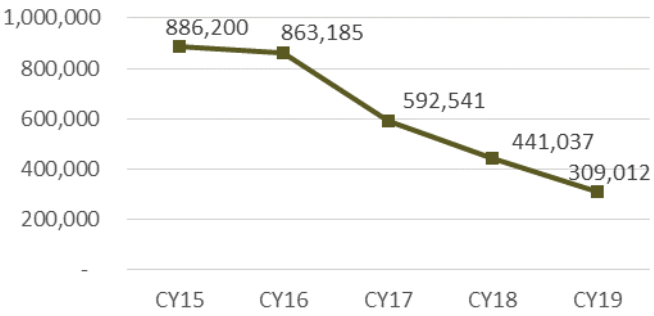
Figure 49. DEA Nationwide Marijuana Seizures in Kilograms, 2015 – 2019



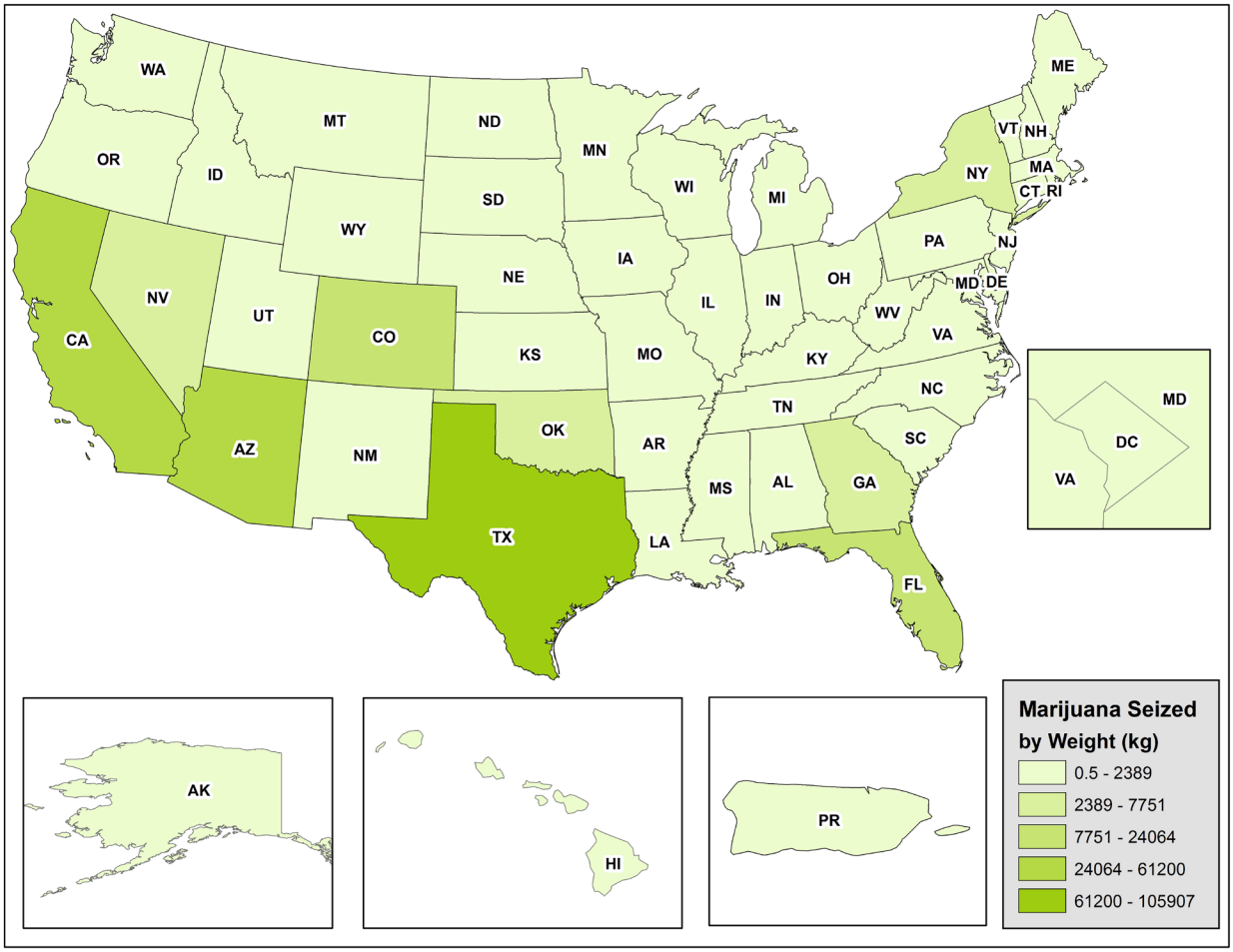
Source: DEA

Marijuana produced in the United States is often trafficked from states where production is legal to or through states where production is not. Domestically produced marijuana is transported in POVs, rented vehicles, semi-trucks, tractor-trailers, vehicle hauler trailers, trains, and buses as well as through personal and commercial planes. The use of commercial parcel services is also common especially for trafficking concentrated forms of marijuana, which are concealed in envelopes, small containers, or flattened parcels.

Foreign-Produced Marijuana

Marijuana is also smuggled into the United States from Mexico, and in smaller volumes from Canada and the Caribbean. Marijuana from Mexico is typically classified as "commercial-grade" or "low-grade" marijuana, lesser in quality than marijuana produced in the United States and Canada. High-grade marijuana is transported from Canada, which legalized marijuana in October 2018, into the United States at various points along the shared

Figure 50. DEA State-Level Marijuana Seizures in Kilograms, 2019



Source: DEA

border, particularly through the Mohawk Nation at Akwesasne, bordering New York State and Canada.

Jamaica continues to be the largest Caribbean marijuana supplier to local Caribbean nations; however, production is increasing in Puerto Rico and the USVI.

Large quantities of foreign-produced marijuana are smuggled into the United States via POVs, commercial vehicles, buses, rail systems, subterranean tunnels, small boats, unmanned aerial vehicles/drones, and catapults. Backpackers also walk loads of marijuana across the SWB. Once marijuana has been smuggled into the United States, it is often stored in warehouses along the border prior to distribution throughout the United States.

According to CBP information, marijuana seizures along the SWB have continued to decline as domestic production increases. The total weight seized by CBP along the SWB decreased 13 percent from 287,398 kilograms in 2018 to 248,585 kilograms in 2019.

- *In June 2020, authorities seized 779 kilograms of marijuana hidden in the cab of a tractor-trailer crossing the World Trade Bridge from Mexico into Laredo, Texas (See Figure 51).*

Figure 51. 1,344 packages of marijuana totaling 5,779 kilograms seized in Laredo, Texas

Source: U.S. Customs and Border Protection, Laredo Sector

In response to an increased demand for marijuana concentrate products in the United States, TCOs in Mexico have begun producing and trafficking THC oil.

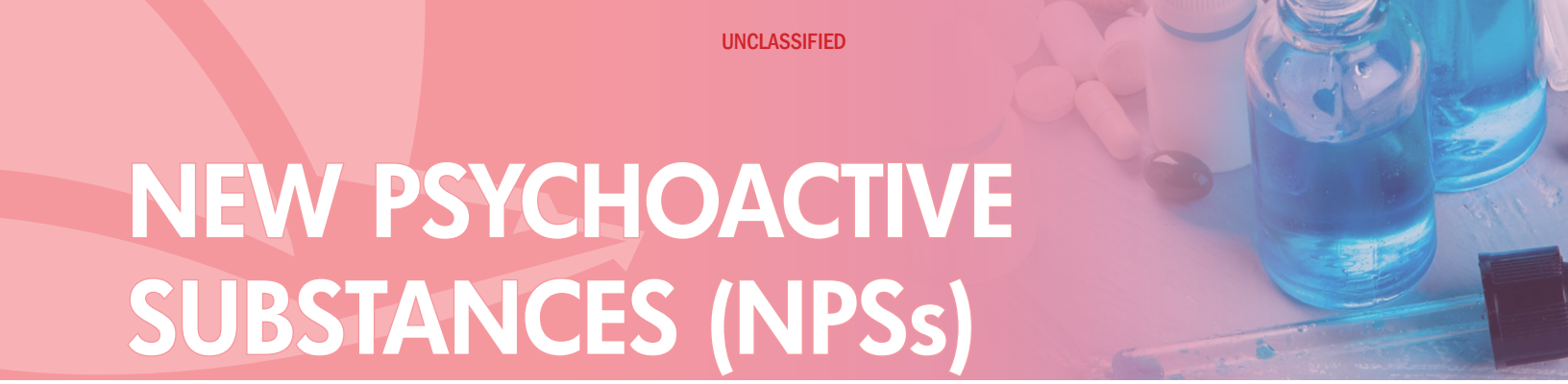
- *Between May 2019 and January 2020, five seizures of THC oil occurred in Arizona's west desert corridor, totaling 607 pounds. In each case, backpackers were transporting the THC oil through Arizona's west desert.*
- *In April 2020, CBP officers at the Port Huron, Michigan POE discovered 788 kilograms of marijuana pressed and packaged into 48 bundles hidden in a semi-truck driven by a Canadian citizen.*

Outlook

Domestic use of marijuana remains high and is likely to increase as state legalization continues and perception of risk by potential users continues to decrease. The high availability of high-potency marijuana, marijuana concentrate products, and trendy paraphernalia will likely continue to entice potential users. Domestic production and trafficking of marijuana will likely increase as more states adopt or change current marijuana laws to establish medical or recreational marijuana markets.

Despite widespread state legalization measures, TCOs will continue to expand their illicit marijuana production and trafficking, earning substantial profits that will further enhance their polydrug trafficking and polycriminal operations.

Marijuana produced in Mexico will continue to be trafficked into the United States in bulk quantities and may increase in quality to compete with domestic-produced marijuana.



NEW PSYCHOACTIVE SUBSTANCES (NPSs)

Overview

New Psychoactive Substances (NPSs) are a diverse group of synthetic substances that are purported to have similar effects to controlled substances. The NPS market is typified by new substances constantly being created and marketed to users, most often as legal alternatives to controlled substances. Synthetic cannabinoids and synthetic cathinones are the most common classes of NPSs available and abused in the United States; however, there are many other classes of NPSs including opioids[x], phenethylamines, tryptamines, benzodiazepines, and piperazines. Synthetic cannabinoids are commonly applied to plant material or suspended in an oil and are designed to be smoked or used in e-cigarettes. Synthetic cathinones are usually powder or crystal substances, typically consumed in powder, tablet, or capsule form. In addition to these classes of NPSs, designer benzodiazepines and synthetic opioids garnered significant national attention in 2019 for their presence in overdoses and deaths.

Availability

The NPS market continues to feature new substances belonging to a multitude of chemical structural classes, which are responsible for overdoses across the country, thus posing a significant risk to communities. While some substances are encountered year after year, many substances quickly rise to popularity and then fall out of use or are no longer available. Some of these changes are likely due to regulatory controls on specific NPSs, which have been successful in discouraging NPS use and availability among the general population.

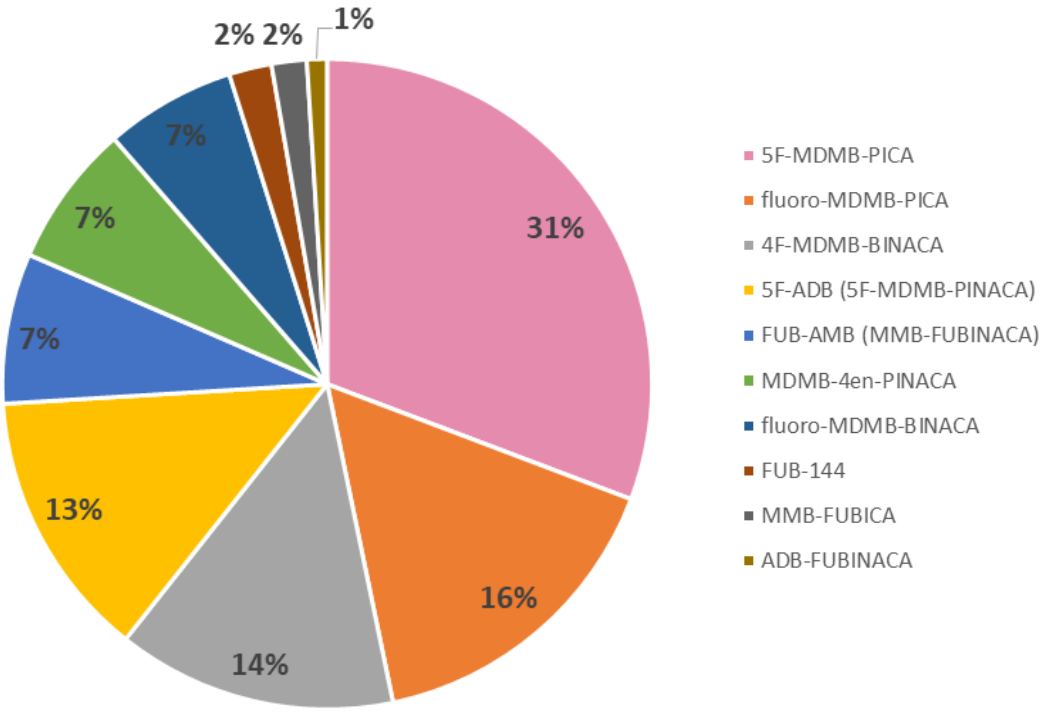
The majority of DEA Field Divisions indicated NPS availability was low or moderate throughout the United States. In 2019, 11 of 23 DEA Field Divisions reported NPS availability was moderate and nine reported NPS availability was low, with only three divisions reporting high NPS availability. Of the 23 divisions, two reported NPS availability increased between 2018 and 2019 and two divisions reported NPS availability decreased between 2018 and 2019. NPS availability across the United States remained largely unchanged in 2019 in comparison to 2018.The number of NPSs worldwide stabilized at around 500 substances identified per year between 2015 and 2017, according to a report from the United Nations Office on Drugs and Crime (UNODC).

Synthetic Cannabinoids

According to NFLIS-Drug, in 2019 there were 18,591 synthetic cannabinoid reports, which represents a 21 percent decrease compared to the 23,416 synthetic cannabinoid reports in 2018. The most commonly occurring synthetic cannabinoid in the United States in 2019 was 5F-MDMB-PICA, which represented 31 percent

x. Synthetic opioids, as a class of New Psychoactive Substances (NPS), include fentanyl-related substances in addition to other synthetic drugs. Given the threat posed by fentanyl and fentanyl-related substances/fentanyl analogues, those substances are discussed in their own section of this report.

Figure 52. Ten Most Frequently Reported Synthetic Cannabinoids to NFLIS-Drug by Percentage, 2019



Source: National Forensic Laboratory Information System-Drug – Retrieved July 10, 2020

of the top 10 synthetic cannabinoids reports to NFLIS-Drug data. The next most commonly occurring synthetic cannabinoids in 2019 were fluoro-MDMB-PICA and 4F-MDMB-BINACA, representing 16 percent and 14 percent, respectively, of the top 10 synthetic cannabinoid reports to NFLIS-Drug data (See Figure 52).

5F-MDMB-PICA was officially placed in Schedule I of the CSA in April 2019. 4F-MDMB-BINACA is controlled as a Schedule I substance as a positional isomer of 5F-AMB, a Schedule I controlled substance under the CSA since April 2017.

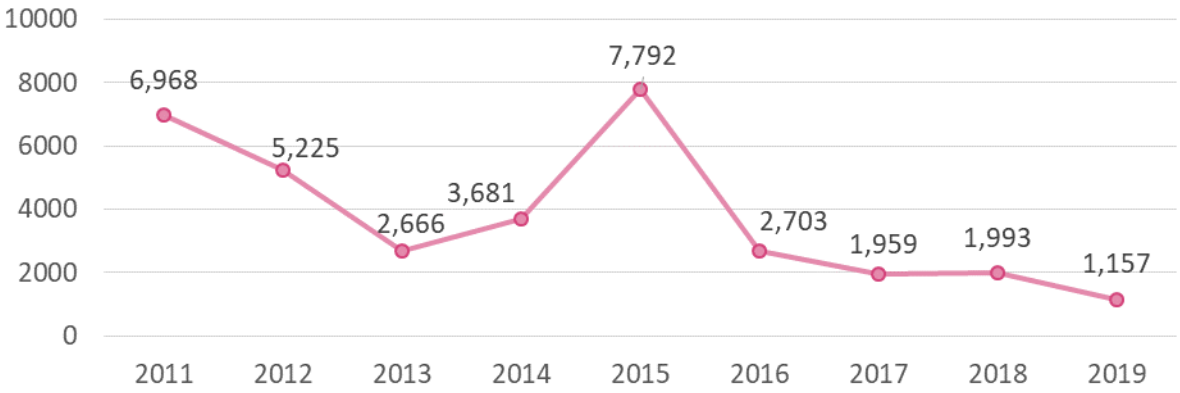
Synthetic cannabinoids are most commonly inhaled. These substances are commonly smoked in cigarettes, pipes, and other smoking devices. Synthetic cannabinoids are also available in an oil form for use in e-cigarettes or vape pens and are sometimes pressed into counterfeit prescription pills.

- *In February 2020, DEA's Gulfport, Mississippi RO analyzed an express package seized from the Terre Haute federal prison containing two legal sized envelopes. Officers examined the papers inside the envelopes and believed that at least some of them were soaked in a solution containing FUB-AMB. This seizure was related to a DTO suspected of trafficking synthetic cannabinoids into at least 13 different federal prisons using a network of inmates.*

Figure 53. Synthetic Cannabinoid 5F-MDMB-PICA Sold as "Herbal Hookah"

Source: DEA

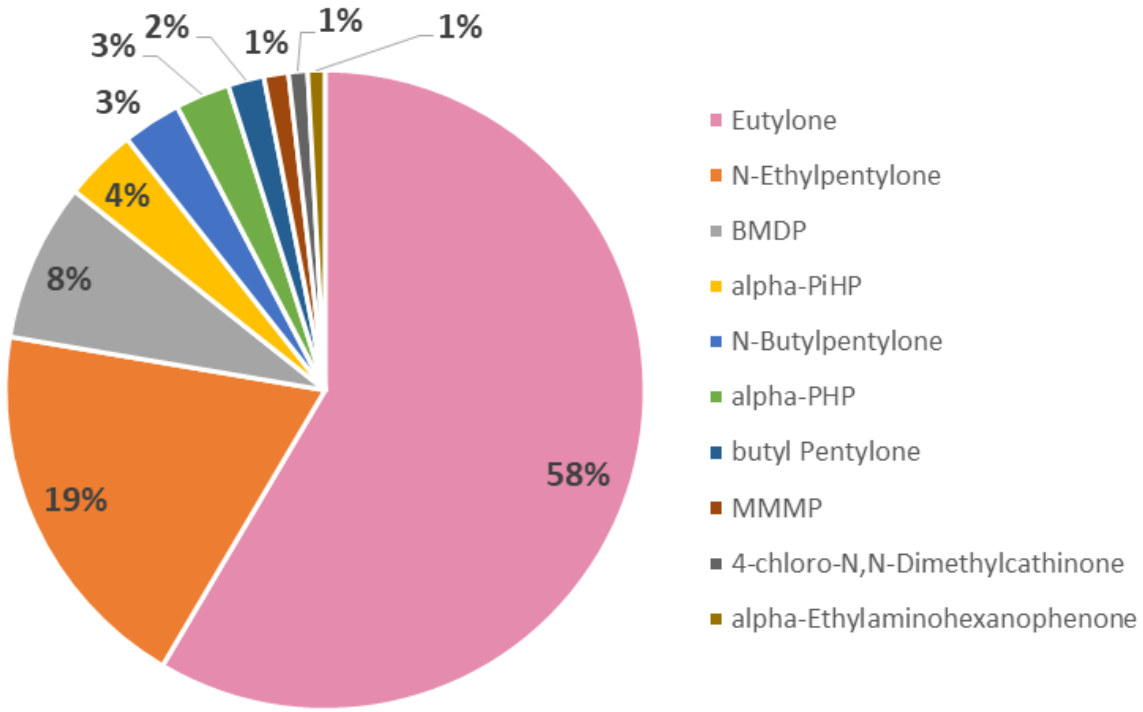
Figure 54. Number of Exposure Calls to the American Association of Poison Control Centers for Synthetic Cannabinoids, 2011 – 2019



Source: American Association of Poison Control Centers

The American Association of Poison Control Centers (AAPCC) reports that in 2019 there were 1,157 calls to poison centers across the country regarding synthetic cannabinoid exposure (See Figure 54). This is an 85 percent decrease from the record-high 7,792 AAPCC calls in 2015 and a 42 percent decrease from 2018. The sharp increases and decreases in calls to poison control centers occur for multiple reasons, such as the short-lived popularity of some NPS varieties or medical providers becoming increasingly familiar with proper treatments for these substances, lessening the need for them to contact poison control centers.

Figure 55. Ten Most Frequently Reported Synthetic Cathinones to NFLIS-Drug by Percentage, 2019



Source: National Forensic Laboratory Information System-Drug – Retrieved July 10, 2020

Synthetic Cathinones

In 2019, there were 9,575 reports of synthetic cathinones[y] to NFLIS-Drug, a 28 percent decrease from the 13,226 reports in 2018. The most frequently reported synthetic cathinone in 2019 was eutylone at 58 percent, according to NFLIS-Drug. The second most common synthetic cathinone was N-ethylpentylone at 19 percent (See Figure 55). Eutylone is a positional isomer of pentylone and is therefore a Schedule I substance under the CSA. DEA published a temporary scheduling order controlling N-ethylpentylone in Schedule I of the CSA in August 2018.

Synthetic cathinones are usually consumed in pill or capsule form, but sometimes users will smoke or insufflate (sniff) them. Many synthetic cathinones are commonly misrepresented and/or sold as substitutes for MDMA for use in the rave and club scenes because of the energy and euphoria reportedly provide.

- *In April 2020, DEA's Savannah, Georgia RO along with the U.S. Secret Service and the U.S. Postal Inspection Service obtained 20 suspected eutylone pills from a dark web supplier. The pills were ordered and arrived in a heat sealed package containing 24 pills with a variety of colors and stamps.*

Other Emerging NPSs

Although synthetic cannabinoids and synthetic cathinones are far and away the types of NPSs most available in the United States, in 2019 and 2020 there were two other NPSs that were noted for causing overdoses and deaths across the country: isotonitazene and flualprazolam. Historically, different NPSs rise and fall in popularity every year based on their availability from international sellers, as well as their scheduling status both internationally and in the United States.

Isotonitazene is a potent synthetic opioid similar in chemical structure to etonitazene, a highly potent Schedule I substance. In August 2020, DEA issued a temporary order to place isotonitazene as a Schedule I substance of the CSA. The abuse of isotonitazene is consistent with the traditional opioid abuse pattern. Available scientific data demonstrates that isotonitazene may be similar in potency to fentanyl, meaning the drug poses a significant threat of overdose to users. Isotonitazene can be encountered in numerous forms, one of the most popular being in the form of illicit counterfeit eight milligram hydromorphone tablets. The drug has been detected in numerous cases and fatal overdoses in the Midwest through April 2020.

Flualprazolam is a designer benzodiazepine with a relatively short onset of action, similar to alprazolam. As of March 2020, the United Nations Commission on Narcotic Drugs decided to add flualprazolam to Schedule IV of the 1971 Convention on Psychotropic Substances. The drug has been marketed as a research chemical since at least 2017 and, similar to isotonitazene, users often purchase the drug through online marketplaces and dark web marketplaces.

Figure 56. Illicit Counterfeit Alprazolam Bar Tablets Containing Flualprazolam

Source: DEA

y. Synthetic cathinones are stimulants meant to produce similar effects as amphetamine or ecstasy.

Flualprazolam is commonly sold in the form of illicit counterfeit alprazolam bar tablets (See Figure 56) and is often marketed as an alternative benzodiazepine. As flualprazolam is a relatively newly trafficked designer benzodiazepine, users who are abusing the substance, knowingly or unknowingly, are at an increased risk for overdose and/or death.

Production

NPSs are created in laboratories and do not require any plant material for production. Each variety requires different precursors and chemical processes to synthesize. These substances are widely available in China and other Asian and European countries. Therefore, most U.S.-based traffickers purchase the NPS

Indictment of Synthetic Cannabinoid Traffickers in Virginia

In March 2020, four individuals were indicted for distributing synthetic cannabinoids that resulted in bodily injury and death. The charges stemmed from an investigation beginning in April 2017 into the retail distribution of synthetic cannabinoids from a convenience store at a gas station in Warrenton, Virginia. Local law enforcement reporting indicated that several individuals had been admitted to local emergency rooms after having consumed quantities of synthetic cannabinoids from the gas station in Warrenton. In December 2017, law enforcement executed search warrants in connection with the investigation and seized seven kilograms of synthetic cannabinoids and over $400,000 USC.

Further reporting revealed the cannabinoids were purchased from an online website which marketed synthetic cannabinoids as herbal incense. The four indicted individuals were assessed to be the suppliers of the cannabinoids available in the convenience store. These individuals reportedly utilized multiple warehouses in Palm Desert, California, as storage facilities for their cannabinoid trafficking operation. In 2019, agents searched these warehouses and seized over 30 kilograms of synthetic cannabinoids from thousands of packets in silver envelopes containing one, five, and ten-gram quantities, along with $45,000 USC (See Figure 57). Throughout the investigation, laboratory analysis revealed that the indicted individuals were trafficking multiple Schedule I controlled synthetic cannabinoids, including 5F-ADB, 5F-MDMB-PICA, FUB-AMB, and ADB-FUBINACA.

Figure 57. Seized Synthetic Cannabinoids in Packages and Oils

Source: DEA

already synthesized and have them shipped through mail carriers to perform final processing and packaging domestically.

Domestic cannabinoid processing facilities are found in residential spaces, such as homes and garages, and in warehouses. Traffickers dissolve powders into a solvent, typically ethanol, or acetone, to create a liquid solution. Cement mixers distribute the synthetic cannabinoid solution on dry plant material (usually damiana leaf), or it can be sprayed onto dry plant material. Once dry, the synthetic cannabinoids are packaged into individual foil packets for sales, with each packet containing anywhere from a few grams to ten or more grams of product.

Transportation and Distribution

Wholesale quantities of NPSs are usually trafficked to the United States via commercial mail carriers from China, often intentionally mislabeled or described as not for human consumption in an attempt to avoid scrutiny from domestic law enforcement and customs officials. Synthetic cannabinoids are commonly distributed in gas stations and smoke shops throughout the United States. At the street level, users and distributors will often use generic names to refer to synthetic cannabinoids (spice, K2) and cathinones (bath salts), indicating that neither the user nor the distributor/trafficker knows exactly which cannabinoid or cathinone they are consuming or selling. Sales have increasingly moved to street sales in traditional illicit drug markets as law enforcement and local business regulations have targeted stores selling synthetic cannabinoids.

Outlook

NPSs continue to pose a nationwide threat, causing occasional spikes in overdoses and deaths, though NPSs are unlikely to pose the same level of threat as other illicit drugs. The availability of both synthetic cannabinoids and synthetic cathinones, the two primary types of NPS available in the United States, will likely remain stable. As many previously popular substances are controlled, other new substances are developed and rise quickly in popularity. Two new NPSs—isotonitazene and flualprazolam, have gained national attention in 2019 and 2020 due to their presence in abuse and overdose deaths, indicating that these substances may increase the threat posed by NPSs in the near term if the popularity of these drugs continues to rise.

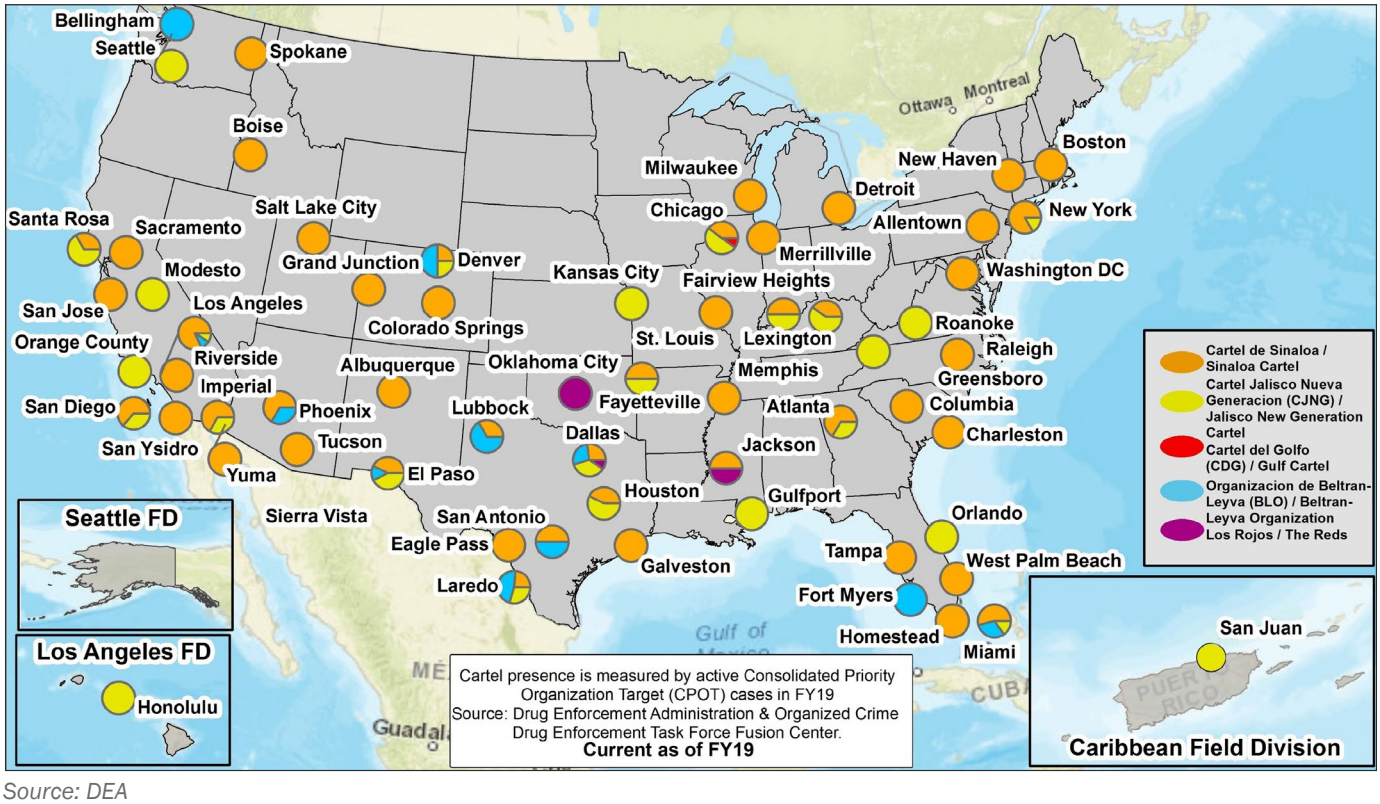
TRANSNATIONAL CRIMINAL ORGANIZATIONS

Mexican Transnational Criminal Organizations

Overview

Mexican TCOs continue to control lucrative smuggling corridors, primarily across the SWB, and maintain the greatest drug trafficking influence in the United States. The two largest organizations, the Sinaloa Cartel and the Jalisco New Generation Cartel (CJNG), show signs of expansion in Mexico, demonstrating their continued influence even compared to other Mexican TCOs. These TCOs expand their criminal influence by engaging in business alliances with other organizations, including independent DTOs, and working in conjunction with transnational gangs, U.S.-based street gangs, prison gangs, and Asian money laundering organizations (MLOs). Mexican TCOs export significant wholesale quantities of fentanyl, heroin, methamphetamine, cocaine, and marijuana into the United States annually. The drugs are delivered to user markets in the United States through transportation routes and distribution cells that are managed or influenced by Mexican TCOs, and with the cooperation and participation of local street gangs (See Figure 58).

Figure 58. United States: Areas of Influence of Major Mexican Transnational Criminal Organizations by Individual Cartel



Source: DEA

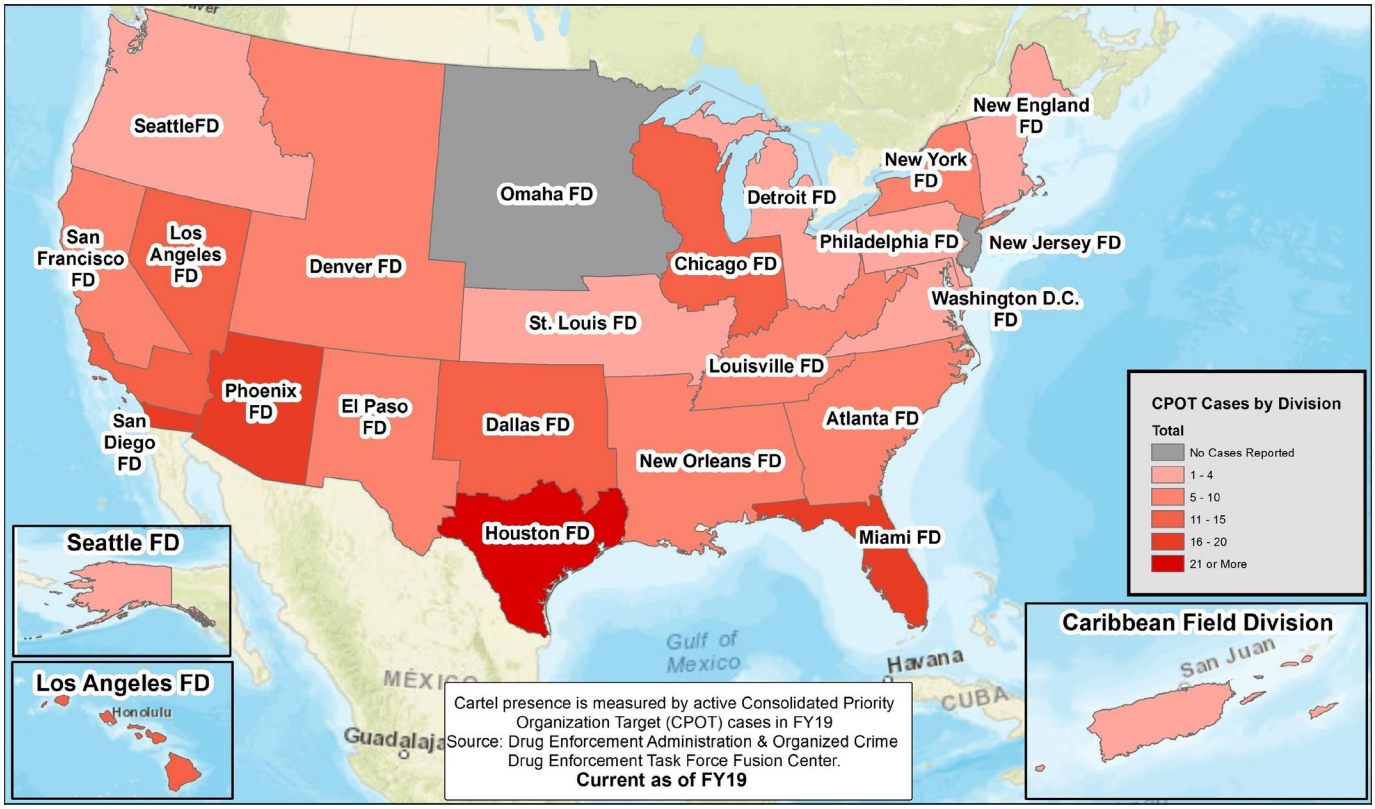
Most Significant Mexican TCOs Currently Active in the United States

DEA considers the following nine Mexican TCOs as having the greatest drug trafficking impact on the United States: Sinaloa Cartel, CJNG, Beltran-Leyva Organization, Cartel del Noreste and Los Zetas, Guerreros Unidos, Gulf Cartel, Juarez Cartel and La Linea, La Familia Michoacána, and Los Rojos. These TCOs maintain drug distribution cells in cities across the United States that either report directly to TCO leaders in Mexico or report indirectly through intermediaries. The cartels dominate the drug trade influencing the United States market, with most cartels having a polydrug market approach that allows for maximum flexibility and resiliency of their operations (See Figures 58 and 59).

▶ Sinaloa Cartel

The Sinaloa Cartel is one of the oldest and most established TCOs in Mexico. The Sinaloa Cartel has significant presence in 15 of the 32 Mexican states and controls drug trafficking activity in various regions in Mexico, particularly along the Pacific Coast in northwestern Mexico and near Mexico's southern and northern borders. Additionally, the Sinaloa Cartel maintains the most expansive international footprint compared to other Mexican TCOs, providing the group an added advantage over its rivals. The Sinaloa Cartel exports and distributes wholesale amounts of fentanyl, heroin, methamphetamine, cocaine, and marijuana in the United States by maintaining distribution hubs in various cities. Illicit drugs distributed by the Sinaloa Cartel are primarily smuggled into the United States

Figure 59. United States: Areas of Influence of Major Mexican Transnational Criminal Organizations by DEA Field Division



Source: DEA

through crossing points located along the SWB. The cartel employs gatekeepers assigned to POEs and controls Arizona and California area smuggling corridors into the United States. The primary fentanyl threat to the United States is most likely the Sinaloa Cartel due to their demonstrated ability to run clandestine fentanyl synthesis labs in Sinaloa Cartel dominant areas in Mexico.

► Cartel Jalisco Nueva Generación (CJNG)

The Cartel Jalisco Nueva Generación, also referred to as Jalisco New Generation Cartel, is one of the fastest growing cartels—with CJNG and the Sinaloa Cartel being the two most dominant TCOs in Mexico. CJNG has a significant presence in 23 of the 32 Mexican states with most of its growth and territory being in central Mexico and strategic locations on the border between the Unites States and Mexico. The CJNG smuggles illicit drugs into the United States by accessing various trafficking corridors in northern Mexico along the SWB including Tijuana, Juarez, and Nuevo Laredo. The CJNG also has influence over the busiest port in Mexico, the Port of Manzanillo, and utilizes that influence for the distribution of large quantities of drugs. The CJNG's rapid expansion of its drug trafficking activities is characterized by the group's willingness to engage in violent confrontations with Mexican government security forces and rival cartels. Like most major Mexican TCOs, the CJNG is a polydrug trafficking group, manufacturing and distributing large amounts of fentanyl, heroin, methamphetamine, and cocaine.

► Beltran-Leyva Organization (BLO)

The Beltran-Leyva Organization was a once powerful group and, despite the deaths or arrests of various leaders in recent years, continues to function throughout Mexico in a less structured manner than the cartel historically operated. BLO relies on its loose alliances with larger cartels for access to drug smuggling corridors along the SWB. BLO members primarily traffic heroin, methamphetamine, cocaine, and marijuana.

► Los Zetas and Cartel del Noreste (CDN)

Los Zetas and their most prominent faction, Cartel del Noreste, have a presence in northeastern Mexico. From there, members smuggle the majority of their illicit drugs through the SWB in the areas of Laredo, Texas; Eagle Pass, Texas; and the Mexican states of Coahuila, Nuevo Leon, and parts of Tamaulipas. CDN's leadership structure has been weakened by law enforcement efforts and internal conflicts; however, the cartel is still operational and able to control the flow of drugs in their territories.

► Guerreros Unidos (GU)

Guerreros Unidos is a cartel based in the Mexican state of Guerrero. Its presence in the region creates a high degree of violence. GU was originally a splinter group from BLO and has become increasingly involved in the heroin trade. The cartel has a working partnership with the CJNG and uses the same transportation networks to move drug shipments into the United States and to return drug proceeds back to Mexico.

► Gulf Cartel

The Gulf Cartel holds its power base in parts of the Mexican state of Tamaulipas and in the state of Zacatecas, and may have alliances with CJNG members working in that region of Mexico. The Gulf Cartel focuses its drug trafficking activities on heroin and cocaine by transporting loads into the United States near the McAllen and Brownsville, Texas, areas.

► Juarez Cartel and La Linea

The Juarez Cartel and the faction unit La Linea are two once powerful groups and, although not as expansive as other cartels, they continue to impact the United States through their drug trafficking activities. These cartels' greatest territorial influence is in the state of Chihuahua near the SWB. This area has profitable smuggling opportunities between Ciudad Juarez and El Paso, Texas. These drug traffickers target this corridor to smuggle shipments of heroin, methamphetamine, cocaine, and marijuana.

► La Familia Michoacána (LFM)

La Familia Michoacána's organizational base is in the state of Michoacán, Mexico. The group's operational capacity has degraded recently due to cartel feuding and successful law enforcement operations. LFM has some ties to the CJNG and also works with other smaller groups to further the cartel's drug trafficking activities.

► Los Rojos

Los Rojos is a splinter group of BLO, similar to GU, generating violence in the Mexican regions where they are active. Los Rojos is involved in heroin trafficking. The group's leadership rotates more regularly than other cartels due to frequent arrests of members.

Structure and Characteristics

Mexican TCO members operating in the United States can be traced back to leading cartel figures in Mexico, often through familial ties. U.S.-based TCO members may reside in the United States prior to employment by a Mexican TCO. In some cases, U.S.-based TCO members are given high-ranking positions within the organization upon returning to Mexico after years of successful activity in the United States. The Sinaloa Cartel maintains the widest national influence, with its most dominant positions along the West Coast, in the Midwest, and in the Northeast. The CJNG continues to be the Mexican TCO with second-most widespread domestic influence.

U.S.-based Mexican TCO affiliates compose various compartmentalized cells and are assigned to specific functions, to include: drug distribution or transportation, consolidation of drug proceeds, or money laundering. Mexican TCO operations in the United States typically function as a supply chain to maximize operational security. Operators in the chain are aware of their specific function, but are unaware of other aspects of an operation. In most cases, individuals hired to transport drug shipments within the United States are independent, third-party "contractors" who may work for multiple Mexican TCOs. The number of these transportation groups is increasing in some areas, and they often transport smaller shipments.

U.S.-based Mexican TCO members generally coordinate the transportation and distribution of wholesale quantities of illicit drugs to U.S. markets while smaller local groups and street gangs—who are not directly affiliated with

Mexican TCOs—typically handle retail-level distribution. At times, Mexican TCOs collaborate directly with local criminal groups and gangs across the United States to distribute and transport drugs at the retail level.

▶ Drug Smuggling and Transportation Methods

Mexican TCOs transport the majority of illicit drugs entering into the United States, moving product across the SWB using a wide array of smuggling techniques. Cartels transport bulk quantity, polydrug loads via commercial and passenger vehicles as well as via underground tunnels. These cross-border tunnels originate in Mexico and lead into safe houses on the U.S. side of the border. TCOs exploit major highway routes for transportation and the most common method employed involves smuggling illicit drugs through U.S. POEs in passenger vehicles with concealed compartments or commingled with legitimate goods on tractor-trailers.

Mexican TCOs also transport illicit drugs into the United States aboard commercial cargo trains, passenger buses, and maritime vessels clandestinely or through official maritime POEs. Mexican TCOs rely on traditional drug smuggling methods, such as the use of backpackers and couriers, when smuggling drugs across remote areas of the SWB into the United States. Mexican TCOs also exploit various aerial methods to transport illicit drugs across the SWB. These methods include the use of ultralight aircraft and unmanned aerial systems (drones) to conduct airdrops.

▶ Violence

While drug-related violence in Mexico remains a concern, there is minimal spillover violence in the United States, as U.S.-based Mexican TCO members generally refrain from inter-cartel violence to avoid detection and increased scrutiny by law enforcement. Mexican TCO-related acts of violence do occur in parts of the United States, particularly along the SWB; however, they are less frequent and mainly associated with 'trafficker-on-trafficker' incidents.

▶ Money Laundering Activity

Mexican TCOs generate billions of dollars annually through the sale of illegal drugs in the United States. The cartels utilize a variety of methodologies to counter law enforcement efforts to identify and confiscate illicit proceeds in the United States and Mexico. TCOs use members to transport cash across the border in vehicles, small aircraft, and by couriers. They also use wire transfers, shell and legitimate business accounts, funnel accounts, and structured deposits with money remitters in order to move money while concealing the routing of the illicit proceeds. Mexican TCOs also use cryptocurrencies to further their criminal enterprise. Furthermore, Asian MLOs engage in the laundering of drug proceeds on behalf of the Mexican TCOs.

