WORLD TRADE ORGANIZATION

WT/GC/W/745

16 July 2018

(18-4397)

Page: 1/14

General Council
26-27 July 2018

Original: English

CHINA'S TRADE-DISRUPTIVE ECONOMIC MODEL

COMMUNICATION FROM THE UNITED STATES

The following communication, dated 11 July 2018, is being circulated at the request of the delegation of the United States.

Table of Contents

The Marrakesh Declaration confirmed the principle that Members were to participate in a multilateral trading system, "based upon open, market-oriented policies[.]" When China acceded to the WTO in 2002, members of the Working Party noted that "China was continuing the process of transition towards a full market economy." It was further hoped that China's agreement to join the WTO, reflected in China's Protocol of Accession and other documents, would dismantle policies and practices incompatible with an international trading system expressly based on the principles of non-discrimination, market access, reciprocity, fairness and transparency.

However, China today maintains a state-led, trade-disruptive economic model not based on those fundamental principles and that imposes substantial costs on and presents severe challenges to WTO Members. This paper (1) sets forth the fundamental aspects of China's trade-disruptive economic model; (2) elaborates upon the costs it exacts; and (3) describes the benefits that China receives.

1 NON-MARKET ORIENTED CONDITIONS SET BY THE GOVERNMENT AND THE PARTY

A. Fundamental Objectives of Control

1.1. At its core, the framework of China's economy is set by the Chinese government and the Chinese Communist Party (CCP or the "Party"), which exercise control directly and indirectly over the allocation of resources through instruments such as government ownership and control of key economic actors and government directives.

1.2. The Chinese government, including the Party, has a constitutional mandate, echoed in China's broader legal framework, to develop the "socialist market economy." Article 6 of the Constitution of the People's Republic of China provides that "[i]n the primary stage of socialism, the state upholds the basic economic system in which public ownership is dominant and diverse forms of ownership develop side by side […]." Article 7 provides that "[t]he state-owned economy, that is, the socialist economy with ownership by the whole people, is the leading force in the national economy. The state ensures the consolidation and development of the state-owned economy."[1]

1.3. To fulfil these mandates, the Chinese government and the CCP direct and channel economic actors to meet government planning targets. The government and the CCP permit market forces to operate only to the extent that such activity accords with the objectives of national economic and industrial policy.[2]

1.4. That is why China's leading companies, state-invested and non-state invested, attest to the fundamental non-market nature of China's economy today. For example, the technology firm Alibaba has stated:

> The PRC economy differs from the economies of most developed countries in many respects, including the extent of government involvement, level of development, growth rate, control of foreign exchange and allocation of resources. Although the PRC government has implemented measures emphasizing the utilization of market forces for economic reform, the reduction of state ownership of productive assets, and the establishment of improved corporate governance in business enterprises, a substantial portion of productive assets in China is still owned by the government. In addition, the PRC government continues to play a significant role in regulating industry development by imposing industrial policies. The PRC government also exercises significant control over China's economic growth by allocating resources, controlling payment of foreign currency-denominated obligations, setting monetary policy, regulating financial services and institutions and providing preferential treatment to particular industries or companies.[3]

1.5. At the same time, China has made clear that it has no foreseeable plans to change its fundamental approach to the economy. As China explained in the report that it circulated in connection with its 2018 WTO trade policy review: "While socialism with Chinese characteristics has entered a new era, the basic dimension of the Chinese context – that China is still and will long remain in the primary stage of socialism – has not changed […]"[4] China is committed to a "socialist market economy" and to improving "the relationship between the government and the market."[5] In China's view, that means that "the government plays its role better" in managing the economy, not that the government ceases to intervene and allows market forces to determine business outcomes.[6]

1.6. Aside from the government's and the CCP's role in managing the economy, there also are serious concerns over how they exercise influence over the operations and investment decisions of state-owned enterprises (SOEs) and private enterprises, including foreign-invested enterprises. This influence appears to be growing following a "Party building" push by the CCP, as detailed below.

B. Control at the Firm Level

1.7. China frequently claims that Chinese enterprises make economic decisions independently and based on market principles.[7] However, the government and the CCP have for decades exercised control over SOEs through, inter alia, (1) the control and appointment of key executives through the CCP Organization Department,[8] and (2) receipt of preferential access to important inputs (e.g., land and capital) and other competitive advantages unavailable to non-state firms.[9] SOEs, in turn, play an outsized role in China's economy; for example, in terms of their share of total credit,[10] their market dominance in key industries,[11] and their share of total market capitalization on China's stock market.[12]

1.8. In October 2016, China's President Xi Jinping, who also serves as General Secretary of the CCP, described the role of SOEs as extensions of the Party-state, and clarified that SOEs are "important forces to implement decisions of the [CCP] Central Committee" and "major strategies such as the 'going out' strategies and the Belt and Road Initiative, as well as to enhance overall national power, economic and social development and people's wellbeing."[13] At the 2017 Central Economic Work Conference, an annual meeting on economic policy, China's top leadership stated that one of six priorities for China's economy in 2018 is to "promote state-owned capital to become stronger, better, and bigger," a task that entails "strengthen[ing] Party leadership and Party infrastructure in state-owned enterprises."[14]

1.9. In addition, both SOEs and nominally private enterprises host internal Party committees capable of exercising government and CCP influence over these enterprises' economic decision-making and corporate governance. This arrangement is codified in Chinese law under Article 19 of the Company Law of the People's Republic of China.[15]

1.10. Recently, the Party has taken demonstrated steps to increase the strength and presence of CCP entities within all economic organizations.[16] As part of these "Party building" activities, SOEs as well as nominally private enterprises are being pressured to amend their articles of association to ensure Party representation on an enterprise's board, usually as Chairman of the Board, and to ensure that important company decisions are made in consultation with the enterprise's Party committee.[17]

1.11. For example, China Pacific Insurance Group is a state-owned insurance firm with assets worth RMB 1.1 trillion (US$182 billion).[18] In the first half of 2017, the company amended its Articles of Association to insert a new Article 8 stating, in part, that "[i]n making decision for material issues of the Company, the Board of Directors shall first seek for the opinion of the Leading [Communist] Party Group of the Company.[19] The Article 8 amendment also promotes a "cross-appointment" system, under which the secretary of the Party committee shall serve as Chairman of the Board, and other senior executives and board personnel are encouraged to overlap with members of the Party committee.[20]

1.12. According to an August 2017 report in Nikkei Asian Review, 288 of the 3,314 companies listed on the Shanghai and Shenzhen stock exchanges had changed their articles of association to ensure that their management policy reflected CCP dictates, with 197 of these changes occurring between April and July 2017.[21] This number is reported to have continued to increase into 2018.[22]

1.13. In the last year, a number of reports indicate that the CCP is, via these Party committees, now looking to influence the managerial and investment decisions of foreign-invested enterprises in China.[23] These efforts are so pervasive that the Delegations of Germany Industry and Commerce released a public statement in November 2017 pushing back against attempts by the CCP "to strengthen their influence in wholly foreign-owned German companies in China."[24]

Similarly, in November 2017, the European Union Chamber of Commerce in China published its official stance, noting that China's efforts to codify Party influence in Sino-Foreign joint ventures (JV) was a matter "of great concern to foreign JV partners as it significantly changes the governance of the JV and undermines the authority of the JV board."[25] The Chamber stated that it is unaware of any legal basis for such actions by China.[26]

1.14. Reinforcing CCP influence is the "Social Credit System," a new tool endorsed by the CCP[27] that the government uses to monitor, rate and condition the conduct of all enterprises in China based on firm-level data collected by government agencies and other institutions.[28]

1.15. By these and other actions, the CCP is increasing its control over key actors in China's economy, and not, as hoped, enabling China's transition to a market economy.

