most likely to show first-run imported movies with English subtitles.

Not to Be Missed

Historic Shanghai French Concession Tour

Every third Sunday, 10:00 am–12:00 pm
Corner of Gao'an Road and Kangping Road
info@historic-shanghai.com
www.historic-shanghai.com
Learn the stories of the French Concession's historic homes and buildings and the fascinating mélange of people who lived in them.

Shanghai International Literary Festival

M on the Bund, 5 The Bund, at Guangdong Road
T: 86-21-6350-9988
www.m-restaurantgroup.com/mbund/literary-festival.html
Each year, dozens of the world's best writers and Shanghai's coolest bookworms congregate during the first three weekends in March. It's quite a scene.

—Wm. Patrick Cranley

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News of China-Related Educational, Cultural, and Charitable Projects

US companies participate in a broad range of programs that benefit the people of China and strengthen the bonds of US-China friendship beyond the commercial realm. *Opportunities* aims to help companies identify programs that merit their assistance. The materials contained in *Opportunities* are condensed. For more detailed information, interested companies should contact the programs directly. (Note: Neither the US-China Business Council nor the CBR is a sponsor of any project listed in *Opportunities* and makes no recommendation with regard to corporate assistance to any specific project.)

US Institution: The Fund for Education Abroad
Project Description: To increase opportunities for US students to study abroad in China.

The Fund for Education Abroad (FEA) is a 501(c)(3) nonprofit organization that is committed to increasing the opportunities for dedicated US students to participate in high-quality, rigorous education abroad programs by reducing financial restrictions through the provision of grants and scholarships. FEA's goals include advancing US students' foreign-language skills and cultivating their world awareness and appreciation of cultural differences.

Despite the increasing need for culturally literate and multilingual professionals, less than 2 percent of the nearly 3 million US undergraduate students enrolled in colleges and universities study abroad each year. Most of those students are from similar demographic groups and travel to a limited range of countries. FEA aspires to help broaden the demographics of participants and the countries in which they study by leveraging the support of the corporate, academic, and philanthropic

communities. In support of the US State Department's 100,000 Strong Initiative, FEA scholarships aim to increase the number and diversity of students studying in China and other nontraditional destinations.

FEA seeks corporate partners who share its mission of developing the next generation of leaders who will help deepen ties, foster understanding, and open doors between the United States and China. By funding China-specific scholarships, corporations can meet the dual need of training the next generation of China professionals and giving back to the community.

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COMMENTARY: CHINA'S WTO ANNIVERSARY

China's Continuing Need for the WTO

Continued from page 30

Compliance with existing WTO rules can help China make needed reforms domestically, and the negotiation of new WTO agreements that address additional trade and investment concerns can spur changes in China that will make Chinese products even more competitive internationally. Foreigners tend not to appreciate how much China has changed domestically in the past decade in an effort to comply with WTO obligations, and many Chinese tend not to appreciate how much more must still be done.

China and its future in the WTO

The ingenuity of the Chinese people is known throughout the world. But to advance by moving up the global value chain, the Chinese must continue to work side by side with others who share their hopes for China's future. To make the transition, China will need imported foreign products, the sophisticated

skills of foreign service providers, the advanced technologies and economies of scale of foreign companies, and the long-term capital and managerial know-how of foreign investors. Such access can only be secured and sustained in a setting where they are treated fairly and without discrimination. Protectionism is always tempting, and it may appear to work in the short term. In the long term, however, protectionism does not work.

When opening China in 1978, Deng said he was "crossing the river by feeling for the stones." Deng learned by doing. Following his example, China has learned much by doing in the years since economic reform began. Today, China must continue "feeling for the stones" in "crossing the river" to a shared and lasting prosperity. 完

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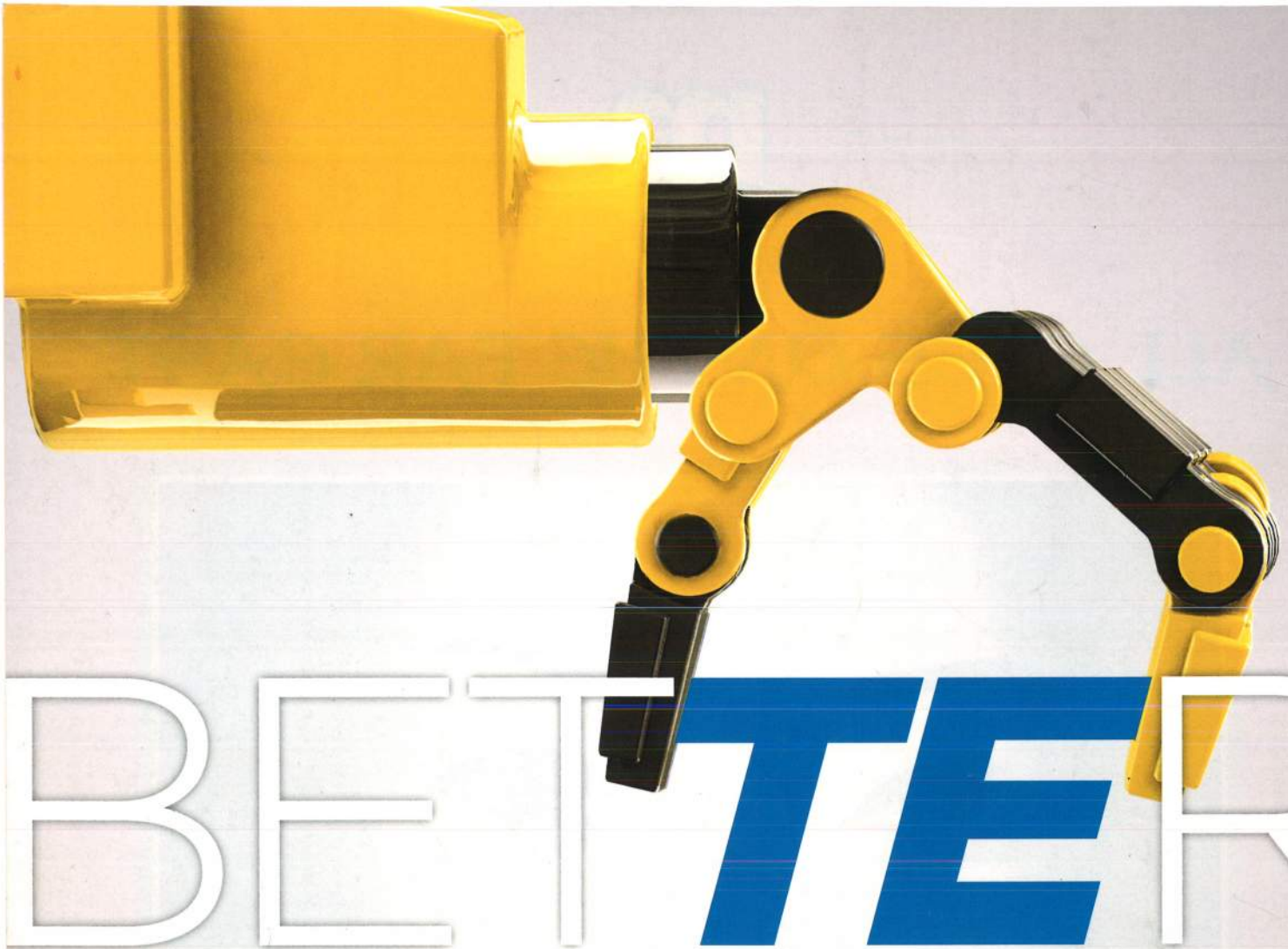
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