▶ Impact of COVID-19

Mexican TCOs' long term operational outlook and capacities were not significantly impacted by the COVID-19 pandemic with regard to their drug trafficking and drug production activities. Most significantly, the Sinaloa Cartel and the CJNG used the COVID-19 pandemic to artificially inflate pricing for methamphetamine. According to DEA

reporting, both the Sinaloa Cartel and CJNG may also have been withholding regular shipments of methamphetamine into the United States, which allowed the cartels to increase the wholesale price. Although DEA reporting suggests Mexican TCOs may have encountered initial difficulties obtaining precursor chemicals at the onset of the pandemic, there are likely no long term significant impacts from COVID-19-related government restrictions. Therefore, there will likely be no significant long term impacts on the availability or the capability for Mexican TCOs to obtain the necessary precursor chemicals to produce synthetic drugs.

Mexican TCOs' financial situations have been influenced by the COVID-19 pandemic, as DEA reporting suggests that the pandemic has affected both the global and domestic illicit financial networks that the TCOs use. These disruptions include the transportation of bulk currency, the processing performed by illicit money brokers, the operations of Asian MLOs (specifically Chinese money laundering networks), and trade-based money laundering.

Colombian Transnational Criminal Organizations

Overview

Colombian TCOs continue to influence the U.S. illicit drug market. According to DEA's CSP, approximately 91 percent of the cocaine seized in the United States and tested by the CSP is of Colombian origin. Colombian TCOs continue to control the production and supply of cocaine, and rely on partnerships with Mexican TCOs to smuggle cocaine from Colombia to U.S. markets. Mexican TCOs dominate the wholesale distribution of Colombian cocaine into the United States. Principally, large-scale Colombian TCOs work closely with Mexican and Central American TCOs to export multi-ton quantities of cocaine from Colombia every year. Large-scale Colombian TCOs sell multi-ton quantities of cocaine and smaller quantities of heroin to Mexican TCOs, who smuggle those drugs through the Central American corridor and Mexico for eventual smuggling into the United States. Colombian TCOs also route cocaine and heroin shipments through the Caribbean Corridor where local TCOs receive and transport them into the United States.

Some smaller Colombian TCOs maintain direct pipelines into the United States, primarily to Northeast and East Coast drug markets, using couriers on commercial flights and air cargo to move smaller wholesale amounts of cocaine and heroin. Colombian TCO members also maintain a physical presence in the United States to assist in laundering drug proceeds. Although illicit Colombian cocaine smuggling has decentralized and fragmented, particularly in the past few years, Colombian TCOs will remain dominant in the international cocaine trade for the foreseeable future.

Large-scale Colombian TCOs

Recently, various Armed Criminal Organizations (Grupos Armados Organizados or GAOs) and dissident factions of the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia or FARC) have dominated the drug trade in Colombia.

The most significant Colombian TCO with an impact on the U.S. drug market is the Gulf Clan, also known as Los Urabeños, Clan del Golfo, and Clan Úsuga. This TCO functions as a highly structured and centralized criminal enterprise that has evolved into the largest GAO in Colombia with a cohesive national presence. The Gulf Clan relies on drug trafficking activities and a military-style framework to maintain operability. Since emerging in the mid-2000s, the Gulf Clan has expanded throughout northern Colombia and other regions mainly by capitalizing on the demise of rival GAOs. Though it maintains a national reach, the Gulf Clan power base lies in its birthplace region of Urabá in northwest Colombia. From this strategic location, the Gulf Clan sends multi-ton quantities of cocaine via maritime conveyances to nearby Panama and other countries in Central America on a regular basis.

Collaboration with Mexican TCOs

While Colombian TCOs control the production and shipment of the majority of cocaine destined for consumption in the United States, Mexican TCOs are responsible for smuggling it into and its distribution throughout the United States. Mexican TCOs work directly with Colombian sources of supply, often

sending Mexican representatives to Colombia, Ecuador, and Venezuela to coordinate cocaine shipments. Similarly, Colombian TCOs maintain representatives in Mexico to serve as brokers for cocaine orders or illicit money movements. Central American TCOs work with both Mexican and Colombian TCOs for the northbound movement of cocaine and the southbound flow of illicit drug proceeds.

Colombian TCOs Transportation

Colombian TCOs export large cocaine shipments through Mexico, the Central American Corridor, and the Caribbean Corridor, using a variety of maritime and aerial means including speedboats (go-fast vessels), fishing vessels, self-propelled semi-submersibles, private aircraft, and commercial air and sea cargo. Less commonly, Colombian TCOs transport cocaine over land across the Darien Gap, which connects northwest Colombia to Panama, using backpackers.

Colombian TCOs continue to use Ecuador and Venezuela as transshipment points for cocaine shipments bound for Mexico, Central America, and the Caribbean. Due to successful counterdrug efforts by the Colombian Government, Colombian TCOs have shifted a sizable portion of their drug trafficking activities to neighboring countries. Colombian TCOs transport and store large quantities of cocaine in remote areas of Venezuela and Ecuador until maritime or aerial transportation can be secured.

Small-scale Colombian TCOs

Smaller Colombian TCOs directly supply smaller wholesale quantities of cocaine and heroin to the United States, primarily to eastern and northeastern drug markets. Colombian TCOs previously dominated cocaine and heroin wholesale markets in the Midwest and East Coast; however, Mexican TCOs now dominate most of these markets, increasingly serving as the primary source of supply to other TCOs in these regions.

Smaller U.S.-based Colombian TCOs handle illicit money movements on behalf of larger Colombian TCOs, Mexican TCOs, or other criminal groups. Law enforcement reporting indicates Cali, Colombia-based money launderers coordinate the receipt of drug proceeds in various U.S. cities including Boston, Chicago, Houston, Miami, and New York. Once received, these funds are often placed in U.S.-based bank accounts and wire transferred externally under the guise of payment for products and services.

Money Laundering Activities

DEA reporting indicates that Colombian TCOs generate and receive as much as $10 billion USC annually through the sale of drugs in the United States, Central America, and Mexico. The principal mechanisms by which Colombian TCOs launder their drug proceeds are the Black Market Peso Exchange (BMPE) and trade-based money laundering (TBML). Colombian TCOs rely on international networks of money launderers who profit from foreign exchange transactions and trade-based activity. Although not as prominent as with the Mexican TCOs, there has been an increase in the presence of Asian MLOs in areas where Colombian TCOs operate. There has also been evidence of the utilization of cryptocurrencies by Colombian TCOs in order to transfer their proceeds internationally.

Dominican Transnational Criminal Organizations

Overview

Dominican TCOs dominate the distribution of cocaine and white powder heroin in the Northeastern corridor of the United States. These TCOs are supplied by Mexican and Colombians TCOs, and dominate wholesale distribution of heroin and fentanyl in certain areas of the Northeast. They also engage in street-level sales in the Northeast. Illegal drugs destined for Dominican TCOs in the Northeast initially arrive in New York City, where the drugs are distributed throughout the greater metropolitan area, or routed to secondary hubs and retail markets across the Northeast and parts of the Mid-Atlantic region. Dominican TCOs work in collaboration with foreign suppliers to have cocaine, heroin, and fentanyl shipped directly to the Northeast from Mexico, Colombia, and the Dominican Republic.

Organizational Structure

Dominican TCOs typically operate as an unstructured network of independent groups without a centralized hierarchy. Each Dominican TCO independently maintains its own internal organized structure with an identified leader and subordinates in designated roles, ensuring compartmentalization of their criminal activities. Dominican TCOs are typically comprised of friends and family members of Dominican nationality or U.S. citizens of Dominican descent. By relying on these networks of family members, friends, and hometown acquaintances, Dominican TCOs are often able to remain insulated from outside threats. Dominican TCOs are willing to collaborate with different ethnic criminal groups in the United States, such as Puerto Rican, Colombian, and Mexican TCOs.

Areas of Influence Concentrated in Northeast

Dominican TCOs maintain their strongest influence in areas of the Northeast with a significant Dominican population, generally in cities located along the I-95 highway corridor. Dominican traffickers conceal their drug trafficking activities behind the cover of established ethnic Dominican communities in various parts of the Northeast, where New York City serves as the main hub for Dominican TCO activity in the Northeast.

Trafficking Connections

Dominican TCOs have expanded their capabilities to have command and control originating in source zone countries and orchestrate the transportation of multi-ton quantities of drugs through the Caribbean with final destination of Northeastern cities in the United States and in Europe. Dominican TCOs also obtain multi-kilogram quantities of cocaine and heroin from wholesalers, which they subsequently break down for local street sales. In many cases, the customers supplied by Dominican TCOs are street gangs with distribution amounts ranging from a few kilograms to multi-gram quantities in pre-bagged form, ready for street-level sales.

Drug Trafficking Activities

The vast majority of cocaine distributed by Dominican traffickers in the Northeast is of Colombian origin, while the vast majority of white powder heroin varies in origin between Mexico and Colombia. Dominican TCOs specialize in the distribution of cocaine and heroin. They are also heavily involved in the distribution of fentanyl

and CPDs, due to the current demand for opioids in the United States. To a lesser extent, they engage in regional supply of other illegal drugs to include marijuana, methamphetamine, and NPSs.

Dominican traffickers take advantage of Puerto Rico's status as a U.S. territory to facilitate commercial air transport of cocaine into the United States, mainly into the Northeast and south Florida. Dominican TCOs typically use small maritime vessels to transport cocaine and heroin from the Dominican Republic into Puerto Rico via the 80 mile stretch of sea known as the Mona Passage, and subsequently these traffickers utilize mail, commercial shipping services, and maritime vessels to transport illegal drugs to the United States. Furthermore, Dominican TCOs exploit the vulnerabilities of maritime commercial cargo containers to transport multi-ton kilograms of cocaine from the Dominican Republic to U.S. ports in Florida, Georgia, Philadelphia, and New York. Additionally, Dominican traffickers utilize private maritime vessels to transport cocaine directly from the Dominican Republic to south Florida. Dominican traffickers utilize Chinese money laundering organizations to facilitate the laundering of Dominican TCO drug trafficking proceeds.

Role in Retail Drug Market

The higher echelon of Dominican TCOs serve as the command, control, and supplier for organizations at the street level in certain regions of the U.S. East Coast. Dominican TCOs based in New York City, New York; Philadelphia, Pennsylvania; and Lawrence, Massachusetts, mainly source Dominican drug dealers involved in retail distribution. Dominican TCOs, particularly in the Northeast, have the infrastructure to handle all facets of drug distribution to include the wholesale, mid-level, and retail sectors. By diluting cocaine and heroin for street sales, Dominican traffickers in the Northeast can expand their inventory and profit.

Asian Transnational Criminal Organizations

Overview

Asian TCOs specialize in the trafficking of marijuana and 4-methylenedioxy-methamphetamine (MDMA), and, to a lesser extent, cocaine and methamphetamine. They are also heavily involved in international money laundering activities, working with Colombian and Mexican TCOs. Asian TCOs actively conduct drug trafficking activities on both U.S. coasts and have distribution networks stretching across the country. U.S.-based Asian TCOs work in concert with Asian TCOs in Canada, Asia, and other international locations to import and export illicit drugs to and from the United States.

Organizational Structure

Asian TCOs are mostly small, independent groups. Some operate with investment from Asia-based crime bosses in Hong Kong, Macau, and Taiwan. Asian TCOs use their contacts in Asian diaspora communities in the United States and around the world to co-opt or establish businesses to facilitate drug trafficking and money laundering. Businesses concentrated in California and New York facilitate the transshipment and importation of drug loads orchestrated by Asian TCOs. Asian TCOs also recruit diaspora community members to act as couriers for money and drugs.

Marijuana Trafficking Trends

Asian TCOs have historically operated large, sophisticated indoor marijuana grow houses in residential homes, primarily in the western United States. These indoor grows are both traditional and hydroponic and are frequently located in suburban neighborhoods. With state-level marijuana legalization actions, some Asian TCOs overtly operate marijuana grows by adhering to local regulations governing private cultivation and medical marijuana allowances. Additionally, some produce large amounts of marijuana in wholly illegal residential grow operations by hiding in plain sight. As a result, significant amounts of marijuana produced in these grow operations are diverted to states where marijuana is much more profitable on the black market.

MDMA Trafficking Trends

Asian TCOs generally control the supply of MDMA in most U.S. markets. U.S.-based Asian TCOs work closely with Canada-based Asian TCOs to import MDMA. MDMA, in both tablet and powder form, is typically either imported from China to Canada or manufactured in clandestine laboratories in Canada, then smuggled across the Northern Border into the United States. MDMA is also shipped to the United States from Asian TCOs based in Europe.

General Trafficking Trends

Asian TCOs also traffic cocaine and methamphetamine. The United States is used as a transit country for some loads of cocaine and methamphetamine trafficked to Asia and Oceania by Asian TCOs. Asian TCOs reach out to cocaine and methamphetamine sources of supply in Mexico and the United States. Los Angeles-based import/export companies established or co-opted by Asian TCO members are used to send cocaine and methamphetamine to Asia, Australia, and New Zealand.

Role in Money Laundering

Asian TCOs in the United States play a key role in the laundering of illicit drug proceeds. Asian TCOs involved in money laundering contract their services and sometimes work jointly with other criminal groups, such as Mexican, Colombian, and Dominican TCOs. Money laundering tactics employed by Asian TCOs generally involve the transfer of funds between China and Hong Kong, using front companies to facilitate international money movement. Asian TCOs also use underground banking and mirroring schemes. U.S.-based Asian TCOs rely on domestic cash-intensive businesses to facilitate money-laundering activities. Law enforcement reporting indicates an increase in Chinese money laundering groups and Mexican TCOs collaborating to move/launder money.

Asian Money Laundering Organizations

Asian money laundering organizations are working in conjunction with Hispanic DTOs with increasing frequency. In some cases, there appear to be agreements between Mexico-based TCO leaders and Asian MLO heads based in Mexico. Asian MLOs provide access to long-standing laundering networks for U.S.-based Mexican TCO members. Various DEA offices have observed Mexican DTOs increasingly utilizing domestic Asian MLOs to facilitate drug money movement across a variety of methods, including TBML, the Chinese Underground Banking System virtual currencies, and even bulk currency storage and shipment.

Within the United States, the laundering networks operate in and around most major metropolitan areas. Outside of the United States, Asian MLOs operating on behalf of drug traffickers have been identified in Mexico, as well as in Central and South America. Moreover, beyond mainland China, Asian MLOs also operate in Hong Kong, Australia, New Zealand, and other Far East and Southeast Asian countries.

Outlook

Barring significant, unanticipated changes to the illicit drug market, Mexican TCOs will continue to dominate the wholesale importation and distribution of cocaine, heroin, marijuana, methamphetamine, and fentanyl in U.S. markets. No other criminal organizations currently possess a logistical infrastructure to rival that of Mexican TCOs. Mexican TCOs will continue to grow in the United States through expansion of distribution networks and continued interaction with local criminal groups and gangs. This relationship will insulate Mexican TCOs from direct ties to street-level drug and money seizures and drug-related arrests made by U.S. law enforcement.

Due to sustained high cocaine production and corresponding profits in Colombia, Colombian TCOs are expected to maintain dominance over the production and supply of the majority of cocaine destined for U.S. markets. Colombian TCOs are expected to continue to collaborate with Mexican TCOs who purchase their products, primarily cocaine, while Mexican TCOs will remain the dominant cocaine wholesale supplier in the United States. Further, Colombian TCOs will most likely continue to maintain representatives in Mexico, Central America, the Caribbean, and the United States to broker and facilitate the exportation of cocaine and heroin to U.S. markets, and the subsequent repatriation of drug proceeds.

Dominican TCOs are positioned to maintain their leading role in the mid-level distribution of illegal drugs, particularly in the Northeast. These TCOs ensure their sustainability through self-sufficiency and accessibility to diverse drug supply lines, smuggling routes, and conveyance methods involving multiple criminal organizations across several nations. Mexican and Colombian TCOs operating in the Northeast will likely maintain their working relationships with Dominican traffickers for the retail-level distribution of illicit drugs. As the Dominican Republic remains a significant drug transshipment node in the Caribbean, it will continue to offer criminal opportunities for Dominican TCOs operating along the East Coast.

Asian TCOs will remain a drug trafficking threat of concern in the United States, particularly in established marijuana and MDMA markets. They will likely continue to expand their relationships with Mexican and Colombian TCOs to further their drug and money laundering operations in the United States and abroad.

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DRUG THREAT IN U.S. TERRITORIES & IN INDIAN COUNTRY

Overview

Puerto Rico, the USVI, and Guam are unincorporated, organized territories of the United States with economies that are largely dependent on tourism, commercial shipment services, or national defense spending. Travelers from some of these U.S. island territories are not subject to routine customs checks upon entering the continental United States, making them attractive to illicit drug traffickers and money launderers.

High rates of unemployment and poverty contribute to Native American communities' issues with substance abuse and exploitation by drug traffickers and TCOs. TCOs often smuggle drugs through reservations along U.S. borders, and Native American criminal groups obtain drugs from traffickers moving through reservations or from TCO associates in nearby major cities.

Puerto Rico and the U.S. Virgin Islands

The DEA Caribbean Field Division is responsible for supporting drug enforcement operations in the Caribbean area, including domestic and foreign locations. The geographical area of responsibility of the DEA Caribbean Field Division extends from The Bahamas, down to Jamaica in the Greater Antilles, eastward along the islands of the Lesser Antilles, to Guyana in the northeastern tip of South America.

With approximate populations of 3.2 million and 106,000 in 2020, respectively, Puerto Rico and the USVI are part of an island chain located along the eastern edge of the Caribbean Sea, where it meets the Atlantic Ocean. Both are unincorporated, organized territories of the United States, whose economies depend largely on tourism. Both U.S. territories have high unemployment rates (8.8 percent in Puerto Rico and 12.1 percent in the USVI), according to 2020 estimates, and opportune geographic locations—midway between the United States and South America. In addition, both Puerto Rico and the USVI are attractive transshipment points, as cargo shipments between these U.S. territories and the continental United States are considered domestic and not subject to inspection.

Drug Threat

Cocaine is the principal drug threat in the Caribbean region, with Puerto Rico and the USVI serving as major transshipment points between cocaine-producing countries in South America and the continental United States. Cocaine is primarily transported to the islands via maritime vessels from Colombia, Venezuela, and the Dominican Republic. Traffickers almost exclusively use go-fast boats or fishing vessels to transport cocaine to Puerto Rico, either departing directly from Venezuela or transiting the Mona Passage from the Dominican Republic. Due to Dominican law enforcement successes

and U.S. Coast Guard interdiction efforts, traffickers prefer to traffic large cocaine loads directly to Puerto Rico.

Traffickers also smuggle cocaine via the British Virgin Islands by island hopping to the USVI and eastern Puerto Rico, and then on to the continental United States. Law enforcement officials report that smaller boats depart the USVI and meet larger "mother ships" from Venezuela. These ships offload cocaine to smaller fishing vessels, which then transit to the Netherlands Antilles, St. Martin/Maarten, the British Virgin Islands, and/or Puerto Rico.

The smuggling and abuse of heroin and fentanyl are also major concerns in the Caribbean region. Heroin availability in Puerto Rico is moderate; it is used locally and also transported to the continental United States. Heroin is available in almost all drug points throughout Puerto Rico and widely consumed. In the USVI, heroin does not pose a major threat, as the demand is typically for resale. However, there was a slight increase in heroin use in 2019 on St. Croix, USVI and one seizure of heroin which contained fentanyl. The heroin trafficked to Puerto Rico and the USVI is of South American origin, which typically arrives commingled with cocaine on maritime shipments. DEA's Caribbean Field Division has also reported minimal heroin-laced fentanyl seizures sent via parcel services from California to Puerto Rico.

Fentanyl availability in Puerto Rico is low. However, fentanyl related deaths in Puerto Rico have increased from 10 deaths in 2015 to 70 reported fentanyl-involved overdose deaths in 2018.

Marijuana is the most consumed illicit drug in Puerto Rico and the USVI. According to law enforcement reporting from Puerto Rico, USVI, and other Caribbean island nations, seizures and seizure-load sizes of marijuana have continued to increase over the past several years.

Transshipment

DEA's Caribbean Field Division reports an increase in cocaine seizures from inbound maritime cocaine smuggling ventures into Puerto Rico arriving from Colombia and Venezuela. According to a U.S. Government database of known and suspected drug seizure and movement events, roughly eight percent of documented cocaine departing South America moved toward the Caribbean Islands in 2019, mostly aboard go-fast vessels. According to DEA reporting, TCOs operating in South America and the Caribbean coordinate multi-ton maritime smuggling ventures originating in Colombia or Venezuela and transiting Puerto Rico, the Dominican Republic, and neighboring Eastern Caribbean islands for destinations in the continental United States, Europe, and Africa.

It is estimated that a third of the cocaine and heroin trafficked into Puerto Rico and the USVI remains for local consumption, but most is smuggled onwards to the continental United States. Traffickers conceal cocaine in parcels mailed from Puerto Rico and the USVI to Florida and the northeastern United States, primarily Connecticut, Massachusetts, New York, and New Jersey. Additionally, traffickers utilize commercial airlines in Puerto Rico to smuggle cocaine concealed within passenger luggage or body cavities to continental U.S. destinations including Connecticut, Florida, Pennsylvania, New York, and Massachusetts.

Drug-related Crime

Drug-related violence continues to pose a threat to public safety in Puerto Rico and the USVI. Puerto Rico and the USVI have the highest homicide rates in the United States. According to the UNODC, the USVI averaged approximately 52 murders per 100,000 people in 2018.

Local law enforcement agencies in Puerto Rico estimate that over 60 percent of homicides are drug-related; however, violent crime and homicide rates have declined every year since peaking in 2011. The majority of DTOs operating in Puerto Rico are based in the public housing projects located throughout the island, with controlled "drug point" locations used for the retail sale of illicit drugs. The DTOs use intimidation, violence, and murder to gain or retain control of the drug markets in the area.

Drug Trafficking Groups

Colombian, Dominican, Venezuelan, and Puerto Rican DTOs are involved with the illicit drug trade in Puerto Rico and the USVI. While Dominican, Colombian, and Venezuelan traffickers serve as crewmembers during maritime operations, the majority of the boat captains are Dominican. Dominican DTOs are becoming more sophisticated and dominant in the drug trade throughout the region, including brokering drug deals and coordinating maritime ventures. Dominican and Puerto Rican DTOs dominate wholesale and retail distribution of cocaine in Puerto Rico.

Puerto Rico-based DTOs have established heroin trafficking routes from Venezuela to Puerto Rico. In some cases, traffickers instruct couriers to take an indirect route to deliver heroin from Caracas, Venezuela, to various major U.S. cities along the East Coast and finally to Puerto Rico in order to evade law enforcement scrutiny. DTOs based in the Dominican Republic also smuggle heroin directly into Puerto Rico by using human couriers on the ferry that operates between the Dominican Republic and Puerto Rico.

The diversion of CPDs for distribution and healthcare fraud are serious threats in Puerto Rico. Puerto Rico did not have a Prescription Drug Monitoring Program (PDMP) until August 2017; however, it was not until September 2018 that the PDMP in Puerto Rico was able to interconnect with PDMPs in the United States. DEA diversion investigations reveal that the majority of controlled substances abused and diverted are obtained through fraudulent prescriptions, doctor shopping, pharmacy thefts, and illegal online prescription services.

Guam

Guam is an organized and unincorporated territory of the United States, located in the North Pacific Ocean; it is the largest and southernmost island in the Mariana Islands archipelago and is an important military and commercial hub between the United States, Asia, and Australia. In 2020, Guam's population was an estimated 168,000 people. The island's economy depends largely on tourism and U.S. national defense spending, followed by construction and transshipment services. According to the Guam Visitors Bureau, the island had its best year, with over 1.63 million visitors during FY 2019. Many of Guam's violent crimes are linked to drugs, alcohol abuse, lack of economic opportunities, and lack of educational attainment.

Drug Threat and Availability

Methamphetamine and marijuana are the two principal drugs used in Guam. Cocaine is resurgent and is popular with the college-aged population. MDMA, ketamine, and illicit pharmaceuticals are also available to a lesser degree and often purchased in clubs and bars.

Methamphetamine poses the greatest threat to Guam. Most of the methamphetamine shipped to Guam originates from the continental United States, primarily from California and Washington, via postal packages or courier. Guamanians residing in the continental U.S. often mail methamphetamine to criminal associates in Guam, who sell the drug for very large profit margins. During 2019, the DEA's Guam RO seized approximately 30 kilograms of methamphetamine, a significant increase from the 12 kilograms seized in 2018.

During 2019, DEA's Guam RO seized approximately 29 kilograms of cocaine, a decrease compared to 45 kilograms seized in 2018.

Low-quality marijuana is cultivated in Guam, with grow sites typically located within heavy jungle growth in close proximity to residential dwellings. Marijuana is also shipped to Guam in lesser amounts via postal packages or transported via commercial air flights from the continental United States.

Drug Trafficking Groups

DTOs in Guam are typically comprised of Korean, Filipino, and Chinese traffickers who smuggle methamphetamine to the island via couriers. Mexican organizations may supply some of the methamphetamine reaching Guam indirectly via the continental United States.

Drug proceeds are often mailed back to the United States or sent electronically through established bank accounts. Similarly, proceeds are sent via wire transfer to South Korea, China, and other Asian countries. Generally, the proceeds are reinvested to purchase additional drug supplies and are used to purchase vehicles or personal goods.

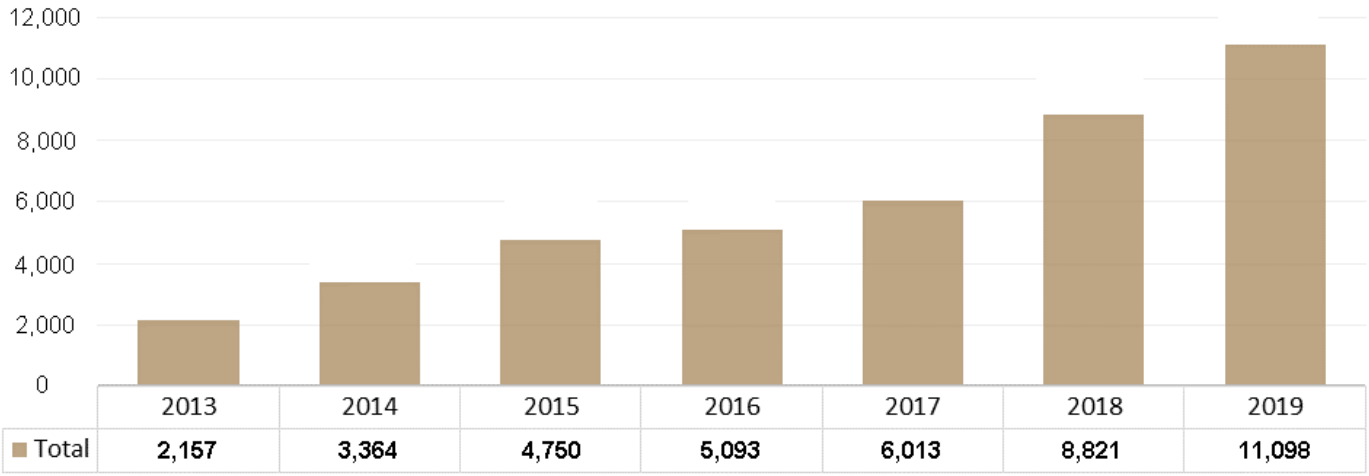
Indian Country

The drug threat in Indian Country varies by region and is influenced by the illicit drugs available in major cities near the reservations. Native American criminal groups and independent dealers transport most of the illicit drugs available throughout Indian Country. These individuals and organizations travel to nearby cities to purchase drugs, primarily from Mexican traffickers and other criminal groups. In some instances, distributors residing on remote reservations travel long distances to obtain drugs for distribution in their home communities.

The number of drug cases and arrests conducted by Indian Country law enforcement programs has increased substantially since 2013. In FY 2019, there was a nearly 26 percent increase from FY 2018 to FY 2019 in the number of drug cases opened across all Indian Country law enforcement programs according to data from the Bureau of Indian Affairs (See Figure 60).

Native American communities face challenges and risks rooted in poverty, high levels of unemployment, chronic trauma, and a lack of resources. These factors contribute to Native American communities' susceptibility to substance abuse and exploitation by drug traffickers. While marijuana and methamphetamine are the most widely used

Figure 60. Drug Cases Opened in Indian Country, 2013 – 2019



	2013	2014	2015	2016	2017	2018	2019
Total	2,157	3,364	4,750	5,093	6,013	8,821	11,098

Source: Bureau of Indian Affairs

illicit substances, prescription drug and heroin use have increased. Additionally, powder and crack cocaine, fentanyl, fentanyl-laced counterfeit pills, and MDMA are also available at various levels. Mexican traffickers are the principal wholesale suppliers and producers of most illicit drugs available on reservations throughout Indian Country.

Drug production in Indian Country is limited. Mexican traffickers play a prominent role in producing cannabis at outdoor grow sites in remote locations on reservations, particularly in the Pacific Region. Illicit drug transportation routes run through the reservations that border Mexico or Canada, ensuring nearby reservations have reliable access to drugs.

TCOs continue to smuggle multiple tons of marijuana through the Tohono O'odham Nation in southeastern Arizona. This reservation accounts for almost four percent of the SWB. TCOs also smuggle lesser amounts of cocaine and heroin, with methamphetamine on the rise, through this reservation. Drug traffickers exploit the vast stretches of remote, sparsely populated desert bordering Mexico and the highways that connect the reservation to major metropolitan areas.

TCOs also smuggle large amounts of illicit drugs into the United States through reservations that border Canada, especially the St. Regis Mohawk Reservation in New York, commonly referred to as the Mohawk Nation at Akwesasne. TCOs smuggle marijuana and thousands of MDMA tablets into the United States and multi-kilogram quantities of cocaine into Canada through the reservation.

The widespread availability and abuse of drugs in Indian Country, coupled with drug trafficking groups operating in Indian Country, contribute to high rates of crime on reservations. Due to the wide range of violent and property crimes in which traffickers engage, the crime rates on some reservations can be higher than the national averages for similar crimes. DTOs engage in these crimes to facilitate their operations, while users generally engage in such crimes to support their drug use.

Outlook

The drug threats in Indian Country will likely remain tied to the predominant threats of nearby markets in major cities. Native American criminal groups will continue travel to major cities outside of Indian Country to acquire all types of illicit drugs, mainly supplied by Mexican traffickers. Methamphetamine and marijuana may likely remain the most widely used drugs, but increases in CPDs and heroin abuse may continue. Reservations near the borders of Canada and Mexico will likely continue to be exploited for their location along transnational smuggling routes.

ILLICIT FINANCE

Overview

DTOs and TCOs continue to generate tens of billions of dollars in illicit proceeds through the sale of drugs every year in the United States. Illicit drug proceeds change hands numerous times between the smuggling, wholesale, or retail levels of the illegal drug market. The onset of the COVID-19 pandemic caused significant shifts in the money laundering landscape. Border restrictions between the United States and Mexico, as well as concerns regarding exposure to the virus have made it more difficult for TCOs to transport loads of bulk currency across the SWB. Trade-Based Money Laundering (TBML) activity has been disrupted due to shipping delays around the world. These shipping delays also disrupt dark web marketplace vendors who are already vulnerable to fluctuations of virtual currencies held in escrow while drugs are traveling in the mail.

TCOs employ various strategies to move and launder drug proceeds into, within, and out of the United States to avoid detection from law enforcement and financial institutions. The preferred methods to move and launder illicit proceeds have largely remained the same throughout the years, e.g. bulk cash smuggling, Black Market Peso Exchange, and TBML; however, significant shifts have occurred in the illicit finance landscape over the years, further complicating the enforcement of anti-money laundering (AML) laws. Although for a number of years virtual currency has been utilized as a payment method to purchase illegal drugs online, it is now becoming more commonly utilized by international money launderers to transfer proceeds across borders on behalf of TCOs.

Effects of COVID-19

The COVID-19 pandemic directly led to traffickers facing hurdles maintaining the flow of drugs and money around the world. Border restrictions between the United States and Mexico, brought on due to the pandemic, have increased the difficulty of transporting loads of bulk currency from the United States across the SWB into Mexico. As a result, large amounts of U.S. currency are being held along the U.S. side, awaiting transport to Mexico. With this stockpile forming, TCOs have begun increasing the frequency and volume of bulk currency shipments across the SWB in an attempt to continue the repatriation of their drug proceeds. However, reporting indicates fewer money pickups being conducted by couriers for fear of exposure to COVID-19 and increased law enforcement presence.

- *DEA's New Jersey Field Division reported in May 2020, that money couriers were less likely to meet with individuals looking to move money from certain heavily infected population centers due to concerns of contracting COVID-19.*

The shipping trade was affected in many parts of the world due to the pandemic that caused disruptions to TBML activity in the

United States and other countries. Many companies involved in TBML are considered non-essential, and are either not permitted to operate during the pandemic, or are subject to increased restrictions. As such, the ability for TCOs to move money under the guise of legitimate trade transactions has diminished.

Dark web marketplaces trading in illicit drugs have experienced disruptions due to the COVID-19 pandemic, due in part to drug shortages and shipping delays which exacerbate the risk of selling drugs for highly volatile virtual currencies. In March 2020, the value of Bitcoin rapidly dropped, which caused a withdrawal of many dark web vendors from the market for fear of loss of funds due to the possibility of Bitcoin devaluation while in escrow. Delays of drug shipments means that funds may be held in escrow for longer periods, which gives more time for their value to decrease before the drug dealer is able to convert the funds into fiat currency.

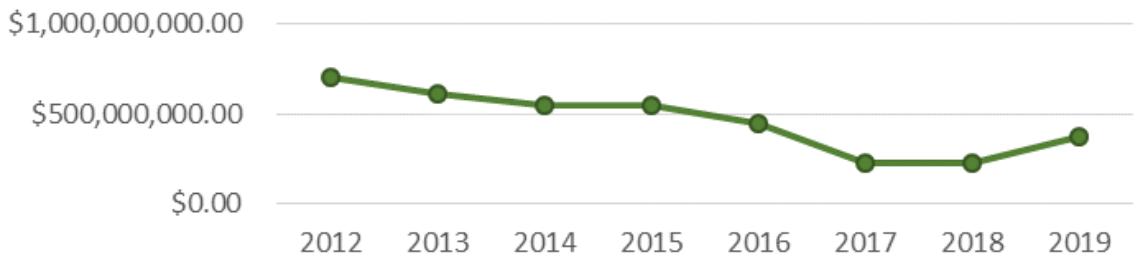
- *DEA's Denver Field Division reported shortages of a variety of illicit drugs available on the dark web, as well as shipping delays due to COVID-19 restrictions. Many dark web marketplace sellers were taking extra precautions to sanitize their products and packaging prior to transport, possibly adding to the shipping delays.*

Bulk Cash Smuggling

TCOs continue to repatriate a significant volume of illicit proceeds every year via bulk cash smuggling, despite the existence of more modern methods of transferring money. In 2019, there were over 3,000 bulk currency seizures in the United States according to EPIC's NSS data. This represents more than $368 million USC seized, a 62 percent increase in volume from the almost $227 million USC seized in 2018. Between 2010 and 2018, the volume of bulk currency seized has steadily dropped, with 2019's increase being an outlier to this trend. The number of seizure events in 2019 (3,454) was a 39 percent increase from the previous year (2,487) (See Figure 61).[z]

Drug traffickers commonly transport bulk currency from various places in the United States over the SWB into Mexico and other Central and South American countries via privately owned vehicles and tractor-trailers. However, transport of bulk currency by passengers on commercial airlines also accounts for a significant amount of drug proceeds traveling within, and exiting the United States.

Figure 61. Bulk Currency Smuggling Seizure Totals, 2012 – 2019



Source: El Paso Intelligence Center

z. This recorded increase in both seizure events as well as seizure volume is due in part to changes in NSS bulk currency reporting methodologies. As such, analytical statements regarding the reasons for this increase cannot be made at this time.

Figure 62. Top 3 States for Bulk Currency Seizure Amounts, 2012 – 2019

	2012	2013	2014	2015	2016	2017	2018	2019
1st State	New York $212,038,936	California $154,015,473	California $126,891,301	California $107,255,478	California $57,175,335	California $40,762,011	California $44,176,916	California $54,556,726
2nd State	California $130,694,737	New York $111,315,107	New York $49,138,747	Texas $45,448,232	Florida $46,060,991	Ohio $22,514,717	Ohio $22,660,487	Ohio $52,861,197
3rd State	Texas $67,202,140	Texas $45,582,571	Georgia $36,982,739	Florida $43,527,424	Texas $36,110,202	Arizona $13,745,181	Illinois $15,158,676	Texas $23,621,917
Total	$702,578,606	$613,829,575	$547,068,839	$550,804,449	$441,178,858	$226,710,289	$227,548,134	$368,042,994
Incidents	3,395	3,343	4,448	4,685	3,437	2,431	2,487	3,454

Source: El Paso Intelligence Center

- *In May 2020, DEA's Washington Field Division conducted an enforcement operation against a DTO that was working with a Chinese MLO to structure deposits of USC into the banking system. A traffic stop on a member of the DTO who had been seen conducting money pick-ups using a tractor-trailer yielded the seizure of $1.5 million USC hidden in bags inside the tractor-trailer.*
- *In June 2020, the Los Angeles HIDTA performed a K-9 check on 15 pieces of luggage being transported on a privately chartered flight. Law enforcement seized an excess of $3 million USC contained between the 15 pieces.*

In 2019, California, Ohio, and Texas reported the highest dollar amounts in bulk cash seizures for a combined total of $131,039,840 USC (See Figure 62). These states accounted for 36 percent of all the bulk cash seized in 2019. In the first six months of 2020, California, New York, and Texas accounted for 39 percent of the bulk cash seized.

Money Laundering Methods

Money laundering is generally comprised of a cycle, which includes placement, layering, and integration—with launderers developing multiple methods to complete each step. Placement involves illicit funds entering into the financial system through various businesses—such as money service businesses—as well as casinos, banks, and real estate. Layering is the process of moving money to disguise its origin. This can take various forms such as wire transfers and TBML, with this step in the money laundering process often involving money moving through multiple countries, further obfuscating the origin of the funds. The final step in the cycle is integration, in which the illicit funds now appear to be clean, and are able to re-enter the economy without drawing attention to the illegal activity that produced the money.

Traditional Methods

TCOs and DTOs widely utilize traditional money laundering methods, often combining well-tested methods with newer ones to decrease their likelihood of discovery by law enforcement. Casinos, with their high volume of currency transactions, remain a popular way for launderers to obfuscate their drug proceeds. Money launderers commonly utilize businesses trading high value commodities such as real estate, vehicles, and jewelry to make their illicit funds appear legitimate by investing the value of their funds into these items. This, combined with avoiding reporting requirements, allows the value of the illicit funds to be moved from person to person under the guise of legitimate business transactions.

The use of shell and front companies remains an extremely common method for DTOs to disguise the origin of their illicit funds. The Financial Action Task Force, an intergovernmental organization designed to combat money laundering, reports that more than two million limited liability companies and corporations are established in the United States each year. Shell companies are businesses that exist only as an entity through which money may be transferred to hide beneficial ownership, as well as to provide plausible deniability for the origin of drug proceeds. Front companies operate as a mostly normal business; however, DTOs commingle their drug proceeds with the legitimate revenue stream from the front company. Due to U.S. laws easily allowing the establishment of businesses and the minimal amount of information required to start a company, shell and front companies are frequently utilized in the money laundering process.

Modern Methods

The complexity of money laundering systems has greatly increased in modern times, as criminal organizations continue to find ways to combine methods to further hide their illicit proceeds. One example of this is the use of third party money brokers to move and handle money. Drug traffickers seeking to repatriate funds outside of the United States will utilize networks of money brokers to move money through various accounts and businesses. The money movement that these brokers perform is often intertwined with other money laundering systems such as BMPE and TBML activity. Due to the third party nature of these brokers, they are often insulated from legal ramifications of money laundering, as it can be difficult to prove that they had knowledge of the illicit nature of the funds they assisted in moving.

TCOs continue to highly favor TBML as a method to transport and launder illicit proceeds through the manipulation of international trade and financial institutions. Illicit funds are used to purchase real or fictitious trade goods, which are then shipped to another country where they are then sold. This allows the value derived from the original illicit activity to move in and out of the United States under the guise of legitimate trade transactions. Free Trade Zones are often involved in TBML schemes because they offer opportunities for cash to be inserted into the financial system in exchange for consumer goods.

In 2017, the Government of China implemented economic policies that placed a $50,000 USC limit on the amount of foreign currency per person that can be exchanged annually. Due to China's economic policy and the restrictions Mexico has placed on depositing USC, Asian MLOs have emerged within the last few years as leaders within the money laundering networks. These groups have quickly grown to dominate the money laundering landscape due to a combination of charging lower fees and the efficiency of the services they provide. These MLOs perform services at all stages of the money laundering cycle; however, Asian MLOs are especially prominent in the areas of bulk currency movement and TBML. Asian MLOs seek to profit from illicit activities associated with Mexican and Colombian TCOs as well as from the resale of U.S. dollars in the United States to Chinese nationals seeking to evade China's currency control laws. Chinese nationals utilize an informal black market that allows them to move their money out of China by trading Chinese-based assets for currency or other assets located abroad, such as drug proceeds. The services provided by Asian

MLOs increasingly have been utilized by TCOs to simplify the acquisition and payment for precursor chemical shipments.

Virtual Currency

Technological innovations in the financial sphere have led to an environment where purchasing goods and transferring money is easier and more seamless than ever. Newer technologies, such virtual currency, create new opportunities for commerce to expand, as well as for criminals to more readily launder illicit proceeds. Virtual currencies like Bitcoin have been increasing in popularity, both among the public as well as among criminals, in the years since inception due in part to the ability of virtual currencies to change hands rapidly without limits on the amount being transferred.

There are over 2,000 distinct virtual currencies in circulation, with more being developed every year; however, Bitcoin continues to be the most widely used due to its status as one of the original virtual currencies. Bitcoin is sometimes a stand-in term, for virtual currency as a whole. In recent years, virtual currency exchangers have emerged as a service to ease the conversion of fiat currency into virtual currency and vice versa. Virtual currencies continue to be popular for use on dark web marketplaces as a method for users to anonymously purchase illicit drugs without having to use traditional payment methods that pose a greater risk of exposing the individual's true identity.

Illicit actors have integrated virtual currencies into many different money-laundering methodologies. Increasingly, MLOs are using virtual currency automated teller machines (ATMs) to aid in the movement of illicit bulk currency. These ATMs are specifically designed to accept fiat currency in exchange for virtual currency, and are subject to federal AML regulations. Despite these regulations, unscrupulous owners of these machines utilize their functions to assist in obfuscating drug proceeds. Money couriers deposit large volumes of cash into these machines to convert the value to virtual currency; the cash in the machine is then integrated into the revenue stream of the owner of the ATM to hide the origin of the funds. The value of the original drug proceeds, now in a virtual form, can easily be transferred to another user of the virtual currency instantaneously, removing much of the risk associated with transporting large amounts of bulk currency. Virtual currency ATMs used in such a manner may be unlisted, and unavailable for use by the general public; instead kept hidden away for exclusive use by money launderers and couriers.

Drug traffickers and money launderers are increasingly incorporating virtual currency into TBML activity as the use of these currencies becomes more widely adopted. DEA reporting has revealed instances in which bulk currency contracts were fulfilled through the use of virtual currency instead of cash, with this money subsequently being integrated into the TBML cycle. These combinations of virtual currency with already established forms of money laundering suggest an increased willingness by illicit actors to utilize this complex technology to further their money laundering endeavors.

Outlook

Drug traffickers seek to transform their monetary proceeds from their criminal activity into revenue through legal sources. Apprehending criminals who circumvent formal regulated financial systems and disrupting their illicit profits is a key element of disrupting TCOs and crucial to protecting the integrity and stability of domestic and global financial systems. Enhanced anti-money laundering regulations and international standards make it more challenging to launder illicit proceeds; however, TCOs constantly evolve in an attempt to thwart law enforcement and regulatory requirements.