2 NON-MARKET ALLOCATION OF RESOURCES

A. Non-Market Allocation of Key Means of Production

2.1. China remains a non-market economy in which the means of production are not sufficiently allocated or priced according to market principles. The government and the CCP continue to control or otherwise influence the price of key factors of production, including land, labor, energy and capital.

2.2. All land in China is property of the state, as either collectively-owned rural land or state-owned urban land.[29] Because the government controls rural land acquisition and monopolizes the distribution of urban land-use rights, the government remains the final arbiter of who uses the land and for what purpose.[30] Land-use rights holders, in turn, face limits with respect to the tenure and the scope of use.[31] The result of these dynamics is an inefficient land market in which rural and urban land are segmented and large swathes of land are misallocated either to small farm plots or to underutilized urban infrastructure.[32]

2.3. There are significant institutional constraints on the extent to which wage rates are determined through free bargaining between labor and management. The Chinese government prohibits the formation of independent trade unions to represent labor,[33] and workers do not have the legal right to strike,[34] which is an important lever in collective action and negotiation with management over wages. Labor unions are under the control and direction of the All-China Federation of Trade Unions (ACFTU), a government-affiliated and CCP organ.[35] China has implemented legislation such as the Labor Contract Law and the Labor Dispute Law that provide employees with a cause of action to challenge particular aspects of an employee's labor contract, but they do not advance the fundamental rights of freedom of association and collective bargaining.[36] In addition, government restrictions on labor mobility imposed by the household registration system continue to inhibit and guide labor flows, causing distortions on the supply side of the labor market.[37]

2.4. The Chinese government also exerts a high degree of control over energy and other input prices. Its ability to set and guide factor input prices, in particular, results in distorted costs and prices throughout the economy. In the electricity sector, for example, the government owns the largest power generation and grid operating companies,[38] controls downstream prices,[39] and employs "differential pricing" as a policy tool to achieve capacity shedding and other industrial policy objectives.[40]

2.5. The influence of the government and the CCP is particularly acute in the financial sector.[41] Five large commercial banks that are majority state-owned operate large branch networks on a nationwide basis and account for nearly half of total bank assets.[42] There are also scores of city commercial banks and credit unions under local government control, as well as three state-owned policy banks.[43]

2.6. Foreign-owned banks and bank branches, in contrast, accounted for less than 2 per cent of bank assets in 2015.[44] For years, China has limited the sale of equity stakes in existing Chinese-owned banks for a single foreign investor to 20 per cent, while the total equity share of all foreign investors is limited to 25 per cent.[45] While China recently took action to remove these foreign equity caps, it remains unclear whether foreign-owned banks will be accorded full national treatment and will be able to expand their business scopes to match the business scopes of domestic banks.

2.7. In addition to outright ownership, the government exercises other forms of influence over banking decisions. The CCP, through its Organization Department, appoints executive officials in state-owned banks and financial institutions.[46] The PBOC meets frequently with large banks to ensure that their lending decisions align with PBOC and government objectives.[47] The Law of the People's Republic of China on Commercial Banks provides that "commercial banks are to conduct their business of lending in accordance with the needs of national economic and social development and under the guidance of the industrial policies of the state."[48]

2.8. The overall ownership and control of the government and the CCP over China's financial sector has been confirmed by independent credit analysts. A 2016 analysis by the ratings agency Fitch Ratings states:

> China's commercial banks […] are still expected to support policy objectives and align their strategies with the State's broad economic goals, and are frequently urged to do so. *That suggests China remains a centrally planned economy despite financial reforms and effort at rebalancing the economy that had implied a greater role for market forces*.[49] (emphasis added)

B. Industrial Policies

2.9. In China's economic framework, government planning through industrial policies conveys instructions regarding sector-specific economic objectives, particularly for those sectors deemed strategic and fundamental. China is currently in its 13th five-year planning cycle, a hallmark of a planned economy that has become more, not less, salient over the past 20 years. China retains formal mechanisms of plan formulation, tasking, and review, and has expanded the scope and specificity of sectoral-level plans. Various institutions participate in plan formulation and execution, including central agencies with legislative and regulatory authority, thousands of local government authorities, various organs of the CCP and the enterprise sector.[50]

2.10. China's approach is materially different from other WTO Members. China provides massive, market-distorting subsidies and other forms of state support to its domestic industries, which too often leads to severe excess capacity.[51] At the same time, China also actively seeks to impede, disadvantage and harm foreign competition by using a wide array of policies and practices to skew the playing field against imported goods and services and foreign manufacturers and services suppliers.

2.11. As one example, a number of official publications of the government and the CCP set out China's ambitious technology-related industrial policies. The industrial policies reflect a top-down, state-directed approach to technology development, and are founded on concepts such as "indigenous innovation" and "re-innovation" of foreign technologies, among others. The Chinese government regards technology development as integral to its economic development and seeks to attain domestic dominance and global leadership in a wide range of technologies.[52] In pursuit of this overarching objective, China has issued a large number of industrial policies, including the National Medium- and Long-Term Science and Technology Development Plan Outline (2006-2020), the State Council Decision on Accelerating and Cultivating the Development of Strategic Emerging Industries, and, more recently, the State Council Notice on Issuing "Made in China 2025."[53]

2.12. Increasingly, China has also used new types of state-controlled financial institutions, such as the National Integrated Circuit Fund ("National IC Fund"), to implement its industrial policies. The National IC Fund was established under the guidance of two government ministries, and funded by several prominent SOEs and state-owned financial institutions.[54] It is part of an "integrated Circuit Industry Technological Innovation Strategic Alliance" established in March 2017 "in conformity with […] the guiding spirit of General Secretary Xi Jinping.[55] The objective of the alliance is to "implement the 'Strong Internet Nation' strategy, achieve breakthroughs in cutting-edge core technologies, and establish secure and controllable information technology [IT] systems".[56]

C. Law as an Instrument of the Party-State

2.13. China's legal system continues to function as an instrument by which the Chinese government and the CCP can secure discrete economic outcomes, channel broader economic policy, and pursue industrial policy goals. Key legal institutions, such as the courts, are structured to respond to the CCP's direction, both broadly and on a case-specific basis.[57] Individuals and firms are constrained in their ability to have meaningful independent input into administrative rulemaking or to challenge administrative decisions.[58] As a general matter, to the extent that individuals and firms seek to act independently of government or CCP direction, the legal system does not provide the venue for them to achieve these objectives on a systemic or consistent basis. In addition, firms continue to face challenges in obtaining impartial outcomes, either because of corruption or local protectionism.[59]

2.14. The United States also notes the larger issue of China's restrictions on the freedom of information, including its Internet firewall and the government's regular censorship of audio-visual and print media, which among many other negative effects, creates distortions in China's economy and impacts the ability of foreign companies to operate and compete in China's market.[60]

3 COSTS TO WTO MEMBERS OF CHINA'S ECONOMIC MODEL

A. Non-Reciprocal and Protected Market

3.1. The WTO is rooted in fundamental principles of market access, non-discrimination, reciprocity, fairness and transparency. It is important to recall that WTO members are supposed to be moving toward market-based outcomes voluntarily. China has pursued policies and practices that not only conflict with its WTO obligations, but which also manifest a disregard for the WTO's fundamental principles.