APPENDIX A: MAP OF DEA FIELD DIVISIONS

DEA Map 1 7-2018

Source: DEA

APPENDIX B: ACRONYM GLOSSARY

4-ANPP	4-anilino-N-phenethyl-4-piperidone
AAPCC	American Association of Poison Control Centers
AML	Anti-Money Laundering
AOR	Area of Responsibility
ARCOS	Automation of Reports and Consolidated Orders System
BLO	Beltran-Leyva Organization
BHO	Butane Hash Oil
CBD	Cannabidiol
CBP	Customs and Border Protection
CDC	Centers for Disease Control and Prevention
CJNG	Cartel Jalisco Nueva Generacion (Jalisco New Generation Cartel)
CMEA	Combat Methamphetamine Epidemic Act
CPD	Controlled Prescription Drugs
CPOT	Consolidated Priority Organization Target
CSA	Controlled Substances Act
CSP	Cocaine Signature Program
DCE/SP	Domestic Cannabis Eradication/Suppression Program
DEA	Drug Enforcement Administration
DTO	Drug Trafficking Organization
EPIC	El Paso Intelligence Center
FARC	Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)
FBI	Federal Bureau of Investigation
FD	DEA Field Division
FinCEN	Financial and Crime Enforcement Network
FRS	Fentanyl-related Substances
FSPP	Fentanyl Signature Profiling Program
FY	Fiscal Year
GAO	Grupos Armados Organizados (Armed Criminal Organizations)
ha	Hectare
HDMP	Heroin Domestic Monitor Program
HIDTA	High Intensity Drug Trafficking Area
MDMA	Methyldioxymethamphetamine
MPP	Methamphetamine Profiling Program
MT	Metric Ton
NDTA	National Drug Threat Assessment
NFLIS	National Forensic Laboratory Information System

NPP	N-phenethyl-4-piperidone
NPS	New Psychoactive Substances
NSDUH	National Survey on Drug Use and Health
NSS	National Seizure System
OCDETF	Organized Crime Drug Enforcement Task Force
OCONUS	Outside Continental United States
P2P	Phenyl-2-Propanone
PDMP	Prescription Drug Monitoring Program
POE	Ports of Entry
POV	Privately Owned Vehicles
RO	DEA Resident Office
SAMHSA	Substance Abuse and Mental Health Services Administration
SOOTM	Synthetic Opioids Other Than Methadone
SWB	Southwest Border
TBML	Trade-Based Money Laundering
TCO	Transnational Criminal Organization
THC	Tetrahydrocannabinol
THCA	Tetrahydrocannabinolic acid
UNODC	United Nations Office of Drug Control
USC	United States Currency
USG	United States Government

APPENDIX C: DATA SET DESCRIPTIONS

► El Paso Intelligence Center, National Seizure System

The El Paso Intelligence Center's *National Seizure System* (NSS) tabulates information pertaining to drug seizures made by participating law enforcement agencies. NSS also includes data on clandestine methamphetamine laboratories seized by local, state, and Federal law enforcement agencies. NSS records are under the control and custody of the DEA, and are maintained in accordance of Federal laws and regulations. Use of the information is limited to law enforcement agencies in connection with criminal law enforcement activities. The El Paso Intelligence Center is the central repository for this data. For example, the methamphetamine data is useful in determining, the types, numbers, and locations of methamphetamine laboratories seized; manufacturing trends; precursor and chemical sources; the number of children and law enforcement officers affected; and investigative leads. NSS superseded the *Federal-Wide Drug Seizure System* (FDSS), a computerized system that deconflicted overlapping information about drug seizures made by and with the participation of the FBI, DEA, and the Department of Homeland Security.

► NFLIS Summary for 2020 NDTA

The National Forensic Laboratory Information System (NFLIS) is a voluntary program of the Drug Enforcement Administration (DEA) Diversion Control Division. NFLIS-Drug is a database where drug identification results and associated information from drug cases are submitted to and analyzed by federal, state, and local forensic laboratories. The NFLIS-Drug participation rate, defined as the percentage of the national drug caseload represented by laboratories that have joined NFLIS, is currently more than 98 percent. Based on the voluntary system, data in NFLIS-Drug fluctuates frequently depending on the date it is queried as more encounters may be added daily. The 2020 NDTA includes information queried on July 10, 2020, so all raw data points were identified on or before that date.

In reference to the data's unit of measure, one count represents one single report in the NFLIS-Drug database. Drug evidence secured in law enforcement operations (i.e., drug seizures) are submitted to forensic laboratories for analysis. However, drug evidence can vary in size, and one case can consist of one or more items of drug evidence. Within each item, multiple drugs may be identified and reported. One single report equates to one documented occurrence of a drug, whereas each report is counted separately and added to the data in NFLIS-Drug.

▶ U.S. Government Drug Production Estimates

The U.S. Government's annual illicit crop cultivation and drug production estimates provide a strategic overview of drug trends in the world's leading heroin and cocaine producing countries. The illicit crop estimates are based on imagery collected from the world's coca and opium poppy growing regions. The cocaine and heroin production estimates are based on scientific analysis of data collected on cocaine and heroin processing methods.

▶ National Vital Statistics Data

Data on drug-induced and drug poisoning deaths are based on information from all death certificates filed (2.839 million in 2018) in the 50 States and the District of Columbia. Information from the states is provided to the National Center for Health Statistics (NCHS), a component of CDC. NCHS makes available causes of death attributable to drug-induced mortality. Drug-induced deaths include not only deaths from dependent and nondependent use of legal or illegal drugs, but also poisoning from medically prescribed and other drugs. Drug-induced causes exclude unintentional injuries, homicides, and other causes indirectly related to drug use. Also excluded are newborn deaths due to the mother's drug use. *The International Classification of Diseases, Version 10* (ICD-10) was implemented in 1999 following conventions defined by the World Health Organization to replace Version 9 (ICD-9), in use since 1979. In addition to tables published by CDC, unpublished sub-national tabulations and drug poisoning deaths involving specific drugs were extracted by ONDCP from CDC's online system WONDER (Wide-ranging Online Data for Epidemiologic Research).


DEA
INTELLIGENCE
U.S. Department of Justice
Drug Enforcement Administration

EXHIBIT 78

中华人民共和国驻以色列国大使馆
Embassy of the People's Republic of China in the State of Israel

The Spokesperson of the Chinese Embassy in Israel Responds to Questions of Israel Media and Friends of All Sectors on U.S. House Speaker Nancy Pelosi's Visit to Taiwan (III)

2022-08-13 21:53

Q:The US claims that drug overdose kills 100,000 people in the U.S. every year, and it is unacceptable for China to suspend counternarcotics cooperation with the US. What is your comment?

A: In disregard of China's stern warnings and repeated representations, Nancy Pelosi visited China's Taiwan region. This has dealt a heavy blow to the political foundation of China-US relations. The Chinese side announced eight countermeasures including suspending China-US counternarcotics cooperation. This is a firm and strong response to the US and "Taiwan independence" separatists' provocation. It is completely justified, appropriate and proportionate.

The root cause of the fentanyl abuse crisis in the US lies in the US itself. The international community, China included, has been strengthening control of fentanyl-related substances, while in the US, abuse of synthetic opioids including fentanyl has been deteriorating. There have been more deaths from overdose. The US should seriously reflect on the underlying reason. According to data from the International Narcotics Control Board, the US is the world's largest producer and consumer of fentanyl-related substances. With five percent of the world's population, the US consumes 80 percent of opioids in the world. The US government has lost effective control over the management of prescription drugs. There aren't enough public awareness campaigns about the harm of narcotics, and measures to reduce demand and ban narcotics have not worked well. The US must look squarely at its own problem instead of deflecting blame.

China has made tremendous efforts to help the US solve its fentanyl issue. There is no immediate hazard or large-scale fentanyl abuse in China. China has always acted in a humanitarian and responsible way in helping the US solve the fentanyl abuse crisis and working with other countries to address new challenges in counternarcotics. The UN Conventions on drug control scheduled 27 categories of fentanyl substances. China was the first in the world to have scheduled fentanyl as a class, covering more categories than what are scheduled by the UN Conventions. In contrast, while the US has the most acute fentanyl challenge in the world, it has yet to officially schedule fentanyl-related substances as a class. China has shown utmost goodwill and sincerity and gone out of our way to work together with the US in this area, which is unprecedented in our drug control practice. This has not only played an important role in preventing the illicit manufacturing, trafficking and abuse of fentanyl-related substances, but also set a fine example for international counternarcotics cooperation and has been fully recognized by the international community.

The responsibility for undermining China-US counternarcotics cooperation is entirely on the US. It has been over two years since the US put the Institution of Forensic Science of the Ministry of Public Security and the National Narcotics Laboratory of China, which are responsible for testing and controlling fentanyl-related substances, on the US's "entity list" in the name of so-called human rights issues in Xinjiang. They still have not been removed from the list. The US has been publicly making irresponsible remarks and repeatedly rehashing old cases. The US has sanctioned Chinese companies in the name of controlling fentanyl-related substances and offered high reward for the arrest of certain Chinese citizens. The US has done this to mislead the public, deflect the blame, and shift away the responsibility for botched response to narcotics abuse in the US. China has made démarches with the US side over this multiple times, but has received no response. All the consequences arising therefrom, including the damage caused to bilateral relations and China-US counternarcotics cooperation must be borne by the US side.

China takes a firm stance on counternarcotics. China has achieved notable results in counternarcotics governance despite the global spread of narcotics. As a responsible major country, China will as always actively participate in international and multilateral counternarcotics cooperation and contribute China's expertise and effort to global counternarcotics efforts. We also sincerely hope that the US can find an effective solution to the fentanyl abuse in the country at an early date so that the American people can rid themselves of the scourge of narcotics sooner rather than later.

EXHIBIT 79

SEPTEMBER 15, 2023

Memorandum on Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2024

Presidential Determination
No. 2023-12

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2024

By the authority vested in me as President by the Constitution and the laws of the United States, including section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107-228) (FRAA), I hereby identify the following countries as major drug transit or major illicit drug producing countries: Afghanistan, The Bahamas, Belize, Bolivia, Burma, the People's Republic of China (PRC), Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela.

A country's presence on the foregoing list is not necessarily a reflection of its government's counterdrug efforts or level of cooperation with the United States. Consistent with the statutory definition of a major drug transit or major illicit drug producing country set forth in sections 481(e)(2) and 481(e)(5) of the Foreign Assistance Act of 1961, as amended (Public Law 87-195) (FAA), the reason countries are placed on the list is the combination of geographic, commercial, and economic factors that allow drugs to be transited or produced, even if a government has engaged in robust and diligent narcotics control and law enforcement measures.

The James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117-263) amended the definition of major drug source countries to include source countries of precursor chemicals used to produce illicit drugs significantly affecting the United States. For countries with large chemical and pharmaceutical industries, preventing precursor chemicals from being diverted to the production of illicit drugs is a particularly difficult challenge, including for the United States and other countries with strict regulatory regimes to prevent diversion. The PRC has been identified as a major source country due to this change in legislation, and the United States strongly urges the PRC and other chemical source countries to tighten chemical supply chains and prevent diversion.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Bolivia, Burma, and Venezuela as having failed demonstrably during the previous 12 months to both adhere to their obligations under the international counternarcotics agreements and to take the measures required by section 489(a)(1) of the FAA. Included with this determination are justifications for the designations of Bolivia, Burma, and Venezuela, as required by section 706(2)(B) of the FRAA. I have also determined, in accordance with

provisions of section 706(3)(A) of the FRAA, that United States programs that support Bolivia, Burma, and Venezuela are vital to the national interests of the United States.

Although the rate of drug overdose deaths in the United States is flattening after years of sharp increases, more than 109,000 lives were lost to drug overdoses in 2022, according to preliminary data from the Centers for Disease Control and Prevention. This remains unacceptably high, and my Administration is deploying unprecedented resources and building new partnerships to confront this public health and security crisis. Domestically, in the last fiscal year alone, the United States allocated more than $24 billion to expand evidence-based prevention and treatment, including harm reduction and recovery support services, with targeted investments to meet the needs of populations at greatest risk for overdose and substance use disorder. Beyond these additional resources, my Administration expanded access to Naloxone, which can reverse opioid-related overdoses, and made this life-saving medicine available over-the-counter. My Administration has also removed barriers to treatment, including by working with the Congress on bipartisan legislation. My Fiscal Year 2024 Budget calls for an even greater historic investment of $46.1 billion for National Drug Control Program agencies, a more than $2 billion increase from what was enacted during the previous year. This request also includes significant investments in reducing the supply of illicit drugs originating from beyond our borders.

The vast majority of illicit drugs causing the most damage in the United States originate from beyond our borders, and our most effective means of reducing the availability of these drugs is to expand and improve our cooperation with international partners. Most drug overdose deaths within the United States involve illicit synthetic drugs and particularly synthetic opioids such as fentanyl. These synthetic drugs can be produced anywhere using precursor chemicals widely available for legitimate purposes, at a fraction of the cost and time it takes criminal organizations to produce dangerous drugs from plants.

Every country and region of the globe faces its own challenges from synthetic drugs. In Africa, the synthetic opioid tramadol is driving increasing numbers of injuries and fatalities, especially when mixed with other drugs. In the Middle East, synthetic stimulants are trafficked and sold as counterfeit captagon in large quantities. Ketamine — a synthetic anesthetic with hallucinogenic effects — is increasingly encountered throughout Asia, and it is being found mixed with methamphetamine, which appears to be growing more prevalent and more potent all over the world. And the categories of synthetic drugs are constantly shifting, as drug traffickers adjust formulas to avoid international controls and domestic regulations to create new demand. More than 1,100 new psychoactive substances and designer drugs have been detected and reported to the United Nations over the past decade alone.

To confront this common challenge, the United States launched this past summer a new Global Coalition to Address Synthetic Drug Threats. This diverse coalition of countries and international organizations will share best practices and expand cooperation to prevent the illicit manufacture and trafficking of synthetic drugs, detect emerging drug threats and use patterns, and promote public health interventions to prevent and reduce drug use and promote recovery. The United States welcomes all like-minded governments to participate in the work of this coalition and join efforts against these rapidly evolving global threats.

The political commitment of our international partners remains critical to achieving success against illicit drug threats, and no country is more important than Mexico. Under the Bicentennial Framework for Security, Public Health, and Safe Communities, our two countries have cooperated to seize greater volumes of fentanyl and other drugs. We have worked successfully during the last year to improve law enforcement collaboration, prevent the diversion of precursor chemicals, and arrest key organized crime figures involved in drugs and firearms trafficking, migrant smuggling, and other criminal activity. Sadly, some of these arrests resulted in the loss of lives of Mexican officials, and their sacrifices underscore the shared commitment from both countries to do what is necessary to fight these criminal organizations. To that end and to build on the increased cooperation of the past year, both countries should continue strengthening law enforcement information sharing and collaboration; build capacity to detect and counter drug production and trafficking and diversion of chemicals and drug-related equipment; and improve mechanisms to monitor, prevent, and treat drug substance use disorders.

With our key partners in South America, the United States will continue to support ongoing efforts to reduce coca cultivation and cocaine production, expand access to justice, and promote alternative livelihoods. Colombia has historically been a strong partner in the fight against the drug trade. Nevertheless, illicit coca cultivation and cocaine production remain at historically high levels, and I urge the Government of Colombia to prioritize efforts to expand its presence in coca-producing regions and achieve sustainable progress against criminal organizations. In Bolivia, I encourage additional steps by the government to safeguard the country's licit coca markets from criminal exploitation, reduce illicit coca cultivation that continues to exceed legal limits under Bolivia's domestic laws for medical and traditional use, and continue to expand cooperation with international partners to disrupt transnational criminal networks.

Afghanistan has been removed from the list of countries determined to have "failed demonstrably" due to progress made within that country over the past year in reducing the cultivation of opium poppy and production of illicit narcotics. However, I remain concerned by the continuation of the illicit drug trade within and originating from Afghanistan, including methamphetamine. The country's drug control efforts must be sustained and expanded to include meaningful steps against drug trafficking and the drug supply chain, including by eliminating illicit drug stockpiles and curbing methamphetamine production. I will reconsider Afghanistan's status during the next annual review based on whether these additional steps are taken, in keeping with Afghanistan's international drug control commitments and in full respect for the human rights of its people.

You are authorized and directed to submit this designation, with the Bolivia, Burma, and Venezuela memoranda of justification, under section 706 of the FRAA, to the Congress, and to publish this determination in the *Federal Register*.

JOSEPH R. BIDEN JR.

EXHIBIT 80

NOVEMBER 16, 2023

FACT SHEET: Biden-Harris Administration Continues Progress on Fight Against Global Illicit Drug Trafficking

President Biden has made beating the overdose epidemic a key priority in his Unity Agenda for the Nation, including a focus on cracking down on global illicit drug trafficking and disrupting the flow of illicit fentanyl and its precursors.

During their November 15 meeting, President Biden and President Xi Jinping of the People's Republic of China (PRC) announced the resumption of bilateral cooperation on counternarcotics, with a focus on reducing the flow of precursor chemicals fueling illicit fentanyl and synthetic drug trafficking. For years, bilateral cooperation on counternarcotics has been suspended. The PRC is now taking law enforcement action against illicit precursor suppliers, has issued a notice to industry warning Chinese companies against illicit trade in precursor chemicals and pill presses equipment, and has committed to restart key law enforcement cooperation.

Today's progress is one of many actions that President Biden has taken to counter the global threat posed by the trafficking of illicit drugs into the United States that is causing the deaths of a hundred thousand Americans annually, as well as countless more non-fatal overdoses.

The Biden-Harris Administration has initiated new measures to disrupt the trafficking of illicit fentanyl and its precursors into American communities and dismantle the firearms trafficking networks that enable drug traffickers to grow their enterprises. The U.S. government, alongside our partners, will continue our efforts to prevent the production and trafficking of illicit synthetic drugs through multiple efforts, including the Global Coalition to Address Synthetic Drug Threats, which has brought together over 100 countries to collectively address the scourge of fentanyl.

The Biden-Harris Administration also has taken historic action to expand access to life-saving public health services and remove decades-long barriers to treatment for substance use disorder. To help advance these Administration efforts, President Biden has requested $26 billion for prevention, harm reduction, treatment, and recovery support services in his FY24 budget request. In addition, President Biden is requesting $1.55 billion in his supplemental budget request to strengthen these support services across the country.

The Biden-Harris Administration's diplomacy with PRC has resulted in concrete action:

- The PRC is issuing a notice to its domestic industry advising on the enforcement of laws and regulations related to trade in precursor chemicals and pill presses equipment. A similar notice to industry in 2019 led to a drastic reduction in seizures of fentanyl shipments to the United States from China.

- The PRC has begun taking law enforcement action against Chinese synthetic drug and chemical precursor suppliers. As a result, certain PRC-based pharmaceutical companies have ceased operations and have had some international payment accounts blocked.

- At the beginning of this month, and for the first time in nearly three years, the PRC re-started submitting incidents to the International Narcotics Control Board's global IONICS database, which is used to share real-time information internationally about things like suspicious shipments and suspected trafficking. This information will help global law enforcement agencies identify trends and conduct intelligence-driven investigations that disrupt illicit synthetic drug supply chains.

Together, the United States and China are now announcing the launch of a counter-narcotics working group to create a platform for policy and technical experts to discuss law enforcement efforts and exchange information on counter-narcotics efforts going forward.
These announcements build on the Administration's comprehensive, whole-of-government approach to tackling global illicit drug trafficking. The Administration's decisive actions to crack down on drug trafficking include:

- **Announcing a strategic approach to commercially disrupting the global illicit fentanyl supply chain.** The Biden-Harris Administration announced a strengthened whole-of-government approach to save lives by disrupting the trafficking of illicit fentanyl and its precursors into American communities. This approach builds on the President's *National Drug Control Strategy* and helps deliver on his State of the Union call to beat the opioid and overdose epidemic by cracking down on the production, sale, and trafficking of illicit fentanyl to help save lives, protect the public health, and improve the public safety of our communities.

- **Increasing security at the border.** Under President Biden's leadership, this Administration has invested significant amounts of funding for law enforcement efforts to address illicit fentanyl trafficking and enabled historic seizures of illicit fentanyl on the border. Further, President Biden's national security supplemental funding request includes more than $1.2 billion to stop the flow of illicit fentanyl into American communities; portions of this funding will support an additional 1,300 border patrol agents to work alongside the 20,200 border patrol agents already funded in the FY24 budget.

- **Deploying detection technology.** President Biden's FY24 budget called for $535 million in U.S. Customs and Border Protection for border technology, including $305 million for Non-Intrusive Inspection Systems, with a primary focus on fentanyl detection at ports of entry. Further, President Biden's national security supplemental funding request includes more than $1.2 billion to stop the flow of illicit fentanyl into American communities; portions of this funding will ensure deployment of more than 100 cutting-edge detection machines that will help detect fentanyl at ports of entry at the southwest border.

- **Expanding our High Intensity Drug Trafficking Area (HIDTA) Program.** The HIDTA program devotes more than $302 million to supporting federal, state, local, and Tribal law enforcement working to stop traffickers across all 50 states. Earlier this year, the White House announced the designation of nine new counties to the HIDTA Program. The addition of these nine counties to the HIDTA program will allow

additional resources to be deployed to areas hardest hit by drug trafficking and overdoses.

- **Targeting the global illicit supply chain.** President Biden issued the *Executive Order on Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade* to target the enablers of the global illicit synthetic drug supply chain including raw material brokers, financiers, and others. This allows the U.S. government to target not just drug kingpins but also those who operate their businesses.

- **Launching the Global Coalition to Address Synthetic Drug Threats.** The Biden-Harris Administration launched the Global Coalition to Address Synthetic Drug Threats that will help accelerate efforts against illicit synthetic drugs and employ coordinated approaches to prevent illicit drug manufacturing, detect emerging drug threats, disrupt trafficking, address illicit finance, and respond to public safety and public health impacts. The Administration brought together more than 100 countries and 11 international organizations to take action knowing that countering illicit synthetic drugs must be a global policy priority.

- **Regulating "precursor" chemicals used to produce illicit fentanyl.** At the request of the United States, the UN Commission on Narcotic Drugs (CND) voted to control three chemicals used by drug traffickers to produce illicit fentanyl. In addition, the United States placed 28 chemicals and certain equipment used in the production of fentanyl, methamphetamine, PCP, LSD, and other controlled substances and listed chemicals on the Controlled Substances Act's Special Surveillance List. These additions include precursor chemicals used to make fentanyl as well as pill press punches and dies, which are used to press fentanyl into fake pills.

- **Bringing law enforcement actions against every aspect of the global illicit fentanyl supply chain.** The United States has executed a network-focused strategy to attack every aspect of the global illicit fentanyl supply chain and dismantle the criminal organizations that operate it. In just the last year, the U.S. government brought: criminal indictments against chemical companies for supplying precursor chemicals to be made into fentanyl; criminal charges against leaders, enforcers, and associates of the largest and most powerful drug cartel in the world and the one responsible for the vast majority of fentanyl entering the United States; criminal charges against more than 3,300 associates of the drug cartels responsible for the last mile of distribution of fentanyl on our streets and on social media. As part of these criminal cases, law enforcement seized fentanyl precursor chemicals, fentanyl analogues, fentanyl additives, and finished fentanyl amounting to more than 263 million deadly doses of fentanyl.

- **Working with Mexico and Canada to counter illicit fentanyl, the Biden-Harris Administration established the Trilateral Fentanyl Committee in 2022.** This high level committee is strengthening regulatory frameworks associated with the manufacture, shipping, and sale of precursor chemicals and related equipment. Expanded bilateral collaboration with Mexico has also yielded significant achievements in 2023—including closer coordination on law enforcement investigations and actions, such as the September extradition of Ovidio Guzman Lopez (son of "El Chapo") to the United States, multiple additional joint

investigations to disrupt and interdict narcotics and arms trafficking, and coordinated public health and public safety initiatives.

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EXHIBIT 81

The Heritage Foundation

NEWS RELEASES

Heritage Unveils Critical Report Exposing China's Role in Fueling America's Fentanyl Crisis

Sep 9, 2024 3 min read

WASHINGTON—Today, The Heritage Foundation unveiled a critical report exposing China's role in fueling America's fentanyl crisis. The report shifts the focus from Mexico to China's complicity and provides effective policy solutions to hold the Communist Chinese Party (CCP) accountable. The CCP is actively funding, supporting, and pushing America's most deadly drug threat in history, where thousands of Americans are harmed annually.

Robert Greenway, Heritage Director of the Allison Center for National Security, stated:

> "Between 2021-2023 more Americans died from opioids than from World War I and the Korean and Vietnam wars combined. It's long past time to confront the driving force of America's fentanyl crisis: China.
>
> "For years, the CCP has undermined U.S. interests by providing Mexican cartels the financial and production resources to expand their fentanyl market. Both the Mexican and Chinese governments have repeatedly demonstrated a lack of commitment to better addressing this epidemic.
>
> "The CCP is directly culpable for this crisis and has yet to face consequences. This report reveals the next steps to do so."

Below are some of the report's major findings:

- Despite being an ocean away, Chinese precursor chemicals serve as the backbone of the supply chain that delivers deadly fentanyl throughout the United States.
- Chinese pharmaceutical companies and other vendors use marketplaces on the dark web to list and sell illicit narcotics, including the many fentanyl precursor and pre-precursor chemicals.
- China uses fentanyl negotiations with the U.S. as a "point of leverage" and "relatively low-hanging fruit" to "seek concessions" from the United States and has refused to substantively address the issue with the United States throughout most of the Biden administration's first term.
- The money laundering leg of fentanyl trafficking networks shows that China's role in the fentanyl crisis does not end at Mexico's ports—it maintains an active presence throughout Mexico and even in the United States.
- The United States must take the lead in confronting the fentanyl crisis as it lacks good-faith partners in both the Chinese and Mexican governments. The U.S. must implement measures that protect the US trade, financial, and

healthcare systems while also deploying U.S. intelligence and law enforcement to target these illicit networks.

Andrew Harding, Heritage's Asian Studies Center Research Assistant and co-author of the report, added:

> "Despite its geographic distance, China—not Mexico—has emerged as the primary force behind America's fentanyl crisis.
>
> "China's precursor chemicals and money laundering operations have emboldened the Mexican Cartels and poisoned Americans from within.
>
> "The CCP's latest offensive against the United States confirms that they remain America's top adversary and should not be treated lightly by the Biden-Harris administration."

Background:

A recap of Heritage's "Exposing China's Complicity in America's Fentanyl Crisis" panel discussion may be viewed here.

A newly released Heritage explainer video further exposing America's fentanyl crisis may be viewed here.

EXHIBIT 82

Can Joe Biden's plan stop the flow of fentanyl to the US?

21 November 2023

Share Save

Bernd Debusmann Jr
BBC News, Washington

Fentanyl is a leading killer in the US - contributing to 75,000 deaths last year - and the heat is on President Joe Biden to do something.

He laid out plans on Tuesday to tackle "every angle" of the fentanyl crisis, calling it an "American tragedy".

Many angles, though, involve China and Mexico, which lay beyond US control.

And China's pledge to crack down on supplying Mexican cartels with chemicals used to make fentanyl may not be enough.

"Curbing this crisis is something every American can get behind," Mr Biden said at a White House meeting on Tuesday. "It's tough stuff. People are dying."

He laid out the many parts of his approach to the crisis, including expanded access to treatment and "strong international co-operation", while flanked by the country's top diplomat, Secretary of State Antony Blinken, and its most powerful prosecutor, Attorney General Merrick Garland.

Getty Images

President Joe Biden described his plan at a White House meeting a week after meeting China's Xi Jinping

Mr Biden also said the deal he reached last week with Chinese President Xi Jinping on limiting the export of certain chemicals from China was "critical" in stopping the flow of fentanyl into the US.

Chemicals used to make the powerful opioid are flowing "unabated" from China to Mexico, according to a report released by **the US Commission on Combating Synthetic Opioids** in February, and China's chemical firms remain the "primary sources" of substances used to produce fentanyl.

In the past, US officials have cautioned that while Chinese counter-narcotics policy is set by the central government in Beijing, enforcement is often in the hands of provincial authorities that may lack the necessary resources, or, in some cases, be susceptible to corruption.

Thomas Bollyky, a former US trade official and veteran of negotiations with China, told the BBC that the central government is "capable" of effectively cracking down on chemical firms involved in the fentanyl trade. The bigger question is if "it's a sufficient priority".

"Whether that's the case really has to do with broader geopolitical dynamics," Mr Bollyky added. "China has been clear that China itself does not have a fentanyl problem. They see these issues as part of the broader strategic dialogue with the US."

AP

Fentanyl contributed to the deaths of 75,000 Americans last year.

President Biden said that the US would "verify" that China was sticking to the agreement.

One of the synthetic opioid commission's co-chairs, Maryland Democrat David Trone - whose son Ian died of a fentanyl overdose in 2016 - said last week that the deal between Mr Biden and Xi Jinping was "worth commending" and "welcome news".

"But, it represents just one step in a long journey to end this vicious drug epidemic," he added.

- Fourth wave of fentanyl crisis hits every corner of US
- Ramaswamy idea for US-Canada border wall is 'extreme'

Those vying to replace Mr Biden in 2024 are focused more on Mexico than China. Several Republican presidential candidates have publicly endorsed using force against fentanyl traffickers and laboratories, without providing exact details of how they would identify people or sites to attack in the often diffused process of making and moving the drug.

Florida Governor Ron DeSantis, for example, has vowed to send US special forces into Mexico on "day one" of his administration if elected.

Former President Donald Trump vowed to "inflict maximum damage" on cartels using special forces, cyber-war and "other overt and covert actions".

Mexican President Andrés Manuel López Obrador has called the suggestions "extravagant nonsense" aimed at gaining "sympathy" among voters.

His government has largely shrugged off suggestions that it is partially responsible for America's fentanyl problem.

Arturo Sarukhán, Mexico's former ambassador in Washington DC, said that rising fentanyl deaths have "turbocharged" an aggressive narrative towards Mexico in US politics, which could ultimately have "dire consequences" for the relationship between the two countries.

"The fact that all roads to the Republican primary now lead to the border and the piñata-bashing of Mexico is a sign of the trouble ahead," he said. "Particularly when Mexico has become the number one trading partner of the US, the largest buyer of US exports in the world and a key player in Washington's successful recalibration of ties vis-à-vis China."

Joe Biden says that the US will 'verify' that China is taking action against firms that produce fentanyl precursor chemicals.

Limiting supply of the drug alone will not solve the crisis, said Professor Alexandra Punch, a public health expert at Syracuse University who focuses on drug policy, adding the US must also address reducing the drug's harm.

She pointed to "safe consumption" or overdose prevention centres similar to those found in countries such as Canada, which, she said, have proven "successful at decreasing mortality, decreasing HIV rates and also decreasing drug-related crime in the vicinity of where they're located".

"What we're looking to solve is the mortality issue," she said. "I don't think we're going to solve the demand issue, because people are just going to find something different to use."

EXHIBIT 83

China says no illegal fentanyl trafficking between it and Mexico

By Reuters

April 10, 20236:03 PM EDTUpdated 2 years ago

Plastic bags of Fentanyl are displayed on a table at the U.S. Customs and Border Protection area at the International Mail Facility at O'Hare International Airport in Chicago, Illinois, U.S. November 29, 2017. REUTERS/Joshua Lott Purchase Licensing Rights

BEIJING, April 6 (Reuters) - (This April 6 story has been corrected to update the CDC data on fatalities to more than 70,000 in 2021 from all synthetic opioids, not more than100,000 in fiscal 2022 from fentanyl, in paragraph 6)

There is no such thing as illegal trafficking of fentanyl between China and Mexico, China's foreign ministry said on Thursday, responding to a letter from the Mexican president asking Beijing to help limit illicit flows of the deadly drug.

China has not been notified by Mexico about any seizure of fentanyl from China, ministry spokesperson Mao Ning said at a regular briefing.

"U.S. needs to face up to its own problems and take more substantive measures to strengthen regulation within its borders and reduce demand," Mao said, referring to drug abuse as a problem "made in the U.S.".

Mexico's president said on Tuesday he had written to Chinese president Xi Jinping, urging him to help control shipments of fentanyl as he fended off criticism in the U.S. that Mexico is not doing enough to stop trafficking of the synthetic opioid.

Fentanyl, widely used in hospitals during anaesthesia and for pain relief, has become a major black market narcotic in the United States. Mexican drug cartels have increasingly taken part in the illegal business.

There were more than 70,000

reported overdose deaths involving synthetic opioids in 2021, according to data from the U.S. Centers for Disease Control and Prevention.

President Andres Manuel Lopez Obrador defended in the March 22 letter efforts to curb supply of the drug, while rounding on U.S. critics, some of whom want Washington to intervene militarily in Mexico.

The letter

and China's response did not mention supplies of the precursor chemicals used to make the powerful sedative.

The U.S. Drug Enforcement Agency says both finished fentanyl and precursors are transported from China to Mexico, the United State and Canada, often by international mail.

EXHIBIT 84

Commerce Department to Add Nine Chinese Entities Related to Human Rights Abuses in the Xinjiang Uighur Autonomous Region to the Entity List

FOR IMMEDIATE RELEASE
Friday, May 22, 2020

Office of Public Affairs
(202) 482-4883
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The Department of Commerce's Bureau of Industry and Security (BIS) announced the impending addition of the People's Republic of China's Ministry of Public Security's Institute of Forensic Science and eight Chinese companies to the Entity List, which will result in these parties facing new restrictions on access to U.S. technology. These nine parties are complicit in human rights violations and abuses committed in China's campaign of repression, mass arbitrary detention, forced labor and high-technology surveillance against Uighurs, ethnic Kazakhs, and other members of Muslim minority groups in the Xinjiang Uighur Autonomous Region (XUAR). This action will supplement BIS's first tranche of Entity List designations in October 2019 involving 28 parties engaged in the XUAR repression campaign in Xinjiang.

The Entity List additions restrict the export of U.S items subject to the Export Administration Regulations (EAR) to persons or organizations reasonably believed to be involved, or to pose a significant risk of being of becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The EAR imposes additional license requirements on, and limits the availability of most license exceptions for, exports, re-exports, and transfers (in-country) to listed entities.

The listing will identify China's Ministry of Public Security's Institute of Forensic Science and Aksu Huafu Textiles Co. for engaging in human rights violations and abuses in the XUAR. An additional seven commercial entities will be to the list for enabling China's high-technology surveillance in the

XUAR: CloudWalk Technology; FiberHome Technologies Group and the subsidiary Nanjing FiberHome Starrysky Communication Development; NetPosa and the subsidiary SenseNets; Intellifusion; and IS'Vision.

BUREAUS AND OFFICES
Bureau of Industry and Security

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Our mission

Strategic plan

Bureaus and offices

Privacy program

EXHIBIT 85

U.S. Customs and Border Protection

U.S. Customs and Border Protection

Drug Seizure Statistics

As of 15 December 2021 the Drug Seizures dashboard now includes seizures of all drug types.

To access the data used to build this dashboard, please visit the CBP Data Portal.

Data is extracted from live CBP systems and data sources. Statistical information is subject to change due to corrections, systems changes, change in data definition, additional information, or seizures pending final review. Final statistics are available at the conclusion of each fiscal year.

Note: *Internet Explorer has problems displaying the following charts. Please use another browser (Chrome, Safari, Firefox, Edge) to view. When using a mobile device, the charts are best displayed in landscape mode.*

U.S. Customs and Border Protection

U.S. Customs and Border Protection (CBP) Drug Seizures

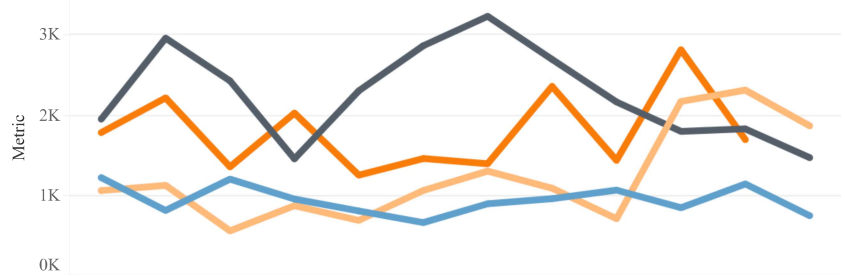
US Border Patrol (USBP) and Office of Field Operations (OFO)
Weight (lbs) and Count of Drug Seizure Events by Fiscal Year (FY)

Metric
- (•) Drug Seizure Weight (lbs)
- ( ) Drug Seizure Events

Component: (All)
Fiscal Year: (All)
Drug Type: Fentanyl
Region Filter: (All)
Land Filter: (All)
Area of Responsibility: (All)
Reset Filters

FY 2021 2022 2023 2024 (FYTD)

FY Drug Seizure Weight (lbs) by Month



	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	Total
2024 (FYTD)	1.8K	2.2K	1.3K	2.0K	1.2K	1.4K	1.4K	2.3K	1.4K	2.8K	1.7K		19.7K
2023	1.9K	2.9K	2.4K	1.4K	2.3K	2.9K	3.2K	2.7K	2.2K	1.8K	1.8K	1.5K	27.0K
2022	1.1K	1.1K	549	862	680	1.1K	1.3K	1.1K	700	2.2K	2.3K	1.9K	14.7K
2021	1.2K	804	1.2K	945	797	652	886	950	1.1K	837	1.1K	737	11.2K

FY Comparison by Drug Type and Drug Seizure Weight (lbs)

Select drug type below or FY to filter: (Multiple values)

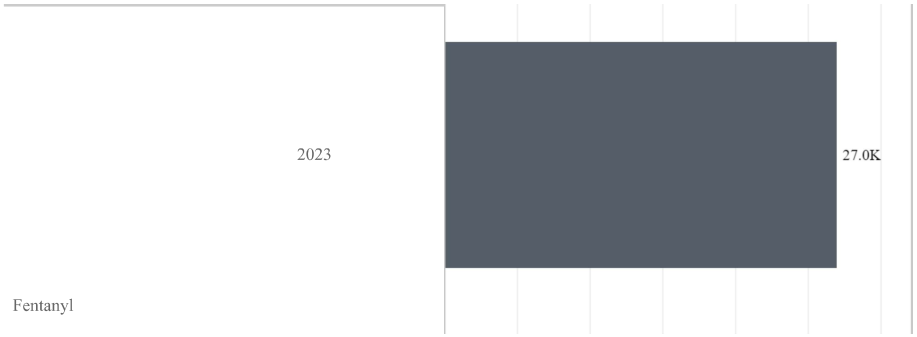


EXHIBIT 86

News

Aug 29, 2024

California's fentanyl task force seizes over 8.8 million fentanyl pills

What you need to know: Since January, California's state fentanyl task force has seized nearly 2.5 tons of fentanyl powder and over 8.8 million pills at California's ports of entry — enough to kill one in every four California residents.

SACRAMENTO – Continuing California's aggressive push to tackle the illicit fentanyl crisis, Governor Gavin Newsom today announced that the California National Guard's Counterdrug Task Force seized almost 4,638 pounds of fentanyl powder and more than 8.8 million pills containing fentanyl since January 2024. These seizures are valued at nearly $40 million.

The task force helps local and federal partners take deadly fentanyl off the street, focusing on ports of entry along the southern border.

> "California's work to address illicit fentanyl entering into our state continues to produce strong results. We'll continue to address the opioid epidemic by all means necessary – including by getting fentanyl off our streets and providing communities with access to the treatment and life-saving medications they need."
>
> Governor Gavin Newsom

The task force focuses on gathering information to interdict illegal narcotics trafficking, utilizing air and ground assets to build criminal investigations, and supporting personnel at border ports of entry to stop illicit narcotics trafficking. CalGuard members with the Counter Drug Taskforce are embedded in cross-government initiatives to combat transnational criminal organizations and the trafficking of illegal narcotics – like fentanyl.

How we got here

In June, Governor Newsom doubled down on the deployment of CalGuard involved in the task force by increasing the number of service members interdicting fentanyl and other drugs at U.S. ports of entry from 155 to nearly 400. Last year, the Governor increased the number of CalGuard service members deployed to interdict drugs at U.S. ports of entry along the border by approximately 50%.

The operations CalGuard supported resulted in the record seizure of 62,224 pounds of fentanyl in 2023 — a 1066% increase since 2021. CalGuard's coordinated drug interdiction efforts in the state are funded in part by California's $30 million investment to expand CalGuard's work to prevent drug trafficking by transnational criminal organizations. Fentanyl is primarily smuggled into the country by U.S. citizens through ports of entry. This adds to the Governor's efforts to address fentanyl within California, including by cracking down on fentanyl in communities across the state, including San Francisco.

Addressing the opioid crisis

California is taking aggressive action to end the fentanyl and opioid crisis. The Governor's Master Plan for Tackling the Fentanyl and Opioid Crisis provides a comprehensive framework to deepen the impact of these investments, including aggressive steps to support overdose prevention efforts, hold the opioid pharmaceutical industry accountable, crack down on drug trafficking, and raise awareness about the dangers of opioids, including fentanyl.

The state launched opioids.ca.gov, a one-stop tool for Californians seeking resources for prevention and treatment, as well as information on how California is working to hold Big Pharma and drug traffickers accountable in this crisis.

This week, California launched the Facts Fight Fentanyl campaign to educate Californians on the dangers of fentanyl and how to prevent overdoses and deaths. This effort will provide critical information about fentanyl and life-saving tools such as naloxone.

As part of Governor Newsom's Master Plan for Tackling the Fentanyl and Opioid Crisis, over-the-counter CalRx®-branded naloxone is now becoming available across the state. Through the Naloxone Distribution Project (NDP), CalRx®-branded over-the-counter (OTC) naloxone HCL nasal spray, 4 mg, will be available for free to eligible organizations through the state or for sale for $24 per twin-pack through Amneal.

In support of President Biden's bilateral cooperation agreement with China on counternarcotics, the Governor spoke with Chinese President Xi Jinping in October about combating the transnational shipping of precursor chemicals used to create fentanyl.

Categories: Press Releases, Public Safety, Recent News, Top Story

EXHIBIT 87

Remarks by Spokesperson of the Chinese Embassy in the US on the US Sanction against Chinese Entities and Individuals for the So-called Involvement in the Production of Illicit Drugs

2023/05/30 20:01

Q: On May 30, the US Department of the Treasury sanctioned 13 China-based entities and individuals under the pretext of involvement in the international proliferation of equipment used to produce illicit drugs. Do you have any comment?

A： While saying it hopes to resume counter-narcotics cooperation with China on various occasions, the US has again brazenly sanctioned Chinese individuals and entities, which is a serious violation of the lawful rights and interests of the companies and individuals concerned. China strongly condemns this.

The pretext the US fabricated this time is that these Chinese entities and individuals are involved in the sale of pill press machines, die molds, and other equipment to the US and Mexico. However, it is widely known that pill press machines and die molds are common commodities with legitimate uses and are widely used in normal industrial production. According to the common practice across the world, to ensure that the goods imported are not used for illicit purposes is not only the basic responsibility of the enterprises, but also the legal obligation of the governments of importing countries.

The Chinese government takes a firm stance on counter-narcotics. Guided by the humanitarian spirit, we have worked with the US to help solve its fentanyl abuse. In May 2019, China became the first country in the world to officially schedule fentanyl-related substances as a class, which played an important role in preventing the illicit manufacturing, trafficking and abuse of the substance. The US, however, in disregard of China's goodwill, used the so-called "human rights issue" in Xinjiang to impose sanctions on the Institution of Forensic Science of the Ministry of Public Security and the National Narcotics Laboratory of China. Now the US is imposing new sanctions on Chinese companies and individuals and attempting to blame China for its own fentanyl problem. This has seriously eroded the foundation for China-US counter-narcotics cooperation.

The US itself is the root cause of its drug problems. With 5% of the world's population, the US consumes 80% of the world's opioids. Yet the US still has not permanently scheduled fentanyl-related substances as a class. As China and the rest of the world strengthen control of fentanyl-related substances, the fentanyl issue in the US has been deteriorating and taking away even more lives. The US needs to do some serious reflections on this. Instead of working to reduce the demand for drugs at home, strengthen management of prescription drugs and step up public awareness campaigns about the harm of narcotics, the US has resorted to grossly sanctioning other countries in an attempt to mislead the public and deflect the blame for its inaction. This is clear to the American people and the rest of the world.

The US sanctions against Chinese companies and citizens will add more obstacles to China-US counter-narcotics cooperation. Such moves hurt others as well as the US itself. If the US truly wants to solve its drug problem, it should respect facts, reflect on itself, correct its wrongdoing, and stop shifting the blame. China will continue to do what is necessary to safeguard the lawful rights and interests of Chinese companies and individuals.

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Email for Passport and Travel Document Application: washington_hz@csm.mfa.gov.cn
Email for Authentication Application: washington_gzrz@csm.mfa.gov.cn
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EXHIBIT 88

International Monetary Fund

FINANCE & DEVELOPMENT
A quarterly magazine of the IMF

June 2002, Volume 39, Number 2

The Allure of the Value-Added Tax

Liam Ebrill, Michael Keen, Jean-Paul Bodin, and Victoria Summers

The VAT began life in the more developed countries of Europe and Latin America but, over the past 25 years, has been adopted by a vast number of developing and transition countries. A recent IMF study concludes that the VAT can be a good way to raise resources and modernize the overall tax system—but this requires that the tax be well designed and implemented

---

The rapid rise of the value-added tax (VAT) was the most dramatic—and probably most important—development in taxation in the latter part of the twentieth century, and it still continues. Forty years ago, the tax was barely known outside theoretical discussions and treatises. Today, it is a key component of the tax system in over 120 countries, raising about one-fourth of the world's tax revenue.

What is the VAT? It is a tax levied on all sales of commodities at every stage of production. Its defining feature is that it credits taxes paid by enterprises on their material inputs against the taxes they must levy on their own sales. Unlike a retail sales tax—under which tax is collected only at the point of sale to the final consumer—revenue is collected throughout the production process. Unlike a simple turnover tax—which levies tax on all sales, intermediate or final—producers can reclaim the tax they have been charged on their inputs. Because the VAT does not affect the prices firms ultimately pay for inputs, it does not distort production decisions and does not create "cascading"—the "tax on tax" that arises when tax is charged both on an input into some process and on the output of that same process. This also makes the effects of the VAT transparent. All firms whose annual turnover exceeds a specified threshold must participate—not only those involved in making final sales to consumers. But, in the end, only the net value of those final sales forms the base of the tax so that the VAT—if it is functioning as intended—is thus a tax on final consumption. While there are other ways in which one can try to tax consumption—such as a retail sales tax—the feature of the VAT that tax is collected throughout the production chain gives it a considerable practical advantage.

Suppose Firm A sells its output (assumed, to keep the example simple, to be produced using no material inputs) for a price of $100 (excluding tax) to Firm B, which in turn sells its output for $400 (again excluding tax) to final consumers. Assume now that there is a VAT with a 10 percent rate. Firm A will then charge Firm B $110, remitting $10 to the government in tax. Firm B will charge final consumers $440, remitting tax of $30: output tax of $40 less a credit for the $10 of tax charged on its inputs. The government thus collects a total of $40 in revenue. In its economic effects, the tax is thus equivalent to a 10 percent tax on final sales (there is no tax incentive, in particular, for Firm B to change its production methods or for the two firms to merge), but the method of its collection secures the revenue more effectively. If, for some reason, Firm A were to omit charging tax to Firm B, for example, the government would still collect $40 from B (which would have no credit to set against its output tax). If Firm B omitted charging tax, the government would at least collect the $10 from A. This last observation also illustrates a key advantage of the VAT over a retail sales tax, hinted at above. Imagine now that B is a retailer, and somehow manages to avoid paying any tax. Under the VAT, the government still has the $10 paid by A; under a retail sales tax, it has nothing.

Before the VAT's introduction, domestic indirect taxes were typically limited to narrowly defined products, such as alcohol and tobacco, and to sales and turnover taxes. Distortions associated with turnover taxes, combined with governments' need to increase their revenues—particularly, in many cases, to replace import tariff revenues lost as a consequence of trade liberalization—created an incentive to seek less distortionary alternatives. Countries were slow to adopt the VAT, however. Although the first proposals emerged in France in the 1920s, the first recognizable VAT did not appear until 1948, in France. Brazil was the first Latin American country to adopt the VAT, in 1967, and Denmark's adoption of the VAT that same year marked the start of the tax's widespread introduction to Europe (see Table 1). The VAT spread rapidly in the industrial world and South America until the late 1970s and was adopted by the developing and transition economies only a decade later. Remarkably, the number of African countries with a VAT increased from 2 to 30 in the 1990s.

For more than 30 years, the IMF has been a critical part of the global drama, advising member countries on how to design and implement the VAT. That is why it recently undertook a major study to answer key questions about the usefulness of the tax—which has been surprisingly little studied—and to crystallize best practices. The findings were encouraging, indicating that the spread of the VAT appears to have been broadly desirable. But they also underscored that the success of a VAT cannot be taken for granted: it requires good design and implementation, not only when first adopted but also for many years after.

Judging efficiency and fairness

Has the VAT lived up to its early promise as an efficient, fair source of revenue? Efficiency gains associated with the use of a VAT are hard to

observe directly, so we tackle this question through the indirect route of asking whether countries with a VAT tend to have a higher ratio of total tax revenues to GDP—the idea being that if a VAT does indeed reduce the efficiency cost of raising revenue, then governments with a VAT should raise more revenue. Holding other things equal—including per capita GDP and the openness of an economy—we found some evidence that the VAT is indeed associated with a higher ratio of general government revenue and grants to GDP; weaker evidence that it is associated with a higher ratio of general government tax revenue alone; and no evidence that it is associated with a higher (or lower) ratio of central government tax revenue. Although the interpretation of these results is difficult and further research is clearly needed, this finding suggests to us that the VAT may bolster revenues efficiently.

Table 1

The lure of the VAT

After its widespread introduction in Europe and Latin America, the VAT has been adopted by a number of developing economies over the past 25 years.

	Sub-Saharan Africa (43)	Asia and Pacific (24)	EU (plus Norway and Switzerland) (17)	Central Europe and BRO[1] (26)	North Africa and Middle East (21)	Americas (26)	Small islands (27)
2001 (April)	27	18	17	25	6	22	8
1989	4	6	15	1	4	16	1
1979	1	1	12	0	1	12	0
1969	1	0	5	0	0	2	0

Source: IMF staff compilation.

Note: The figures in parentheses are the total number of countries in each region as of September 1998.
[1]Baltic states, Russia, and other countries of the former Soviet Union.

When is the VAT most effective in raising revenue? The traditional measure of the effectiveness of the VAT in raising revenue is the "efficiency ratio"—the ratio of VAT revenue to GDP, divided by the standard VAT rate. But this measure has flaws, notably that errors in measuring GDP contaminate it. More important, the appropriate benchmark should be total consumption (the ideal VAT base), not GDP. A policy error that brought some investment into the tax base, for example, would increase the efficiency ratio even though it meant a worse VAT. We tried to avoid this problem by looking instead at the "C-efficiency ratio"—the ratio of VAT revenue to consumption, divided by the standard tax rate (see Table 2): a VAT that taxed all consumption at a uniform rate—which is the benchmark at which the IMF typically aims in making its VAT recommendations—would have C-efficiency of 100 percent. We found that factors linked with relatively high C-efficiency include

- a relatively high ratio of trade to GDP (presumably because it is relatively easier to collect VAT at the point of import than domestically);
- high literacy rates; and
- the age of the VAT (the longer the tax has been in place, the better the performance).

Not just for rich countries

Is the VAT suitable for developing countries? The VAT is often thought to be an intrinsically complicated tax, cumbersome for both taxpayers and authorities and thus ill suited to developing countries, where even basic record-keeping ability may be limited. The key question is not, however, whether developing countries gain less from adopting the VAT than developed countries; nor is it whether the VAT performs better in countries with greater administrative sophistication —presumably true of any tax. Rather, the question is whether the VAT does worse than available alternatives in developing countries. That is, does it perform less well, taking into account the administrative and compliance costs to all participants, than other taxes that would have to be used—or were actually used—to raise similar revenues in its absence?

To shed light on this, in the absence of reliable evidence on the collection costs associated with alternative taxes in developing countries, we examined six francophone and six anglophone African countries' tax systems before and after the VAT. There were many similarities among the predecessor indirect taxes (turnover taxes on the old French model and manufacturers' sales taxes in the former British colonies). These taxes had many and, frequently, narrowly differentiated rates; many specific exemptions; exemptions for retail trade; differential treatment of imports and domestic sales; and, in some cases, artificially constructed "manufacturer's prices" to form the tax base. All the taxes, in particular, had complex methods to avoid the cascading that is inherent in turnover taxes—the function neatly served by the VAT's multistage crediting method. We found that, in many developing countries, a simple VAT with a high registration threshold—the turnover level at which the tax is charged —would clearly be simpler to administer than the tax(es) that such a VAT would replace.

Table 2

How effective?

Countries rated most effective in raising revenue from VAT tend to have relatively open economies, high literacy rates, and an "older" VAT.
(percent)

	Sub-Saharan Africa	Asia and Pacific	Americas	EU (plus Norway and Switzerland)	Central Europe and BRO[1]	North Africa and Middle East	Small islands
Efficiency ratio[2]	27	35	37	38	36	37	48
C-efficiency ratio[2]	38	58	57	64	62	57	83

Source: IMF staff calculations.
[1]Baltic states, Russia, and other countries of the former Soviet Union.
[2]The efficiency ratio is the ratio of VAT revenue to GDP, divided by the standard VAT rate. The C-efficiency ratio is the ratio of VAT revenue to consumption, divided by the standard VAT rate. The C-efficiency ratio is a better measure of VAT effectiveness.

Does this also hold for small countries, given that most countries still without a VAT are small, and over one-fourth are small island economies with populations of under one million? Here, too, we found that C-efficiency ratios for small countries with VATs were strikingly high, averaging 65 percent, about the same as for the European Union countries. This is consistent with the earlier observation that good VAT performance is strongly correlated with openness. But one must again ask, "good compared to what?" Just

because the VAT may be the easiest tax to collect in small, open economies, that does not make it the best choice. Maybe other taxes would perform even better.

To answer this, we compared the VAT with a uniform tariff on all imports, because, in the absence of collection costs, the best policy for a small economy is to levy no trade taxes but to raise revenues by taxing consumption. Rough calculations suggest that collection cost differentials would have to be quite large to outweigh the efficiency aspects of moving to a VAT. Where there are few stages in domestic production, however, the VAT may offer little gain over either a retail sales tax or, in particular, a uniform tariff. The VAT's advantages would be greater the lower the share of imports in GDP, the smaller the proportion of imported consumption, and the larger the share of intermediate goods in imports. As an economy develops, the VAT's advantages increase.

Best practices in design

What are the key challenges in designing a VAT? A survey of the IMF's advice and experience with VAT policy and administration in 37 countries showed that many issues in the design of the tax are not contentious. More striking, however, there were several areas in which IMF advice was consistent across countries but not fully accepted.

- Zero rating—under which sales are not taxed, but tax paid on inputs can nevertheless be reclaimed—is recommended only for exports, but, in practice, is used more widely.
- Provision of input credits for capital purchases is often less timely than advised.
- Exemptions—situations under which tax is not charged on output but also cannot be recovered on input—are more common than advised, undoing the VAT's good work in avoiding distortions of input decisions and compromising its transparency.
- A number of countries use multiple tax rates rather than the single rate that the IMF generally prefers—although the 1990s saw a definite improvement.
- Countries tend to set registration thresholds at much lower turnover levels than advised.

The threshold issue is of great practical importance, given that the low initial threshold in several countries has been cited as one of the VAT's key weaknesses. It is considered a prime reason why Ghana's VAT failed when first introduced in 1995 (at a registration level of $20,000, compared with $75,000 on its successful reintroduction in 1999). It is also one of the reasons Uganda's VAT nearly failed when it was introduced in 1996 (at $20,000, later raised to $50,000). Clearly, if there were no administrative or compliance costs, the most efficient threshold would be zero. But, of course, this is not the case. A simple rule of thumb is to set the threshold at the point where the collection costs saved are balanced against the revenues lost. Given that, in most countries, the value-added base is concentrated among relatively few firms, a high threshold is, by far, the most efficient approach. Countries seem to have resisted this for various reasons—particularly,

the perception that excluding smaller firms is in some way unfair and a belief that covering more firms will bring in more revenue. While there is some truth in these concerns, they are, in our view, often outweighed by the advantages of focusing the VAT on relatively few, large taxpayers.

A tool for poverty reduction

Is the VAT inherently regressive or is it a powerful instrument for poverty alleviation? It is commonly feared that the VAT adversely affects the distribution of real income. But, rather than any one tax, it is the tax system as a whole, taken in conjunction with public spending policies, that affects poverty and fairness. In theory, a regressive tax could be the best way to finance pro-poor spending, which more than offsets any anti-poor effect of the tax itself. The question, of course, is how the situation plays out in practice in most developing countries with a VAT.

Studies of the VAT in developing countries are still few, but there is growing evidence that the VAT is not an especially regressive tax. For example, studies for Cï¿½te d'Ivoire, Guinea, Madagascar, and Tanzania all show that the poor pay less than their share of total consumption as their share of total VAT revenues. Notably, the VAT proved more progressive than the trade taxes it often replaced. Many of those who perceive the VAT as particularly regressive are likely to be implicitly comparing it to a progressive personal income tax—a comparison of little relevance given the great difficulties that developing countries experience in administering an effective personal income tax.

More generally, few taxes are well suited to pursuing equity objectives. Expenditure policies are often a far better means of achieving these aims, though the capacity for well-targeted spending measures is very limited in many low-income countries. While the scope for pursuing distributional objectives on the spending side should not be taken for granted, experience has clearly demonstrated that the first duty of taxation must normally be to raise needed revenues with as little distortion of economic activity as possible.

Simple is best

What are the main administrative problems? The introduction of a VAT can facilitate substantial improvements in overall tax administration, particularly the establishment of more integrated tax administration organizations and the development of modern procedures based on voluntary compliance. But there have been some significant weaknesses in the VAT's implementation in developing and transition countries:

- the lack of coordination of the direct and indirect tax administrations, which are not yet integrated in a number of countries;
- the difficulty of implementing workable self-assessment systems, under which taxpayers declare and pay taxes on the basis of their own calculations, subject to the possibility of later audit by the tax authorities;

- the need for effective audit programs based on risk-analysis selection methods; and
- the need to give prompt refunds of excess credits to certain taxpayers, particularly exporters. (Because exports are zero rated, exporters will have no output tax liability but will be entitled to a refund of the tax paid on their purchases.)

The refund issue has become increasingly problematic in many countries in recent years. There is a troublesome tension between the importance of assuring prompt refunds—without which the VAT loses many of its economic merits—and the desire of governments to guard their revenues against fraud and the temptation they face to strengthen revenues by simply delaying refund payments. Indeed, we find that refunds are the VAT's Achilles heel. Tax policy advice in this area has been greatly influenced by tax administration constraints because adoption of best practice (which is the prompt refunding of all excess credits) is simply not possible in countries with weak administrative capacity. The lack of effective audit mechanisms is usually the primary cause of these problems, and the importance of developing such capacity may have been underappreciated in much of the advice and technical assistance on the VAT. The IMF currently tends to advise paying refunds only to exporters and, sometimes, businesses importing large quantities of capital equipment, with streamlined procedures for those with established, reliable records in their tax dealing, while imposing some delays and carry-forwards of credits on other taxpayers.

Next steps for the VAT

Key issues for the future will no doubt involve the VAT's implementation in decentralized states and within regional trading blocs, where there are no formal border controls; the proper treatment of the financial sector under the VAT; and reduction of the damage from multiple rates and exemptions, which are even more inconsistent with the basic logic of the VAT. A still more fundamental and as yet little recognized set of issues concerns the relationships between the VAT and income taxes, both domestically and internationally. For all the VAT's impressive achievements, its potential has still not been fully exploited or, perhaps, fully understood.

This article is based on the authors' book, The Modern VAT, *which was published by the IMF in 2001.*

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EXHIBIT 89

(https://msadvisory.com)

Understanding VAT in China

Dream Zhou | May 12, 2022

China's VAT system is widely considered to be quite a complex system. Over the past few years, it has undergone and will continue to undergo more developments to be a progressive tax system. Due to the differences between Chinese and Western accounting (https://msadvisory.com/accounting-standards-chinese-gaap-vs-ifrs/) practices, it is essential for companies operating in China to understand better how the Chinese tax system works in detail to ensure they properly comply with Chinese tax regulations. In this article, we look at the VAT framework in China, how it is calculated and filed, and other essential aspects.

Background of China VAT

China's value-added tax (VAT) regulations have seen several reforms since the opening up of the economy. In 1993, the government issued the Interim Regulations of the People's Republic of China on Value-Added Tax (*GuoWuYuan Ling No. 134*), which still form the primary basis for the regulations today. New Interim Regulations were passed on November 5th, 2008, and implemented on January 1st, 2009. At the end of 2018 and the start of 2019, the government made further changes to the VAT regulations, lowering the applicable VAT rates for certain goods and services, increasing the VAT exemption threshold for small-scale taxpayers, expanding the scope of VAT credits, and implementing pilot schemes for VAT refunds.

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To this date, the applicable VAT framework is governed by interim regulations. The current regulations have not been formally entered into law, but the authorities are expected to formalize a VAT law in the foreseeable future.

VAT Taxpayer Categories

In China, there are two categories of VAT taxpayers based on their annual sales: general and small-scale taxpayers. The threshold for general VAT taxpayers is now unified at RMB 5 million in yearly sales (previously, it varied across industries between RMB 500,000 and RMB 5 million). This means all companies with annual sales exceeding RMB 5 million will be general taxpayers, and companies below the threshold will be small-scale taxpayers. However, companies with annual sales below the threshold can apply for general taxpayer status.

The Difference Between General and Small-Scale Taxpayers

The key difference between general and small-scale taxpayers is that they are subject to a simplified and VAT rate of 3% and cannot deduct input VAT from output VAT. Previously, small-scale taxpayers could not issue any special fapiaos. Nowadays, it is possible to either issue special fapiaos at the tax bureau or apply with the tax bureau to issue special fapiaos for the company itself. However, the VAT rate will remain at 3% in such a case. Small-scale taxpayers with monthly sales below RMB 150,000 (or quarterly sales below RMB 450,000) are exempt from paying VAT. This threshold was raised from RMB 100,000 per month as per the 2021 Government Work Report.

After the emergence of COVID-19, the government implemented a temporary preferential policy, reducing the VAT rate for small-scale taxpayers to 1%. This policy, initially set to end in March 2022, was further extended. From January 1, 2023, to December 31, 2027, the VAT rate for small-scale VAT payers remained reduced from 3% to 1% (source (https://taxsummaries.pwc.com/peoples-republic-of-china/corporate/other-taxes)).

General VAT Fapiao versus Special VAT Fapiao

China has two types of fapiaos: the General VAT fapiao and the Special VAT fapiao. The main difference is that the Special VAT fapiao allows for the deduction of input VAT, whereas the General VAT fapiao does not. Because small-scale taxpayers cannot legally deduct input VAT from output VAT, they typically use the General VAT fapiao. Small-scale taxpayers can issue special VAT fapiaos under certain conditions, but the VAT rate will still be 3%.

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Category	General VAT Taxpayers	Small-Scale VAT Taxpayers
Annual Sales Threshold	Exceeds RMB 5 million	Up to RMB 5 million
VAT Rate	Category-specific rates	Standard rate of 3% (reduced to 1% from Jan 1, 2023, to Dec 31, 2027)
Input VAT Deduction	Allowed	Not allowed
Special Fapiao Issuance	Allowed	Allowed (with conditions, VAT rate remains 3%)
General Fapiao Issuance	Allowed	Allowed
VAT Exemption Threshold	Not applicable	Monthly sales below RMB 150,000 or quarterly sales below RMB 450,000
Temporary COVID-19 Policy	Not applicable	VAT rate reduced to 1% (extended to Dec 31, 2027)
Restrictions on Special Fapiao	Cannot issue for specific consumer goods (e.g., cigarettes, alcohol, food, clothing, shoes, hats, cosmetics)	Not applicable

Moreover, it should be noted that General VAT taxpayers selling specific consumer goods such as cigarettes, alcohol, food, clothing, shoes and hats, cosmetics, etc., are also not allowed to issue Special VAT fapiaos. For more information on how fapiaos work, read our

article on the Chinese invoicing system (https://msadvisory.com/what-is-a-fapiao-the-invoicing-system-in-china-explained/).

What is the VAT rate in China?

As highlighted above, the applicable VAT rate for small-scale taxpayers will generally be 3%, although currently, they can issue normal fapiaos with 0% VAT.

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Since the changes made in 2019, the applicable standard rate of VAT is set at 13% for all VAT taxpayers. For general taxpayers, the rate may vary; as such, the following VAT rates apply:

Rate	Type	Which goods or services
13%	Standard	All other taxable goods and services
9%	Standard	Retail; entertainment; hotel; restaurants; catering services; real estate and construction, telephony calls; postal; transport and logistic
6%	Standard	Financial services and insurance; telephony and internet data; IT; technology; consulting
3%		Chinese National Education Tax
2%		Chinese Local Education Taxes
7%, 5%, 1%		City Maintenance & Construction
3%		Construction services
3%	Reduced	For small-sized enterprises
1%-56%	Luxury	Consumption tax applies to specified nonessential and luxury or resource-intensive goods, including alcohol, luxury cosmetics, fuel oil, jewelry, motorcycles, motor vehicles, petrol, yachts, golf products, luxury watches, disposable wood chopsticks, tobacco, and specific cell and coating products. This tax primarily affects companies involved in producing or importing these goods. It is calculated based on the sales value, volume, or a combination. The proportional consumption tax rate ranges from 1% to 56% on the sales revenue of these goods. Exports are exempt.

How is VAT Calculated in China?

The calculation for VAT payable differs between general and small-scale taxpayers. Below, we elaborate on how these calculations work:

General VAT taxpayer calculation method

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For general taxpayers, the calculation formula is as follows:

Tax payable = current output VAT – current input VAT

The output VAT is calculated as follows:

Output VAT = sales volume x tax rate

Where the sales volume is determined as follows:

Sales volume = sales volume including taxes / (1 + Tax rate)

The input VAT can be deducted from the output VAT to pay the tax payable. However, not all input VAT can be deducted. To deduct any input VAT, the company must receive a special VAT fapiao where the tax amount is specified, and this amount must be verified in the tax bureau's online system.

If the current output VAT is higher than the current input VAT, this will result in a payable for the company. If the current input VAT is higher than the output VAT, the amount of input VAT that is not deducted can be carried forward to the next period. Since April 2022, specific companies have had the added possibility to apply for a refund over the input VAT amount.

Small-scale VAT taxpayer calculation method

The calculation method for small-scale taxpayers is simplified, as they cannot deduct input VAT. Therefore, the calculation formula is as follows:

Tax payable = sales volume x tax rate (3%)

Where the sales volume is determined in the same manner as the general taxpayer calculation method above.

How to file VAT in China?

Companies in China must file VAT on a monthly or quarterly basis. General taxpayers are required to submit their VAT filings monthly, whereas small-scale taxpayers can submit their VAT filings quarterly.

The monthly or quarterly tax filing deadline is the 15th day of the subsequent month (e.g., the tax filing deadline for February is March 15th, and the deadline for the first quarter is April 15th).

Aspect	General VAT Taxpayers	Small-Scale VAT Taxpayers
Filing Frequency	Monthly	Quarterly
Filing Deadline	15th day of the subsequent month	15th day of the subsequent month (for the quarter)
Example Deadline	February filing due by March 15th	Q1 filing due by April 15th
Weekend Deadline Adjustment	Moved to Monday if the 15th falls on a weekend	Moved to Monday if the 15th falls on a weekend
Public Holiday Adjustments	Deadline may be altered pending notification from tax authorities	Deadline may be altered pending notification from tax authorities

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If the 15th falls on a weekend, the deadline will be moved to Monday. Furthermore, due to public holidays, the monthly/quarterly tax deadline may be altered pending notification from the tax authorities.

Is VAT in China Refundable?

In China, there are two mechanisms for VAT refunds. The first and most common scheme is for exported goods, while the second mechanism is for excess input VAT. Below, we discuss both these mechanisms in greater detail.

China Export VAT Refunds

No VAT applies to exported goods in China to promote the export of goods. However, when a company sources products in China (https://msadvisory.com/sourcing-in-china/), it must pay VAT. Usually, the input VAT could be deducted from the output VAT, but there is no output VAT for exported goods. Therefore, the government has set up a system for the refund of export-related VAT refunds. Companies can claim back the input VAT paid for export sales through the monthly export VAT refund claim.

In China, there are two types of VAT refunds for exports:

1. VAT refunds for manufacturing companies

When manufacturing companies purchase material from suppliers, they receive an input VAT fapiao. After processing the materials, the company sells the final products either domestically or exports to overseas markets. When selling in the domestic market, the company has to pay output VAT. However, there is no output VAT for exporting.

The VAT refund is calculated as input VAT—output VAT

Thus, the company will not receive a VAT refund if the output VAT exceeds the input VAT. However, no output VAT applies for exported goods so that the VAT refund will consist of the input VAT.

However, for domestic and international manufacturing companies, the Chinese Tax Bureau cannot separate which materials are used for domestic sales and which are meant for export. So, in that case, it is unclear how much input VAT can be attributed to domestic or export sales. Therefore, the Tax Bureau uses a simple calculation to determine the VAT refund. The VAT refund is equal to input VAT – output VAT. If the output VAT exceeds the input VAT, the company will not receive any VAT refund.

2. VAT refunds for trading companies

For trading companies, the VAT refund will equal the input VAT paid for goods subsequently exported, as there is no output VAT on exports. Usually, the VAT refund is calculated by subtracting output VAT from input VAT. Since there is no output VAT for export sales, input VAT could, in theory, not be deducted.

Therefore, Chinese tax policy has created a VAT refund system based on the so-called "refund rate." The authorities set refund rates for product categories. Depending on the refund rate of the exported products, a difference can exist between the input VAT and the VAT refund. The difference will cost the company if the refund rate is lower than input VAT.

At MSA, we can support your company with export VAT refund claims. We regularly help numerous clients successfully obtain such refunds.

China Domestic VAT Refunds

If a company's input VAT is higher than the output VAT, the excess input VAT can be carried forward to the next period. In the past, it was only possible to have these amounts forward until they could be used to deduct the amount from output VAT.

However, since April 1st 2019, certain qualified taxpayers could apply for a refund of excess input VAT, instead of carrying the full amount forward to the next accounting period. However, taxpayers could only refund 60% of the uncredited input VAT.

There was also a requirement that the incremental uncredited input VAT had to remain positive for 6 consecutive months or 2 consecutive quarters, and the total amount should be no less than 500,000 RMB.

In April 2022, the government announced a further expansion of this policy. According to the new policy, the scope of companies that can apply for VAT refunds has been expanded to include micro and small firms in all industries and qualified firms in the following industries: manufacturing, scientific research and technical services, electricity, heat, gas and water production and supply, software and information technology services, ecological protection and environmental governance and transportation, warehousing and the postal industry.

Following the implementation of this policy, all qualified companies, as highlighted above, can apply for (incremental) VAT refunds every month starting April 1st 2022. Additionally, all companies that have built up outstanding VAT refund credits can apply for a one-time refund of the outstanding amount. The requirements described above for an input tax refund are no longer valid with this regulation and can be refunded in full, regardless of the amount carried forward.

The government will give priority to micro and small enterprises, followed by medium-sized and large enterprises, according to the following schedule:

What is China's Business Tax?

Business tax is no longer applicable in China due to a major reform of the VAT system. Most areas where business tax was relevant and applied are now under VAT regulations.

(https://msadvisory.com)

Business tax applied to businesses that provided services, the transfer of intangible properties, and the sale and transfer of real estate in China. (Although it applied to the provision of services, it did not apply to processing services and repair and replacement services.) Business tax rates previously ranged from 3% to 20%.

Future Outlook on China VAT

Significant developments have occurred in China's VAT landscape since the end of 2019. The State Tax Administration (STA) and the Ministry of Finance (MOFCOM) released a new draft of the VAT law aimed at formalizing and harmonizing VAT rules for goods and services. This draft law aligns with the OECD VAT/GST guidelines, ensuring VAT applies only when consumption occurs in China and allowing for refunds of excess input VAT credits.

Despite the initial delay caused by the COVID-19 pandemic, the draft VAT law has moved forward. The Standing Committee of the National People's Congress submitted it for the first round of deliberation (https://insightplus.bakermckenzie.com/bm/attachment_dw.action?attkey=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQJsWJiCH2WAXENnrNzNVLushMH%2FuEdVml&nav=FRbANEucS95N in December 2022.

With COVID-19 restrictions lifted, the Chinese government has renewed its focus on tax reforms to support economic recovery and growth. The new VAT regulations are expected to be enacted soon, bringing China's VAT system closer to international best practices. This includes clearer definitions, adjusted scopes for taxable items, and improved administrative procedures.

The enactment of these regulations will provide more stability and predictability for businesses operating in China, enhancing compliance and reducing administrative burdens. As the Chinese economy continues to rebound post-pandemic, these VAT reforms are anticipated to be crucial in fostering a more efficient and equitable tax environment.

Conclusion

While the VAT system remains comparatively complex, properly managing your company's VAT is essential to ensure it remains compliant with local regulations. The enactment of substantive changes into law may lead to further or additional developments in the VAT framework in China. Businesses must be aware of all changes and stay updated with other tax changes that may impact their operations or financial activities in China.

MSA in China

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EXHIBIT 90

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Sourcing from China
Export VAT Refund

One of the most frequently asked tax question is regarding the Export VAT Refund Scheme. The export VAT refund scheme applies if a Chinese company exports goods. When exporting goods, no VAT will be charged by the exporter. However, the export VAT refund impacts the recovery of VAT incurred on goods in 2 ways:

- Exporter is able to recover part of their VAT incurred on goods exported as a refund ("Cash Refund"); but
- Any VAT which cannot be recovered will be a cost to the exporter ("Restriction of the input VAT amount").

The refund is based on the export VAT refund rate of the exported goods which is determined by the Customs commodity code. The export VAT refund rates are between 0 percent and 17 percent. Where the refund rate is at 17 percent, there is a full recovery of the input VAT.

Cash refund

In China, the recovery of VAT incurred on costs is carried out by offsetting the input VAT against output VAT. For exports, where no VAT is charged, the exporter may be allowed to recover part of the input VAT as cash through the monthly export VAT refund claim.

The export VAT refund scheme is adding a cost for many businesses exporting. In practice, the non-recoverable VAT is passed on along the supply chain. To understand the pricing impact, the export VAT refund scheme needs to be fully understood.

Restriction of the input VAT amount

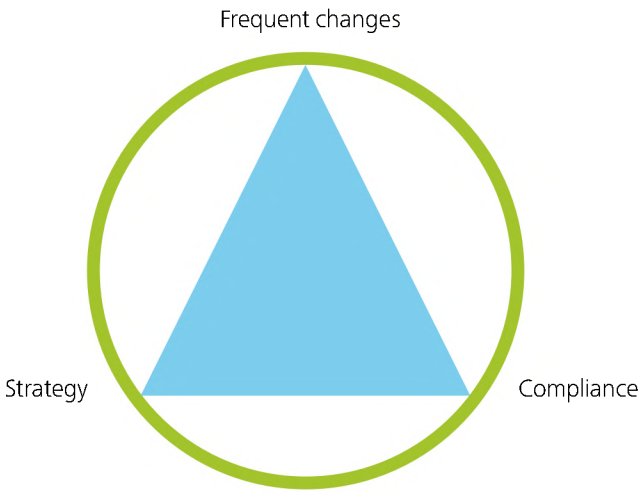
The amount of non-recoverable input VAT is determined by a number of factors but mostly by the export VAT refund rate of the exported goods and whether the company is a trading or manufacturing company.

The calculation of the export VAT refund is a complicated one but, to illustrate, when Chinese exporters incur VAT on costs (raw materials, overheads, machinery), they would typically pay 17 percent VAT on costs. If the VAT refund rate of the goods exported is less than 17 percent, such as 13 percent, the exporter is left with a 4 percent cost. This percentage of cost then applied either on the:

- Sales price of the exported goods (FOB price) for manufacturers; or
- Purchase price of the goods exported for trading companies.

The calculated irrecoverable amount is then deducted from the total input VAT incurred via the monthly VAT return. As there are limited goods carrying a full refund rate of 17 percent, the export VAT refund scheme creates a resulting cost for many businesses in China exporting.

Challenges in managing the export VAT refund



Challenges in managing the export VAT refund

I. Frequent changes

China's export refund policy changes frequently. We have seen constant decreases of the export VAT refund rates for goods that consume precious and rare resources, pollutants, and trade disputes with China's trading partners. A decrease of export VAT refund rates leads to higher costs for the exporter. However, in time of economic crises, the rates have been increased to support the export sector. Therefore, it is important for exporters and also the foreign buyers to anticipate and respond to the export refund policy adjustments as this influences pricing.

II. Compliance

When submitting the export VAT refund, export documents such as Export Declaration Form and Foreign Exchange Cancellation Form would be required. As the export documents are collected from different authorities and need to be provided within a specific timeframe, a process to manage and monitor the collection of export documents should be in place especially when a 3rd party export agent is involved. Any error with the filing of the export VAT refund claim, or incorrect supporting documentation, may result in a refusal of the refund and the export is deemed as a local supply plus VAT.

III. Strategy

From our experience, a strategy is needed and the below gives an overview of how to mitigate the potential impact on the export VAT refund scheme.

Tariff coding	Reviewing the Customs classification of the goods to leverage off the most applicable commodity code and also the export VAT refund rate.
Supply chain model	The tax efficiency of the current export business model should be evaluated, to understand the tax costs and savings of other models such as examining the difference between contract manufacturing versus toll manufacturing.
Functions and risks	The functions and risks undertaken by the operation should be revisited to see if some functions could be performed and risks assumed outside China in order to lower FOB prices as this is one of the variables of the VAT refund calculation.
Increase of bonded imports	Increase of bonded imports will reduce the irrecoverable VAT cost, as bonded imports are excluded from the VAT cost calculation.
Communication	A good internal communication between different departments as sales, legal and finance/tax is needed.

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VAT rebates and export performance in China: Firm-level evidence ☆

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ABSTRACT

A destination-based VAT system without a complete export tax rebate is detrimental to a country's exports, while an increase in the VAT rebate rate helps reduce the negative effects. In this paper, we study the role of VAT rebates in affecting Chinese exports using firm-level panel data for 2000–2006. To address potential endogeneity, we rely on a *quasi-natural* policy experiment in 2004, when the fiscal conditions of local governments became important in determining the actual VAT rebate rates for exports. The empirical findings demonstrate significant and large effects of VAT rebates on export volume. On average, for each percentage point increase in the VAT rebate rate, the amount of exports increased by 13%, which translates into an additional $4.70 of exports for each $1 of export tax rebates paid.

1. Introduction

The spectacular growth in China's international trade since the 1980s has drawn much attention to the various trade policies adopted by the Chinese government (see Eckaus, 2006; Girma et al., 2009, for example). We study the effects of one policy instrument used frequently in recent years, i.e., value-added tax (VAT) rebates. Using firm-level panel data from the *Annual Report of Industrial Enterprise Statistics* collected by the National Bureau of Statistics of China (NBS data) for 2000–2006, we present empirical evidence that suggests VAT rebates have a large and significant positive impact on Chinese export growth.

VAT is an indirect tax imposed at each stage of the production process based on the amount of value added at that stage. As it is an indirect tax similar to sales tax, the World Trade Organization (WTO) allows its member countries to return, up to the full amount, the VAT levied on their exported goods (Schenk and Oldman, 2007). Thus, VAT rebates are often referred to as export tax rebates, and we will use these two terms interchangeably. Note that in contrast to export subsidies and other measures that affect export performance, VAT rebates are a policy sanctioned by the WTO. The WTO rule regarding VAT rebates is consistent with the organization's main function of ensuring free and smooth trade, as trade theory implies that a destination-based VAT system with a complete export tax rebate has neutral effects on exports and imports (Feldstein and Krugman, 1990).

Feldstein and Krugman (1990) also show that a VAT system where exports do not receive complete rebates tends to act as an export tax and hence reduces trade volume, which then implies a positive relationship between the VAT rebate rate and export volume, taking as given the domestic VAT rate. We intend to directly explore whether export tax rebates help a country's exports to recover from the negative impact of VAT, and if so, how important the effect is in influencing export volume. In particular, we analyze the Chinese case using firm-level panel data from the NBS for 2000–2006. To preview our results, the findings show that VAT rebates, indeed, have a large and significant positive impact on the volume of Chinese exports. Specifically, for each percentage point of increase in the VAT rebate rate, the amount of exports increases on average by 13%, which translates into an additional $4.70 of exports for each $1 of export tax rebates.

As with evaluations of any policy instruments, the possible endogeneity is a concern. For example, other trade promotion measures, which are often unobserved by the researcher, may be in place at the same time as an increase in export tax rebate rates. In addition, as different rebate rates are set for different commodities by government officials with an incentive to showcase the effectiveness of their policies, rebate rates may be set higher for commodities with a greater

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potential for export growth. Both possibilities suggest that a simple OLS analysis may over-estimate the effects of tax rebates on exports.

To address this issue, we use instrumental variable estimation, relying on a *quasi-natural* experiment in China between 2004 and 2006. During this period, fiscal pressure forced the Chinese government to adjust export tax rebate rates and to switch part of the fiscal burden for paying such rebates from the central government to the local governments. In turn, heterogeneous fiscal conditions across localities led to substantial variations in the actual rates of VAT rebates received by exporters in different regions. As local fiscal conditions are, to a large degree, independent of local export performance, they can serve as an instrument in our study of how VAT rebates affect exports.

Our paper's contribution to the general literature is, thus, to provide empirical evidence for the trade theory linking VAT, VAT rebates, and trade volume. To our knowledge, there have been no empirical studies that directly explore how VAT rebates affect trade flows, although existing empirical studies tend to provide indirect support for the theoretical predictions. Desai and Hines (2005) find that for a group of countries including both developing and advanced economies, both the VAT dummy and a country's reliance on VAT revenue are significantly and negatively associated with the economy's trade intensity as well as with its export share. Keen and Syed (2006) discover that for OECD countries from 1967 to 2003, an increased reliance of a country on VAT revenue tends to be associated with a sharp reduction in its net exports, although the effect quickly fades.

The discrepancy between the neutral effect of VAT on exports postulated by trade theory and the negative findings in above studies may be due to the violation in reality of one or more assumptions made in the theoretical models, including fully flexible exchange rates, uniform VAT rates across tradable and non-tradable commodities, as well as perfect refunds of VAT paid on inputs used by exporters (Desai and Hines, 2005; Keen and Syed, 2006). To the extent that imperfect refunds of VAT are prevalent in reality, the above findings are consistent with the theoretical prediction that the VAT system with incomplete rebates for exports reduces trade volume.

In the context of China, our research relates most closely to the few papers that study the role of export tax rebates (Chao et al., 2001, 2006; Chen et al., 2006). These earlier studies either rely on the CGE framework or use national-level time series data, and they tend to find a positive impact of VAT rebates on trade volume. In contrast, the current paper utilizes a rich firm-level panel data set, which allows us to control for various other confounding factors. More generally, our paper follows the line of research about how China has obtained its fast export growth (Branstetter and Feenstra, 2002; Eckaus, 2006; Wang and Wei, 2010; Schott, 2008; Girma et al., 2009). By exploring the effectiveness of one specific WTO-sanctioned measure, this study adds to the small literature on the effectiveness of various trade policies (Balassa, 1978; Bernard and Jensen, 2004; Görg et al., 2008). Finally, our use of firm-level data furthers the research agenda of firm heterogeneity's role in explaining trade.

The structure of the paper is as follows: Section 2 overviews the theoretical results relating VAT and its rebate rate to exports, and provides background information on the VAT rebate program in China. The endogeneity concern in estimating the impact of VAT rebates on exports and the fitness of local fiscal conditions as an instrument, as well as various data and measurement issues, are discussed in Section 3. Section 4 describes the estimation specifications and discusses the empirical results, while a short conclusion in Section 5 completes the text.

2. VAT, export tax rebates, and trade: theory and the China experience

In this section, we first overview theoretical results relating VAT and export tax rebates to exports, and then provide background information on China's VAT rebate program.

2.1. VAT, export tax rebates, and export: theory

The value-added tax, or VAT, is a general, broad-based consumption tax that is assessed on the incremental value added to goods and services at each phase of production. In the nations that use a VAT system, including China, it applies more or less to all goods and services that are bought or sold for use or consumption. As of January 2007, at least 150 nations use a VAT regime (Bird and Gendron, 2007). The WTO Agreement on Subsidies and Countervailing Measures (SCM, Article 1.1a) allows members to provide rebates on export duties as long as the rebate does not exceed the full extent of the duty imposed.[1] Thus, in contrast to other trade policies such as export subsidies, VAT rebates are sanctioned by the WTO.

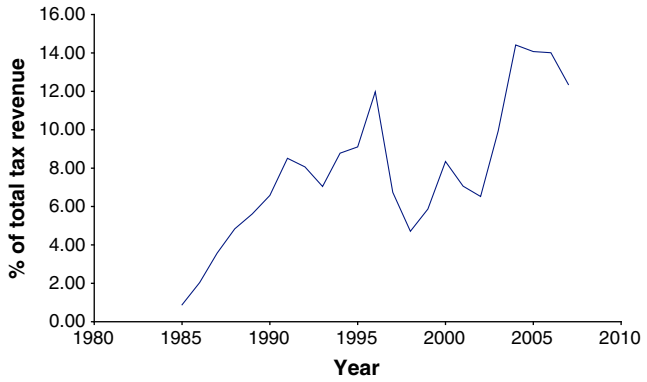
How does value-added tax affect trade? In the Feldstein and Krugman (1990) framework, the *idealized* VAT system has no effect on a country's exports or imports (often referred to as the neutrality or irrelevancy result). However, three conditions are essential to obtain this result in their model: (1) The country is a price-taker on the world goods market; (2) A uniform VAT rate applies to both tradable goods and non-tradable goods; and; (3) It is a destination-based VAT, i.e., with VAT imposed on imports and full VAT rebates given to exports. The logic is that a uniform VAT rate on all commodities has the same effect as an across-the-board price increase of the same proportion in the host country; that is why the domestic price ratios between imports, exports, and non-traded goods all remain unchanged and so does the country's competitiveness in international trade. In addition, the full amount of border adjustments in VAT for both exports and imports implies that the neutrality result does not require either price flexibility or exchange rate adjustment. This is because the full VAT rebate for exports allows their prices to equalize to those on the world market when sold abroad. Similarly, the domestic prices for imports increase by the same proportion as all other goods sold at home after VAT is imposed at the border on imported commodities.

As long as domestic prices or exchange rates are flexible, the neutrality result also applies for VAT calculated on an origin basis, where no VAT is collected on imports and no VAT rebates are given to exports. In particular, for consumer prices of exports and imports to remain unchanged (as they are determined on the world market), their domestic producer prices will have to fall in proportion to the VAT rate. Alternatively, a currency depreciation in the VAT country in proportion to the VAT rate will also allow the neutrality result to hold. The additional requirement of price or exchange rate flexibility may explain why a destination-based VAT is preferred in practice to an origin-based VAT.

Now consider the following arrangement observed in the real world: Some countries apply a destination-based VAT without an export tax rebate or without a complete export tax rebate as in the case of China. In such cases, the domestic consumer price for exported goods is equal to the world price (or slightly higher than the world price in the incomplete rebate case), whereas the consumer prices of imports and non-traded goods rise in proportion to the VAT rate. Hence, exports become cheaper relative to other commodities. This implies lower profit for exporters and thus leads to a lower level of exports, at least in the short run. Consequently, if VAT rebates are granted or increased, the export level will rise. Theoretically, a full VAT rebate on exports will move exports back to the original higher level seen in the absence of a VAT.

The puzzle then is why a country will ever adopt a destination-based VAT without a complete export tax rebate, as such a system clearly hampers export growth from a theoretical standpoint. One potential

[1] According to Article 1.1(a) of the WTO SCM agreement, "government revenue that is otherwise due is foregone or not collected" constitutes a subsidy. It, however, notes that the "exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy."