3.2. As the Office of the US Trade Representative has demonstrated in its annual Report to Congress on China's WTO Compliance, China helps its domestic industries by skewing the playing field against imported goods and services and foreign manufacturers and services suppliers in myriad ways, not only through market access limitations, investment restrictions and massive, market-distorting subsidies that lead to severe excess capacity, but also through preferential treatment for state-owned enterprises and other favoured Chinese companies, discriminatory regulatory requirements, unique national standards, technology transfer requirements, inadequate protection and enforcement of intellectual property rights, cyber theft, overly broad and discriminatory cybersecurity measures, cross-border data restrictions and data localization requirements, and the use of competition law for industrial policy purposes. Exacerbating this situation is the regular abuse of administrative licensing and approval processes by Chinese government officials.

3.3. Moreover, China's opaque governing and regulatory system is inconsistent with the commitments it made when it joined the WTO and defeats the WTO's principle of transparency. As a result, it is difficult – and often impossible – for Members to assess China's compliance with its WTO obligations. For example, since joining the WTO 16 years ago, China's three WTO subsidy notifications, covering only central government subsidy programs have generally been submitted years after the deadline and have consistently been grossly incomplete. Furthermore, China did not provide a sub-central government subsidy notification until July 2016, which was also grossly incomplete. Moreover, contrary to its commitments when it joined the WTO, China has not published all trade-related measures issued at the central and sub-central levels of government in a single official journal and has not made translations of these measures available in one of the WTO languages. As a result, Members have resorted to submitting multiple counter-notifications in a number of WTO bodies in an attempt to fill in gaps when China does not disclose all of the information required under its WTO notification obligations.

B. Excess Capacity

3.4. Excess capacity in China hurts the global economy not only through direct exports from China, but also because lower global prices and a glut of supply make it difficult for even the most competitive producers to remain viable.[61] Many WTO Members, including Canada, Australia, India, and the EU, have continued to respond to the trade-distortive effects of China's excess capacity by imposing trade remedies such as antidumping and countervailing duties in response to petitions from their domestic industries.[62]

3.5. China today is the world leader in excess capacity. For example, China's large increases in steel capacity since it joined the WTO in 2001 have led to similarly large increases in steel production. China's annual steel production rose from 152 million MT in 2001 to 808 million MT in 2016, by far the largest in the world, and China's steel industry now accounts for 50 per cent of global steel production.[63] China's steel exports have also grown to be the largest in the world, at 108 million MT in 2016, compared to 66 million MT a decade earlier.[64] Examples of numerous other excess capacity industries are discussed in the European Union Chamber of Commerce in China's 2016 report, Overcapacity in China: An Impediment to the Party's Reform Agenda. Indeed, China's State Council, in its 2013 Guiding Opinions of the State Council on Resolving the Conflict of Serious Overcapacity, acknowledged excess capacity in industries including steel, cement, electrolytic aluminium, flat glass and shipbuilding.[65]

3.6. Excess capacity leads to injury in other trading members. For example, China's excess capacity in solar panels was a key reason why US imports of solar cells and modules from China increased by 500 per cent from 2012 to 2016, while prices for solar cells and modules fell by 60 per cent, to a point where most US producers ceased domestic production, moved their facilities to other countries, or declared bankruptcy. By 2017, the US solar manufacturing industry had almost disappeared, with 25 companies closing since 2012.[66]

3.7. Excess capacity is driven to a large degree by actions of the Chinese government, including massive, market-distorting subsidies and a variety of other policies and practices. According to a 2017 report by the Economist Intelligence Unit, "[f]or years [China's] authorities had tolerated expansions in capacity across a variety of industries, despite capacity utilization rates dipping below 75 per cent (normally a threshold for indicating a balanced relationship between supply and demand)."[67] According to the aforementioned European Union Chamber of Commerce in China report, key recurring factors include the protection of local industries, weak enforcement of regulations, price controls for key inputs, and fiscal imbalances that create a perverse incentive to attract excessive investment.[68] China issued guiding measures in 2016 to reduce excess capacity in the coal and steel sectors as part of the so-called "supply-side structural reform" initiative. These solutions to excess capacity, however, continue to reflect a high level of government intervention rather than market-based principles.[69]

C. Forced Technology Transfer

3.8. As members are aware, the United States has issued a detailed factual report that illustrates how China has pursued unreasonable acts, policies and practices that harm US intellectual property rights, innovation and technology development.[70] The report details, for example, how the Chinese government uses foreign ownership restrictions, such as formal and informal JV requirements, to require or pressure technology transfer from US companies to Chinese entities. The report also details how the Chinese government directs and unfairly facilitates the systematic investment in, and acquisition of, US companies and assets by Chinese entities, to obtain cutting-edge technologies and intellectual property and generate large-scale technology transfer in industries deemed important by state industrial plans. Moreover, the report illustrates how the Chinese government has conducted or supported cyber intrusions into US commercial networks targeting confidential business information held by US firms. China's unfair acts, policies and practices injure not only the United States, but also the rest of the WTO membership.

4 BENEFITS TO CHINA OF ITS ECONOMIC MODEL

4.1. China considers itself to be "the largest developing country in the world."[71] In fact, China has seized on the benefits of WTO membership to rapidly develop its economy. Between 2005 and 2016, China averaged annual real GDP growth rates of 9.5 per cent,[72] and rose from the world's fifth-largest to second-largest economy.[73] In 2001, China was the world's sixth-largest goods exporter; by 2016, it ranked number one, exporting more than all of North America combined.[74] As of December 2017, China maintained foreign exchange reserves upwards of US$3.1 trillion.[75] A prominent Chinese economist has remarked that China's rapid economic growth in the first decade after joining the WTO "was unique in the economic history of any country."[76]

4.2. China also insists it is a developing country in need of technology upgrading.[77] In fact, China has already achieved major gains in high-technology fields, including:

- China has the largest number of supercomputers in the world;[78]
- China has the fastest high-speed trains in operation and the "longest [high-speed rail network] in the world";[79]
- "A successful US$600 million funding round has catapulted Chinese artificial intelligence company SenseTime into the position of the most valuable AI start-up in the world"[80]; and
- "Chinese solar-panel manufacturers are estimated to have a 20 per cent cost advantage over their US peers, owing to economies of scale and more advanced supply-chain development. And Chinese wind-turbine manufacturers, having gradually closed technology gaps, now account for more than 90 per cent of the Chinese domestic market [...]."[81]

4.3. Numerous other facts illustrate the extent of China's economic development. China spent approximately US$228 billion on defence in 2017.[82] China is the world's largest automotive market,[83] the world's largest oil importer[84] and the world's largest meat consumer.[85] China has six megacities with over 10 million residents.[86] Not least, China has overtaken the UK as the "second biggest art market after the United States," with a 21 per cent global art market share by value.[87]

4.4. While China undoubtedly struggles with poverty-related challenges in some areas of its economy, the claim that it is a developing country on par with many others, and therefore exempt from contributing to progressive liberalization of global trade rules, is simply not sustainable when measured against numerous indicators of China's rapid development and accumulation of wealth.