Data sources: Financial Yearbook of China, 1985-2010

Fig. 1. Export tax rebates/total tax revenue: 1985–2007.
Data sources: Financial Yearbook of China, 1985–2010.

explanation is the concern with government fiscal conditions. As the financial burden can be quite substantial to refund the full amount of VAT payments collected on exported goods, the government may have to lower the export tax rebate rates at times of grave fiscal pressure.

A case in point is China, where a complete rebate (of 17%) was granted to exported goods when the country first introduced VAT as the main component of its new tax system in 1994. But within two years, the fiscal burden of export tax refund had become so high that the government was forced to reduce the rebate rate from 17% to a set of lower rates (3%, 6%, and 9% for different groups of commodities). The VAT rebates on exports have since remained incomplete for most commodities in China, although the rebate rates have been adjusted over the years. In times when export conditions deteriorated, the government raised the VAT rebate rates to help alleviate the difficulties; while in times with tight budgets, the rebate rates were lowered to ease the fiscal pressure on the government.

Fig. 1 illustrates the magnitude of the export tax rebate program in China between 1985 and 2007, relative to the country's total tax revenue. As shown in the graph, since 1994 the amount of export tax rebates as a share of total tax revenue was rarely below 8% and exceeded 12% in no less than five years. Thus, export tax rebates have remained a significant expenditure item for the Chinese government. The brief history of Chinese VAT rebates in the next section provides further evidence that fiscal conditions are often instrumental in determining VAT rebate rates, at least in the case of China.

2.2. VAT rebates in China: a brief history

Export tax rebates were first used in China in 1985. As value-added taxes were not yet uniformly adopted at the time, rebates were initially based on sales tax payments. Mainly due to the modest export volume, the total amount of export tax rebates started small, at less than 1.8 billion RMB in 1985, amounting to about 0.88% of total tax revenue. By 2007, the total amount of VAT rebates paid to Chinese exporters rose to over 560 billion RMB; and the ratio between export tax rebates and total tax revenue increased to 12.35%, a fourteen-fold increase since 1985 (see Fig. 1).[2] The magnitude of the rebate program has grown substantially over time, often leading to fiscal stress for the Chinese central government, the entity that was solely responsible for paying such rebates until 2004.

Another pattern related to VAT rebates in China is the relatively high frequency with which the rebate rates have been adjusted. In addition, the program seems effective in achieving the intended goals as higher export tax rebate rates are usually correlated with subsequent higher export growth. A short history of Chinese export tax rebates since 1994 helps to substantiate this point.

When China reformed its tax system in 1994, VAT was chosen to be the main component of the new tax system, which henceforth provided the basis for export tax rebates. The VAT rate was set at 17% for most commodities produced in China throughout the post-1994 period, including for all manufactured goods studied in this paper. Following the principle of full refund of VAT levied on exports in destination-based VAT, the export tax rebate rates were initially set to equal the VAT rate, resulting in an average actual rebate rate of 16.63% in 1994. Many commentators argue that the large increase in the rebate rate (a 50% rise from around 11% in 1993 to close to 17% in 1994) can largely explain the growth rate of 32% and 23% in Chinese exports in 1994 and 1995, respectively.[3]

Subsequently, the rapid growth in exports, coupled with a less-than-perfect auditing system in the early stage of the export tax rebate program, quickly resulted in a large VAT rebate backlog in 1995, just one year into the new rebate program. By 1996, the fiscal burden became so heavy that the government was forced to reduce the rebate rates from 17% to a set of much lower rates (3%, 6%, and 9% for different groups of commodities).

Since then, the export tax rebate rates have been adjusted multiple times, sometimes in response to export conditions and sometimes due to fiscal constraints. To counter the Asian financial crisis of 1997 and the subsequent difficulties faced by Chinese exporters, the low export tax rebate rates of 1996 were dropped and replaced in 1998 by a set of higher rebate rates of 5%, 13%, 15%, and 17% depending on the category of goods. Here again the high growth of exports between 2000 and 2003 led to a large backlog of rebate payments and severe fiscal pressure on the central government. In response, the rebate rates were lowered again in 2004 to 5%, 8%, 11%, 13%, and 17% depending on the product category.[4] These rates remained in force until 2006, the end of the time period studied in this paper.

Based on the theoretical discussion in Section 2.1, a VAT of 17% together with a rebate of say 13% is equivalent to an origin-based value-added tax of 13% plus an export tax of 4%. This arrangement obviously discriminates against the export sector with the degree of discrimination increasing with the export tax rate and decreasing with the VAT rebate rate. Fig. 2 provides some preliminary evidence in support of this observation by linking the timing of rebate rate adjustments to the surge or slow-down in Chinese exports during 1993–2007. The graph shows that the rebate rate increase in 1994 was followed by fast export growth in 1994 and 1995, while the drop in rebate rates in 1996 was followed by a decline in export growth in the same year. Similarly, the rebate rate rise in 1998 preceded fast export growth until 2004, when the rebate rates were again lowered. The lower rebate rates in turn prompted a reduction in export growth rate starting in 2005.

In summary, VAT rebates in China have absorbed substantial government financial resources since their formal implementation in 1994. Furthermore, there is suggestive evidence that export tax rebate rates are positively correlated with Chinese export growth in the past decade and a half. In the remainder of this paper, we use firm-level panel data from China to formally study how much a country with VAT system can influence its export level by adjusting the export

[2] As a share of total turnover tax (which includes value-added tax, business tax, consumption tax, and tariffs), export tax rebates increased from 1.85% to 18.53% during the same time period, a ten-fold increase.

[3] As there were not uniform VATs levied on Chinese firms until 1994, it is difficult to assess and compare the export tax rebate rates prior to 1994 with the rates in later years. Yet, Mr. Guoqiang Long, a former vice minister of the MOFTEC (Ministry of Foreign Trade and Economic Cooperation of China) was quoted in 2003 giving an approximate average export tax rebate rate of 11.2% by 1993 (Long, 2003).

[4] The other element of the 2004 export tax rebate reform, the payment sharing arrangement between the central and local governments, will be discussed in Section 3.1.

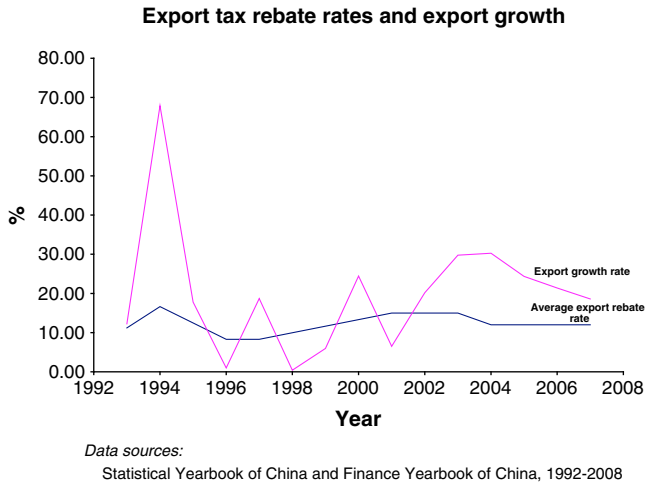


Fig. 2. Export tax rebate rates and export growth (1993–2007). Data sources: Statistical Yearbook of China and Finance Yearbook of China, 1992–2008.

tax rebate rate. However, the fact that exports may benefit from a higher VAT rebate rate should not be mistaken as evidence that the VAT system itself is trade promoting.[5]

3. Methodology, data, and measurement

As with most program evaluations, endogeneity is a main concern in this study. To address this concern, we adopt the instrumental variable approach. Section 3.1 discusses the endogeneity issue in more detail and describes a *quasi-natural* experiment in China between 2004 and 2006 to provide some background information and the motivation for our choice of instruments. Section 3.2 describes the data used in the analysis, constructs the relevant measures, and outlines the estimation strategy.

3.1. Endogeneity and the VAT rebate reform of 2004 as a natural experiment

The patterns shown in Fig. 2 suggest a positive relationship between export tax rebates and export performance in China, but are not sufficient to establish causality from rebate rate to exports for the following reasons. Other factors that may also influence exports might be present at the same time as the export tax rebate rate adjustment, including the macroeconomic conditions of foreign markets and other trade policies adopted by the Chinese government to facilitate exports (such as improved customs and transportation services). Thus, the correlation between VAT rebates and export performance may merely reflect the effects of these other factors.

There is an additional potential source of endogeneity. As different export tax rebate rates are assigned to different commodities by trade officials who have an incentive to showcase the effectiveness of their policies, they may set higher rebate rates for products with a greater potential for export growth. Therefore, a simple OLS analysis may fail to demonstrate causality from tax rebates to exports or may overestimate the effects of tax rebates on exports. While year fixed effects might capture the time-varying macroeconomic conditions in foreign markets, and some of the other factors can be controlled for using the available information, others may not be observable to the researchers and are thus more challenging to address.

Fortunately, the 2004 reform of China's export tax rebate program offers us an opportunity to address the endogeneity issue. In addition to lowering rebate rates in response to mounting fiscal pressure during 2000–2003, a major change was made in the reform regarding the roles of central versus local governments in VAT rebates. Prior to 2004, the central government had been solely responsible for paying VAT rebates to exporters. But since 2004, local governments were required to share the financial burden of refunding the rebates. Specifically, the central government would continue to refund export tax rebates up to the actual total amount of rebates paid out in the year 2003 for each region. For the amount of rebates claimed by local exporters in excess of the 2003 level, the local government would now have to pay 25% of it. The remaining 75% of the refund would still come from the central government, but only after the fulfillment of the local government's obligation.

The justification for the 75/25 split is based on the fact that the VAT revenue on goods and services produced domestically is shared between the central government and local governments with the same ratio. Yet this arrangement still has the flavor of an unfunded mandate because all VAT income from imported goods (including materials or components that are routinely used in producing exports) belongs to the central government. The local government thus has likely received less than 25% of the total VAT income levied on the export goods.

This suggests a strategy for how to address the potential endogeneity of VAT rebate rates: We can use some measure of local fiscal conditions to instrument the actual rebate rates. This satisfies the relevancy criterion after 2004, as the reform implies that the fiscal conditions of local governments have since become important in determining the actual VAT rebate rates in each region. For exports exceeding the previous year's level, local governments were not only required to pay 25% of total rebates to exporters located in their own region, but also the payment of the remaining 75% of the rebate by the central government was conditioned on the local payment.

Note that, local governments with a large fiscal gap (between their revenue income and government expenditure) will be less able to fully fund their share of the export tax rebates, resulting in the further withholding of the part owed by the central government. As a result, one expects to see lower actual export tax rebate rates in regions with higher deficit rates. Indeed, media reports abound where fiscal conditions had prevented local governments from paying their 25% share of the export tax rebates, resulting in local exporters failing to obtain any rebate.[6]

To satisfy the exclusiveness condition, we carefully choose the measure for the local fiscal conditions to best capture the part that is not directly correlated with the region's export performance. In particular, for any given Chinese province j in year t of our sample, we evaluate the region's fiscal conditions using the *routine fiscal deficit rate*$_{jt}$ which is constructed from the region's business tax revenue and government administrative expenditure as follows:

$$\textit{routine fiscal deficit rate}_{jt} = \left(\textit{government administrative expenditure}_{jt} - \textit{businesstax}_{jt}\right) / \textit{government administrative expenditure}_{jt}.$$

Although it is the most important revenue source for the local government, business tax revenue is largely independent of the region's export volume, as this tax is levied on service firms whereas Chinese exports are predominantly commodities. On the expenditure side, government administrative expenditure mainly consists of salaries of the government employees, which are mainly determined by personnel

[5] Note that export prices are taken as given in the discussion here, implying that we can discuss the quantity and the value of exports interchangeably. This assumption is highly applicable for the discussion on manufactured goods exported by China, as it competes with other low labor cost producers throughout the world. As a result, although the monetary value of exports will be used in our empirical analysis, we believe the findings will also apply to the quantity of exports.

[6] See, for example, "Further Reform Export Rebate Sharing System to Reduce Local Government Fiscal Burden," a news report published on *China Law Education* on August 24, 2006 (accessed on March 4, 2013 at http://www.chinalawedu.com/news/21602/21661/21670/2006/8/zh869492656142860021000 5-0.htm).

quotas in the bureaucracy and are, thus, largely independent of the region's export volume.

Admittedly, there may be spillover effects from better export performance on business tax revenue (through increased business and other expenditures by exporters and their suppliers in service industries, for example) and government administrative expenditure (probably through overtime pay for customs staff due to increased exports). However, we believe these effects are indirect and relatively small, and our analysis below, based on the NBS data, provides some supportive evidence for this belief.

Specifically, we look at the correlation between the *routine fiscal deficit rate* and exports at the provincial level for two separate periods: 2004–2006, the period after the VAT rebate reform; and 2000–2002, the years prior to the reform.[7] While the correlation was only −0.14 for the earlier period, it increased in magnitude to −0.41 for the later period. As discussed previously, the difference between the two periods is mainly caused by the VAT rebate reform, which requires local governments to be partially responsible for refunding VAT rebates and, thus, establishes a link between local fiscal conditions and local export performance through VAT rebate rates. These results thus offer some support that the spillover effects of exports on the *routine fiscal deficit rate* are relatively small and indirect.

In addition, we compute and compare the correlation coefficient between the *routine fiscal deficit rate* and the export tax rebate rates for the two time periods (i.e., 2000–2002 and 2004–2006). While the correlation is insignificant for the earlier period, it is negative and significant for the later period with a value of −0.32. These results are consistent with the argument that local fiscal conditions play a bigger role in determining export tax rebate rates since 2004, thus providing support for our choice of instrumental variable. Hence, there is suggestive evidence that estimates using this instrument may not suffer significantly from violations of the exclusion restriction, even if the exclusion restriction is not strictly valid.

3.2. Data and measurement

We now implement the instrumental variable approach outlined in Section 3.1 using the NBS data. The NBS dataset includes all state owned enterprises (SOEs) as well as all other manufacturing firms with an annual turnover of more than 5 million RMBs. Typically, the firms included in the dataset account for about 85%–90% of the total industrial output of China (Girma et al., 2009).[8] As discussed previously, our estimation strategy relies on the *quasi-natural* experiment that started in 2004. Thus, we use the NBS firm level panel data for the 2004–2006 period in our main specifications. We also use the NBS data from the earlier period (2000–2002) to compare and test the robustness of our main results.

As the recent trade literature highlights the role of firms in trade, we conduct our analysis at the firm level (Bernard and Jensen, 2004; Bernard et al., 2007; Melitz, 2003). Moreover, using the firm-level panel allows us to control for various firm-specific characteristics (including size, capital intensity, productivity, as well as other unobserved time-invariant firm characteristics), which are believed to be important for making export decisions, according to the literature. Nevertheless, while we conduct our analysis at the firm level, our main variable of interest varies at a higher level of aggregation. Specifically, for the reasons discussed below, we use the NBS firm-level panel data to construct aggregate measures for VAT rebate rates for each province-industry pair. The provincial level is chosen because provinces are the top level of local governments in China, which are ultimately in charge of all tax collection at the local level. The data source for variables at the provincial level, including those used to measure local fiscal conditions, is the China Statistical Yearbooks for 2000–2006.

Our main variable of interest is the VAT rebate rate. However, two decisions need to be made regarding its measurement. The first is the choice between using the rebate rates stipulated by law (de jure rates) and using the observed actual rebate rates (de facto rates). We choose to use the de facto rates for two reasons: The de facto rates often differ substantially from the de jure rates due to different fiscal constraints faced by local governments, which is the key to our identification strategy. Just as importantly, it is the actual rebate rates that provide the ultimate incentive for exporters.

Since the VAT rate for industrial products is set at a uniform rate of 17%, the legal rule applicable for computing VAT payable for firm k in year t of our sample is as follows[9]:

$$\begin{aligned} VAT\,payable_{kt} &= Value\,Added_{kt} * 17\% - export_{kt} * VAT\,rebate\,rate_{kt} \\ &= (revenue_{kt} - throughput_{kt}) * 17\% - export_{kt} * VAT\,rebate\,rate_{kt} \\ &= revenue_{kt} * 17\% - VAT\,on\,throughput_{kt} \\ &\quad - export_{kt} * VAT\,rebate\,rate_{kt}. \end{aligned} \tag{1}$$[10]

Therefore, we use the following formula in constructing the de facto firm-level VAT rebate rates, where all the variables on the right-hand-side are available from the NBS data set at the firm level:

$$\begin{aligned} actual\,VAT\,rebate\,rate_{kt} = (0.17 * revenue_{kt} - VAT\,on\,throughput_{kt} - VAT\,payable_{kt}) \\ / export_{kt}\ if\ export_{kt} > 0. \end{aligned} \tag{2}$$

An advantage of focusing on the rebate rate instead of the total value of rebate received by the firm is that our analysis does not suffer from the endogeneity concern due to the automatic correlation between the VAT rebate amount and export volume. Moreover, as shown in Eq. (2), the VAT rebate rate is defined only for firms with positive exports. Since imputing a zero rebate rate for non-exporters would introduce an artificial positive correlation between the rebate rate and export volume, we focus only on exporters to avoid the potential upward bias in the estimates.

The second decision to be made relates to the level of aggregation at which VAT rebate rates should be measured. On the one hand, the actual VAT rebate rates may differ at the firm level for various reasons, thus calling for measuring the rebate rate for each firm individually. For instance, in addition to the variation in actual rebate rates that firms in different provinces receive due to heterogeneous local fiscal conditions, the actual rebate rates for firms within the same province may also differ if the firms export different commodities, which may have different de jure rebate rates. Furthermore, firms may differ in their abilities in claiming rebates, either due to differences in their staff's technical skills to navigate the VAT rebate process or due to their different political connections with the relevant tax agency. This

[7] To avoid complications due to the different rebate rates imposed on different commodity groups, the analysis on how VAT rebate rates relate to regional deficit rates or exports is conducted separately for individual industries. The discussion here is based on analysis of the Chinese electronics and communication industry, which is the largest industry in terms of both export value as well as the total output for each year in our sample. Analysis based on several other leading industries, such as chemicals or machinery, gives similar results.

[8] Some Chinese firms export through intermediaries or trading firms, and these trading firms accounted for about 20% of the total exports in China in 2005 (Ahn et al., 2011). As export tax rebates are only given to firms that directly sell to foreign markets, and our data set does not include trading companies, we cannot study the effects of export tax rebate rates on trading intermediaries.

[9] See Circular No. 7 (2002) for the accounting rules governing value-added taxes and export tax rebates in China.

[10] The original formula for computing VAT payable for the exporting firms is: $VAT\,payable_{kt} = Domestic\ Sales_{kt} * 17\%\text{-}Domestic\ Input_{kt} * 17\% + (export_{kt}\text{-}BIM_{kt}) * (17\%\text{-}Rebate\ Rate_{kt})$, where BIM_{kt} is the value of bonded imported raw materials. In the formula given in the text, we have assumed $BIM_{kt} = 0$ and $total\ input_{kt} = domestic\ input_{kt}$ for simplicity, consistent with the approach taken in other recent papers (see, for example, Liu, 2010). In the empirical section we show that our results are robust to the exclusion of firms for which these assumptions are most likely to be violated, i.e., export processing firms and foreign invested firms.

Table 1
Summary statistics of main variables, 2000–2006.
Data sources: All variables are obtained from the NBS industrial census data for 2000–2006, except the per capita GDP and the routine fiscal deficit rate at the provincial level which are from the China Statistical Yearbooks for 2000–2006. We exclude the top and bottom 1% of observations in the calculated rebate rate to avoid the potential impact of influential outliers. The average VAT rebate rate is obtained after averaging the firm-level rebate rate over province and 2-digit Chinese industry pairs.

Panel A: VAT rebate rate, 2000–2006

Variable	Firm-level VAT rebate rate			Average VAT rebate rate		
	N	Mean	Std. dev.	N	Mean	Std. dev.
Years (2000–2002)	114,782	0.0634	0.1396	121,456	0.0880	0.0579
Years (2004–2006)	242,022	0.0809	0.1628	257,033	0.1145	0.0787
2000	31,218	0.0628	0.1425	33,257	0.0858	0.0616
2001	42,759	0.0586	0.1370	45,036	0.0813	0.0565
2002	40,805	0.0689	0.1399	43,163	0.0967	0.0553
2004	78,590	0.0775	0.1458	82,267	0.1093	0.0587
2005	83,728	0.0839	0.1733	89,766	0.1182	0.0900
2006	79,704	0.0811	0.1670	85,000	0.1155	0.0825

Panel B: other variables, 2000–2002 vs. 2004–2006

Variable	2000–2002			2004–2006		
	N	Mean	Std. Dev	N	Mean	Std. Dev.
Firm-level						
ln(export)	121,456	6.9135	4.3679	257,033	7.2963	4.2815
ln(labor productivity)	121,456	3.3747	1.1894	257,033	3.8185	1.1434
ln(employment)	121,456	5.3634	1.1863	257,033	5.1391	1.1376
ln(asset/employment)	121,456	3.4790	1.3862	257,033	3.5287	1.3798
number of firms	47,488	–	–	93,800	–	–
Province-level						
routine fiscal deficit rate	93	−0.6369	1.5407	93	−0.6576	1.4861
per capita GDP (RMB)	93	9429.81	7166.57	93	16,314.73	11,347.18

Notes.
The formulae for computing the variables are as follows:

$$actual\,VAT\,rebate\,rate_{kt} = (0.17 * revenue_{kt} - VAT\,on\,throughput_{kt} - VAT\,payable_{kt})/export_{kt},\ if\ export_{kt} > 0 \text{ for firm } k \text{ in year } t;\ \text{and},\ routine\,fiscal\,deficit\,rate_{jt}$$
$$= \left(government\,administrative\,expenditure_{jt} - business\,tax_{jt}\right)/government\,administrative\,expenditure_{jt} \text{ for a Chinese province } j \text{ in year } t.$$

suggests that one should exploit the variations across firms in their de facto rebate rates.

On the other hand, firms contemplating whether and how much to export are more likely to base their decisions on the average expected rebate rates for other firms producing similar goods in their region, especially if they have not been exporting in recent years. In addition, while there is a potential for measurement errors in calculating the firm-level actual VAT rebate rate using Eq. (2) (for instance, due to the lags in rebate payments), the problem may be mitigated when rebate rates are averaged across firms. Hence, these reasons argue for using an average VAT rebate rate across similar firms.

To the extent that new entrants to the export market are important and that measurement errors in rebate rates are of a concern at the firm level, we choose to measure the rebate rates as an average in our main specifications. Specifically, we first compute the VAT rebate rate for each firm in each year, and then compute the average rebate rate for all firms of the same industry that are located in the same province, where we define industry using the 2-digit Chinese industry classification (CIC).[11] Note that we calculate the average across all firms in an industry-province pair rather than computing the average across all firms in that province because different product groups have different de jure rebate rates. In addition, to check the robustness of our results while exploiting firm-level variations, we also use de facto firm-level rebate rates in some of the specifications.

We report the summary statistics of the actual rebate rates received by firms in Panel A of Table 1. The columns on the left report the summary statistics for firm-level VAT rebate rates calculated using Eq. (2), whereas, the columns on the right report similar statistics for the average rebate rate as described above. As expected, the average rebate rate is slightly higher in magnitude but has a lower variance for any given year in the sample, compared to the firm-level rebate rates. Nevertheless, both measures show a similar trend in the VAT rebate rates, which is largely in line with the changes over time as portrayed in Fig. 2, with a lag of a year or two. For example, the observed de facto VAT rebate rate started to rise in 2002, one year after the de jure VAT rebate rate rose in 2001; and started to decline in 2006, two years after the 2004 export tax rebate reforms. The time lag in the de facto VAT rebate rate relative to the de jure VAT rebate rate is most likely due to delays in rebate payments. Moreover, the average rebate rate in Table 1 is similar in magnitude to that given in Fig. 2. Most importantly, Table 1 shows larger variances in the later time period, consistent with our hypothesis that the VAT reform of 2004 led to increased differences in the de facto rates across provinces.

Panel B of Table 1 gives information on the other variables used in the empirical analysis. Compared to the earlier time period (2000–2002), Chinese firms exported more, had higher labor productivity, and had higher capital intensity, but employed fewer people in the later period (2004–2006). However, none of these differences are statistically significant. Similarly, while the average provincial per capita GDP has roughly doubled, there is no significant change in the provincial routine fiscal deficit rate between the two periods. The average provincial deficit rate is around −0.6, implying that, on average, the amount of

[11] While we calculate and report the results using the simple average of the firm-level VAT rebates, most of our results remain qualitatively unchanged if we compute a weighted average of the firm-level VAT rebate rates using either the output or the value added of the firms as weights. These results are available on request.

revenue provincial governments received from business taxes was much more than their administrative expenditure.[12] Finally, we see that around 18% of tax revenue at the provincial level comes from the value-added tax.

4. Estimation specification and empirical results

To empirically study the effects of VAT rebate rates on firm export performance, we conduct the following estimation using firm-level panel data:

$$log\left(export_{kijt}\right) = \alpha_k + \alpha_t + \beta_1 * average\,VAT\,rebate\,rate_{ijt} + \Gamma * X_{kijt} + \varepsilon_{kijt}, \quad (3)$$

where $log(export_{kijt})$ is the logarithm of firm k's export level in year t, *average VAT rebate rate*$_{ijt}$ is the average rebate rate in year t for all firms located in industry i and province j, X_{kijt} is a vector of firm-level control variables, while ε_{kijt} is the random noise variable. For firm-level characteristics, we include the usual controls for explaining export — the logarithms of labor productivity, employment, and capital intensity. To account for potential effects of region's income level on exports, we also include provincial per capita GDP. Finally, firm fixed effects are included to control for unobserved firm characteristics that are time invariant, and year dummies are included to address common trends over time such as macro policy shocks, both domestically and abroad.

The variable of interest is *average VAT rebate rate*$_{ijt}$, and we expect its coefficient to be positive and significant. As discussed in Section 3.1, to address the potential endogeneity of *average VAT rebate rate*, we rely on a two-stage least squares estimation with an instrumental variable, *routine fiscal deficit rate*. We expect a negative correlation between *routine fiscal deficit rate* and *average VAT rebate rate* in the first stage estimations.

As discussed in Section 3.1, local fiscal conditions became a good instrument for actual export tax rebate rates since 2004 because of the *quasi-natural* experiment conducted in that year. Thus, we mainly investigate data for the 2004–2006 period in the empirical analysis, but also use the data for the earlier years as a counterfactual test. Our analysis in the main specification focuses on the sample of firms that exported at least once during the 2000–2006 period as these firms are the main policy target of VAT rebate rate adjustments. In addition, we use other sub-samples to test the robustness of our results.

Table 2 gives the main results from our empirical analysis, where Columns 1 and 2 provide the OLS estimates as the benchmark results, with robust standard errors clustered at the province-2-digit CIC level and the firm level, respectively.[13] The OLS estimates are in line with the expectation that a higher export tax rebate rate is correlated with a higher export volume, as the coefficient of average VAT rebate rate (averaged at the province-2-digit CIC level) is positive and significant in both estimations.

However, as discussed in Section 3.1, these results may suffer from potential endogeneity. We address this issue in Columns 3 and 4 by using IV estimation, where a measure for local fiscal conditions, the *routine fiscal deficit rate*, is used as an instrument for the average VAT rebate rate. As shown in Table 2, the IV estimation produces significant and positive coefficients for the VAT rebate rate, regardless of whether the standard errors are clustered at the province-2-digit CIC level (Column 3) or at the firm level (Column 4).

The estimated coefficients imply that the effect of VAT rebates on exports is also economically important. Based on the results from Column 3 of Table 2, a one percentage point increase in the VAT rebate rate will result in an increase of about 13% in the volume of exports. The magnitude is very large, amounting to more than half of China's average export growth rate in 2000–2006 (at 25%). The magnitude of the IV estimate is similar to that of the OLS estimate, suggesting that the various sources of endogeneity have produced effects that cancel out one another.

Up until now, the average VAT rebate rate is used as the main explanatory variable. To allow for the possibility that the variations observed in the firm-level actual VAT rebate rate indicate additional systematic differences rather than random errors, we replace the average VAT rates with the firm-level rebate rate in Columns 5 and 6 of Table 2. Again, the standard errors are clustered, either at the province-2-digit CIC level (Column 5) or at the firm level (Column 6). We get similar results as those from Columns 3 and 4, except with smaller magnitudes for the coefficients. This is what one would expect if the actual VAT rebate rates calculated at the firm level were more susceptible to the (classical) measurement error.

To test the validity of our instruments, we report the corresponding first-stage results for Columns 3–6 in the bottom panel of Table 2. Consistent with the expectation that those local governments with higher deficit rates are less capable of paying out export tax rebates, *routine fiscal deficit rate* has negative and significant effects on *actual rebate rate* in the first-stage. Moreover, for each IV specification Table 2 also reports several standard statistical tests that support the validity of the instrument.

To test the robustness of our main findings, we conduct additional estimations shown in Table 3, using various samples. All of the specifications adopt the IV estimation, use average VAT rebate rates, and report robust standard errors clustered at the province-2-digit CIC level. Although clustering at either the firm level or the group level is recommended in the literature (Bertrand et al., 2004; Stock and Watson, 2008; Wooldridge, 2003), we report the results with standard errors clustered at the industry–province pair level as this tends to give more conservative (larger) estimates for standard errors.

In Column 1 of Table 3, we provide additional evidence to confirm the importance of the *quasi-natural* experiment in 2004–2006 in making *routine fiscal deficit rate* a valid instrument for actual rebate rates, by conducting the same 2SLS estimation as above (see Table 2, Column 3) for the 2000–2002 data.[14] As shown in the bottom panel of Table 3, *routine fiscal deficit rate* is insignificant in explaining actual rebate rate, and other statistical test results also imply that it is not a valid instrument for the actual rebate rate for the 2000–2002 time period. Moreover, the coefficient of the VAT rebate rate in the top panel of Table 3 not only is insignificant but also has the opposite sign, suggesting that *routine fiscal deficit rate* is not a valid instrument for the earlier period. In other words, the *quasi-natural* experiment in 2004 is, indeed, the key to *routine fiscal deficit rate* being a valid instrument for actual rebate rates.

In Columns 2 and 3 of Table 3, we limit our sample to only domestic firms and non-export-processing firms, respectively, to address two issues. First, as we assumed the bonded imported materials (BIM) to be zero in our calculation of the actual export tax rebate rate, it introduces a larger measurement error for foreign firms and export-processing firms, the most common users of BIM.[15] In addition, as foreign firms and export-processing firms enjoy other preferential treatment, including more streamlined customs procedures, we expect them to experience effects of the VAT rebates that may be different from those on domestic firms.

[12] This, however, does not imply that local governments did not face financial constraints during these years, because they also faced other fiscal obligations.

[13] The clustering of standard errors is needed because the VAT rebate rate is averaged at the province-2-digit CIC level and because random errors from different years may be correlated for the same firm. As is well known, in the presence of a group-level explanatory variable, one should account for the possible correlation within the group to avoid inconsistent standard errors (see for instance, Moulton, 1990; Wooldridge, 2003). Hence, we use clustering at the province-2-digit CIC level. On the other hand, Bertrand et al. (2004) and Stock and Watson (2008) strongly recommend that one should control for unit-level autocorrelations when using panel data. Hence, we also report our results with standard errors clustered at the firm level.

[14] We do not use data from 2003 as exporters may have behaved differently due to the large backlogs of VAT rebate refunds that year.

[15] See Footnote 10 for the formula referring to BIM. In addition, we define export-processing firms to be those firms that exported more than 90% of their total output.

Table 2
VAT rebate rates and Chinese export volume, 2004–2006 (main results).
Data sources: All variables are obtained from the NBS data for 2004–2006, except for provincial GDP per capita and routine fiscal deficit rate, which are from the China Statistical Yearbooks for 2004–2006.

	(1)	(2)	(3)	(4)	(5)	(6)
VAT rebate rate	12.8717***	12.8717***	13.0585**	13.0585***	9.6337*	9.6337***
	(1.4231)	(0.2627)	(5.9794)	(2.3421)	(5.4349)	(2.6201)
ln(labor productivity)	0.2698***	0.2698***	0.2692***	0.2692***	0.1549**	0.1549***
	(0.0153)	(0.0154)	(0.0222)	(0.0148)	(0.0669)	(0.0343)
ln(employment)	1.2660***	1.2660***	1.2646***	1.2646***	1.0357***	1.0357***
	(0.0440)	(0.0392)	(0.0496)	(0.0354)	(0.1214)	(0.0653)
ln(assets/employment)	0.1982***	0.1982***	0.1976***	0.1976***	0.1472***	0.1472***
	(0.0248)	(0.0237)	(0.0238)	(0.0203)	(0.0335)	(0.0245)
Provincial per capita GDP	−0.0001**	−0.0001***	−0.0001**	−0.0001***	−0.0000	−0.0000***
	(0.0000)	(0.0000)	(0.0000)	(0.0000)	(0.0000)	(0.0000)
Constant	−1.1973**	−1.1973***				
	(0.5649)	(0.3043)				
Number of observations	257,033	257,033	257,033	257,033	238,454	238,454
Number of firms	93,799	93,799	93,800	93,800	89,016	89,016
R-squared (within)	0.05	0.05	0.05	0.05	0.09	0.09
First stage F-stat	–	–	959.95	959.95	64.13	64.13
Under identification test	–	–	0.00	0.00	0.00	0.00
Weak instrument test	–	–	0.00	0.00	0.00	0.00
Firm fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Year fixed effects	Yes	Yes	Yes	Yes	Yes	Yes

Corresponding first stage regressions –

	(3)	(4)	(5)	(6)
Dependent variable (average VAT rebate rate)				
ln(labor productivity)	0.0035***	0.0035***	0.0122***	0.0122***
	(0.0002)	(0.0002)	(0.0005)	(0.0005)
ln(employment)	0.0071***	0.0071***	0.0217***	0.0217***
	(0.0004)	(0.0004)	(0.0013)	(0.0013)
ln(assets/employment)	0.0029***	0.0029***	0.0058***	0.0058***
	(0.0002)	(0.0002)	(0.0008)	(0.0008)
Provincial per capita GDP	−0.0000***	−0.0000***	−0.0000***	−0.0000***
	(0.0000)	(0.0000)	(0.0000)	(0.0000)
Routine fiscal deficit rate	−0.0236***	−0.0236***	−0.0211***	−0.0211***
	(0.0008)	(0.0005)	(0.0026)	(0.0026)
Number of observations	257,033	257,033	238,454	238,454
Number of firms	93,800	93,800	89,016	89,016
R-squared (within)	0.04	0.04	0.01	0.01

Notes.
1. The dependent variable is ln(exports). All specifications report cluster-robust standard errors, clustered at the firm level in Columns 1, 3, and 5, and at the province-2-digit CIC level in Columns 2, 4, and 6;
2. OLS estimation is used in Columns 1 and 2, while IV estimation is used in all other columns using local fiscal conditions as instruments;
3. For Columns 1–4, VAT rebate rate is computed as the average for all exporting firms in the same province and the same 2-digit CIC industry in each year, while Columns 5 and 6 use the firm-level VAT rebate rate;
4. Samples in all the columns include the 2004–2006 observations of firms that had exported at least once in the 2000–2006 period;
5. The under-identification test statistic reported is Kleibergen–Paap test statistic, which is more suitable when the errors are correlated or the i.i.d. assumption fails. The weak instrument test is the Anderson-Rubin Wald test.

* Significant at 10%.
** Significant at 5%.
*** Significant at 1%.

Reassuringly, the VAT rebate rate continues to have a positive and significant impact on the export volumes of both domestic firms and non-export-processors. Furthermore, the effects are of a larger magnitude for these firms as compared to those for the whole sample of firms. This is consistent with our expectations, because domestic firms and regular exporters are more likely to benefit from VAT rebates. In contrast, even without VAT rebates, foreign-invested firms and export-processing firms already enjoy import duty drawbacks, which are equivalent to a complete waiver on the VAT for their imported inputs, and thus these firms should benefit less from export tax rebates.

Finally, we address the potential impact of export over-reporting or VAT rebate fraud in Columns 4 and 5 of Table 3. For example, there may be incentives for firms to over-report their export figures; such incentives are stronger in regions and sectors where the rebate rates are higher. In addition, firms could systematically shift the timing of when they export to benefit more from the VAT rebate program.

To partially evaluate the impact of these behaviors, we exclude firms in the apparel and electronics industries from our sample in Column 4, since they are the prime targets for export tax rebate fraud.[16] The incentive for over-reporting is greater for these two types of products because apparel products and electronic products tend to have higher rebate rates than other products. In addition, apparel products are used in export tax rebate fraud more than other goods because the probability of detection is relatively low due to their large export volumes. Similarly, the light weight and high unit value of electronics make these products an ideal choice for export tax rebate fraud. Reassuringly, the results show that the VAT rebate rate still has positive and significant effects on export volumes.

In Column 5 of Table 3, we exclude firms from Guangdong and Fujian provinces to further address the potential issue of export over-reporting because these are the two regions that likely suffer the most

[16] For a detailed discussion on the most common types of export tax frauds, see "Frauds within Frauds: the Case of Baoxiang Hebei Import–export Group Tax Fraud," a report published by *Xinhua News* on July 24, 2003 (accessed at http://news.xinhuanet.com/newscenter/2003-07/24/content_992341.htm on March 4, 2013).

Table 3
VAT rebate rates and Chinese export volume (robustness checks).
Data sources: All variables are obtained from the NBS data for 2000–2006, except for provincial GDP per capita and routine fiscal deficit rate, which are from the China Statistical Yearbooks for 2000–2006.

	(1)	(2)	(3)	(4)	(5)
VAT rebate rate	−133.0360	29.9837***	16.7452***	14.3302**	19.1686***
	(632.4616)	(6.1816)	(4.5247)	(5.5305)	(3.6333)
ln(labor productivity)	0.3028	0.1971***	0.3318***	0.2607***	0.2479***
	(0.26698)	(0.0363)	(0.0231)	(0.0214)	(0.0165)
ln(employment)	1.3413*	1.2317***	1.5267***	1.2633***	1.2805***
	(0. 7752)	(0.0807)	(0.0606)	(0.0514)	(0.0474)
ln(asset/employment)	0.3928	0.1882***	0.2987***	0.2128***	0.2369***
	(0. 6582)	(0.0345)	(0.0277)	(0.0249)	(0.0245)
Provincial per capita GDP	−0.0006	−0.0000	−0.0001**	−0.0001**	−0.0001**
	(0. 0031)	(0.0000)	(0.0000)	(0.0000)	(0.0000)
Number of observations	121,456	144,519	167,870	228,931	188,924
Number of firms	47,488	52,993	63,474	83,593	68,922
R-squared (within)	0.04	0.02	0.08	0.06	0.06
First stage F-stat	1.05	493.92	952.46	862.24	2442.52
Under identification test	0.31	0.00	0.00	0.00	0.00
Weak instrument test	0.05	0.00	0.00	0.00	0.00
Firm fixed effects	Yes	Yes	Yes	Yes	Yes
Year fixed effects	Yes	Yes	Yes	Yes	Yes

Corresponding first stage regressions –

	(1)	(2)	(3)	(4)	(5)
Dependent variable (average VAT rebate rate)					
ln(labor productivity)	0.0004**	0.0054***	0.0048***	0.0037***	0.0040***
	(0.0002)	(0.0003)	(0.0002)	(0.0002)	(0.0002)
ln(employment)	0.0012**	0.0104***	0.0099***	0.0077***	0.0085***
	(0.0005)	(0.0006)	(0.0006)	(0.0004)	(0.0005)
ln(asset/employment)	0.0010***	0.0025***	0.0038***	0.0032***	0.0027***
	(0.0003)	(0.0003)	(0.0003)	(0.0002)	(0.0003)
Provincial per capita GDP	−0.0000***	−0.0000***	−0.0000***	−0.0000***	−0.0000***
	(0.0000)	(0.0000)	(0.0000)	(0.0000)	(0.0000)
Routine fiscal deficit rate	−0.0013	−0.0328***	−0.0339***	−0.0253***	−0.0460***
	(0.0013)	(0.0015)	(0.0011)	(0.0009)	(0.0009)
Number of observations	121,456	144,519	167,870	228,931	188,924
Number of firms	47,488	52,993	63,474	83,593	68,922
R-squared (within)	0.06	0.08	0.06	0.04	0.07

Notes.
1. The dependent variable is ln(exports). All specifications report cluster-robust standard errors, clustered at the province-2-digit CIC level;
2. IV estimation is used in all columns using local fiscal conditions as instruments;
3. VAT rebate rate is computed as the average for all exporting firms in the same province and the same 2-digit CIC industry in each year;
4. Samples in Columns 1–5 are, respectively, firms that had exported at least once in 2000–2006, only firms with domestic ownership, firms excluding those that only engage in processing exports, firms that do not operate in electronics or apparel industries, and firms that do not locate in Fujian or Guangdong provinces. Column 1 uses observations for the 2000–2002 period, whereas Columns 2–6 use observations from the 2004–2006 period.
5. The under-identification test statistic reported is Kleibergen–Paap test statistic, which is more suitable when the errors are correlated or the i.i.d. assumption fails. The weak instrument test is the Anderson–Rubin Wald test.

* Significant at 10%.
** Significant at 5%.
*** Significant at 1%.

rampant VAT rebate fraud cases. These provinces were hosts to the original four Special Economic Zones in China and enjoyed more flexible customs regulations. In addition, Guangdong province borders Hong Kong where a common form of VAT rebate fraud, that of first shipping exports and then smuggling them back into China, allegedly occurs. Fujian, on the other hand, has the largest number of underground financial institutions in China, which are often involved in funding fraudulent activities. Once again, the positive and significant effect of the VAT rebate rates on export volume remains.

5. Conclusion

Economic theory implies that the adoption of VAT coupled with imperfect VAT refunds to exporters reduces the country's exports. Consequently, an increase in VAT rebate rates will partially remedy the negative impact and lead to a higher level of exports. This hypothesis is supported by our findings based on firm-level panel data from China's annual industrial statistics collected by NBS for 2004–2006.

Specifically, we find significant and large positive effects of VAT rebate rates on the export volume of Chinese firms. For each percentage point of increase in the average VAT rebate rate expected for similar firms, a typical Chinese firm's exports will increase by 13%, on average, which translates into an additional $4.7 of exports for each $1 of export tax rebates. The estimated effects of VAT rebates are large compared to the effects of tariff reduction. For example, Tokarick (2007) estimates that a complete elimination of tariffs in China (then, at an average level of 12%) during the Doha Round would lead to an increase in its exports of about 19.5%. Similarly, Ianchovichina and Martin (2004) estimated that the WTO accession of China in 2001 and the subsequent tariff liberalization increased China's exports by about 16.8%.[17]

[17] Note that, there are at least two reasons for finding a lower effect of China's own tariff liberalization on its exports. Tariff liberalization boosts exports by reducing protection on the imported intermediate inputs. However, China had already reduced its tariff barriers significantly through unilateral liberalization prior to its WTO accession. Moreover, China has followed a policy of duty exemptions that allows a large share of the intermediate inputs used in the production of exports to be either exempt from import duty or to be eligible for refunds later (Ianchovichina and Martin, 2004).

In obtaining these estimates, we exploit the *quasi-natural* experiment in China whereby both central and the provincial government started sharing the burden of rebating export taxes. We instrument the actual VAT rebate rates by the *routine fiscal deficit rate* at the province level to address the issue of potential endogeneity, as the deficit rate is directly correlated with the actual rebate rate but generally is not associated with the export performance of local firms. Our results survive numerous robustness tests and counterfactual exercises.

Two caveats are in order, however. First, as the results are based on a relatively short panel, the findings may not be used to extrapolate effects of VAT rebate rates on exports in the longer term. Second, although the empirical findings are consistent with higher VAT rebates leading to increased Chinese exports in the past decade, these results do not speak to the general effectiveness or efficiency of trade policies in China. In particular, one cannot rule out the possibility that Chinese export growth could have been higher if China had adopted a different tax system — for example, a VAT system with automatic complete border adjustments.

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EXHIBIT 92

2023 Report to Congress on China's WTO Compliance

United States Trade Representative

February 2024

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

ABBREVIATIONS

ACFTU	All China Federation of Trade Unions
CBIRC	China Banking and Insurance Regulatory Commission
CED	U.S.-China Comprehensive Economic Dialogue
CFDA	China Food and Drug Administration
CNIPA	China's National Intellectual Property Administration
GACC	General Administration of Customs of China
ISO	International Organization for Standardization
JCCT	U.S.-China Joint Commission on Commerce and Trade
MIIT	Ministry of Industry and Information Technology
MARA	Ministry of Agriculture and Rural Affairs
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOST	Ministry of Science and Technology
NBC	National Biosafety Committee
NDRC	National Development and Reform Commission
NMPA	National Medical Products Administration
PBOC	People's Bank of China
SAC	Standardization Administration of China
SAIC	State Administration for Industry and Commerce
SAMR	State Administration for Market Regulation
SASAC	State-owned Assets Supervision and Administration Commission
SAT	State Administration of Taxation
SCLAO	State Council's Legislative Affairs Office
SED	U.S.-China Strategic Economic Dialogue
S&ED	U.S.-China Strategic and Economic Dialogue
WTO	World Trade Organization

FOREWORD

This is the 22nd report prepared pursuant to section 421 of the U.S.-China Relations Act of 2000 (P.L. 106-286), 22 U.S.C. § 6951 (the Act), which requires the United States Trade Representative (USTR) to report annually to Congress on compliance by the People's Republic of China (China) with commitments made in connection with its accession to the World Trade Organization (WTO), including both multilateral commitments and any bilateral commitments made to the United States. The report covers calendar year 2022. It also incorporates the findings of the Overseas Compliance Program, as required by section 413(b)(2) of the Act, 22 U.S.C. § 6943(b)(2).

In preparing this report, USTR drew on its experience in overseeing the U.S. Government's monitoring of China's WTO compliance efforts. USTR chairs the Trade Policy Staff Committee (TPSC) Subcommittee on China, an inter-agency body whose mandate is, *inter alia*, to assess China's efforts to comply with its WTO commitments. This TPSC subcommittee is composed of experts from USTR, the Departments of Agriculture, Commerce, Labor, Justice, State and Treasury, the Environmental Protection Agency, the Federal Trade Commission and the U.S. Patent and Trademark Office, among other agencies. Members of the TPSC subcommittee work closely with State Department economic officers, Foreign Commercial Service officers, Enforcement and Compliance officers and Intellectual Property Attachés from the Commerce Department, Foreign Agricultural Service officers, Customs and Border Protection attachés and Immigration and Customs Enforcement attachés at the U.S. Embassy and Consulates General in China, who are active in gathering and analyzing information, maintaining regular contacts with U.S. industries operating in China and maintaining a regular dialogue with Chinese government officials at key ministries and agencies. The TPSC subcommittee meets in order to evaluate and coordinate U.S. engagement with China in the trade context.

To aid in its preparation of this report, USTR as chair of the TPSC published a notice in the Federal Register on August 17, 2023. The notice asked interested parties to submit written comments. A number of written comments were received from interested parties. These written comments are available at *www.regulations.gov* under docket no. USTR-2023-0008.

EXECUTIVE SUMMARY

In this report, we provide an updated assessment of China's WTO membership. This assessment reveals the unique and very serious challenge that China's state-led, non-market approach to the economy and trade continues to pose for the global trading community. While the United States and other like-minded WTO Members have pursued various WTO-focused strategies over the years to address the many problems created by China, it remains clear that new and more effective strategies – including strategies that involve taking actions outside the WTO where necessary – are critically needed to address those problems.

When China acceded to the WTO in 2001, it voluntarily agreed to embrace the WTO's open, market-oriented approach and to embed it in China's economic and trading system and institutions. China also agreed to take on the obligations set forth in existing WTO rules, while also making numerous China-specific commitments. As we previously documented, and as remains true today, China's record of compliance with these terms has been poor.

As has been previously documented, China has a long record of violating, disregarding and evading existing WTO rules. China has also sought to frustrate WTO oversight and accountability mechanisms, such as through its poor record of adhering to its WTO transparency obligations. In addition, and more critically, after more than two decades of WTO membership, China still embraces a state-led, non-market approach to the economy and trade, despite other WTO Members' expectations – and China's own representations – that China would transform its economy and pursue the open, market-oriented approach endorsed by the WTO. In fact, China's embrace of a state-led, non-market approach to the economy and trade has increased rather than decreased over the past decade, and the mercantilism that it generates has harmed and disadvantaged U.S. companies and workers, as well as companies and workers of other WTO Members, often severely.

The vast majority of the harm that China inflicts upon other WTO Members is attributable not to China's periodic non-compliance with existing WTO rules, but rather to the daily impact of China's state-led, non-market approach to the economy and trade, which relies heavily on interventions in the market by the Chinese government and, increasingly in recent years, the Chinese Communist Party (CCP or the Party). As is well-documented, the Chinese government and the CCP routinely intervene in the market using a wide array of non-market policies and practices, both to provide artificial competitive advantages to Chinese industries and enterprises and to actively disadvantage foreign industries, enterprises and workers.

China's decision to continue pursuing a state-led, non-market approach to the economy and trade after acceding to the WTO takes on significantly added importance because China is the second largest economy in the world and the largest trader among WTO Members. As a result, as time has borne out, the policies and practices that it pursues can have a tremendous impact on bilateral and global trade.

As is now more than clear, China's approach to the economy and trade, which is characterized by a routine reliance on non-market policies and practices, undermines fair, market-oriented decisions made by foreign enterprises and distorts market outcomes in significant ways. Observers have coined various terms to describe China's economic system, from "state capitalism" to "China, Inc.," and, more recently, "CCP, Inc." Whatever terminology is used in an attempt to capture the essence of China's economic system, the unique challenge posed for the global trading community is clear. Foreign enterprises are competing not only against Chinese enterprises but also the Chinese state. As a result, the playing field is simply not level. It is heavily skewed against foreign enterprises

wherever they seek to compete against Chinese enterprises, whether it is in China's market or in other markets around the world.

It is important to highlight, moreover, that China has not simply continued to pursue what it termed a "socialist market economy" when it joined the WTO. China's so-called "socialist market economy" has turned decidedly predatory. In other words, China no longer relies on central planning simply to direct and guide the business decisions of Chinese industries and enterprises. Rather, China is now using its state-led, non-market approach to the economy and trade in ways designed to secure the dominance of Chinese enterprises, both in the China market and in global markets. As part of this pursuit of international dominance, China is targeting both traditional industries and emerging industries, not only by providing its own industries with unprecedented financial and regulatory support but also by actively pursuing policies and practices that are calculated to disadvantage and ultimately displace foreign competitors.

Over the years, the non-market policies and practices that China has deployed as it seeks to achieve and maintain the dominance of Chinese industries and enterprises are myriad. They are also constantly evolving. While the particular combination of non-market policies and practices that China deploys in pursuit of securing dominant market shares for Chinese businesses domestically and globally can vary from industry to industry, any list of the most common non-market policies and practices that the Chinese state currently deploys is long and includes:

- adopting and pursuing industrial plans that target specific industries for domination by Chinese enterprises, including by establishing capacity, production and export levels or market share targets;

- directing, pressuring or otherwise acting to ensure that Chinese enterprises adhere to the objectives set forth in the state's industrial plans;

- placing CCP officials in state-owned enterprises and private Chinese enterprises in management positions in order to monitor, direct, pressure or otherwise influence commercial decision making;

- deploying massive and frequently non-transparent subsidies relentlessly in pursuit of industrial plan objectives, including via policy banks, state-owned commercial banks and government investment and guidance funds at all levels of government;

- transferring risk to the state through loan guarantees and loan rollovers for Chinese enterprises in targeted industries;

- failing to publish final central level and provincial level measures that provide subsidies or other financial support to Chinese enterprises;

- directing, pressuring or otherwise acting to ensure that foreign enterprises operating in China not make business decisions that conflict with the objectives of the state's industrial plans, including in some cases by embedding CCP officials in those enterprises;

- according special regulatory and other preferences and competitive advantages to state-owned enterprises;

- directing or allowing government regulatory authorities to exercise their authority in a discriminatory manner, including by treating Chinese enterprises more favorably than foreign or foreign-invested enterprises;

- directing or sponsoring the theft of intellectual property rights, trade secrets and confidential business information for commercial use;

- engaging in forced or pressured technology transfer;

- directing, pressuring or otherwise acting to ensure that Chinese enterprises pursue acquisitions of foreign enterprises whose technologies are needed to achieve the state's industrial plan objectives;

- directing, pressuring or otherwise acting to ensure that Chinese enterprises purchase Chinese-made products over imported products in accordance with the state's industrial plan objectives;

- directing, pressuring or otherwise acting to ensure that Chinese enterprises invest in and secure access to raw materials outside of China for the sole use of Chinese enterprises producing downstream products in accordance with the state's industrial plan objectives;

- retaliating against foreign enterprises when they offend the Chinese state or otherwise act in a manner that displeases the Chinese state, thereby creating a chilling business environment for all foreign enterprises, especially ones with business operations located in China;

- using selective or arbitrary application or enforcement of intellectual property law to achieve the state's industrial plan objectives;

- using selective or arbitrary application or enforcement of competition law to achieve the state's industrial plan objectives;

- pursuing unique national standards when international standards already exist in order to leverage the economic power of China's market to promote or compel the adoption of those standards in global markets;

- using unfair labor practices, such as forced labor, restrictions on labor mobility, institutional constraints on the extent to which wage rates are determined through free bargaining between labor and management, the denial of the rights of workers to associate and to organize and collectively bargain, and a prohibition on the formation of independent trade unions to represent workers, which artificially lower labor costs for Chinese enterprises, especially in industrial sectors;

- condoning lax enforcement of environmental laws and regulations, which artificially lowers labor costs for Chinese enterprises, especially in industrial sectors;

- creating or maintaining persistent non-market excess capacity in industries through state-owned enterprises and private Chinese enterprises, to the detriment of competing foreign enterprises in the China market and in global markets around the world;

- directing the judiciary to render decisions that serve the state's industrial plan objectives; and

- failing to publish all central level and provincial level laws, regulations and other measures that impact the rights and obligations of enterprises and individuals.

It is evident that China does not deploy these non-market policies and practices in isolation or only in a few industries. China resorts to some combination of these non-market policies and practices in many industries. China's efforts are also relentless. China has shown every indication that it will continue to intervene in the market in any way that it deems necessary to achieve the state's industrial plan objectives. China does not act with moderation.

An example of the magnitude of China's efforts can be seen in a review of how China pursues one type of non-market policy or practice, namely, China's practice of directing or sponsoring the theft of intellectual property rights, trade secrets and

confidential business information for commercial use. In recent public remarks, intelligence and law enforcement officials from the Five Eyes countries – Australia, Canada, New Zealand, the United Kingdom and the United States – characterized the scale of the Chinese state's pursuit and sponsorship of this type of theft as unprecedented in human history. They added that it is the biggest of any country in the world and, indeed, bigger than every other country in the world combined. In the United States alone, in 2023, there were approximately 2,000 active investigations into apparent state-sponsored theft by China covering a diverse array of industries, from aviation to biotechnology to robotics, among many others. The Five Eyes officials noted that while all countries engage in clandestine activities for national security purposes, China is different in that the Chinese state steals information and then uses it for commercial advantage.

Plainly, China's approach is far different from the open, market-oriented approach envisioned by the WTO membership and pursued by the United States and almost all other WTO Members. China routinely deploys economic and trade policies and practices that promote unfair competition and state-directed outcomes rather than fair competition and market-based outcomes. China often does not enable or allow enterprises to make their own commercial decisions, nor does it treat all enterprises engaged in commercial activities equally or allow private actors to determine the allocation of resources. China also does not require its regulatory authorities to administer in a fair, transparent, impartial and reasonable manner all laws, regulations and other measures pertaining to or affecting trade in goods, trade in services, investment and trade-related aspects of intellectual property rights. In addition, China does not maintain an independent judiciary, nor does it publish all laws, regulations and other measures that impact the rights and obligations of enterprises and individuals.

At present, moreover, there are no indications that China is considering taking meaningful steps toward the adoption of the open, market-oriented economic system that the WTO membership has endorsed and expects of all WTO Members. In fact, China continues to take steps designed to increase, not decrease, the role of the Chinese state in the market.

Critically, the WTO has been unable to effectively address China's continued pursuit of a state-led, non-market approach to the economy and trade. While some of the non-market policies and practices pursued by China are disciplined by existing WTO rules, resort to WTO dispute settlement has proven ineffective in changing or discouraging China's behavior in any fundamental way. For the most part, however, it has become clear that China's non-market policies and practices are not effectively disciplined by existing WTO rules. Indeed, when WTO Members developed and agreed on the existing WTO rules, they simply did not contemplate that a WTO Member would ever pursue many of the policies and practices that now emanate from China's state-led, non-market approach to the economy and trade. In short, China's approach is fundamentally at odds with the multilateral trading system.

It is now more than two decades since China joined the WTO, and it is clear that China has not lived up to the bargain that it struck with WTO Members when it acceded to the WTO, as recounted above. With existing WTO disciplines having proved to be ineffective, or simply not designed to discipline many of the types of harmful non-market policies and practices deployed by the Chinese state, it is also clear – and has been clear for some time – that solutions independent of the WTO are needed.

While the WTO can still play a role in addressing certain aspects of the unique challenge that China poses for the global trading community, the United States believes, realistically, that other strategies are needed. For that reason, the United States has been pursuing a multi-faceted approach that accounts for the current realities in the U.S.-China trade relationship and the many problems that China generates for the United States and other trading

partners, both now and likely in the future. As the U.S. Trade Representative previously announced, the U.S. approach includes four principal components.

First, it is critical that the United States take steps domestically to invest in, and build policies supportive of, the industries of today and tomorrow. Important steps taken to date include the passage of the CHIPS and Science Act, the Inflation Reduction Act and the Infrastructure Investment and Jobs Act, as well as the many subsequent efforts to implement those Acts.

Second, the United States is continuing to pursue bilateral engagement with China. China is an important trading partner, and every avenue for obtaining real change in its economic and trade regime must be utilized. We are focused on the United States' most fundamental concerns with China's state-led, non-market approach to the economy and trade, enumerated above, rather than on resuming dialogues focused on isolated issues that leave the core China challenge unaddressed. At the same time, the United States will continue to work to hold China accountable for its existing commitments.

Third, it is clear that domestic trade tools – including updated or new domestic trade tools reflecting today's realities – will be necessary to secure a more level playing field for U.S. workers and businesses. The United States continues to explore how best to use and improve domestic trade tools to achieve that end.

Finally, it is equally critical for the United States to work intensely and broadly with allies and like-minded partners in order to build support for solutions to the many significant problems that China's state-led, non-market approach to the economy and trade has created for the global trading community. The United States recognizes that each trading partner may be impacted differently by the many types of non-market policies and practices that China pursues, but we all must work together if we are to be able to find viable solutions. This work is ongoing and is taking place in bilateral, regional and multilateral fora, including the WTO.

Importantly, among U.S. trading partners, there is a growing convergence about the need to approach trade relations with China with more realism, like the United States has been doing. China's increased use of economic coercion in recent years has certainly played a role in this convergence. As its economic power has grown, the Chinese government more and more has resorted to the threat or use of measures affecting trade and investment in an abusive, arbitrary or pretextual manner to pressure, induce or influence a foreign government into taking, or not taking, a decision or action in order to achieve a strategic political or policy objective, or to prevent or interfere with the foreign government's exercise of its legitimate sovereign rights or choices. It is particularly troubling to witness an authoritarian government using economic coercion to influence the policies being pursued by democratic countries. However, even so, the more significant factor in this convergence of thinking is the incontrovertible evidence of the significant harm being caused by China's state-led, non-market – and predatory – approach to the economy and trade. Indeed, this harm is not confined to the advanced market economies, as emerging and developing economies tend to be particularly adversely impacted by China's non-market policies and practices.

At the same time, despite China's rhetoric, the United States does not view "decoupling" from China as the solution to the many problems posed by China's state-led, non-market approach to the economy and trade. Indeed, if the United States were to decouple from China, it would not address those problems.

The United States has taken targeted actions, including on export controls and outbound investment, to protect our national security, consistent with our approach to the U.S.-China economic and trade relationship, which is more

appropriately characterized as one of de-risking and diversifying, not decoupling. Because the Chinese government continually intervenes in the market and actively seeks to advantage Chinese enterprises and disadvantage foreign enterprises, the United States is not in a position to rely on the good will of the Chinese state when it comes to supply chains, especially for critical minerals. Similarly, U.S. companies with operations in China are not able to have confidence that they will be treated fairly by the Chinese state, and they increasingly are re-evaluating the degree of their dependence on the China market.

Nevertheless, the United States still seeks to trade with China, just as the United States seeks to do with other countries. But the terms of competition must be fair. U.S. companies and workers need to be able to compete on a level playing field with Chinese companies and workers, whether in the U.S. market, China's market or other markets around the world.

For two-way trade to expand, both the United States and China need to be committed to it. But questions remain about China's commitment, as China itself appears to be pursuing a decoupling strategy – and not just from the United States.

China's "dual circulation" strategy, in place since 2020, touts the importance of China continuing to participate in international trade, while simultaneously seeking to become self-sufficient domestically. What this means in reality is that, for now, China will continue to export to the world (often at predatory prices), including the negative externalities from its industrial policies, and China will continue to welcome foreign companies operating in China and continue to import products needed by Chinese companies, especially in technology products. However, once Chinese companies are capable of displacing the foreign competition in any particular industry in the China market, the Chinese state will no longer welcome foreign companies and their products.

Another by-product of China's drive for domestic self-sufficiency, of course, is the non-market excess capacity that it inevitably creates, to the detriment of foreign producers and efficient investment around the world. Indeed, in 2022, China accounted for the largest global trade surplus in the history of the world, totaling $877.6 billion, which was more than three times the total for the country with the next largest global trade surplus, Russia.

Whatever term might best describe China's "dual circulation" strategy, it is plainly not a strategy ever envisioned by, or condoned by, the WTO membership. The autarky that this strategy envisions runs counter to the WTO's goal of developing an integrated, more viable and durable multilateral trading system. In other words, this strategy is best viewed as further evidence of China's broader intent to re-shape the international order and move the world away from rules-based engagement premised on market-based competition.

The United States, in contrast, remains committed to the WTO and the shared values upon which it is based, including openness, fair competition, non-discrimination, reciprocity and transparency as well as adherence to the rule of law. But serious challenges threaten those core values, most notably the challenge posed by the policies and practices that emanate from China's state-led, non-market – and predatory – approach to the economy and trade.

INTRODUCTION

In this report, we first provide a broad assessment of China's WTO membership to date. Next, we discuss past strategies that have been used, without success, in an attempt to address the many problems that China's state-led, non-market approach to the economy and trade creates for the United States and other WTO Members. We then describe the nature of the China challenge as it exists today and explain how the United States' trade policy is dealing with it. Lastly, we catalogue, on a topic-by-topic basis, the many specific trade concerns generated by China's outlier behavior.

ASSESSMENT OF CHINA'S WTO MEMBERSHIP

In assessing China's WTO membership below, we first recall the terms of China's accession to the WTO. As explained below, these terms included commitments to adhere to the rules and principles set forth in the WTO agreements as well as an unprecedented number of China-specific commitments intended to facilitate China's intended transition to a market economy. These terms also included an expectation that China would pursue an open and market-oriented approach to the economy and trade, like other WTO Members. After reviewing the terms of China's accession to the WTO, we then review China's record of compliance, which has been poor.

CHINA'S WTO ACCESSION

In July of 1986, China applied for admission to the WTO's predecessor, the General Agreement on Tariffs and Trade (GATT). The GATT formed a Working Party in March of 1987, composed of all interested GATT contracting parties, to examine China's application and negotiate terms for China's accession. For the next eight years, negotiations were conducted under the auspices of the GATT Working Party. Following the formation of the WTO on January 1, 1995, pursuant to the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), a successor WTO Working Party, composed of all interested WTO Members, took over the negotiations.

Like all WTO accession negotiations, the negotiations with China had three basic aspects. First, China provided information to the Working Party regarding its trade regime. China also updated this information periodically during the 15 years of negotiations to reflect changes in its trade regime. Second, each interested WTO Member negotiated bilaterally with China regarding market access concessions and commitments in the goods and services areas, including, for example, the tariffs that would apply on industrial and agricultural goods and the commitments that China would make to open up its market to foreign services suppliers. The most trade liberalizing of the concessions and commitments obtained through these bilateral negotiations were consolidated into China's Goods and Services Schedules and apply to all WTO Members. Third, overlapping in time with these bilateral negotiations, China engaged in multilateral negotiations with Working Party members on the rules that would govern trade with China. Throughout these multilateral negotiations, U.S. leadership in working with China was critical to removing obstacles to China's WTO accession and achieving a consensus on appropriate rules commitments. These commitments are set forth in China's Protocol of Accession and an accompanying Report of the Working Party.

WTO Members formally approved an agreement on the terms of accession for China on November 10, 2001, at the WTO's Fourth Ministerial Conference, held in Doha, Qatar. One day later, China signed the agreement and deposited its instrument of ratification with the Director-General of the WTO. China became the 143rd member of the WTO on December 11, 2001. China's Protocol of Accession, accompanying Working Party Report and Goods and

Services Schedules are available on the WTO's website (www.wto.org).

To accede to the WTO, China agreed to take concrete steps to remove trade barriers and open its markets to foreign companies and their exports from the first day of accession in virtually every product sector and for a wide range of services. Supporting these steps, China also agreed to undertake important changes to its legal framework, designed to add transparency and predictability to business dealings.

Like all acceding WTO Members, China also agreed to assume the obligations of more than 20 existing multilateral WTO agreements. Areas of principal concern to the United States and China's other trading partners, as evidenced by the accession negotiations, included core principles of the WTO, such as most-favored nation treatment, national treatment, transparency and the availability of independent review of administrative decisions. Other key concerns arose in the areas of agriculture, sanitary and phytosanitary measures, technical barriers to trade, trade-related investment measures, customs valuation, rules of origin, import licensing, antidumping, subsidies and countervailing measures, trade-related aspects of intellectual property rights and services. For some of its obligations, China was allowed minimal transition periods, where it was considered necessary.

Through its membership in the WTO, China also became subject to the same expectations as other WTO Members, as set forth in the Marrakesh Declaration issued in April 1994 at the conclusion of the Uruguay Round negotiations. There, among other things, WTO Members expressly affirmed their view that the WTO Member economies would participate in the international trading system based on "open, market-oriented policies."

Even though the terms of China's accession agreement are directed at the opening of China's market to WTO Members, China's accession agreement also includes provisions designed to address issues related to any injury that U.S. or other WTO Members' industries and workers might experience based on import surges or unfair trade practices, particularly during what was envisioned to be a time of transition for China from a non-market economy to a market economy. These mechanisms include: (1) a special textile safeguard mechanism (which expired on December 11, 2008, seven years after China's WTO accession); (2) a unique, China-specific safeguard mechanism allowing a WTO Member to take action against increasing Chinese imports that disrupt its market (which expired on December 11, 2013, 12 years after China's WTO accession); (3) an expression of the ability of WTO Members to use an antidumping methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product; and (4) an expression of the ability to use methodologies for identifying and measuring subsidy benefits to Chinese enterprises that are not based on terms and conditions prevailing in China.

With China's consent, the WTO also created a special multilateral mechanism for reviewing China's compliance on an annual basis. Known as the Transitional Review Mechanism, this mechanism operated annually for eight years after China's accession. A final review, looking back over the first 10 years of China's WTO membership, took place in 2011.

EXPECTATIONS OF WTO MEMBERSHIP

For all WTO Members, the expectations of WTO membership are clearly set forth in the Marrakesh Declaration issued in April 1994 at the conclusion of the Uruguay Round negotiations. There, WTO Members expressly affirmed their view that the establishment of the WTO ushers in a "new era of global economic cooperation" that "reflect[s] the widespread desire to operate in a fairer and more open multilateral trading system." WTO Members

further made clear their determination that their economies would participate in the international trading system, based on both "open, market-oriented policies" and "the commitments set out in the Uruguay Round Agreements and Decisions."

As this language makes clear, it was not contemplated that any WTO Member would reject market-based policies in favor of a state-led trade regime. It also was not contemplated that any WTO Member would pursue mercantilist outcomes instead of policies promoting a fairer and more open multilateral trading system. Rather, it was expected that each WTO Member would pursue open, market-oriented policies. The pursuit of open, market-oriented policies means not only adhering to the agreed rules but also observing in good faith the fundamental principles that run throughout the many WTO agreements, which include non-discrimination, openness, reciprocity, fairness and transparency.

When China acceded to the WTO in 2001, it agreed to embrace the WTO's open, market-oriented approach and embed it in its trading system and institutions. Through China's commitments and representations, WTO Members understood that China intended to dismantle existing state-led, mercantilist policies and practices, and they expected China to continue on its then-existing path of economic reform and successfully complete a transformation to a market-oriented economy and trade regime.

China's protocol of accession to the WTO sets out China's obligations under the WTO agreements as well as numerous additional China-specific commitments made necessary because of the need for China to transform its approach to the economy and trade. China itself acknowledged "the evolving nature of its economy," and it confirmed that "a socialist market economy system was applied" in China. Similarly, WTO Members highlighted that "China was continuing the process of transition towards a full market economy." WTO Members noted, for example, that "the special features of China's economy, in its present state of reform, still created the potential for a certain level of trade-distorting subsidization."

For these reasons, it was agreed that special safeguard-like provisions would be included among the terms of China's protocol of accession as protective measures while China completed its transformation into a market economy. As noted above, for example, China's protocol of accession included a China-specific safeguard mechanism, special antidumping rules and special methodologies for identifying and measuring subsidy benefits. It also created a unique, 10-year review mechanism designed to monitor China's progress in implementing its many WTO commitments and to secure updated information on the use of industrial plans by China.

CHINA'S WTO COMPLIANCE RECORD

As has been catalogued in prior reports, China has a poor record when it comes to complying with WTO rules and observing the fundamental principles on which the WTO agreements are based − non-discrimination, openness, reciprocity, fairness and transparency. Too often, China flouts the rules to achieve industrial domination objectives. In addition, and of serious concern to the United States and other WTO Members, China has not made sufficient progress in transitioning toward a market economy. China continues to embrace a state-led, non-market and mercantilist approach to the economy and trade. This approach results in sophisticated and expansive policies and practices that often evade effective WTO disciplines and cause serious harm to markets, workers and industries in the United States and other WTO Members. At the same time, China has used the benefits of WTO membership – including its guarantee of open, non-discriminatory access to the markets of other WTO Members – to become the WTO's largest trader, while resisting calls for further liberalization of its trade regime by claiming to be a "developing" country.

ADOPTION OF MARKET-ORIENTED POLICIES

Since last year's report, our assessment of China's record in terms of transitioning to a market economy has not changed. More than two decades after its accession to the WTO, China has still not embraced open, market-oriented policies. The state remains in control of China's economy, and it heavily intervenes in the market to achieve anticompetitive industrial policy objectives. Indeed, the state's already sizable role continues to grow, not recede.

As we detailed in prior reports, China pursues a wide array of continually evolving interventionist policies and practices. It offers substantial government guidance, resources and regulatory support to domestic industries, including China's state-owned enterprises and numerous other domestic companies. At the same time, it also seeks to limit market access for imported goods and services and restrict the ability of foreign manufacturers and services suppliers to do business in China in various ways. The benefits that China's industries realize from these non-market policies and practices largely come at the expense of China's trading partners and their workers and companies, as markets all over the world are distorted, and the playing field is heavily skewed against foreign companies that seek to compete against Chinese companies, whether in China's market or markets outside of China.

This situation has worsened over the past decade. Since new leaders assumed power in China in 2013, the state's role in the economy – effectuated by the Chinese government and, increasingly, the CCP – has grown. While China has repeatedly signaled in recent years that it is pursuing "economic reform," China's concept of "economic reform" differs from the type of change that a country would be pursuing if it were embracing open, market-oriented policies. For China, "economic reform" appears to mean deepening the management of the economy by the government and the Party and strengthening state-owned and state-invested enterprises. Meanwhile, as the state's role in the economy has increased in recent years, the depth and breadth of challenges facing U.S. and other foreign companies doing business in China – or competing with favored Chinese companies in markets outside of China – have similarly increased.

To fully appreciate the challenges presented by China's non-market economy, it is vital to understand the extent to which the state still maintains control over economic decision-making in China. As we catalogued in prior reports, a thorough examination of China's Constitution, relevant directives and pronouncements by China's leadership, legislative and regulatory measures issued by the Chinese government, China's industrial plans and the actions of the Chinese government and the CCP leave no doubt that the state maintains a tight grip on virtually all economic activity. Indeed, the government and the Party have constitutional mandates to develop a "socialist market economy with Chinese characteristics." To fulfill these mandates, the framework of China's economy is set by the government and 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 innumerable government directives. The government and the Party also direct and channel economic actors to meet the state's planning targets. The government and the Party permit market forces to operate only to the extent that they accord with China's industrial policy objectives, which typically target industries for domination by Chinese companies. When there is conflict between market outcomes and the state's objectives, the government and the Party intervene to ensure that the state's objectives prevail.

Aside from the role of the government and the Party in managing the economy, there are also serious concerns over how the government and the Party exercise influence over the operations and investment decisions of state-owned and state-invested enterprises and private enterprises, including foreign-invested enterprises. This

influence continues to grow, as the Party is increasing its control over key actors in China's economy and not, as had been hoped, enabling China's transition to a market economy.

China claims that its state-owned and state-invested enterprises make business decisions independently of the state and based on market principles. However, the government and the Party continue to exercise control over state-owned and state-invested enterprises. Among other things, they appoint and control key executives through the Chinese Communist Party Organization Department. They also provide state-owned and state-invested enterprises with preferential access to important inputs (such as land and capital) and other competitive advantages unavailable to private Chinese companies. State-owned and state-invested enterprises, in turn, play an outsized role in China's economy. For example, state-owned and state-invested enterprises outstrip private Chinese companies in terms of their share of total credit, their market dominance in key industries and their share of total market capitalization on China's stock market.

Both state-owned and state-invested enterprises and private Chinese companies also host internal Party committees capable of exercising government and Party influence over their corporate governance and business decisions. This arrangement is codified in Chinese law under Article 19 of the *Company Law*, which applies to both state-owned and state-invested enterprises and private Chinese companies. In recent years, moreover, the Party has taken steps to increase the strength and presence of Party committees within all of these companies. For example, state-owned and state-invested enterprises and private Chinese companies are being pressured to amend their articles of association to ensure Party representation on their boards of directors, usually as the Chairman of the Board, and to ensure that important company decisions are made in consultation with Party cells.

Increasingly in recent years, China has also taken "golden shares" in large private Chinese companies. Under this type of arrangement, the Chinese government via a government guidance fund or other state-backed entity purchases a small stake in the company in exchange for a seat on the board of directors or veto rights. The result is stronger Chinese government oversight and control of the company's operations.

As we explained in prior reports, U.S. industry associations report that the Party is also taking steps to influence the managerial and investment decisions of foreign-invested enterprises in China through the insertion of Party cells. According to these reports, these efforts, in some cases, are beginning to affect the decision-making processes of some Chinese-foreign joint ventures in China.

Further reinforcing the Party's influence over enterprises in China is the *Social Credit System*, a tool endorsed by the Party that the government is increasingly using to monitor, rate and condition not only the conduct of all individuals in China, but also all domestic and foreign companies in China. This system has become operational, but so far there is no fully integrated national system for assigning comprehensive social credit scores for companies, and the social credit system remains highly fragmented, as local governments experiment with their own pilot social credit schemes. In any event, it appears that the government will use the threat of poor ratings and corresponding adverse consequences under the *Social Credit System*, among other things, to ensure that all economic actors in China operate in accordance with China's industrial policy objectives and do not cross political redlines on sensitive matters like human rights.

Separate from these various mechanisms used to control company behavior, the government and the Party continue to control or otherwise influence the prices of key factors of production. The result is that the means of production in China are not allocated

or priced according to market principles. For example, all land in China is property of the state, as either state-owned urban land or collectively owned rural land. The state also exerts a high degree of control over energy and other input prices. In addition, there are significant institutional constraints on the extent to which wage rates are determined through free bargaining between labor and management, contrary to International Labor Organization principles. China denies workers the right of association and the right to organize and collectively bargain. China prohibits the formation of independent trade unions to represent workers, and workers do not have the legal right to strike, which is an important lever in collective action and negotiation with management over wages in market economies. In addition, government restrictions on labor mobility continue to inhibit and guide labor flows, causing distortions on the supply side of the labor market.

The government and the Party also exercise strong control over the financial sector. Five large commercial banks that are majority state-owned entities operate large branch networks on a nationwide basis and account for nearly half of total commercial bank assets. There are also three large state-owned policy banks, as well as scores of city commercial banks and credit unions under local government control. In addition to the ownership of these banks by the government, the state exercises other forms of influence over banking decisions. The Party, through its Organization Department, appoints executives in state-owned banks and other state-owned financial institutions. China's central bank, the People's Bank of China (PBOC), also meets frequently with large banks in China to ensure that their lending decisions align with PBOC and government objectives. In addition, the *Law 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."

Similarly, China's legal system continues to function as an instrument by which the government and the Party can secure discrete economic outcomes, channel broader economic policy and pursue the state's industrial policy objectives. Key legal institutions, such as the courts, are structured to respond to the Party's direction, both broadly and on a case-specific basis. As a general matter, to the extent that companies and individuals seek to act independently of government or Party direction, the legal system does not provide a venue for them to achieve these objectives on a systemic or consistent basis. In addition, companies and individuals continue to face challenges in obtaining impartial outcomes, either because of protectionism or corruption.

The larger issue of China's restrictions on the freedom of information also impacts China's economic system. For example, while China's Internet firewall and the Party's regular censorship of audio-visual and print media have many negative effects outside China's economic system, they also create distortions in China's economy, and these distortions affect the ability of foreign companies to operate and compete effectively in China's market.

In March 2021, China finalized and issued the *14th Five-Year Plan (2021-2025) for National Economic and Social Development*, which runs from 2021 through 2025. Like its predecessor, the *14th Five-year Plan* covers all sectors of China's economy and is not limited to one overarching plan, but instead will include hundreds of sub-plans. In this regard, various institutions participate in plan formulation and execution, including central government bodies with legislative and regulatory authority, thousands of provincial and local government authorities, various organs of the Party and key Chinese companies.

When compared to the industrial plans of other WTO Members, China's industrial plans are not merely more extensive. They are also fundamentally

different in kind. In several significant ways, China's industrial plans go well beyond traditional approaches to guiding and supporting domestic industries:

- First, adherence to the objectives of China's industrial plans is effectively mandatory. Chinese companies have little discretion to ignore them, even when market forces would dictate different commercial behavior.

- Second, the financial support that the state provides to domestic industries in pursuit of China's industrial plan objectives is massive, relentless and highly market-distorting. Indeed, this financial support is provided on a scale never before seen in the world, and much of it is not transparently provided. As previously noted, this financial support often leads to severe excess capacity in China – followed by China's widespread dumping of the inevitable excess production into the markets of other WTO Members, which not only depresses global prices but also distorts investment decisions by market actors in markets around the world. This assault on global markets causes serious harm to other WTO Members' industries, companies and workers, while the WTO does not provide effective mechanisms for addressing this problem.

- Third, China's industrial planning is more comprehensive and complex than in any other country, as it is made up of hundreds of plans across industries and at all levels of government.

- Fourth, in pursuit of its industrial plan objectives, China goes well beyond merely guiding or supporting the development of domestic industries as it actively seeks to impede, disadvantage and harm the foreign competition by skewing the playing field against imported goods and services and foreign manufacturers and services suppliers. Indeed, China actively targets entire industries for domination by Chinese companies, often by explicitly setting market share goals that it pursues through a wide array of non-market policies and practices. In other words, China's approach to industrial planning is fundamentally predatory in nature.

When combined with the large size of China's economy and China's large share of global trade, the policies and practices that China pursues in support of its industrial plans transform China into a unique and pressing challenge for the United States and other market economies as well as for the WTO and the multilateral trading system. Moreover, this troubling situation is not static. China continues to develop and implement new policies and practices to maintain and enhance the state's control over the economy and trade.

COMPLIANCE WITH WTO RULES

Since last year's report, our assessment of China's record in terms of complying with WTO rules and observing the fundamental principles on which the WTO agreements are based has not changed. China's record remains poor.

As we detailed in prior reports, China's economic and trade regime has generated many WTO compliance concerns over the years. Too often, WTO Members have had to resort to the WTO's dispute settlement mechanism to change problematic Chinese policies and practices. The United States, for example, has brought 27 cases against China at the WTO covering a wide range of important policies and practices, such as: (1) discriminatory requirements in the automobile sector; (2) discriminatory taxes in the integrated circuit sector; (3) hundreds of prohibited subsidies in a wide range of manufacturing sectors; (4) inadequate intellectual property rights enforcement in the copyright area; (5) significant market access barriers in copyright-intensive industries; (6) severe restrictions on foreign suppliers of financial information services; (7) export restraints on

numerous raw materials; (8) a denial of market access for foreign suppliers of electronic payment services; (9) repeated improper use of trade remedies; (10) excessive domestic support for key agricultural commodities; (11) the opaque and protectionist administration of tariff-rate quotas for key agricultural commodities; and (12) discriminatory regulations on technology licensing. Even though the United States prevailed in these WTO disputes, as other WTO Members have done in their disputes against China, they take years to litigate, consume significant resources and often require further efforts when China fails to comply with WTO rules.

In addition, China has often taken steps to obscure its actions to make it more difficult for trading partners to even challenge them in the WTO's adjudicative system. The WTO's dispute settlement mechanism was designed to facilitate the resolution of disagreements over whether an action breaches a WTO obligation, but where the action is so obscured that it is difficult to demonstrate it as a factual matter, the dispute settlement mechanism can fail to be an effective disciplinary tool. In this regard, as USTR has explained in prior reports, China disregards many of its WTO transparency obligations, which places its trading partners at a disadvantage and often serves as a cloak for China to conceal unfair, non-market and distortive trade policies and practices from scrutiny.

For example, during the first 15 years of its WTO membership, China failed to notify any sub-central government subsidies to the WTO, despite the fact that most subsidies in China are provided by provincial and local governments. The magnitude and significance of this problem is illustrated by the five WTO cases that the United States has brought challenging prohibited subsidies maintained by China. While those cases involved hundreds of subsidies, most of the subsidies were provided by sub-central governments. The United States was able to bring those cases only because of its own extensive investigatory efforts to uncover China's opaque subsidization practices. Most other WTO Members lack the resources to conduct the same types of investigations.

Despite these efforts, China continued to shield massive sub-central government subsidies from the scrutiny of other WTO Members, while in recent years also obscuring massive central government subsidies provided through a newer vehicle known as "government guidance funds." While China claims that these government guidance funds are wholly private, the facts plainly reveal that the funds are run by government agencies and state-owned enterprises and provide state capital to Chinese companies. Together with other complimentary non-market practices, the massive and relentless subsidization provided by China's central government and sub-central governments distorts global markets and contributes to the serious excess capacity problems that have been plaguing industries like steel, aluminum, solar panels and fishing and have been devastating foreign competitors. Similar results can be expected in other industries now being targeted by China for dominance.

In sum, the WTO's dispute settlement mechanism has not been effective in addressing the serious issues that arise from a WTO Member's state-led, non-market approach to the economy and trade that systematically disadvantages that Member's trading partners and broadly conflicts with the fundamental, market-oriented underpinnings of the WTO system. The value of the dispute settlement mechanism is also undermined where a WTO Member does not operate in good faith. As a result, over time, despite the enforcement efforts of the United States and other WTO Members, China was able to continue to pursue its predatory non-market policies and practices, which WTO rules and the dispute settlement mechanism have proven unable to discipline effectively.

PAST EFFORTS TO ADDRESS THE CHINA CHALLENGE

In the past, the United States has intensively pursued both WTO-focused strategies and strategies outside the WTO in an effort to address the unique challenge posed by China. Other WTO Members have also made similar efforts. Those strategies have been unsuccessful in securing fundamental changes in China's state-led, non-market approach to the economy and trade.

WTO-FOCUSED STRATEGIES

For many years following China's accession to the WTO, a variety of bilateral and multilateral efforts were pursued by the United States and other WTO Members to address the unique challenges presented by China's WTO membership. However, even though these efforts were persistent, they did not result in meaningful changes in China's state-led, non-market approach to the economy and trade.

The United States itself pursued a dual track approach in an effort to resolve the many concerns that arose in our trade relationship with China. One track involved using high-level bilateral dialogues, and the other track focused on enforcement at the WTO.

The United States approached its bilateral dialogues with China in good faith and put a great deal of effort into them. These dialogues were intended to push China toward complying with and internalizing WTO rules and principles and making necessary market-oriented changes. However, they only achieved isolated, incremental progress. At times, the United States did secure broad commitments from China for fundamental shifts in the direction of Chinese policies and practices, but China repeatedly failed to follow through on them. Moreover, over time, commitments from China became more difficult to secure.

Meanwhile, at the WTO, the United States brought 27 cases against China, often in collaboration with like-minded WTO Members. The United States secured victories in every one of its cases that was decided. Other WTO Members were also successful in many cases that they brought against China. Still, even when China changed the specific practices that had been challenged, it did not typically change the underlying policies, and meaningful reforms by China remained elusive.

As has become clear, the WTO's dispute settlement mechanism is of only limited value in addressing a situation where a WTO Member is dedicated to a state-led economic and trade regime that prevails over market forces. The WTO's dispute settlement mechanism is designed to address good faith disputes in which one Member believes that another Member has adopted a measure or taken an action that breaches a WTO obligation. This mechanism is not designed to address a trade regime that broadly conflicts with the fundamental underpinnings of the WTO system. No amount of WTO dispute settlement by other WTO Members would be sufficient to remedy this systemic problem. Indeed, many of the most harmful policies and practices being pursued by China are not even directly disciplined by WTO rules.

Overreaching by the WTO's Appellate Body in deciding WTO dispute settlement cases has also shielded China's non-market policies and practices from discipline and has affirmatively undermined the efforts of the United States and other WTO Members to protect our workers and businesses from the harmful impacts of China's predatory non-market economic system. The Appellate Body's erroneous substantive interpretations have undermined core values, such as the ability to protect workers and businesses from non-market economic harms, to promote democracy and human rights or to protect human health or the environment. At the same time, China has sought to use the WTO dispute settlement system to subject

U.S. national security measures to review, pursuing a strategy that would convert the WTO into a permanent venue for national security disagreements. As a result, the United States has been clear that fundamental reform is needed to ensure a well-functioning WTO dispute settlement system that supports WTO Members in the resolution of their disputes and in doing so limits the needless complexity and interpretive overreach seen in recent years. Among the objectives for reform, the United States has been clear that the dispute settlement system should preserve the policy space in WTO rules for WTO Members to address their critical societal interests and to support, rather than undermine, the WTO's role as a forum for discussion and negotiation. Most critically, fundamental reform must ensure that the WTO respects the essential security interests of WTO Members, including the United States.

Over the years, in addition to pursuing WTO dispute settlement cases, the United States has actively participated in meetings at the WTO addressing China's adherence to its WTO obligations. For example, the United States took on a leading role in the numerous China-specific Transitional Review Mechanism meetings from 2002 through 2011, which involved annual meetings of most WTO committees and councils. However, China consistently approached these meetings in ways that frustrated WTO Members' efforts to secure a meaningful assessment of China's compliance efforts. The United States also raised, as it continues to do, China-related issues at regular meetings of WTO committees and councils, including the WTO's General Council. Among other things, the United States sought to highlight how China's trade-disruptive economic model works, the costs that it exacts from other WTO Members and the benefits that China receives from it. While these efforts raised awareness among WTO Members, they did not lead to meaningful changes in China's approach to the economy and trade.

In theory, the WTO membership could have adopted new rules expressly requiring members like China to abandon non-market economic systems and state-led, mercantilist trade regimes. For two basic reasons, however, Members have not pursued any negotiation of new WTO rules that would change China's problematic approach to the economy and trade in a meaningful way.