4.5. The United States would remind Members that China's Protocol of Accession questioned China's claim to be a developing country and expressly denied China's right to self-elect developing country status under several of the WTO agreements.

5 CONCLUSION

5.1. Since joining the WTO, China has repeatedly signalled that it is pursuing economic reform. For example, in November 2013, at the Third Plenary Session of the 18th Central Committee of the CCP, the CCP endorsed a number of far-reaching economic reform pronouncements, which called for making the market "decisive" in allocating resources and reducing Chinese government intervention in the economy.[88] And as China reminded us at the last General Council meeting in May, this year marks the 40th anniversary of China's self-described "reform and opening up" policy.

5.2. Unfortunately, China's use of the term "reform" differs from the type of reform that a country would be pursuing if it were embracing market-oriented principles. For China, economic reform means perfecting the government's and the Party's management of the economy and strengthening the state sector, particularly state-owned enterprises. As long as China remains on this path, the implications for this organization are decidedly negative.

____

[1] *Constitution of the People's Republic of China* (adopted by the National People's Congress on 4 December 1982, amended 12 April 1988, further amended 29 March 1993, 15 March 1999, 14 March 2004, and 11 March 2018.) *See also*, *Constitution of the People's Republic of China*, Art. 1. ("[…] The socialist system is the basic system of the People's Republic of China. The leadership of the Communist Party of China is the defining feature of socialism with Chinese characteristics […]").

[2] *See Property Law of the People's Republic of China*, Art. 3 (adopted by the National People's Congress on 16 March 2007, 2007 Order No. 62, effective 16 March 2007). ("The State consolidates and develops the public ownership sector of the economy, and encourages, supports, and guides the development of the non-public ownership sector of the economy.") Similar language is enshrined in the *Constitution of the Chinese Communist Party*, Preamble (Central Committee of the Communist Party of China, issued 6 September 1982, amended 1 November 1987, further amended 18 October 1992, 19 September 1997, 14 November 2002, 21 October 2007, 14 November 2012, and 24 October 2017). ("The Communist Party of China leads the people

in developing the socialist market economy. It is firm in consolidating and developing the public ownership sector of the economy and remains steadfast in encouraging, supporting, and guiding the development of the non-public ownership sector of the economy.") These provisions illustrate how the private sector, or "non-public ownership sector", of the economy is treated differently than the "public ownership sector."

[3] Alibaba Group Holding Limited, *Amendment No. 7 to Form F-1* (Filing with the US Securities and Exchange Commission (2014)).

[4] World Trade Organization, *Trade Policy Review – Report by China,* WT/TPR/G/375 (6 June 2018), Paragraph 2.2.

[5] World Trade Organization, *Trade Policy Review – Report by China*, WT/TPR/G/375 (6 June 2018), Paragraph 2.4.

[6] *Id.*

[7] *See*, *e.g.*, *Regular Press Conference of the Ministry of Commerce (April 12, 2018)* (MOFCOM, published 13 April 2018), *available at* http://english.mofcom.gov.cn/article/newsrelease/press/201804/20180402733489.shtml. ("With regard to government-led systematic acquisition of and investment in US companies […] [t]hese are independent decisions to explore the international market and enhance innovation capability."); *Regular Press Conference of the Ministry Of Commerce (1 February 2018)* (MOFCOM, published 2 February 2018), *available at* http://english.mofcom.gov.cn/article/newsrelease/press/201802/20180202711566.shtml. ("Second, Chinese companies' investment and acquisitions in Europe are autonomous corporate acts based on market principles, bringing Europe capital, jobs and access to Asian markets and creating a mutually beneficial and win-win situation.")

[8] Liwen Lin and Curtis Milhaupt, "We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China," *Stanford Law Review* 65(4) (May 2013): 737-38. ("Party and corporate leadership appointments take place in a highly institutionalized sharing arrangement between the Party and SASAC. In fifty-three central enterprises, the occupants of top positions, including board chairmen, CEOs, and party secretaries, are appointed and evaluated by the Organization Department of the Party's Central Committee.") *See also* Zheng Yongnian, *The Chinese Communist Party as Organizational Emperor: Culture, Reproduction, and Transformation* (London: Routledge, 2010), 103-104. ("The CCP's most powerful instrument in structuring its domination over the state is a system called the 'Party management of cadres' (*dangguan ganbu*), or more commonly known in the West as the nomenklatura system. The nomenklatura system 'consists of lists of leading positions, over which Party units exercise the power to make appointments and dismissals; lists of reserves or candidates for these positions; and institutions and processes for making the appropriate personnel changes.'")

[9] *See, e.g.*, Markus Taube and Christian Schmidkonz, *Assessment of the Normative and Policy Framework Governing the Assessment of the Normative and Policy Framework Governing the Chinese Economy and Its Impact on International Competition*, Final Extended Report for AEGIS Europe (Think!Desk China Research & Consulting, 13 August 2015), 331. ("The Chinese financial sector is not operating independently from the Chinese state, but is subjected to far reaching governmental intervention in its operations. […] One major underlying reason for this reality clearly lies in the still incomplete marketisation of China's state-owned enterprise sector. For as long as these SOEs enjoy a privileged, shielded existence, the financial sector cannot mature into a normal market economy financial sector. This is one of the reasons the IMF recommends China to push state-owned enterprise reforms forward, take further steps in establishing a more commercially oriented financial system and establish an underlying market-based monetary policy framework.")

[10] The IMF reports that the "SOE share in credit stock" was 55.6 per cent in 2014. Kang et al*., People's Republic of China: Selected Issues*, IMF Country Report No. 16/271 (International Monetary Fund, 7 July 2016), 9. *See* Table 1: Rebalancing Scorecard. *See also World Bank, China 2030: Building a Modern, Harmonious, and Creative Society*, Report No. 96299 (March 2013), 125. (The World Bank notes the inherent tension between the poor performance of the SOE sector and its access to credit, stating "The weighted average return on assets of SOEs is […] significantly lower than that of other firms […] On the other hand, the average debt to equity ratio of SOEs is substantially higher […]")

[11] *See*, *e.g.*, WTO, *Trade Policy Review – Report by the Secretariat – China*, WT/TPR/S/342 (15 June 2016), 95. (Noting that "sectors of strategic importance (e.g. energy; utilities; and transport, financial, telecom, education, and health care services) remain only partially open to private investment. These sectors are often dominated by large SOEs.")

[12] As of July 2018, the top ten firms listed on the Shanghai Stock Exchange accounted for approximately one-quarter of total market capitalization. These firms included the state-owned commercial banks Bank of China and Agricultural Bank of China; two of the major state-owned oil companies, Petrochina and Sinopec; and the state-owned automaker SAIC Motor. Shanghai Stock Exchange website, *available at* http://www.sse.com.cn/market/stockdata/marketvalue/, accessed 12 July 2017.

[13] Xinhua, "Xi Stresses CPC Leadership of State-owned Enterprises," 11 October 2016, *available at* http://www.xinhuanet.com/english/2016-10/11/c_135746608.htm.

[14] Xinhua [via Ministry of Finance website], "Central Economic Work Conference Draws Key Points: Six Major Priorities for the Economy Next Year," [Chinese] 21 December 2017, *available at* http://www.mof.gov.cn/zhengwuxinxi/caijingshidian/xinhuanet/201712/t20171221_2785496.html.