First, new WTO rules disciplining China would require agreement among all WTO Members, including China. China has shown no willingness at the WTO to consider fundamental changes to its economic system or trade regime. Given the extent to which China has benefited and continues to benefit from the current state of affairs, it was not realistic to expect that China would agree to effective new WTO disciplines on its behavior. Indeed, China has been using its WTO membership to develop rapidly – albeit largely in an anticompetitive manner that comes at the expense of others. China is now the second largest economy in the world, and it is also the largest goods trader – and the largest exporter – among WTO Members. It is therefore highly unlikely that China would agree to new WTO disciplines targeted at its policies and practices. In fact, in connection with ongoing discussions at the WTO relating to needed WTO reform, China has stated that it would not alter its state-led, non-market approach to the economy and trade.

Second, China has a long record of not pursuing ambitious outcomes at the WTO. Past agreements, even relatively narrow ones, have been difficult to achieve, and even when an agreement is achieved, it is significantly less ambitious because of China's participation.

As these experiences make clear, it is unrealistic to believe that actions at the WTO alone will be sufficient to force or persuade China to make fundamental changes to its economic system or trade regime. The WTO's trading system was designed for countries that are truly committed to fair competition based on market principles, not for an economically powerful country determined to maintain a state-led, non-market approach to the

economy and trade, and China has demonstrated no willingness to change its approach in any meaningful way.

STRATEGIES OUTSIDE THE WTO

In recent years, it became evident to the United States that new strategies were needed to deal with the many problems generated by China's state-led, non-market approach to the economy and trade, including solutions independent of the WTO. For example, in August 2017, the United States launched an investigation into China's acts, policies and practices relating to technology transfer, intellectual property and innovation under Section 301 of the Trade Act of 1974. The findings made in this investigation in March 2018 led to, among other things, substantial U.S. tariffs on imports from China as well as corresponding retaliation by China. Against this backdrop of rising tensions, in January 2020, the two sides signed what is commonly referred to as the "Phase One Agreement." This Agreement included commitments from China to improve market access for the agriculture and financial services sectors, along with commitments relating to intellectual property and technology transfer and a commitment by China to increase its purchases of U.S. goods and services.

Many of the commitments in the Phase One Agreement reflected changes that China had already been planning or pursuing for its own benefit or that otherwise served China's interests, such as the changes involving intellectual property protection and the opening up of more financial services sectors. Other commitments to which China agreed reflected a political calculation, as evidenced by the attention paid to the agriculture sector in the Phase One Agreement and the novel commitments relating to China's purchases of U.S. goods and services ostensibly as a means to reduce the bilateral trade deficit.

Given these dynamics, and given China's interest in a more stable relationship with the United States, China followed through in implementing some provisions of the Phase One Agreement. At the same time, China has not yet implemented some of the more significant commitments that it made in the Phase One Agreement, such as commitments in the area of agricultural biotechnology and the required risk assessment that China is to conduct relating to the use of ractopamine in cattle and swine. Intellectual property is another area where China still must take a number of actions to implement its commitments. In addition, China fell far short of implementing its commitments to purchase U.S. goods and services in 2020 and 2021.

The reality is that this Agreement did not meaningfully address the more fundamental concerns that the United States has with China's state-led, non-market policies and practices and their harmful impact on the U.S. economy and U.S. workers and businesses. China's government continues to employ extensive industrial policies of a kind not found in market economies. It provides substantial government guidance, massive financial resources and favorable regulatory support to domestic industries across the economy, often in pursuit of specific targets for capacity and production levels and dominant market shares. In furtherance of its industrial policy objectives, China's government has also limited market access for imported goods and services and restricted the ability of foreign manufacturers and services suppliers to do business in China. It has also used various, often illicit, means to secure foreign intellectual property and technology to further its industrial policy objectives.

The principal beneficiaries of these non-market policies and practices are China's state-owned and state-invested enterprises and numerous nominally private domestic companies. The benefits that Chinese industries receive largely come at the expense of China's trading partners, including their workers, businesses and consumers. As a result, markets all over the world have faced distorted signals, and the playing field is heavily skewed

against foreign businesses that seek to compete against Chinese enterprises, whether in China, in the United States or globally.

The industrial policies that flow from China's predatory non-market economic system have systematically distorted critical sectors of the global economy such as steel, aluminum, solar and fisheries, devastating markets in the United States and other countries. At the same time, as is their design, China's industrial policies are increasingly responsible for displacing companies in new, emerging sectors of the global economy, as the Chinese government and the CCP powerfully intervene in these sectors on behalf of Chinese companies. Companies in economies disciplined by the market cannot effectively compete with both China's domestic companies and the Chinese state.

TODAY'S CHINA CHALLENGE

Like many other WTO Members, the United States expects, and seeks to ensure, that its trading partners' economic and trade regimes promote fair, market-oriented conditions for competition. Market orientation implies the freedom for enterprises and individuals to pursue their interests and goals on a level playing field. Indeed, in establishing the WTO, members agreed that "open, market-oriented policies" were at the foundation of the multilateral trading system.

In the case of China, more than two decades after its accession to the WTO, it has still not embraced a market-oriented approach to the economy and trade. Instead, unlike the market-oriented approaches found in the United States and other WTO Members, China continues to pursue a state-led, non-market approach to the economy and trade, which is decidedly predatory in nature. China heavily relies on market-distorting industrial plans covering virtually every sector of the economy, and these industrial plans are typically designed to provide substantial competitive advantages to Chinese enterprises and to impose substantial competitive disadvantages on competing foreign enterprises, as China seeks to secure dominant market shares for Chinese companies, both in China and globally.

Under China's approach, control and direction of all aspects of the economy is retained by the Chinese government and the CCP, facilitated by a reliance on rule *by* law rather than rule *of* law. The mere fact that decisions in the marketplace are often made based on the objectives of the state, rather than based on commercial considerations, distorts China's economy and, in turn, the global economy in ways that can damage and weaken the economies of China's trading partners. This damage is exacerbated by the overriding objective of the Chinese state's intervention in the market, which is to secure dominant positions for Chinese enterprises in numerous targeted industries. It is also exacerbated, of course, because China is the second largest economy in the world and the largest trader among WTO Members.

A host of harmful policies and practices currently emanate from China's predatory non-market economic and trade regime. Key examples include: numerous industrial plans that target specific industries for domination by Chinese enterprises; the placement of CCP officials in state-owned enterprises and private Chinese enterprises in order to control commercial decision making; massive and relentless subsidization of domestic industries (including financial support to and through state-owned enterprises and other state entities at multiple levels of government and a banking system dominated by state-owned banks favoring state-owned enterprises and targeted industries); discriminatory regulatory practices; investment and market access restrictions; import substitution; the creation and maintenance of persistent non-market excess capacity in industrial sectors; forced or pressured technology transfer; state-sponsored theft of intellectual property, trade secrets and confidential business information; state-directed acquisitions of foreign companies with valuable technologies; continued gaps in intellectual property

protection and enforcement; violations of internationally recognized labor rights (including forced labor); lax or unenforced environmental standards; increased adoption of unique Chinese national standards (including reportedly through the China Standards 2035 plan, which seeks to set the global standards for next-generation technologies); overly broad cybersecurity regulation designed to favor domestic companies; unwarranted data localization requirements and cross-border data transfer restrictions; the misuse of competition policy for industrial policy objectives; purposeful obfuscation of trade and economic policies, especially with regard to China's subsidization practices; and inadequate regulatory transparency.

As has become evident to the United States and China's other trading partners, one of the more problematic manifestations of China's predatory non-market economic and trade regime is the creation of non-market excess capacity – that is, capacity that would not have been created and would not persist if market forces were operating properly. In the past, China itself has acknowledged excess capacity in several industries, including steel, cement, electrolytic aluminum, flat glass and shipbuilding. Numerous other excess capacity industries have been identified by industry associations in the United States and other countries. Some of the Chinese industries most likely to inflict the disastrous consequences of severe excess capacity on the world in the future can be found in the *Made in China 2025* industrial plan. Through that plan, the Chinese government is seeking to create dominant Chinese companies in 10 broad sectors, including advanced information technology, robotics and automated machine tools, aircraft and aircraft components, maritime vessels and marine engineering equipment, advanced rail equipment, new energy vehicles, electrical generation and transmission equipment, agricultural machinery, new materials and pharmaceuticals and medical devices. By some estimates, the Chinese government is making available more than $500 billion of financial support to these sectors, often using large government guidance funds that China attempts to shield from scrutiny by claiming that they are wholly private. Based on the recent history of the steel and aluminum industries, China's non-market distortions in these newer sectors will likely result in oversupply, leading to loss of jobs and production in market economies and, in some cases, less choice, lower quality, less innovation and higher prices for consumers over time.

Another example of the harm that can be caused by China's predatory non-market economic and trade regime involves forced or pressured technology transfer. In USTR's Section 301 investigation into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation, USTR issued two extensive factual reports that detailed how the Chinese government uses foreign ownership restrictions, such as formal and informal joint venture requirements, to require or pressure technology transfer from U.S. companies to Chinese entities. The reports also explained how China imposes substantial restrictions on, and intervenes in, U.S. companies' investments and activities, including through restrictions on technology licensing terms. In addition, the reports analyzed how the Chinese government directs and unfairly facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese entities to obtain cutting-edge technologies and intellectual property and to generate large-scale technology transfer in industries deemed important by the state's industrial plans. Finally, the reports illustrated how the Chinese government has conducted or supported cyber intrusions into U.S. commercial networks, with the targets being intellectual property and sensitive commercial information held by U.S. firms. While these reports focused on the harm caused to U.S. interests, it is not a problem borne solely by the United States. As in the case of non-market excess capacity, China's unfair policies and practices relating to forced or pressured technology transfer also affect other WTO Members whose companies have developed or are developing advanced technologies.

Closely related to its pursuit of forced or pressured technology transfer, China also sponsors and engages in the theft of intellectual property rights, trade secrets and confidential business information for commercial use. As noted earlier in the report, intelligence and law enforcement officials from the Five Eyes countries – Australia, Canada, New Zealand, the United Kingdom and the United States – have publicly characterized the Chinese state's sponsorship and pursuit of this type of theft as being on a scale unprecedented in human history. In the United States alone, in 2023, there were approximately 2,000 active investigations into apparent Chinese theft covering a diverse array of U.S. industries, from aviation to biotechnology to robotics, among many others.

In addition to non-market excess capacity, forced or pressured technology transfer and state-sponsorship of the theft of intellectual property rights, trade secrets and confidential business information, China's predatory non-market economic and trade regime also causes serious harm to industries, companies and workers in the United States and other WTO Members in other ways. For example, Chinese companies use the artificial competitive advantages provided to them by the extensive interventionist policies and practices of the Chinese state to undersell their foreign competition, both in China and around the world. To some extent, the harm to foreign manufacturers is reflected in the very large number of antidumping and countervailing duty investigations that have been initiated against China by the investigating authorities of WTO Members. Since China joined the WTO in 2001, it has been the number one target for both antidumping and countervailing duty investigations. At the same time, many types of interventionist policies and practices are not capable of being addressed by antidumping and countervailing duty regimes, so the harm caused by China is only partially reflected in those antidumping and countervailing duty investigations.

In sum, China's approach to the economy and trade has not moved toward a stronger embrace of open, market-oriented principles and instead has seen a doubling-down on state capitalism "with Chinese characteristics." The state remains in control of China's economy, and it heavily intervenes in the market to achieve China's industrial policy objectives, which typically target industries for domination by Chinese companies. Along the way, the state subsidizes industries that would not otherwise form or thrive, directs activities that a private business would not choose to undertake and seeks access to foreign technologies often through nefarious ways, among many other problematic policies and practices.

The evidence is clear, moreover, that when a trading partner with China's size – China is the second largest economy in the world and the largest goods trader among WTO Members – routinely pursues these types of non-market policies and practices, the distortions that it creates impose substantial costs on its trading partners. The Chinese state's decisions in the marketplace are not driven by market factors, but their effects on markets push U.S. and international companies out of sectors, such as steel, aluminum, solar panels and fisheries. Once China's dominance is established, barriers to entry can lock-in China's dominance over the long term. As a result, markets all over the world are less fair and well-functioning than they should be, and the playing field is heavily skewed against U.S. and other foreign companies that seek to compete against Chinese companies, whether in China's market or markets outside of China.

In the United States, it is widely accepted that the existing WTO rules do not, and cannot, effectively discipline many of China's most harmful policies and practices. It is similarly evident to us that China has become quite adept at circumventing the existing rules, as well as the attempted enforcement of those rules, by obscuring state involvement in the economy in ways that the WTO rules did not anticipate at the time of their negotiation. These problems are exacerbated by China's long record of flouting the transparency obligations that it undertook when it joined the WTO. At the same

time, there is no expectation that China would agree to new WTO rules disciplining its problematic behavior. As a result, in the United States' view, while the WTO still has a significant role to play, enforcement of WTO rules has become less significant and solutions independent of the WTO are necessary, including solutions pursued through bilateral engagement and the use of domestic trade tools, to counter the harm caused by China's unfair and anticompetitive policies and practices.

In recent years, it has become apparent that the views of other WTO Members have also been evolving toward the United States' view regarding the limits of the WTO when it comes to addressing the China challenge. While the WTO remains a strong focus for the United States and many of the United States' trading partners, there is a growing awareness that it may be necessary to pursue solutions outside the WTO in order to avoid the severe harm that will likely continue to result from China's predatory non-market economic and trade regime. For example, some of the United States' trading partners are now exploring or adopting possible new domestic trade tools to address the challenges posed by China's state-led trade regime. These and other like-minded trading partners have also begun working with the United States — sometimes confidentially — in pursuit of new joint strategies to address China's harmful non-market policies and practices. Many of these same trading partners have also intensified their work on deterring and responding to China's increasing use of economic coercion, including through joint and coordinated strategies.

It is also noteworthy that, in recent years, many of China's trading partners have also become increasingly skeptical of China's rhetoric. For example, China often touts its strong commitment to win-win outcomes in international trade matters, but its actions plainly belie its words. Through state-led industrial plans like *Made in China 2025*, which targets 10 strategic emerging sectors, China pursues a zero-sum approach. It first seeks to develop and dominate its domestic markets. Once China develops, acquires or steals new technologies and Chinese enterprises become capable of producing the same quality products in those industries as the foreign competition, the state suppresses the foreign competition domestically and then supports Chinese enterprises as they "go out" and seek dominant positions in global markets. Countries with industries like steel, aluminum, solar panels and fisheries have experienced this reality, and they know that a new wave of severe and persistent non-market excess capacity can be expected in industries like those targeted by *Made in China 2025*, to the detriment of China's trading partners.

As China's economy grew over the years since its accession to the WTO, every country in the world has witnessed China become a regular user of economic coercion, directed not only against foreign companies but also increasingly foreign governments, including in democratic countries. Indeed, China no longer hesitates to take on foreign governments whose policies or practices are perceived to undermine either China's economic and trade interests or China's political interests. China's coercive economic measures in this context have taken a variety of forms, including, for example, import restrictions, export restrictions, restrictions on bilateral investment, regulatory actions, state-led and state-encouraged boycotts, and travel bans. Many countries have been directly subjected to this economic coercion. At the same time, one intended by-product of this economic coercion is broader in scope, as China seeks to create an environment that mutes international objections to China's non-market policies and practices, even when China blatantly flouts the WTO's rules-based international trading system.

Finally, it has also not gone unnoticed among China's trading partners — particularly the democratic market economies — that China's leadership appears confident in its state-led, non-market approach to the economy and trade and feels no need to conform to global norms. China's leadership also demonstrates confidence in its ability to quiet dissenting voices. Indeed, it has become increasingly

evident that China's leadership is seeking to establish new global norms that better reflect and support not only China's approach to the economy and trade but also China's governance model, providing a potentially attractive alternative for other authoritarian regimes around the world.

In sum, the reality confronting the United States and other WTO Members is not simply that China has chosen to pursue an economic and trade regime that conflicts in significant and harmful ways with the market-oriented approach endorsed by the WTO membership, to the detriment of our workers and businesses. China also does not hold the same core values as other WTO members, especially the democratic market economies. China plainly does not embrace our core values, which, like the fundamental principles of the WTO, include openness, fair competition, non-discrimination, reciprocity and transparency as well as adherence to the rule of law.

U.S. TRADE POLICY TOWARD CHINA

As a starting point, any U.S. trade policy toward China must account for current realities in the U.S.-China trade relationship and the many problems that China's state-led, non-market approach to the economy and trade creates for the United States and other trading partners, both now and likely in the future. Given that China's problematic approach has evolved and become more sophisticated, our strategies also need to evolve and become more sophisticated. We also need to find ways to address — and to protect ourselves against — the many non-market policies and practices routinely generated by China's state-led, non-market approach to the economy and trade. Those policies and practices directly harm American workers, farmers, businesses and consumers, threaten our technological edge, weaken the resiliency of our supply chains and undermine our national interest. They also inflict similar harms on many of our trading partners.

Given these circumstances, it is clear that any strategic approach pursued by the United States must focus not only on the near-term, but also on the longer term, if the United States is to compete effectively with China and build resilience against the harms caused by China's predatory behavior. Any strategic approach should also be pursued in coordination with our many important, like-minded trading partners around the world.

Looking back over the first 22 years of China's WTO membership, and observing China's current leadership and clear policy direction, it would be appropriate to assume that the problems currently created by China will be with us for some time. We cannot expect that China will willingly make fundamental changes to its state-led, non-market approach to the economy and trade in the near-term or even the medium-term.

It is also clear that effective strategies for dealing with China need to be flexible. The United States must be prepared to adapt and adjust its strategic approach over time as China's non-market policies and practices evolve and as global trade patterns shift and alliances and interests change.

For all of these reasons, the United States is now pursuing a multi-faceted strategic approach as it seeks to address the China challenge. This approach involves the pursuit of strategic domestic investment, bilateral engagement of China, enforcement actions, the deployment of domestic trade tools and close coordination with allies and partners.

DOMESTIC INVESTMENT

The United States has been working to ensure that we are taking the steps domestically to invest in, and build policies supportive of, the industries of today and tomorrow. We therefore have been working to strengthen our economy, our supply chains, our infrastructure, our workers, our farmers and our

businesses and to lay a solid foundation for us to continue to innovate and maintain our technological edge. Important steps taken to date include the passage of the CHIPS and Science Act, the Inflation Reduction Act and the Infrastructure Investment and Jobs Act, as well as the many subsequent efforts to implement those Acts.

BILATERAL ENGAGEMENT

The United States continues to pursue bilateral engagement with China. China is an important trading partner, and every avenue for obtaining real change in its approach to the economy and trade must be utilized.

The United States' focus is on addressing the most fundamental problems emanating from China's state-led, non-market approach to the economy and trade, rather than seeking isolated, incremental changes in China's trade policies and practices. Of particular concern are China's industrial plans, which target specific industries for dominance and are pursued through a wide array of non-market policies and practices, such as discriminatory regulation, forced or pressured technology transfer, state-sponsored theft of intellectual property, the non-market activities of state-owned and state-invested enterprises, massive, unrelenting and often non-transparent subsidization, market access restrictions and repression of internationally recognized labor rights, including the use of forced labor, among other harmful policies and practices. China's increasing use of economic coercion is another significant concern.

At the same time, it is clear that prior U.S. efforts have not led to fundamental changes in China's approach to the economy and trade. Ultimately, it will be up to China to decide whether and to what extent it is willing to work constructively with the United States to address these significant concerns.

ENFORCEMENT

It is important for the bilateral relationship to demonstrate that China must honor its promises. We therefore have been working to ensure that China lives up to its existing trade commitments, including its WTO commitments and the ones that China made in the Phase One Agreement.

DOMESTIC TRADE TOOLS

The use of domestic trade tools is also a key focus of U.S. trade policy toward China. To the extent that China's unfair, non-market and distortive policies and practices persist, the United States is prepared to use domestic trade tools strategically as needed in order to achieve a more level playing field with China for U.S. workers and businesses.

It is also apparent that existing trade tools need to be strengthened, and new trade tools need to be forged. China pursues unfair policies and practices that were not contemplated when many of the U.S. trade statutes were drafted decades ago, and we are therefore exploring ways in which to work with the Congress to update our trade tools to counter them.

In one significant action to date, as previously discussed, USTR pursued an investigation under the authority of Section 301 of the Trade Act of 1974 into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation. In March 2018, after a thorough review and analysis of the evidence, USTR issued a detailed report, finding that China had engaged in a range of unfair and harmful conduct:

- First, USTR found that China uses foreign ownership restrictions, including joint venture requirements, equity limitations and other investment restrictions, to require or pressure

technology transfer from U.S. companies to Chinese entities. USTR also found that China uses administrative review and licensing procedures to require or pressure technology transfer, which, *inter alia*, undermines the value of U.S. investments and technology and weakens the global competitiveness of U.S. companies.

- Second, USTR found that China imposes substantial restrictions on, and intervenes in, U.S. companies' investments and activities, including through restrictions on technology licensing terms. These restrictions deprive U.S. technology owners of the ability to bargain and set market-based terms for technology transfer. As a result, U.S. companies seeking to license technologies must do so on terms that unfairly favor Chinese recipients.

- Third, USTR found that China directs and facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and to generate large-scale technology transfer in industries deemed important by Chinese government industrial plans.

- Fourth, USTR found that China conducts and supports unauthorized intrusions into, and theft from, the computer networks of U.S. companies. These actions provide the Chinese government with unauthorized access to intellectual property, trade secrets and confidential business information, such as technical data, negotiating positions and sensitive and proprietary internal business communications. The purpose of these actions is to support China's strategic development goals, including its science and technology advancement, military modernization and economic development.

Based on these findings, the United States took a range of responsive actions. These actions included the successful prosecution of a WTO dispute settlement case challenging Chinese measures that deny foreign patent holders the ability to enforce their patent rights against a Chinese joint venture partner after a technology transfer contract ends and that impose mandatory adverse contract terms that discriminate against and are less favorable for imported foreign technology as compared to Chinese technology, as well as the imposition of substantial additional tariffs on imports of Chinese goods. Over time, as has been previously reported, these tariffs eventually covered $370 billion of Chinese imports, with additional tariffs of 25 percent on $250 billion of Chinese imports and additional tariffs of 15 percent on a further $120 billion of Chinese imports, while China responded through the imposition of retaliatory tariffs on various imports of U.S. goods.

In December 2019, after one year of negotiations, the United States announced that the two sides had finalized the text of an economic and trade agreement, which was later signed in January 2020. This agreement, commonly referred to as the "Phase One Agreement," included commitments from China on intellectual property, technology transfer, agriculture, financial services, currency and foreign exchange, and the purchase of U.S. goods and services. The commitments varied in ambition, and in effectiveness. For example, some commitments related to financial services reflected reforms that China was already contemplating or pursuing, as China had begun easing foreign investment restrictions in some financial services sectors in 2017. In addition, in the area of intellectual property rights, while China committed to make a number of changes to its laws and regulations, China saw many of these changes as now needed by its domestic businesses, given their own increasing efforts at innovation. It also remains unclear how faithfully and fairly China will actually enforce the changes to its laws and regulations. Meanwhile, other

commitments that China made, such as in the area of technology transfer, are difficult to verify given the tactics that China takes to obscure its activities.

Notably, the Phase One Agreement did not address many of the U.S. concerns that the United States had been seeking to address in its negotiations with China. The unresolved issues included critical concerns in areas such as industrial plans, subsidies, state-owned enterprises, excess capacity, state-sponsored theft of intellectual property, standards, cybersecurity, data localization requirements, restrictions on cross-border data transfers, competition law enforcement and regulatory transparency as well as certain issues in the areas of intellectual property, technology transfer and services market access that were not addressed in the Phase One Agreement.

In light of the limited progress represented by the Phase One Agreement, the United States did not make major changes to the existing Section 301 tariffs. After some minor adjustments, the United States kept in place tariffs on $370 billion of Chinese imports, which included 25 percent tariffs on $250 billion of Chinese imports and 7.5 percent tariffs on $120 billion of Chinese imports. The United States also decided not to move forward with plans to raise the tariff rate for some of the existing Section 301 tariffs or to impose new tariffs on additional Chinese imports.

Since the Phase One Agreement entered into force in February 2020, the United States has been closely monitoring China's progress in implementing its commitments. The United States has also been utilizing the consultation arrangements set forth in the agreement, including regular meetings required by the agreement between the two sides. Through these many engagements, the United States has raised various concerns that have arisen regarding China's implementation progress. In addition, official trade data appears to show that China fell far short of implementing its commitments to purchase U.S. goods and services in calendar years 2020 and 2021. Serious concerns with China's implementation efforts have also arisen in other areas, including intellectual property rights, where the implementation of several commitments has been proceeding slowly, and agriculture, particularly with regard to China's commitments relating to agricultural biotechnology, the risk assessment that China is required to conduct relating to the use of ractopamine in cattle and swine, the registration of U.S. food facilities and trade in U.S. poultry products.

In 2024, USTR expects to complete a statutorily mandated four-year review of the tariffs that had been imposed on Chinese imports as a result of the Section 301 investigation into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation. As part of this review, USTR is examining the effectiveness of the tariff actions in achieving the objectives of the original investigation, other actions that could be taken and the effects of those actions on the United States economy, including consumers.

ALLIES AND PARTNERS

Despite the size of the U.S. economy, the United States cannot do it alone. There are limits to bilateral engagement and the impact of enforcement actions and domestic trade tools. That is why the United States is working more intensely and broadly with allies and partners. Just as we are reassessing our domestic trade tools, we are also re-thinking how the United States can coordinate with its trading partners to address the challenges that China poses for the global economy.

As more and more U.S. allies and partners come to understand the need for new approaches for dealing with China and its non-market policies and practices, the United States is working more intensely and broadly with them, both in existing international trade fora and initiatives and in new ones. The COVID-19 pandemic, followed by Russia's full-scale invasion of Ukraine, and their impacts on supply chains and global economic conditions, have laid bare the vulnerabilities and interdependencies of

economies around the world and have underscored the need to build up economic security and resiliency across sectors. The concentration of supply chains in China is a particular problem, especially in light of the many serious risks and potential harms that emanate from China's state-led, non-market approach to the economy and trade. There is a strong need for new thinking and new coalitions of allies and partners, including not only on a bilateral basis — especially with major trading partners — but also regionally and multilaterally, to find global solutions to the many serious problems posed by China's state-led, non-market approach to the economy and trade.

For example, the United States and the European Union (EU) have established a Trade and Technology Council, and the United States and Japan have established a Partnership for Trade. In both venues, one important component of the engagement focuses on better understanding and developing strategies for addressing non-market policies and practices.

Notably, as a result of meetings of the Trade and Technology Council, the United States and the EU have been discussing and exploring possible coordinated actions to address China's non-market policies and practices in the medical devices sector and in the clean energy sector. The two sides have also been exchanging information on China's extensive use of government guidance funds, which provide large amounts of financial support to Chinese companies, and on non-market excess capacity in the legacy semiconductor chips sector. In addition, the two sides have expressed serious concerns regarding China's use of economic coercion, including against allies and partners of the United States and the EU, and resolved to cooperate on strategies for addressing this problem.

Separately, in 2022, the United States and the EU held the first Ministerial Meeting of the Working Group on Large Civil Aircraft. Since then, the two sides have met regularly at the working level to explore strategies for confronting the challenges posed by China's non-market policies and practices in the aviation sector.

Over the past two years, the United States, the EU and Japan have also begun to deepen their trilateral work, focusing on the identification of problems arising from non-market policies and practices, including in sectors such as legacy semiconductor chips. The three trading partners have also sought to identify gaps in existing trade tools and where further work is needed to develop new trade tools to address non-market policies and practices, as well as possible cooperation in utilizing existing tools. The three trading partners have also highlighted the importance of WTO reform in an effort to build a free and fair rules-based multilateral trading system that benefits all its members and helps secure shared prosperity for all.

The United States is also holding discussions with many other like-minded trading partners, including in the Indo-Pacific region, on how to strengthen our existing trade relationships. Given that trade with China poses so many serious risks and potential harms, the United States believes that market economies should enhance their trade with each other.

As part of its discussions with like-minded trading partners, the United States is also working to make critical supply chains less vulnerable and more secure, sustainable and resilient. The United States recognizes the need to cooperate with trading partners to diversify international suppliers and reduce geographic concentration risk, especially in China, and to address vulnerabilities that can result in shortages of key goods. This joint work can also enable more effective responses to non-market policies and practices that have eroded critical supply chains. Reducing geographic concentration also reduces opportunities for economic coercion while contributing to a more stable and secure trading environment.

At the same time, the United States is continuing to pursue initiatives at the WTO. For example, the U.S.

agenda at the WTO includes pushing for and building support for meaningful WTO reforms to update the organization and respond to contemporary challenges, including those posed by China's state-led, non-market approach to the economy and trade. One U.S. proposal relates to "special and differential treatment," where certain WTO Members rely on self-declared developing country status to inappropriately seek "special and differential treatment" to avoid making meaningful commitments in WTO negotiations. The United States has also offered, and will continue to pursue, a proposal intended to increase consequences for WTO Members who fail to adequately notify industrial subsidies. More recently, in connection with the WTO's upcoming 13th Ministerial Conference, the United States has been advocating for the establishment of a work stream broadly focused on state intervention, including an analysis of gaps in existing WTO rules to discipline it.

Similar work is taking place in fora such as the Group of Seven (G7), the Group of Twenty (G20) and the Organization for Economic Cooperation and Development (OECD). For example, at the G7 Leaders Meeting, held in June 2022, the United States and the other members of the G7 discussed the challenges that China's non-market policies and practices pose to the multilateral trading system. They determined to continue to build a shared understanding of this problem and to consult on collective approaches for addressing it. They also specifically committed to work together to develop coordinated actions to ensure a level playing field, to counter economic coercion and to reduce strategic dependencies. Subsequently, in May 2023, the G7 Leaders decided to launch the Coordination Platform on Economic Coercion. In addition, in October 2023, the G7 trade ministers issued a statement reaffirming their shared concerns regarding a wide and evolving range of non-market policies and practices, particularly when they are an integral part of comprehensive strategies to pursue global market dominance. The statement also highlighted the fact that non-market policies and practices distort competition and lead to unfair trade and have a particularly negative impact on industrial development in emerging and developing economies.

SPECIFIC TRADE CONCERNS

At present, China pursues numerous unfair, non-market and distortive policies and practices that cause particular concern for the United States and U.S. stakeholders. The key concerns are summarized below.

INDUSTRIAL PLANS

China continues to pursue an extensive number of industrial plans and supporting policies and practices that target industries for domination by Chinese companies, both in China and globally. Pursuant to these industrial plans, the Chinese state offers substantial government guidance, resources and regulatory support to Chinese companies while actively seeking to limit market access for imported goods, foreign manufacturers and foreign services suppliers. The beneficiaries of these non-market policies and practices, which are constantly evolving, include not only China's state-owned enterprises but also other domestic Chinese companies.

One of the more far-reaching and harmful industrial plans is *Made in China 2025*. China's State Council released this industrial plan in May 2015. It is a 10-year plan targeting 10 strategic sectors, including advanced information technology, automated machine tools and robotics, aviation and spaceflight equipment, maritime engineering equipment and high-tech vessels, advanced rail transit equipment, new energy vehicles (NEVs), power equipment, farm machinery, new materials, biopharmaceuticals and advanced medical device products. While purportedly intended simply to raise industrial productivity through more advanced and flexible manufacturing techniques, *Made in China 2025* is emblematic of China's evolving and increasingly

sophisticated approach to "indigenous innovation," which is evident in numerous supporting and related industrial plans. Under China's harmful and anticompetitive approach to indigenous innovation, the common, overriding aim is to replace foreign technologies, products and services with Chinese technologies, products and services in the China market through any means possible so as to enable Chinese companies to dominate international markets.

Made in China 2025, which represents the first 10 years of a 30-year strategy known as the "Strong Manufacturing Nation Strategy," seeks to build up Chinese companies in the 10 targeted, strategic sectors at the expense of, and to the detriment of, foreign companies and their technologies, products and services through a multi-step process over 10 years. The initial objective of *Made in China 2025* is to ensure, through various means, that Chinese companies develop, extract or acquire their own "indigenous" technology, intellectual property and know-how and their own brands. The next objective of *Made in China 2025* is to substitute domestic technologies, products and services for foreign technologies, products and services in the China market. The final objective of *Made in China 2025* is to capture much larger worldwide market shares in the 10 targeted, strategic sectors.

In pursuit of these objectives, subsequently released documents set specific targets for capacity and production levels and market shares for the dozens of industries that comprise the 10 broad sectors targeted in *Made in China 2025*. In October 2015, China's National Manufacturing Strategic Advisory Committee published the *Made in China 2025 Key Area Technology Roadmap*, and since then it has published two updated editions of this document. The first update took place in February 2018, with the issuance of the *Made in China 2025 Key Area Technology and Innovation Greenbook – Technology Roadmap (2017)*. Like its predecessor, the updated document sets explicit market share and other targets to be attained by Chinese companies in dozens of high-technology industries, often both in the China market and globally. For example, it calls for "indigenous new energy vehicle annual production" to have a "supplying capacity that can satisfy more than 80 percent of the market" in China by 2020, up from a 70 percent target set in the 2015 document. In November 2020, the 2017 document was updated with the issuance of the *Made in China Key Area Technology Innovation Greenbook – Technology Roadmap (2019)*.

Many of the policy tools being used by the Chinese government to achieve the objectives of *Made in China 2025* raise serious concerns. Several of these tools are unprecedented and include numerous types of state intervention and support that work in concert with one another and are designed to promote the development of Chinese industry in large part by restricting, taking advantage of, discriminating against or otherwise creating disadvantages for foreign enterprises and their technologies, products and services. Indeed, even facially neutral measures can be applied in favor of domestic enterprises, as past experience has shown, especially at sub-central levels of government.

Made in China 2025 also differs from industry support pursued by other WTO Members in its level of ambition and, perhaps more importantly, in the scale and type of resources that the government is investing in the pursuit of its industrial plan goals. Indeed, by some estimates, the Chinese government is making available more than $500 billion of financial support to the *Made in China 2025* sectors, often using, among many other vehicles, large government guidance funds, which China attempts to shield from scrutiny by claiming that they are wholly private. Even if China fails to fully achieve the objectives set forth in *Made in China 2025*, it is still likely to create or exacerbate market distortions, create severe excess capacity in many of the targeted sectors and distort investment decisions by foreign companies. It is also likely to do long-lasting damage to U.S. interests, as well as the interests of the United States' allies and partners, as China-backed companies increase their market share at the expense of foreign companies operating in these

sectors. Developing countries are especially at risk of severe harm from industrial plans like *Made in China 2025*.

While public references to *Made in China 2025* subsided after June 2018 reportedly in response to an order from the central government, it is clear that China remains committed to achieving the underlying goals of *Made in China 2025* and continues to seek dominance for Chinese firms in the sectors that it views as strategic, both in China's market and globally. For example, in September 2020, the central government issued a guiding opinion encouraging investment in "strategic emerging industries," a term used to describe an earlier initiative from which *Made in China 2025* evolved. Among other things, the guiding opinion called for the support and creation of industrial clusters for strategic emerging industries, along with the use of various types of government support and funding. The guiding opinion specifically encouraged provincial and local governments to support industries such as advanced information technology, NEVs and biopharmaceuticals. More recently, the October 2022 Report to the 20th Party Congress also underscored the continuing importance of China's industrial policy objectives, calling for efforts to promote the development of strategic emerging industries and to "cultivate new growth engines such as next-generation information technology, artificial intelligence, biotechnology, new energy, new materials, high-end equipment and green industry."

In March 2021, the National People's Congress passed the *14th Five-Year Plan (2021-2025) for National Economic and Social Development* (the *14th Five-Year Plan*), together with a document titled *Long-Range Objectives Through Year 2035*. The *14th Five-Year Plan* and subsequently issued sector-specific five-year plans, along with five-year plans issued by sub-central governments, make clear that China will continue to pursue its various industrial domination objectives. While industrial plans like *Made in China 2025* were not named in the *14th Five-Year Plan*, there continues to be overlap between the industries identified in China's five-year plans with both *Made in China 2025* industries and strategic emerging industries. More recent plans, including those issued at the sub-central level of government, also make clear that the state will continue to support these key industries. In addition, other longer-ranging plans, such as the *New Energy Vehicle Industry Development Plan (2021-2035)* and *China Standards 2035*, reaffirm China's strong commitment to a state-led, non-market approach to the economy and trade.

STATE-OWNED ENTERPRISES

While many provisions in China's WTO accession agreement indirectly discipline the activities of state-owned and state-invested enterprises, China also agreed to some specific disciplines. In particular, it agreed that laws, regulations and other measures relating to the purchase of goods or services for commercial sale by state-owned and state-invested enterprises, or relating to the production of goods or supply of services for commercial sale or for non-governmental purposes by state-owned and state-invested enterprises, would be subject to certain specified WTO rules. China also affirmatively agreed that state-owned and state-invested enterprises would have to make purchases and sales based solely on commercial considerations, such as price, quality, marketability and availability, and that the government would not directly or indirectly influence the commercial decisions of state-owned and state-invested enterprises. In addition, China agreed that enterprises of other WTO Members would have an adequate opportunity to compete for sales to and purchases from state-owned and invested enterprises on non-discriminatory terms and conditions.

In subsequent bilateral dialogues with the United States, China made further commitments. In particular, China committed to develop a market environment of fair competition for enterprises of all kinds of ownership and to provide them with non-discriminatory treatment in terms of credit provision, taxation incentives and regulatory policies.

However, instead of adopting measures giving effect to its commitments, China took steps intended to strengthen the role of state-owned and state-invested enterprises in the economy and to protect them against foreign competition. China established the State-owned Asset Supervision and Administration Commission (SASAC) and adopted the *Law on State-owned Assets of Enterprises* in addition to numerous other measures that mandate state ownership and control of many important industrial sectors. The CCP also ensured itself a decisive role in state-owned and state-invested enterprises' major business decisions, personnel changes, project arrangements and movement of funds. The fundamental premise of these measures was to enable the government and the Party to intervene in the business strategies, management and investments of these enterprises in order to ensure that they play a dominant role in the national economy in line with the overall objective of developing China's "socialist market economy" and China's plans for industrial domination. Over the past few years, Party leadership in state-owned and state-invested enterprises has been strengthened through practices such as appointing a person as both the chairman of the board and the Party secretary for a state-owned enterprise and requiring the establishment of party committees in state-owned enterprises.

Separately, the Chinese government also has issued a number of measures that restrict the ability of state-owned and state-invested enterprises to accept foreign investment, particularly in key sectors. Some of these measures are discussed below in the Investment section.

In its 2013 *Third Plenum Decision,* China endorsed a number of far-reaching economic reform pronouncements, which called for making the market "decisive" in allocating resources, reducing Chinese government intervention in the economy, accelerating China's opening up to foreign goods and services and improving transparency and the rule of law to allow fair competition in China's market. It also called for "reforming" China's state-owned and state-invested enterprises.

However, rather than actually embrace the role of the market, China sought to strengthen the role of the state in the economy. Statements by China's President also made clear that China continues to view the role of the state very differently from the United States and other market economies. In October 2016, he called for strengthening the role of the CCP in state-owned enterprises and emphasized that state-owned enterprises should be "important forces" to implement national strategies and enhance national power. In February 2019, in an article in a CCP journal, China's President further called for the strengthening of the Party's "leadership over the rule of law," and he vowed that China "must never copy the models or practices of other countries" and "we must never follow the path of Western 'constitutionalism,' 'separation of powers' or 'judicial independence.'"

With regard to the reform of China's state-owned enterprises, one example of China's efforts included an announcement that China would classify these enterprises into commercial, strategic or public interest categories and require commercial state-owned and state-invested enterprises to garner reasonable returns on capital. However, this plan also allowed for divergence from commercially driven results to meet broadly construed national security interests, including energy and resource interests and cyber and information security interests. Similarly, in recent years, China has pursued reforms through efforts to realize "mixed ownership." These efforts included pressuring private companies to invest in, or merge with, state-owned and state-invested enterprises as a way to inject innovative practices into and create new opportunities for inefficient state-owned and state-invested enterprises. As should be evident, these various reforms do not strengthen the role of the market. Rather, they are intended to strengthen the role of state-owned enterprises in the economy and to direct state capital toward certain industries,

including those specified in *Made in China 2025*, in pursuit of China's industrial domination objectives.

China has also previously indicated that it would consider adopting the principle of "competitive neutrality" for state-owned enterprises. However, China has continued to pursue policies that further enshrine the dominant role of the state and its industrial plans when it comes to the operation of state-owned and state-invested enterprises. For example, China has adopted rules ensuring that the government continues to have full authority over how state-owned and state-invested enterprises use allocations of state capital and over the projects that state-owned enterprises pursue.

Overall, while China's efforts at times have appeared to signal a high-level determination to accelerate needed economic reforms, those reforms have not materialized. Indeed, the Chinese state's role in the economy has increased rather than decreased. It also seems clear that China's past policy initiatives were not designed to reduce the presence of state-owned and state-invested enterprises in China's economy or to force them to compete on the same terms as private commercial operators. Rather, the reform objectives were to strengthen state-owned and state-invested enterprises through consolidation, increased access to state capital, preferential access to goods and services and the use of other non-market policies and practices designed to give these enterprises unfair competitive advantages, both in China and globally.

This unfair situation is made worse for foreign companies. Like China's state-owned and state-invested enterprises, China's private companies also benefit from a wide array of state intervention and support designed to promote the development of China's domestic industries in accordance with China's industrial domination objectives. These interventions and support are deployed in concert with other non-market policies and practices that restrict, take advantage of, discriminate against or otherwise create disadvantages for foreign companies and their technologies, products and services.

TECHNOLOGY TRANSFER

For years, longstanding and serious U.S. concerns regarding forced or pressured technology transfer remained unresolved, despite repeated, high-level bilateral commitments by China to remove or no longer pursue problematic policies and practices. In August 2017, USTR sought to address these concerns by initiating an investigation under Section 301 focused on policies and practices of the Government of China related to technology transfer, intellectual property and innovation. Specifically, in its initiation notice, USTR identified four categories of reported Chinese government conduct that would be the subject of its inquiry: (1) the use of a variety of tools to require or pressure the transfer of technologies and intellectual property to Chinese companies; (2) depriving U.S. companies of the ability to set market-based terms in technology licensing negotiations with Chinese companies; (3) intervention in markets by directing or unfairly facilitating the acquisition of U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property; and (4) conducting or supporting cyber-enabled theft and unauthorized intrusions into U.S. commercial computer networks for commercial gains. In March 2018, USTR issued a report supporting findings that the four categories of acts, policies and practices covered in the investigation are unreasonable or discriminatory and burden and/or restrict U.S. commerce. In November 2018, USTR issued an updated report that found that China had not taken any steps to change its problematic policies and practices. Based on the findings in USTR's Section 301 investigation, the United States took a range of responsive actions, including the pursuit of a successful WTO case challenging certain discriminatory technology licensing measures maintained by China in addition to the imposition of substantial additional tariffs on Chinese imports.

The Phase One Agreement, signed in January 2020, addresses certain aspects of the unfair trade practices of China that were identified in USTR's Section 301 report. In the agreement, China committed to end its longstanding practice of forcing or pressuring foreign companies to transfer their technology to Chinese companies as a condition for obtaining market access, securing administrative approvals or receiving advantages from the Chinese government. China also committed to provide transparency, fairness and due process in administrative proceedings and to ensure that technology transfer and licensing take place on market terms that are voluntary and reflect mutual agreement. Separately, China committed to refrain from directing or supporting outbound investments aimed at acquiring foreign technology pursuant to its distortive industrial plans.

Since the entry into force of the Phase One Agreement in February 2020, the United States has continually engaged with the U.S. business community, which has expressed concern about China's informal, unwritten actions that force or pressure U.S. companies to transfer their technology to Chinese entities, including as a condition for obtaining market access. The United States has engaged China as issues arise and will continue to monitor developments closely.