[15] *Company Law of the People's Republic of China*, Art. 19 (adopted by the National People's Congress on 29 December 1993, amended 25 December 1999, further amended 28 August 2004, 27 October 2005 and 28 December 2013). *See also* Delegations of German Industry and Commerce, *Press Statement: Increasing Business Challenges – Delegations of German Industry and Commerce in China Concerned About Growing Influence of Chinese Communist Party on Foreign Business Operations* (24 November 2017). ("According to

Article 19 of the Company Law of the People's Republic of China, the establishment of party cells of the Communist Party of China in a company is permissible as long as at least three party members decide to form a party cell. This law applies to Chinese state-owned enterprises and Chinese-foreign invested Joint Ventures as well as Wholly Owned Foreign Enterprises.")

[16] At a press conference following the 19th National Congress of the Chinese Communist Party in October 2017, Qi Yu, the vice head of the Chinese Communist Party Organization Department noted: "Since the 18th National Congress of the Communist Party of China, we have *increased our efforts* to establish Party organizations and carry out Party building and Party activities in enterprises, and continued promoting the reach of Party organizations and Party work. This is our focus." China.org.cn, *Press Briefing: Party Building, Self-Governance* (19 October 2017), *available at* http://www.china.org.cn/china/2017-10/20/content_41765343.htm. In February 2018, the Central Committee of the Chinese Communist Party released the *Decision on Deepening Institutional Reform of the Party and the State*, which calls for "[a]ccelerating the establishment and improvement of all Party organizations and institutions in new types of economic organizations and social organizations, such that where the Party's work progresses, there is coverage of Party organizations." *Decision of the Central Committee of the Communist Party of China on Deepening Institutional Reform of the Party and State*, Section III(2) (Central Committee of the Communist Party of China, issued 28 February 2018).

[17] *See, e.g.*, Sinopec, *Proposed Amendments to the Articles of Association and the Rules of Procedure for the Board of Directors' Meeting*, Art. 109 (27 April 2017). ("When making decisions on significant matters such as direction of reform and development, key objectives, and priority operational arrangements of the Company, the board of directors should seek advice from the Party organization. When the board of directors appoints the management personnel of the Company, the Party organization shall consider and provide comments on the candidates for management positions nominated by the board of directors or the president, or recommend candidates to the board of directors and/or the president."). *See also* Yu Nakemura, "Chinese Enterprises Write Communist Party's Role into Charters," *Nikkei Asian Review*, 17 August 2017; Michael Martina, "Exclusive: In China, the Party's Push for Influence inside Foreign Firms Stirs Fears," Reuters, 24 August 2017; Jude Blanchette, *To Ensure Harmonious Relations with Party Organizations, Proactively Establish Boundaries* (The Conference Board China Center, February 2018).

[18] China Pacific Insurance Group, *2017 Annual Report*, *available at* https://www.cpic.com.cn/upload/resources/file/2018/04/23/47593.pdf (accessed 26 June 2018).

[19] China Pacific Insurance (Group) Co., Ltd, *Articles of Association*, Art. 8, *available at* http://www.hkexnews.hk/listedco/listconews/sehk/2018/0201/LTN201802011653.pdf (accessed 26 June 2018).

[20] *Id.*

[21] Yu Nakemura, "Chinese Enterprises Write Communist Party's Role into Charters," *Nikkei Asian Review*, 17 August 2017. *See also* Michael Martina, "Exclusive: In China, the Party's Push for Influence inside Foreign Firms Stirs Fears," Reuters, 24 August 2017.

[22] *See*, *e.g.*, Jude Blanchette, *To Ensure Harmonious Relations with Party Organizations, Proactively Establish Boundaries* (The Conference Board China Center, February 2018).

[23] *See*, *e.g.*, Alexandra Stevens, "China's Communists Rewrite the Rules for Foreign Businesses," *New York Times*, 13 April 2018 (noting that "…several of his clients in joint ventures had received explicit requests to give their internal Party organizations a greater say in the company's operations. At some companies, the requested language requires a board of directors to consult with the committee before making business decisions.") *See also* Tom Mitchell, "China's Communist Party Seeks Company Control Before Reform," *Financial Times*, 14 August 2017; Yu Nakemura, "Chinese Enterprises Write Communist Party's Role into Charters," *Nikkei Asian Review*, 17 August 2017; Michael Martina, "Exclusive: In China, the Party's Push for Influence inside Foreign Firms Stirs Fears," Reuters, 24 August 2017.

[24] Delegations of German Industry and Commerce, *Press Statement: Increasing Business Challenges – Delegations of German Industry and Commerce in China Concerned About Growing Influence of Chinese Communist Party on Foreign Business Operations* (24 November 2017).

[25] The European Union Chamber of Commerce in China, *Chamber Stance on the Governance of Joint Ventures and the Role of Party Organizations* (3 November 2017).

[26] *Id.*

[27] A key measure governing the Social Credit System was issued in the "spirit of" of the CCP's recent plenary sessions and the speeches of "General Secretary Xi Jinping." *See State Council Guiding Opinion on Establishing and Improving the System of Jointly Incentivizing the Maintenance of Credit, Jointly Punishing the Loss of Credit, and Accelerating the Promotion of Social Integrity Development* (State Council, Guo Fa [2016] No. 33, issued 12 June 2016), *available at* http://www.gov.cn/zhengce/content/2016-06/12/content_5081222.htm.

[28] Individuals and enterprises with deficient credit scores may, for example, find their access to financial credit or their ability to travel diminished or prohibited. *See* Kirsty Needham, "If You Get on China's 'Blacklist,' You Can Be Banned from Travel," *The Sydney Morning Herald*, 6 March 2018. For other reports on the Social Credit System, *see* Andrew Browne, "China's Big Brother Is Watching You Do Business," *Wall Street Journal*, *23* May 2017; *The Economist,* "China Invents the Digital Totalitarian State," 17 December 2016; Mirjam Meissner, *China Social Credit System: A Big-Data Enabled Approach to Market Regulation with Broad Implications for Doing Business in China* (Mercator Institute for China Studies, 24 May 2017).

[29] *Constitution of the People's Republic of China*, Arts. 9 and 10.

[30] Li Zhang and Xianxiang Xu, *Land Policy and Urbanization in the People's Republic of China*, ADBI Working Paper Series No. 614 (Asian Development Bank Institute, 11 November 2016), 7. ("With its monopoly

on land expropriation and transaction, local governments have held down land expropriation prices to acquire large amounts of rural land and turned them into urban lands, which directly led to the excessive expansion of urban land area, as in the massive construction of development zones and new towns.") Dwight Perkins, "China's Land System: Past, Present, and Future," in *Property Rights and Land Policies*, edited by Gregory K. Ingram and Yu-Hung Hong (Cambridge, Ma: Lincoln Institute of Land Policy, 2009), 89. ("Formally, rural land [in China] is collectively owned by the local village or township, and urban land is owned by the state. In both cases, local officials play the primary role in deciding whether a piece of land under their jurisdiction can be leased for commercial uses.") Samson Yuen, *China's New Rural Land Reform? Assessment and Prospects*, China Perspectives 2014/1 (2014), 61. ("[…] while the Third Plenum reforms point in the direction of reducing state monopoly on rural land transfer and restoring land-use rights to farmers, they are nothing very new. More importantly, these reforms cannot enjoy much success unless more drastic reforms are undertaken. Such reforms include reconfiguring the power relations between local governments and farmers in a way that owners of collective land will truly secure their land-use rights, as well as a thorough fiscal and tax reform that reduces the reliance of local government on land sales.")

[31] *See Property Law of the People's Republic of China*, Chapters XI-XIV (adopted by the National People's Congress on 16 March 2007, 2007 Order No. 62, effective 1 October 2007); *Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in Urban Areas* (State Council, 1990 Order No. 55, issued 19 May 1990); *Law of the People's Republic of China on Administration of Urban Real Estate* (adopted by the National People's Congress on 5 July 1994, amended 30 August 2007, further amended 27 August 2009); *Rural Land Contracting Law of the People's Republic of China* (adopted by the National People's Congress on 29 August 2002, 2002 Order No. 73, effective 1 March 2003, amended 27 August 2009).

[32] According to the OECD, in 2010 the average size of farm plots in China was 0.6 hectares. OECD*, OECD Economic Surveys: China* (Paris: OECD Publishing, 2015), 106. Land designated for industrial use is also underutilized; a nationwide survey suggests that 70 per cent of the total land within China's 6,866 Development Zones is unused*;* Jinfeng Du and Richard Peiser, "Land Supply, Pricing and Local Governments' Land Hoarding in China,"

Regional Science and Urban Economics 48 (2014): 183.

[33] *Trade Union Law of the People's Republic of China*, Art. 10 (adopted by the National People's Congress on 3 April 1992, amended 27 October 2001, further amended 27 August 2009). *See also* Bloomberg, "Beijing Wants One Union to Rule Them All," 10 November 2016.

[34] Kai Chang and Fang Lee Cooke, "Legislating the Right to Strike in China: Historical Development and

Prospects," *Journal of Industrial Relations* 57(3) (2015): 444 and 448. *See also* Dongtao Qi, *Progress and*

Dilemmas of Chinese Trade Unions, East Asian Policy Background Brief 537 (East Asian Institute, National

University of Singapore, 2010), 21.

[35] *Trade Union Law of the People's Republic of China*, Arts. 9 and 10 (adopted by the National People's Congress on 3 April 1992, amended 27 October 2001, further amended 27 August 2009). *See also* Cynthia Estlund, *A New Deal for China's Workers?* (Cambridge: Harvard University Press, 2017), 47.

[36] Hualing Fu, "Bringing Politics Back In: Access to Justice and Labor Dispute Resolution in China," in *Justice: The China Experience*, edited by Flora Sapio et al. (Cambridge: Cambridge University Press, 2017), 356-78.

[37] *See* Kam Wing Chan, "The Chinese Hukou System at 50," *Eurasian Geography & Economics* 50(2) (2009): 201-02; Charlotte Goodburn, *The End of the Hukou System? Not Yet*, China Policy Institute Policy Paper (China Policy Institute, University of Nottingham, September 2014), 2-3.

[38] Jack Perkowski, "Cracking China's Power Sector," *Forbes*, 12 January 2011, *available at* https://www.forbes.com/sites/jackperkowski/2011/01/12/cracking-chinas-power-sector/#63a210e31a8e. ("Of the more than 4,300 power generation companies in China that have capacity of 6,000 kilowatts and above, approximately 90 percent are state-owned, or companies with a majority of their shares controlled by the state. Among them, five corporations directly under the central government account for approximately 45 percent of China's installed capacity. The big five are: China Huaneng Group; China Datang Corporation; China Guodian Corporation; China Huadian Corporation; and China Power Investment Corporation […] In order to transmit electricity around the country, there are 38 power transmission companies at the central government and provincial levels. […] The State Grid Corporation of China covers provinces, municipalities and autonomous regions, while the China Southern Power Grid Co., Ltd. covers five.")

[39] *See, e.g.*, Zhong Xiang Zhang, "Energy Prices, Subsidies, and Resource Tax Reform in China," *Asia & Pacific Policy Studies* 1(3) (September 2014): 440. ("To respond to electricity generators' concerns, NDRC proposed in May 2005 a coal electricity price 'co-movement' mechanism that would raise electricity tariffs if coal prices rose by 5 per cent or more in no less than six months, and allowed electricity generators to pass up to 70 per cent of increased fuel costs on to grid companies, and grid companies to pass costs on to consumers. However, because of fears of inflation, the co-movement policy had not been implemented as the conditions met, and power tariffs continue to remain flat while coal prices rise.") *See also*, Ryan Rutkowski, *Rebalancing and Rising Electricity Prices in China*, China Economic Watch (Peterson Institute for International Economics, 18 February 2014). ("If coal prices rise once again, the state still *has complete control over end user pricing*, thus can limit pass-through of rising on-grid tariffs. The 5 percent threshold for annual adjustment to on-grid tariffs also leaves plenty of room to squeeze thermal power producers once again.")

[40] *National Development and Reform Commission Opinion on Comprehensively Deepening Price Mechanism Reform* (National Development and Reform Commission, Fa Gai Jia Ge [2017] No. 1941, issued

8 November 2017) (providing at Section V(9) for "improving differential pricing mechanisms" for electricity and water to target, *inter alia*, "excess capacity industries," and encouraging each locality across China to expand its use of this policy.) *See also* Markus Taube and Christian Schmidkonz, *Assessment of the Normative and Policy Framework Governing the Assessment of the Normative and Policy Framework Governing the Chinese Economy and Its Impact on International Competition*, Final Extended Report for AEGIS Europe (Think!Desk China Research & Consulting, 13 August 2015), 196. ("By 2015, the practice [of differential energy pricing] has not only been implemented nationwide, it has also been generally accepted as a way to guide corporate decision-making. While the actual contribution of differential energy pricing is hard to gauge and has been overshadowed by changing economic trends and policy strategies, differential pricing has become a mainstay of the industrial policy tool box.")

[41] *See* Markus Taube and Christian Schmidkonz, *Assessment of the Normative and Policy Framework Governing the Assessment of the Normative and Policy Framework Governing the Chinese Economy and Its Impact on International Competition*, Final Extended Report for AEGIS Europe (Think!Desk China Research & Consulting, 13 August 2015), 17. ("In the Chinese capital markets the price signals generated on the markets are subjected to government induced distortions first of all due to a repression of interest rates and a manipulation of the exchange rate. Both factors result in a constellation where capital is made available at too low prices and is utilised excessively by those having access to the formal financial system – which are China's state-owned enterprises and those actors upholding close relationships to local government agencies. According to calculations by IMF staff, this has resulted in an investment ratio ten percentage points above its equilibrium value and costs to the economy in a range of about 4 per cent of GDP per year (Lee/Syed/Liu 2012, Geng/N'Diaye 2012).")

[42] Moody's Investor Service, *Chinese Banking System Overview* (2017), *available at* https://www.moodys.com/sites/products/ProductAttachments/Infographics/chinese-banking-system.pdf?WT.z_referringsource=tb~lp~bkg~20170724~chinesebanks.

[43] Douglas Elliott and Kai Yan, *The Chinese Financial System: An Introduction and Overview*, Monograph Series Number 6 (The Brookings Institution, John L. Thornton China Center, July 2013), 13.

[44] *Id.*

[45] *Financial Times*, "China Pledges to Open Finance Sector to More Foreign Ownership," 10 November 2017, *available at* https://www.ft.com/content/d4a85422-c5d5-11e7-b2bb-322b2cb39656; *Nikkei Asian Review*, "China to Abolish Foreign Ownership Caps in Finance in 2021," 30 June 2018, *available at* https://asia.nikkei.com/Economy/China-to-abolish-foreign-ownership-caps-in-finance-in-2021; Xinhua, "China to Scrap Limits on Foreign Holdings in Banks, asset management companies," 8 June 2018, *available at* http://www.xinhuanet.com/english/2018-06/08/c_137240212.htm.

[46] Douglas Elliott and Kai Yan, *The Chinese Financial System: An Introduction and Overview*, Monograph Series Number 6 (The Brookings Institution, John L. Thornton China Center, July 2013), 3. ("Unlike in the West, the careers of the most important bankers are determined by the Party […].").

[47] *See* Aidan Shevlin and Lan Wu, *China: The Path to Interest Rate Liberalization* (J.P. Morgan Asset Management, 2015), 7; *PRC Macro*, "Bailing China 'in' to the Great State Refinancing," 19 February 2016, 3.

[48] *Law of the People's Republic of China on Commercial Banks*, Art. 34 (adopted by the National People's Congress on 10 May 1995, effective, 1 July 1995, amended 27 December 2003, further amended 29 August 2015).

[49] Katie Chen and Grace Wu, *China: State Support for Banks Intact Amid Financial Reform* (Fitch Ratings, 8 January 2016), 1.

[50] *See*, *e.g.*, Sebastian Heilmann and Oliver Melton, "The Reinvention of Development Planning in China, 1993-2012," *Modern China* 39(6) (2013): 586. ("The five-year plan begins with brief, fairly general guidelines approved by the [CCPCC] in the fall of the year before the start of the plan period, and with a more detailed – but still fairly broad – outline approved by the National People's Congress the following March. Collectively, they set national priorities and outline how they will be met, but these documents—which are commonly referred to as the five-year plan—are only executed through a network of thousands of sub-plans that evolve into detailed execution instructions for all levels of government. This web of plans evolves over the entire five-year period, and is better thought of as a planning coordination and evaluation cycle rather than a cohesive, unified blueprint. The planning system's layered and nested programs can be found in almost every single policy domain in China and across three core levels of government: the center, provincial-level jurisdictions, and cities or counties.")

[51] *See* Markus Taube, *Analysis of Market-Distortions in the Chinese Non-Ferrous Metals Industry*, Think!Desk for WirtschaftsVereinigung Metalle e.V. (April 2017); Usha C.V. Haley and George T. Haley, *Subsidies to Chinese Industry: State Capitalism, Business Strategy, and Trade Policy* (Oxford: Oxford University Press, 2013); Markus Taube and Christian Schmidkonz, *The State-Business Nexus in China's Steel Industry—Chinese Market Distortion in Domestic and International Perspective,* Think!Desk prepared for the European Confederation of Iron and Steel Industries (January 2009).

[52] *See* US Chamber of Commerce, *Made in China 2025: Global Ambitions Built on Local Protections* (2017);

European Union Chamber of Commerce in China, *China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces* (2017); Jost Wübbeke, Mirjam Meissner, Max J. Zenglein, Jaqueline Ives, and Björn Conrad, *Made in China 2025: The Making of a High-Tech Superpower and Consequences for Industrial Countries*, Papers on China No. 2 (Mercator Institute for China Studies, December 2016).

[53] *Notice on Issuing the National Medium- and Long-Term Science and Technology Development Plan Outline*

(2006-2020) (State Council, Guo Fa [2005] No. 44, issued 26 December 2005); *Decision on Accelerating the Cultivation and Development of Strategic Emerging Industries* (State Council, Guo Fa [2010] No. 32, issued 10 October 2010); *Notice on Issuing "Made in China 2025"* (State Council, Guo Fa [2015] No. 28, issued 8 May 2015).

[54] These entities include: (1) China Development Bank Capital, a subsidiary of China Development Bank, a state-owned policy bank; (2) China Mobile Communications Corporation, a central SOE and market leader in China's telecommunications sector; and (3) Beijing E-Town International Investment and Development Co., Ltd. (Beijing ETown), an investment company owned by the municipal government of Beijing. *See* Zhejiang Wansheng Co., *Zhejiang Wansheng Co., Ltd. Public Notice In Response to a Letter from the Shanghai Stock Exchange Requesting Information Disclosure Regarding the Company's Issuance of Shares to Acquire Assets and Raise Supporting Funds in a Related Party Transaction* (Code 603010, Public Notice 2017-042) [Chinese].

[55] China National Science and Technology Major Project (Press Release), *Integrated Circuit Industry Technological Innovation Strategic Alliance Official Established* [Chinese], (March 22, 2017), *available at* http://www.nmp.gov.cn/gzxgz/jcdl/201703/t20170323_5031.htm.

[56] *Id.*

[57] Ling Li, "The Chinese Communist Party and People's Courts: Judicial Dependence in China," *American Journal*

of Comparative Law 64(1) (2016): 59-72.

[58] *See Administrative Litigation Law of the People's Republic of China* (adopted by the National People's Congress on 4 April 1989, amended 1 November 2014, further amended 27 June 2017) (This law strictly limits the sorts of administrative acts that members of the public can challenge under the law. In particular, the law specifically enumerates the types of administrative actions subject to judicial review under the law and excludes any administrative acts not so-specified from court review. While the 2014 version of the law expands the list of permissible subject matter from eight to twelve types of administrative actions, it remains unclear whether courts have any authority to review administrative actions beyond those specifically enumerated. In addition, the law prohibits courts from conducting challenges to an administrative regulation or departmental rule that is generally binding.) *See also Decision of the Standing Committee of the National People's Congress on Amending the Administrative Procedure Law of the People' s Republic of China* (NPC Standing Committee, Order No.15 of the President, issued 1 November 2014); Jianfu Chen, *Chinese Law: Context and Transformation* (Leiden, The Netherlands: Brill Nijhoff 2016), 333; Qianfan Zhang, "From Administrative Rule of Law to Constitutionalism? The Changing Perspectives of the Chinese Public Law," *Asia Law Review* 3(1) (2006): 56.

[59] *See* Craig Charne and Shehzad Qazi, *Corruption in China: What Companies Need to Know* (Charney Research, January 1, 2015), 1-2. (The report finds that over one-third of Chinese firms surveyed noted having to pay bribes or unofficial fees, or provide gifts to public officials.) *See also* Freedom House, *Freedom in the World 2016*, *available at* https://freedomhouse.org/report/freedomworld/2016/china. (The report notes that foreign companies continue to contend with "arbitrary regulatory obstacles, demands for bribes and other inducements.") *See also* Daniel C.K. Chow, "How China's Crackdown on Corruption Has Led to Less Transparency in the Enforcement of China's Anti-Bribery Laws," *U.C. Davis Law Review* 49 (2015): 694.

[60] *See*, *e.g.*, Freedom House, *Freedom on the Net 2017 – China Country Profile* (accessed July 6, 2018). (China's overall score is 87 out of 100, with 0 = Most Free and 100 = Least Free.)

[61] *See*, *e.g.*, Reuters, "China Steel Glut: Years in the Making, Years to Resolve,"12 April 2016, *available at https://www.reuters.com/article/us-china-steel-overcapacity/chinas-steel-glut-years-in-the-making-years-to-resolve-idUSKCN0XA033*.

[62] *See, e.g.*, in 2016-2018: (1) Canada's *AD and CVD Investigations of Certain Fabricated Industrial Steel Components from China* (final affirmative determinations issued 25 April 2017), (2) Australia's *AD and CVD Investigations of Ferrous Grinding Balls from China* (final affirmative AD and CVD determinations issued 1 September 2016), (3) the European Union's *AD Investigation of Certain Corrosion-Resistant Steels from China* (final affirmative determination issued 7 February 2018), and (4) India's *CVD Investigation of Hot Rolled and Cold Rolled Stainless Steel Flat Products from China* (final affirmative determination (attached) issued 4 July 2017).

[63] *See* data on "Total Production of Crude Steel" from World Steel Association, *Steel Statistical Yearbook 2010* (2010) and *Steel Statistical Yearbook 2017* (2017).

[64] *See* data on "Exports of Semi-Finished and Finished Steel Products" from World Steel Association, *Steel Statistical Yearbook 2017* (2017).

[65] *Guiding Opinions of the State Council on Resolving the Conflict of Serious Overcapacity*, Art. 1 (State Council, Guo Fa [2013], No. 41, issued 6 October 2013).

[66] Office of the US Trade Representative, *Fact Sheet – Section 201 Cases: Imported Large Residential Washing Machines and Imported Solar Cells and Modules* (January 2018), *available at* https://ustr.gov/sites/default/files/files/Press/fs/201%20FactSheet.pdf.

[67] The Economist Intelligence Unit, *China's Supply-Side Structural Reforms: Progress and Outlook* (2017), 5.

[68] European Union Chamber of Commerce in China, *Overcapacity in China: An Impediment to the Party's Reform*

Agenda (2016), 2-14. (The EU Chamber report further states: "Despite then National Development and Reform Commission (NDRC) Chairman Zhang Ping's statement in 2009, that 'there won't be a penny spent on enlarging mass production or highly polluting and resource-intensive sectors', the [2009] stimulus package resulted in a massive expansion of the production capacities of many state-owned enterprises (SOEs). This situation was perpetuated by a surge in lending – encouraged by the government, to meet the needs of the thousands of infrastructure investment projects that were being approved around the country – in conjunction with the ease with which producers were able to secure such loans.")

[69] The State Council issued guiding opinions for coal and steel capacity shedding in February 2016. Both documents instruct authorities to limit approvals of capacity increases. To downsize existing capacity, the State Council assigns a series of tasks to lower-level authorities, including: (1) forcing capacity-shedding "according to the law" by enforcing stricter standards regarding environmental protection, energy consumption, quality, safety, and technology; (2) encouraging firms to "proactively" shed capacity by relocating production, engaging in mergers and acquisitions, lowering output targets in firm-level strategic plans, and other means; and (3) disabling production facilities by demolishing steel smelting equipment, or alternatively, resorting to means such as cutting off supplies of water and electricity. *See Opinion on Shedding Excess Industrial Capacity in the Coal Industry to Achieve Development out of Difficulty* (State Council, Guo Fa [2016] No. 7, issued 1 February 2016); *Opinion on Shedding Excess Industrial Capacity in the Steel Industry to Achieve Development out of Difficulty* (State Council, Guo Fa [2016] No. 6, issued 4 February 2016).

[70] Office of the US Trade Representative, *Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974* (22 March 2018), *available at* https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF.

[71] World Trade Organization, *Trade Policy Review – Report by China,* WT/TPR/G/375 (June 6, 2018), Paragraph 2.2.

[72] The World Bank, "GDP Growth (Annual per cent) (2018)," *available at* https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG.

[73] The World Bank, "GDP (current US$)," *available at* https://data.worldbank.org/indicator/NY.GDP.MKTP.CD.

[74] The World Bank, "Merchandise Exports (Current US$)," (Source Organization: WTO). *See also The Guardian*, "China Surpasses US as World's Largest Trading Nation," 10 January 2014, *available at* https://www.theguardian.com/business/2014/jan/10/china-surpasses-us-world-largest-trading-nation.

[75] People's Bank of China, *2017 Financial Statistical Data Report* (2018), *available at* http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/3461233/index.html.

[76] Long Guoqiang, "Overview, An Emerging Power's New Strategy of Opening Up to the Outside: Entry into the WTO: A Look Back over the Past Ten Years and a Look Forward," in *China's WTO Accession Reassessed*, edited by Wang Luolin (New York: Routledge, 2015), 2.

[77] Xinhua, "China Remains Largest Developing Country: Economist," *15* April 2018, *available at* http://www.xinhuanet.com/english/2018-04/15/c_137113119.htm. *See also* World Bank, *China Overview* (last updated 19 April 2018), *available at* http://www.worldbank.org/en/country/china/overview.

[78] Joseph Hincks, "China Now Has More Supercomputers Than Any Other Country," *Time*, 14 November 2017, *available at* http://time.com/5022859/china-most-supercomputers-world/.

[79] World Economic Forum, *These Are the World's Fastest Trains* (29 September 2017), *available at* https://www.weforum.org/agenda/2017/09/these-are-the-world-s-fastest-trains/.

[80] World Economic Forum, *China Is Now Home to the World's Most Valuable AI Start-up* (11 April 2018), *available at* https://www.weforum.org/agenda/2018/04/chart-of-the-day-china-now-has-the-worlds-most-valuable-ai-startup.

[81] World Economic Forum, *How China Is Leading the Renewable Energy Revolution* (29 August 2017), *available at* https://www.weforum.org/agenda/2017/08/how-china-is-leading-the-renewable-energy-revolution.

[82] Stockholm International Peace Research Institute, *SIPRI Military Expenditure Database*, *available at* https://www.sipri.org/databases/milex.

[83] *Wall Street Journal*, "China's Auto Market Slips Into Slow Lane—Except for EVs,"*11* January 2018, *available at* https://www.wsj.com/Articles/chinas-auto-market-slips-into-slow-laneexcept-for-evs-1515669639.

[84] US Energy Information Administration, *China Surpassed the United States as the World's Largest Crude Oil Importer in 2017* (February 5, 2018), *available at* https://www.eia.gov/todayinenergy/detail.php?id=34812.

[85] Reuters, "China's Pork Demand Hits a Peak, Shocking Producers, as Diets Get Healthier,"19 June 2017, *available at* https://www.reuters.com/Article/us-china-meat-demand-insight/chinas-pork-demand-hits-a-peak-shocking-producers-as-diets-get-healthier-idUSKBN19A31C.

[86] World Economic Forum, *You Knew China's Cities Were Growing. But the Real Numbers Are Stunning* (20 June 2016), *available at* https://www.weforum.org/agenda/2016/06/china-cities-growing-numbers-are-stunning/.

[87] World Economic Forum, *China Has Overtaken the UK as the World's Second-largest Market for Art* (19 March 2018), *available at* https://www.weforum.org/agenda/2018/03/china-is-second-largest-art-market-in-world.

[88] *CCP Central Committee Decision on Several Major Issues for Comprehensively Deepening Reform* (CCP Central
Committee, issued 12 November 2013).