In 2024, USTR expects to complete a statutorily mandated four-year review of the tariffs that had been imposed on Chinese imports as a result of the Section 301 investigation into China's unfair acts, policies and practices related to technology transfer, intellectual property and innovation. As part of this review, USTR is examining the effectiveness of the tariff actions in achieving the objectives of the original investigation, other actions that could be taken and the effects of those actions on the United States economy, including consumers.

INDIGENOUS INNOVATION

Policies aimed at promoting China's so-called "indigenous innovation" continue to represent an important component of China's industrialization efforts. Through intensive, high-level bilateral engagement with China since 2009, the United States has attempted to address these policies, which provide various preferences when intellectual property is owned or developed in China, both broadly across sectors of China's economy and specifically in the government procurement context. For example, at the May 2012 meeting of the U.S.-China Strategic and Economic Dialogue (S&ED), China committed to treat intellectual property owned or developed in other countries the same as intellectual property owned or developed in China. The United States also used the U.S.-China Joint Commission on Commerce and Trade (JCCT) process in 2012 and subsequent discussions to press China to revise or eliminate specific measures that appeared to be inconsistent with this commitment. At the December 2014 JCCT meeting, China clarified and underscored that it will treat intellectual property owned or developed in other countries in the same manner as domestically owned or developed intellectual property. Once again, however, these commitments were not fulfilled. China continues to pursue myriad policies that require or favor the ownership or development of intellectual property in China.

The United States secured a series of similar commitments from China in the government procurement context, where China agreed to de-link indigenous innovation policies at all levels of the Chinese government from government procurement preferences, including through the issuance of a State Council measure mandating that provincial and local governments eliminate any remaining linkages by December 2011. Many years later, however, this promise had not been fulfilled. At the November 2016 JCCT meeting, in response to U.S. concerns regarding the continued issuance of scores of inconsistent measures, China announced that its State Council had issued a document requiring all agencies and all sub-central governments to "further clean up related measures linking indigenous innovation policy to the provision of government procurement preference."

Over the years, the underlying thrust of China's indigenous innovation policies has remained unchanged, as China's leadership has continued to emphasize the necessity of advancing indigenous innovation capabilities. Through plans such as the *14th Five-Year Plan for the Protection and Utilization of National Intellectual Property Rights*, China has continued to implement discriminatory policies encouraging "indigenous intellectual property rights" and "core technologies" that are owned or developed in China. Accordingly, USTR has been using mechanisms like a Section 301 investigation to seek to address, among other things, China's use of indigenous innovation policies to force or pressure foreigners to own or develop their intellectual property in China.

SUBSIDIZATION

INDUSTRIAL SUBSIDIES

China continues to provide massive subsidies to its domestic industries, which have caused injury to U.S. industries and the industries of other WTO Members. Some of these subsidies also appear to be prohibited under WTO rules. To the extent possible, the United States has sought to address these subsidies through countervailing duty proceedings conducted by the Commerce Department and dispute settlement cases at the WTO.

The United States and other WTO Members also have continued to press China to notify all of its subsidies to the WTO in accordance with its WTO obligations while also submitting counter notifications listing hundreds of subsidy programs that China has failed to notify. Over the years, China's WTO subsidy notifications have marginally improved at times in terms of timeliness and completeness, but not consistently. Nevertheless, since joining the WTO more than 20 years ago, China has not yet submitted to the WTO a complete notification of subsidies maintained by the central government, and it did not notify a single sub-central government subsidy until July 2016, when it provided information largely only on sub-central government subsidies that the United States had challenged as prohibited subsidies in a WTO case. While China has continued to notify some sub-central government subsidies in its more recent subsidy notifications, these notifications are woefully inadequate and do not address the most distortionary sub-central government subsidies, such as the increasingly prolific, and very large, "government guidance funds" that can be found at all levels of government in China.

The United States began working with the EU and Japan in 2018 to identify further effective action and potential rules that could address problematic Chinese subsidies practices not currently covered by existing obligations. In January 2020, the trade ministers of the United States, the EU and Japan issued a statement agreeing to strengthen the WTO subsidy rules by: (1) prohibiting certain egregious types of subsidies; (2) requiring the subsidizing country to demonstrate for other distortive subsidy types that the subsidy provided did not cause adverse effects; (3) building upon the existing "serious prejudice" rules; (4) strengthening the notification rules; and (5) developing a new definition of what constitutes a "public body." In November 2021, the trade ministers of the United States, the EU and Japan renewed their commitment to work together, including with regard to the identification of areas where further work is needed to develop new tools and other measures to address non-market policies and practices. Since then, the United States, the EU and Japan have also been working together at the staff level to uncover China's subsidies practices in specific sectors, such as the semiconductors sector.

Separately, the United States has continued to pursue a series of proposals to reform the functioning of the WTO Committee on Subsidies and Countervailing Measures. These proposals have focused on ensuring that Members timely provide written responses to written questions regarding their subsidy programs.

EXCESS CAPACITY

Because of its state-led approach to the economy, China is the world's leading offender in creating non-market capacity, as evidenced by the severe and persistent excess capacity situations in several industries. China is also well on its way to creating severe excess capacity in other industries through its pursuit of industrial plans such as *Made in China 2025*, pursuant to which the Chinese government is doling out hundreds of billions of dollars to support Chinese companies and requiring them to achieve preset targets for domestic market share – at the expense of imports – and global market share in each of 10 advanced manufacturing industries.

In manufacturing industries such as steel and aluminum, China's economic planners have contributed to massive excess capacity in China through various government support measures. For steel, the resulting over-production has distorted global markets, harming U.S. workers and manufacturers in both the U.S. market and third country markets, where U.S. exports of steel and steel-intensive products compete with exports from China. This over-production has similarly harmed the workers and manufacturers of many of the United States' allies and partners. While China has publicly acknowledged excess capacity in its steel and aluminum industries, it has yet to take meaningful steps to address the root causes of this problem in a sustainable way. Indeed, China continues to replicate these results in other industries.

From 2000 to 2022, China accounted for 72 percent of global steelmaking capacity growth, an increase well in excess of the increase in global and Chinese demand over the same period. Currently, China's capacity represents about one-half of global capacity and more than twice the combined steelmaking capacity of the EU, Japan, the United States, Canada, Mexico and Brazil.

At the same time, China's steel production is continually reaching new highs, eclipsing demand. In 2020, China's steel production climbed above one billion metric tons for the first time, reaching 1,065 million metric tons, a seven percent increase from 2019, and remained high at 1,018 million metric tons in 2022, despite a significant contraction in domestic steel demand. This sustained ballooning of greenhouse gas (GHG) emissions-intensive steel production, combined with weakening economic growth and a slowdown in the Chinese construction sector, has flooded the global market with excess steel and steel-intensive products at a time when steel and other manufacturing sectors outside of China are facing renewed weakness in market conditions, growing global excess capacity, a slowdown in world economic growth and continued disruptions in supply chains. In 2022, China exported more steel than the world's second, third and fourth largest steel producers (India, Japan and the United States) combined. Furthermore, China's exports from January through September 2023 were 36 percent higher than during the same period in 2022. Today, China remains by far the world's largest exporter of steel and steel-intensive products. China's steel production also remains far dirtier than the steel production that it displaces in the United States and most other countries, thereby undermining global efforts to transition to a clean-energy economy.

Similarly, primary aluminum production capacity in China increased by more than 1,400 percent between 2000 and 2022, with China accounting for 80 percent of global capacity growth during that period. China's expansion of production capacity has driven price declines globally, but even with these low prices, China has continued to expand its production capacity. Much of this additional capacity has been built with government support and relies on GHG emissions-intensive sources of electricity. China's primary aluminum capacity now accounts for 57 percent of global capacity and is more than double the capacity of the next eight aluminum-producing countries combined. As in the steel sector, China's aluminum production has also ballooned in recent years, as China's aluminum production has continued to increase despite global

demand shocks. China's capacity and production continue to contribute to major imbalances and price distortions in global markets, harming U.S. aluminum producers and workers.

Excess capacity in China hurts various U.S. workers and industries not only through direct exports from China to the United States, but also through its impact on global prices and supply and through indirect trade of steel and aluminum-intensive products, which makes it difficult for competitive manufacturers throughout the world to remain viable. Indeed, domestic industries in many of China's trading partners continue to petition their governments to impose trade measures to respond to the trade-distortive effects of China's excess capacity. In addition, the United States has acted under Section 232 of the Trade Expansion Act of 1962 to impose additional duties on steel and aluminum products after finding that steel and aluminum products are being imported into the United States in such quantities and under such circumstances as to threaten to impair U.S. national security. In the United States' view, in the absence of efforts to redress China's anticompetitive behavior, the risk is that steel and aluminum producers in the United States and many other countries with market-oriented economies will be forced to close, which would, among other things, create even greater dependencies on China.

AGRICULTURAL DOMESTIC SUPPORT

For several years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector. China maintains direct payment programs, minimum support prices for basic commodities and input subsidies. China has implemented a cotton reserve system, based on minimum purchase prices, and cotton target price programs. In 2016, China established subsidies for starch and ethanol producers to incentivize the purchase of domestic corn, resulting in higher volumes of exports of processed corn products from China in 2017 and 2018. In addition, in 2022, China began encouraging soybean production through various support programs, such as through increased subsidies for crop rotations, awards to counties with high oilseed production, incentives to promote the intercropping of corn and soybeans, and subsidies for "demonstration farming" of soybeans on alkali and salty land.

China submitted a notification concerning domestic support measures to the WTO in May 2015, but it only provided information up to 2010. In December 2018, China notified domestic support measures for the period 2011-2016. This notification showed that China had exceeded its *de minimis* level of domestic support for soybeans (in 2012, 2014 and 2015), cotton (from 2011 to 2016), corn (from 2013 to 2016), rapeseed (from 2011 to 2013) and sugar (2012). The situation was likely even worse, as the methodologies used by China to calculate domestic support levels result in underestimates. Moreover, the support programs notified by China seemingly failed to account for support given at the sub-national level by provincial and local governments and, possibly, support administered through state-owned enterprises.

In September 2016, the United States launched a WTO case challenging China's government support for the production of wheat, corn and rice as being in excess of China's commitments. Like other WTO Members, China committed to limit its support for producers of agricultural commodities. China's market price support programs for wheat, corn and rice appear to provide support far exceeding the agreed levels. This excessive support creates price distortions and skews the playing field against U.S. farmers. In October 2016, consultations took place. In January 2017, a WTO panel was established to hear the case. Hearings before the panel took place in January and April 2018, and the panel issued its decision in February 2019, ruling that China's domestic support for wheat and rice was WTO-inconsistent. China originally agreed to come into compliance with the panel's recommendations by March 31, 2020. The United States subsequently agreed to extend this deadline to June 30, 2020. In July 2020, the United States submitted a request for

authorization to suspend concessions and other obligations pursuant to Article 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) on the ground that China had failed to bring its measures into compliance with its WTO obligations. After China objected to this request, the matter was referred to arbitration in accordance with Article 22 of the DSU. The arbitration is currently suspended, and the United States continues to closely monitor the operation of China's market price support programs for wheat and rice.

FISHERIES SUBSIDIES

It is estimated that China is the world's largest provider of harmful fisheries subsidies, with support exceeding $4.2 billion annually. These subsidies contribute to overfishing and overcapacity that threatens global fish stocks. Indeed, China is the world's largest producer of marine capture fisheries and, in the years since its WTO accession, has continued to support its fishing fleet through subsidies and other market-distorting means. China's annual fisheries harvest is nearly double that of the next largest producer in the world in terms of marine capture and triple that of other top producers, like the United States, India and Japan. At the same time, reports continue to emerge about Chinese-flagged fishing vessels engaging in illegal, unreported and unregulated (IUU) fishing in distant waters, including in areas under the jurisdiction of other WTO Members. While China has made some progress in reducing subsidies to domestic fisheries, it continues to shift its overcapacity to international fisheries by providing a much higher rate of subsidy support to Chinese distant water fishery enterprises.

For several years, the United States has been raising its long-standing concerns over China's fisheries subsidies programs. In 2015, the United States submitted a written request for information pursuant to Article 25.8 of the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). This submission addressed fisheries subsidies provided by China at central and sub-central levels of government. The subsidies at issue were set forth in nearly 40 measures and included a wide range of subsidies, including fishing vessel acquisition and renovation grants, grants for new fishing equipment, subsidies for insurance, subsidized loans for processing facilities, fuel subsidies and the preferential provision of water, electricity and land. When China did not respond to this request, the United States submitted an Article 25.10 counter notification covering these same measures. More recent subsidy notifications by China have been more fulsome, but still incomplete.

In addition, the United States has long been an active and constructive participant in the WTO fisheries subsidies negotiations, pressing for a meaningful outcome to prohibit the most harmful types of fisheries subsidies. The United States and various like-minded WTO Members have put forward several proposals designed to achieve an ambitious outcome for those negotiations. Notably, in June 2022, WTO Members adopted the text of the WTO Agreement on Fisheries Subsidies, which includes several important disciplines, including prohibitions on subsidies to vessels or operators engaged in IUU fishing, subsidies to fishing regarding stocks that are overfished and subsidies to fishing on the unregulated high seas. This agreement also contains robust transparency provisions to strengthen WTO Members' subsidy notifications and to enable effective monitoring of WTO Members' implementation of their obligations. The agreement will enter into force when it has been accepted by two-thirds of WTO Members.

Going forward, the United States will continue to investigate the full extent of China's fisheries subsidies and will continue to press China to fully comply with its relevant WTO subsidy obligations. The United States also will urge WTO Members to support additional, ambitious disciplines on harmful fisheries subsidies as part of the further WTO negotiations on fisheries subsidies.

IMPORT POLICIES

TRADE REMEDIES

As of December 2023, China had in place 117 antidumping measures, affecting imports from 17 countries or regions, with two new antidumping investigations underway. China also had in place five countervailing duty measures, affecting imports from two countries or regions. The greatest systemic shortcomings in China's antidumping and countervailing duty practice continue to be in the areas of transparency and due process. Over the years, China has often utilized antidumping and countervailing duty investigations as more of a retaliatory tool than as a mechanism to nullify the effects of dumping or unfair subsidization within its domestic market. In response, the United States has pressed China bilaterally, in WTO meetings and through written comments submitted in connection with pending antidumping and countervailing duty proceedings to adhere strictly to WTO rules in the conduct of its trade remedy investigations.

The conduct of antidumping investigations by China's Ministry of Commerce (MOFCOM) continues to fall short of full commitment to the fundamental tenets of transparency and procedural fairness embodied in the WTO's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, commonly known as the Antidumping Agreement. The United States and other WTO Members accordingly have expressed concerns about key lapses in transparency and due process in China's conduct of antidumping investigations. The principal areas of concern include: MOFCOM's inadequate disclosure of key documents placed on the record by domestic Chinese producers; insufficient disclosures of the essential facts underlying MOFCOM decisions, such as dumping margin calculations and evidence supporting injury and dumping conclusions; MOFCOM's failure to issue supplemental questionnaires in instances where MOFCOM identifies information deficiencies; the improper rejection of U.S. respondents' reported cost and sales data; the unjustified use of facts available; and MOFCOM's failure to adequately address critical arguments or evidence put forward by interested parties. These aspects of China's antidumping practice have been raised with MOFCOM in numerous proceedings over the past several years.

A review of China's conduct of countervailing duty investigations makes clear that, as in the antidumping area, China needs to improve its transparency and due process when conducting these investigations. In addition, the United States has noted procedural concerns specific to China's conduct of countervailing duty investigations. For example, in recent years, China has initiated investigations of alleged subsidies that raised concerns, given the requirements regarding "sufficient evidence" in Article 11.2 of the Subsidies Agreement. The United States is also concerned about China's application of facts available under Article 12.7 of the Subsidies Agreement.

On several occasions in the past, the United States has expressed serious concerns about China's pursuit of antidumping and countervailing duty remedies that appear to be retaliatory and intended to discourage the United States and other trading partners from the legitimate exercise of their rights under WTO antidumping and countervailing duty rules and the trade remedy provisions of China's accession agreement. It also appears that China has used arbitrary economic and trade measures, including antidumping and countervailing duty investigations, as a form of economic coercion designed to achieve China's political goals. The antidumping and countervailing duties that China imposed on imports of Australian barley and imports of Australian wine in 2021 provide two obvious examples of this tactic.

In certain recent investigations of U.S. imports, China has also made determinations without legal or factual support. For example, in the final countervailing duty determination on imports of n-propanol from the United States, China found that

alleged subsidies to the U.S. oil and gas sector automatically passed through to petrochemical products without providing the analysis required by the Subsidies Agreement.

TARIFF-RATE QUOTA ADMINISTRATION FOR AGRICULTURAL COMMODITIES

Market access promised through the tariff-rate quota (TRQ) system set up pursuant to China's WTO accession agreement has yet to be fully realized as of December 2023. Due to China's poorly defined criteria for applicants, unclear procedures for distributing TRQ allocations and failure to announce quota allocation and reallocation results, traders are unsure of available import opportunities and producers worldwide have reduced market access opportunities. As a result, China's TRQs for wheat, corn and rice seldom fill even when they are oversubscribed. For example, from 2020 to 2023, China's corn imports exceeded TRQ levels, but the TRQ issuance, application and allocation processes lacked transparency, and large state-owned enterprises in China appear to have been the primary beneficiaries of the increased imports.

In December 2016, the United States launched a WTO case challenging China's administration of TRQs for wheat, corn and rice. Consultations took place in February 2017. A WTO panel was established to hear the case at the United States' request in September 2017, and 17 other WTO Members joined as third parties. The panel issued its decision in April 2019, ruling that China's administration of tariff-rate quotas for wheat, corn and rice was WTO-inconsistent. In July 2021, the United States submitted a request for authorization to suspend concessions and other obligations pursuant to Article 22 of the DSU on the ground that China had failed to bring its measures into compliance with its WTO obligations. After China objected to this request, the matter was referred to arbitration in accordance with Article 22 of the DSU. The arbitration is currently suspended, and the United States continues to closely monitor China's ongoing administration of the tariff-rate quotas for wheat, corn and rice.

As part of the Phase One Agreement, China agreed that, from December 31, 2019, its administration of TRQs for wheat, corn and rice would conform to its WTO obligations. In addition, China agreed to make specific improvements to its administration of the wheat, corn and rice TRQs, including with regard to the allocation methodology, and to the treatment of non-state trading quota applicants. China also committed to greater transparency. To date, however, China has not demonstrated full implementation of these commitments.

VAT REBATES FOR AGRICULTURAL COMMODITIES

The Chinese government attempted to manage imports of primary agricultural commodities by raising or lowering the value-added tax (VAT) rebate to manage domestic supplies. China sometimes reinforces its domestic objectives by imposing or retracting VATs. These practices have caused tremendous distortion and uncertainty in the global markets for wheat, corn and soybeans, as well as intermediate processed products of these commodities.

ENVIRONMENTAL POLICIES

IMPORT BAN ON SCRAP MATERIALS AND RECYCLABLE MATERIALS

Currently, China restricts almost all imports of unprocessed scrap and recyclable materials. China only allows imports of certain processed materials, including "recycled raw materials" such as copper, steel, aluminum and brass that meet purity standards, pelletized scrap plastic and pulped scrap paper.

Since 2017, China has issued numerous measures that limit or ban imports of most scrap and recovered materials, such as certain types of plastic,

paper and metals. China has also employed import licensing and inspection measures to restrict imports of scrap materials contrary to international standards and practices. Notably, China does not universally apply similar restrictions to domestic processers of domestically sourced scrap and recovered materials.

In 2020, China amended the *Law on the Prevention and Control of Environmental Pollution by Solid Waste*. According to this amended law, the intent is to reduce imports of solid waste essentially to zero.

U.S. exports to China of the unprocessed scrap and recovered materials covered by China's restrictive measures totaled $479 million in 2016, the year before China started to pursue its more restrictive policies. Since then, U.S. exports of these materials to China have been significantly reduced.

In addition to impacting the global market for scrap and recovered materials, the tightened restrictions have raised the costs of recycling in the United States, leading some communities to end recycling programs. Additionally, other countries, particularly in Southeast Asia, have introduced their own regulatory changes that in some ways parallel the changes in China's import regime, such as by setting impossibly high purity standards for recyclable materials, imposing new import licensing requirements and requiring pre-shipment and post-shipment inspections. As a result, significant amounts of U.S. scrap materials and recyclable materials have not found new buyers, leading to increased landfilling, incineration and air pollution and increased demand for virgin materials globally.

IMPORT BAN ON REMANUFACTURED PRODUCTS

China prohibits the importation of remanufactured products, which it typically classifies as used goods. China also maintains restrictions that prevent remanufacturing process inputs (known as cores) from being imported into China's customs territory, except special economic zones. These import prohibitions and restrictions undermine the development of industries in many sectors in China, including mining, agriculture, healthcare, transportation and communications, because companies in these industries are unable to purchase high-quality, lower-cost remanufactured products produced outside of China. Nevertheless, China is apparently prepared to pay this price in order to limit imports of remanufactured goods.

LABOR

The Chinese government represses internationally recognized labor rights and does not adequately enforce existing prohibitions on forced labor. China has been the subject of international attention for its forced labor practices, especially in the Xinjiang Uyghur Autonomous Region (Xinjiang), where China has arbitrarily detained more than one million Uyghurs and other mostly Muslim minorities. Victims, news media and think tanks report that factories, including factories producing cotton and tomato products, frequently engage in coercive recruitment, limit workers' freedom of movement and communication and subject workers to constant surveillance, retribution for religious beliefs, exclusion from community and social life, and isolation. It is currently estimated that hundreds of thousands of Uyghurs, ethnic Kazakhs and members of other Muslim minority groups are being subjected to forced labor in China following detention. Based on the U.S. Government's independent analysis of these sources, the U.S. Government has taken several actions to address forced labor and other human rights abuses in Xinjiang.

U.S. Customs and Border Protection has issued several withhold release orders (WROs) pursuant to section 307 of the Tariff Act of 1930 based on information that reasonably indicates the use of detainee or prison labor and situations of forced labor in Xinjiang, including a region-wide WRO on cotton and tomato products from Xinjiang in January 2021. The scope of this WRO includes cotton and tomatoes and downstream products that incorporate these products as inputs.

In July 2020, the United States issued a Xinjiang Supply Chain Business Advisory for U.S. businesses whose supply chains run through Xinjiang, China. The United States updated this advisory in July 2021. As updated, the advisory calls urgent attention to U.S. businesses' supply chain risks and identifies serious investing and sourcing considerations for businesses and individuals with exposure to entities engaged in forced labor and other human rights abuses linked to Xinjiang. The advisory also describes U.S. government actions taken to date to counter the use of forced labor in Xinjiang and to prohibit the importation of goods produced in whole or in part with forced labor or convict labor. In September 2023, the United States issued an addendum to the updated advisory to further highlight reports on state-sponsored forced labor and human rights abuses in Xinjiang as well as to stress the urgency for businesses to undertake appropriate due diligence measures.

In December 2021, President Biden signed into law the Uyghur Forced Labor Prevention Act (UFLPA), which, among other things, establishes a rebuttable presumption that the importation of goods from Xinjiang is prohibited under section 307 of the Tariff Act of 1930. This rebuttable presumption took effect in June 2022.

The United States also published its UFLPA Enforcement Strategy in June 2022. This Enforcement Strategy took into account input received from private individuals, industry associations, consultancy and risk-management companies, civil society organizations, non-governmental organizations (NGOs), labor unions and others who shared their views on potential measures to prevent the importation of goods mined, produced or manufactured wholly or in part with forced labor in China into the United States. The main components of the Enforcement Strategy include (1) an assessment of the risk of importing goods made with forced labor in China, (2) the development of the UFLPA Entity List and descriptions of forced-labor schemes, (3) the consideration of efforts, initiatives and tools to identify and trace the origin of goods, (4) a description of relevant legal authorities and tools to prevent entry of violative goods, (5) a description of resources, (6) the development of importer guidance and (7) the development of a coordination plan with NGOs and the private sector.

Various U.S. agencies have been working to compile and update the UFLPA Entity List, a consolidated register of four distinct lists, including: (1) a list of entities in Xinjiang that mine, produce or manufacture wholly or in part any goods, wares, articles and merchandise with forced labor; (2) a list of entities that work with the government authorities of Xinjiang to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz or members of other persecuted groups out of Xinjiang; (3) a list of entities that export products mined, produced or manufactured by entities in lists 1 or 2 above from China into the United States; and (4) a list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from Xinjiang or from persons working with the government authorities in Xinjiang or the Xinjiang Production and Construction Corps for purposes of the "poverty alleviation" program or the "pairing assistance" program or any other government labor scheme that uses forced labor. To date, dozens of entities have been designated on the UFLPA Entity List.

Separately, in June 2022, President Biden issued the Memorandum on Combating Illegal, Unreported and Unregulated Fishing and Associated Labor Abuses. This Memorandum notes that, if left unchecked, IUU fishing and associated labor abuses threaten the livelihoods and human rights of fishers around the world and will undermine U.S. economic competitiveness, national security and fishery sustainability. It also notes that this behavior will exacerbate the environmental and socioeconomic effects of climate change. In December 2022, the Treasury Department sanctioned individuals associated with China's distant water fishing vessels for serious human rights abuse, including forced labor, of workers aboard these vessels.

It also remains concerning that China does not adhere to certain other internationally recognized labor standards, including the freedom of association and effective recognition of the right to collective bargaining. Chinese law provides for the right to associate and form a union, but does not allow workers to form or join an independent union of their own choosing. Unions must affiliate with the official All-China Federation of Trade Unions (ACFTU), which is under the direction of the CCP. Workers at enterprises in China are required to accept the ACFTU as their representative. They cannot instead select another union or decide not to have any union representation. Only collective bargaining through the ACFTU is permitted, and there is no legal obligation for an employer to bargain in good faith. Striking is also prohibited.

SANITARY AND PHYTOSANITARY MEASURES

OVERVIEW

China remains a difficult and unpredictable market for U.S. agricultural exporters, largely because of inconsistent enforcement of regulations and selective intervention in the market by China's regulatory authorities. China's unwillingness to routinely follow science-based, international standards and guidelines and to apply regulatory enforcement in a transparent and rules-based manner further complicates and impedes agricultural trade.

AGRICULTURAL BIOTECHNOLOGY APPROVALS

The Chinese regulatory approval process for agricultural biotechnology products creates significant uncertainty among developers and traders, slowing commercialization of products and creating adverse trade impacts, particularly for U.S. exports of corn, soy, canola and alfalfa. Despite some recent product approvals, the process remains lengthy and opaque and continues to reflect significant asynchrony relative to approvals issued by regulatory authorities in many other countries.

For many years, biotechnology product approvals by China's regulatory authorities mainly materialized only after high-level political intervention. In the Phase One Agreement, the United States was able to secure China's commitment to implement a transparent, predictable, efficient and science- and risk-based system for the review of products of agricultural biotechnology. The agreement also called for China to improve its regulatory authorization process for agricultural biotechnology products, including by completing reviews of products for use as animal feed or further processing within an average of no more than 24 months and by improving the transparency of its review process. China also agreed to work with importers and the U.S. government to address situations involving low-level presence of genetically engineered (GE) materials in shipments. In addition, China agreed to establish a regulatory approval process for all food ingredients derived from genetically modified microorganisms (GMMs), rather than continue to restrict market access to GMM-derived enzymes only.

Since 2021, China's National Biosafety Committee (NBC) has issued biosafety certificates to foreign developers for several new GE products for import for feed or processing, including alfalfa, canola, corn, cotton, soybean, and sugarcane products. Some of these approved products had been under review for more than 10 years. During the same time period, China has issued biosafety certificates to Chinese developers for well over 100 new corn, cotton, and soybean products for domestic cultivation. These approvals continue the recent trend of expanding domestic approvals for GE crops beyond solely cotton.

China's approach to agricultural biotechnology remains among the most significant commitments under the Phase One Agreement for which China has not demonstrated full implementation. Despite the commitments that China made, there remains a significant lack of transparency regarding the procedures for convening meetings of the NBC, including regarding dates and agenda items for these

meetings and the process for notifying applicants of outcomes and for soliciting additional information to support product applications. While the NBC is required to meet at least two times each year, the meetings are not held pursuant to a regular schedule, and information about the meetings is not widely shared with the public in a transparent and predictable manner. In addition, in conducting its approval process, China continues to ask for information that is not relevant to a product's intended use or information that applicants have previously provided. For this and other reasons, China has not reduced the average time for its approval process for agricultural biotechnology products for feed or further processing to no more than 24 months, as it had committed to do, even when taking into account recent approvals.

FOOD SAFETY

China's ongoing implementation of its 2015 *Food Safety Law* has led to the introduction of myriad new measures. These measures include exporter facility and product registration requirements for almost all food and agricultural products. Overall, China's notification of these measures to the WTO Committee on Technical Barriers to Trade (TBT Committee) and the WTO Committee on Sanitary and Phytosanitary Measures (SPS Committee) has been uneven.

In November 2019, China's regulatory authorities issued draft measures for public comment that would require the registration of all foreign food manufacturers. The United States submitted comprehensive written comments on the draft measures to China's regulatory authorities. The United States also raised concerns about them before the WTO TBT Committee and the WTO SPS Committee. More than 15 WTO Members supported the concerns raised by the United States.

In April 2021, China's regulatory authorities issued final versions of these measures, now known as Decrees 248 and 249, with an implementation date of January 1, 2022. In correspondence delivered to foreign missions in Beijing in September 2021, China's regulatory authorities laid out a non-transparent, multi-tier system where producers of certain products are required to be registered by foreign regulatory authorities, while producers of other products are eligible to self-register. Decrees 248 and 249 also establish new labeling and conformity assessment requirements. In July 2023, China implemented additional registration requirements for certain products under Decree 248, expanding the burden on foreign food safety regulators. Moreover, the tasks being required of foreign food safety regulators are fundamentally beyond the traditional roles of regulatory authorities. These various additional requirements have already disrupted trade, especially for new U.S. food manufacturers unable to meet the requirements for first-time registration.

Decree 248 and similar prior measures continue to place excessive strain on food producers, traders and exporting countries' regulatory authorities, with no apparent added benefit to food safety. They instead provide China with a tool to control food imports, as decided by China's state planners, and to retaliate against food producers from countries whose governments challenge Chinese government policies or practices in non-trade areas.

In the Phase One Agreement, China committed that it would not implement food safety regulations that are not science- or risk-based and that it would only apply food safety regulations to the extent necessary to protect human life or health. China also agreed to certain procedures for registering U.S. facilities that produce various food products. Despite repeated U.S. requests for clarification regarding the relationship between the facility registration procedures set forth in the Phase One Agreement and the requirements of Decree 248, China has not provided sufficient information.

POULTRY

In the Phase One Agreement, China agreed to maintain measures consistent with the World

Organization for Animal Health (WOAH) guidelines for future outbreaks of avian influenza. China also agreed to sign a regionalization protocol within 30 days of entry into force of the agreement, which it did, to help avoid unwarranted nationwide animal disease restrictions in the future. This protocol requires that China resume acceptance of poultry imports from states with high pathogenicity avian influenza (HPAI) detections within five days of receiving a U.S. report that the states are HPAI-free.

Starting in February 2022, the United States notified China of detections of HPAI in multiple U.S. states. In the ensuing months, several states recovered from these detections, and they were deemed HPAI-free by the United States. The United States submitted reports to China for these states and requested approval to resume exporting poultry from these states to China. China has yet to confirm the restoration of market access.

PORK

China maintains an approach to U.S. pork that is inconsistent with international standards, limiting the potential of an important export market given China's growing meat consumption and major shortages of domestic pork due to African swine fever. Specifically, China bans the use of certain veterinary drugs and growth promotants instead of accepting the maximum residue levels (MRLs) set by Codex Alimentarius (Codex).

As part of the Phase One Agreement, China agreed to broaden the list of pork products that are eligible for importation, including processed products such as ham and certain types of offal that are inspected by the U.S. Department of Agriculture's Food Safety and Inspection Service for both domestic and international trade. China also agreed to conduct a risk assessment for ractopamine in swine and cattle as soon as possible and to establish a joint working group with the United States to discuss next steps based on the risk assessment. To date, China has not completed the risk assessment and therefore has not yet made any progress on next steps based on the risk assessment, which will need to include the establishment of MRLs or import tolerances.

BEEF

In May 2017, China committed to allow the resumption of U.S. beef shipments into its market consistent with international food safety and animal health standards. However, China back-tracked one month later and insisted that it would retain certain conditions relating to veterinary drugs, growth promotants and animal health that were inconsistent with international food safety and animal health standards. For example, China insisted on maintaining a zero-tolerance ban on the use of beta-agonists and synthetic hormones commonly used by global cattle producers under strict veterinary controls and following Codex guidelines. Beef from only about three percent of U.S. cattle qualified for importation into China under these conditions.

In the Phase One Agreement, in addition to the ractopamine commitment relating to swine and cattle discussed above in the Pork section, China agreed to expand the scope of U.S. beef products allowed to be imported, to eliminate age restrictions on cattle slaughtered for export to China and to recognize the U.S. beef and beef products' traceability system. China also agreed to establish MRLs for three synthetic hormones legally used for decades in the United States consistent with Codex standards and guidelines. Where Codex standards and guidelines do not yet exist, China agreed to use MRLs established by other countries that have performed science-based risk assessments.

While China confirmed to the United States that it had adopted Codex-consistent MRLs for use of the three synthetic hormones in beef, China still has not published the MRLs. The lack of publication contributes to regulatory ambiguity for U.S. beef producers and traders, who remain uncertain regarding which products will be allowed for import into China. China's failure to publish the MRLs is

another example of China's inadequate implementation of the Phase One Agreement.

TECHNICAL BARRIERS TO TRADE

STANDARDS

The Chinese government continues to pursue changes to its standards system, including by moving from a government-led system to one that incorporates both government guidance and outside input. At times, Chinese government officials have also indicated they provide equal treatment to foreign companies in connection with China's standardization work. However, in practice, the Chinese government continues to limit foreign participation in standards setting and, at times, still pursues unique national standards for strategic reasons.

In January 2018, China's revised *Standardization Law* entered into force. Since then, China has issued numerous implementing measures, some of which contain positive references to the ability of foreign-invested enterprises to participate in China's standardization activities and purport to recognize the value of international standards. Unfortunately, many of these implementing measures cause concern for U.S. industry as they appear to focus on the development of Chinese standards without sufficient consideration being given to existing, internationally developed standards. In addition, they do not explicitly provide that all foreign stakeholders may participate on equal terms with domestic competitors in all aspects of the standardization process, and they fall short of explicitly endorsing internationally accepted best practices.

As these implementing measures have been issued, China's existing technical committees have continued to develop standards. U.S. and other foreign companies have reported that they are often not permitted to participate in these domestic standards-setting processes, and even in technical committees where participation has been possible for some foreign stakeholders, it has typically been on terms less favorable than those applicable to their domestic competitors. For example, the technical committee for cybersecurity standards (known as TC-260) allows foreign companies to participate in standards development and setting, with several U.S. and other foreign companies being allowed to participate in some of the TC-260 working groups. However, foreign companies are not universally allowed to participate as voting members, and they report challenges to participating in key aspects of the standardization process, such as drafting. They also remain prohibited from participating in certain TC-260 working groups, such as the working group on encryption standards.

Over the years, U.S. stakeholders have also reported that, in some cases, Chinese government officials have pressured foreign companies seeking to participate in the standards-setting process to license their technology or intellectual property on unfavorable terms. In addition, China has continued to pursue unique national standards in a number of high technology areas where international standards already exist. The United States continues to press China to address these specific concerns, but to date this bilateral engagement has yielded minimal progress.

Notably, U.S. concerns about China's standards regime are not limited to the implications for U.S. companies' access to China's market. China's ongoing efforts to develop unique national standards aims eventually to serve the interests of Chinese companies seeking to compete globally, as the Chinese government's vision is to use the power of its large domestic market to influence the development of international standards. The United States remains very concerned about China's policies with regard to standards and has expressed, and will continue to express, concerns to China bilaterally and multilaterally as China continues to develop and issue implementing measures for its revised *Standardization Law*.

In October 2021, the Central Committee of the Chinese Communist Party and the State Council issued the *Outline for the Development of National Standardization*, which set targets for China's standardization system. It reiterates the desire for China's standardization system to be both guided by the government and driven by the market. It also calls for China's standardization system to refocus from quantity to quality and to shift from a domestic focus to an equal domestic and international focus. In addition, it calls for standards to support not just a particular industry, but also the economy and society as a whole.

The October 2021 *Outline for the Development of National Standardization* is partly based on an initiative that China announced in 2019, known as *China Standards 2035*. A lack of transparency with regard to the initiative's findings is troubling, particularly given longstanding global concerns about inadequate foreign participation in China's standards-setting processes, China's use of standards that differ from international standards without basis and certain licensing practices in China's standards-setting processes.

COSMETICS

Over the past several years, the United States and U.S. industry have engaged with China's Food and Drug Administration (CFDA) and its successor, the National Medical Products Administration (NMPA), to highlight serious concerns with China's regulation of cosmetics. Currently, the regulation of cosmetics in China is governed by the Cosmetics Supervision and Administration Regulation (CSAR), which was issued in June 2020 and entered into effect in January 2021. The United States has repeatedly raised serious concerns with the CSAR and its numerous implementing measures, both bilaterally and in meetings of the WTO TBT Committee and the Council for Trade in Goods, as have several other WTO Members.

The CSAR implementing measures contain provisions that would require companies to disclose full product formulations, ingredient suppliers, manufacturing methods, claims and safety data to both NMPA and local agents in China when products are registered or notified. In addition, these measures require companies to publish claims abstracts that may contain trade secrets and confidential business information on NMPA's website. The United States has expressed concern to China that its regulators are applying an approach that treats cosmetics as having much higher safety risks than is warranted. China's filing and registration requirements for cosmetics also significantly diverge from those in other major markets and do not align with international standards, making compliance very burdensome for exporters.

The United States is particularly concerned that the CSAR implementing measures do not provide adequate assurances as to how undisclosed information, trade secrets and confidential business information will be protected from unauthorized disclosure. China also has not addressed requests from the United States and cosmetics right holders that NMPA provide a legally enforceable mechanism to monitor and protect the trade secrets and confidential business information typically identified by companies in their cosmetics filings.

In addition, China continues to require duplicative in-country testing to assess many product and ingredient safety and performance claims, without considering the applicability of international data or other means of establishing conformity. In response to U.S. concerns, China indicated that it would allow foreign laboratories with facilities in China to conduct its required testing. However, this change does not address the burden of China's requirement, which does not consider the applicability of testing conducted via internationally recognized laboratories outside of China, as well as other means used by foreign regulators and industries to assess

the conformity of product and ingredient safety and performance claims.

The United States also questions China's assertion that its cosmetics good manufacturing practices (GMP) requirements provide equal treatment for imported and domestic general and special cosmetics. If the government of a cosmetics importer does not issue GMP or manufacturing export certificates, the only means that China provides to establish conformity with China's GMP for general cosmetics is animal testing. The United States and other WTO Members have made repeated requests that China consider the many alternative means available to establish GMP conformity, including utilizing second party or third party certificates based upon the ISO 22716 Cosmetics GMP Guidelines. Although China accepts some GMP certificates issued by U.S. state governments, the process remains inconsistent and uncertain for exporters.

In sum, after years of the United States engaging with China bilaterally and via the International Cooperation on Cosmetics Regulation, the WTO and other fora to share views and expertise regarding the regulation of cosmetics, China has not yet addressed key U.S. concerns, including the use of international standards and good regulatory practices to facilitate cosmetics conformity assessment and avoid discriminatory treatment, nor has it provided confidence that U.S. intellectual property will be protected. Until China addresses these concerns, many U.S. companies will be impeded in accessing, or simply unable to access, the China market.

INVESTMENT RESTRICTIONS

China seeks to protect many domestic industries through a restrictive investment regime. Many aspects of China's current investment regime continue to cause serious concerns for foreign investors. For example, China's *Foreign Investment Law* and implementing regulations, both of which entered into force in January 2020, perpetuate separate regimes for domestic investors and investments and foreign investors and investments and invite opportunities for discriminatory treatment.

There has also been a lack of substantial liberalization of China's investment regime, evidenced by the continued application of prohibitions, foreign equity caps and joint venture requirements and other restrictions in certain sectors. China's most recent version of its *Foreign Investment Negative List*, which entered into force in January 2022, leaves in place significant investment restrictions in a number of areas important to foreign investors, such as key services sectors, certain types of agriculture and several extractive industries. With regard to services sectors, China maintains prohibitions or restrictions in key sectors such as cloud computing services and other Internet-related services, telecommunications services, film production and film distribution services, and video and entertainment software services. With regard to agriculture, China maintains prohibitions on the development of agricultural biotechnologies and restrictions on the development of new varieties of corn and wheat. Similarly, China maintains prohibitions on the exploration, mining and processing of all of the 17 types of rare earths as well as tungsten.

China's *Foreign Investment Law*, implementing regulations and other related measures suggest that China is pursuing the objective of replacing its case-by-case administrative approval system for a broad range of investments with a system that would only be applied to "restricted" sectors. However, it currently remains unclear whether China is fully achieving that objective in practice. Moreover, even for sectors that have been liberalized, the potential for discriminatory licensing requirements or the discriminatory application of licensing processes could make it difficult to achieve meaningful market access. In addition, the potential for a new and overly broad national security review mechanism, and the increasingly adverse impact of China's *Cybersecurity Law*, *Data Security Law* and *Personal*

Information Protection Law and related implementing measures, including ones that unduly restrict cross-border data flows and impose data localization requirements, have serious negative implications for foreign investors and investments. Foreign companies also continue to report that Chinese government officials may condition investment approval on a requirement that a foreign company transfer technology, conduct research and development (R&D) in China, satisfy performance requirements relating to exportation or the use of local content or make valuable, deal-specific commercial concessions.

Over the years, the United States has repeatedly raised concerns with China about its restrictive investment regime. Given that China's investment restrictions place pressure on U.S. companies to transfer technology to Chinese companies, they were a focus of USTR's Section 301 investigation. The responsive actions taken by the United States in that investigation are intended in part to address this concern.

More recently, the investment climate has turned unusually negative, in large part because of actions taken by the Chinese government. For example, over the past year, purportedly in implementing China amended its *Counterespionage Law* to broaden the definition of espionage, and Chinese security officials raided and detained staff at several multinational companies operating in China that help investors perform due diligence regarding existing or potential new investments in China. With no effective judicial oversight or other means for challenging these actions, investor confidence in China has been severely damaged.

In August 2023, perhaps in an effort to restore investor confidence, China's State Council released a new measure, titled *Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment*, in the apparent hope of attracting increased levels of foreign investment. Often referred to as Document No. 11, this measure sets forth general guidance to central level ministries and sub-central government authorities on 24 topics related to foreign investment. China has issued similar guidance in the past without meaningfully following through.

COMPETITION POLICIES

In March 2018, as part of a major government reorganization, China announced the creation of the State Administration for Market Regulation (SAMR), a new agency that incorporated the former anti-monopoly enforcement authorities from the National Development and Reform Commission (NDRC), MOFCOM and the State Administration of Industry and Commerce (SAIC) into one of its bureaus. It had been hoped that more centralized anti-monopoly enforcement would lead to policy adjustments that address the serious concerns raised by the United States and other WTO Members in this area, but to date it does not appear to have led to significant policy adjustments.

In November 2021, China elevated the status of SAMR's anti-monopoly bureau, by designating a vice minister as its official-in-charge and re-naming it the National Anti-Monopoly Agency while also separating its functions into three bureaus. The division into three bureaus appears to have allowed SAMR to increase the number of staff responsible for antimonopoly law enforcement. It remains to be seen how the elevated status of the National Anti-Monopoly Agency and its increased staff will impact anti-monopoly policy enforcement in China.

In June 2022, the National People's Congress Standing Committee passed amendments to the *Anti-Monopoly Law*. These amendments gave SAMR expanded authority to investigate potential anti-competitive behavior as well as the authority to impose increased fines for certain conduct and the authority to impose up to a five-times fine multiplier for particularly serious violations.

As previously reported, China's implementation of the *Anti-Monopoly Law* has generated various

concerns. A key concern is the extent to which the *Anti-Monopoly Law* is applied to state-owned enterprises. While Chinese regulatory authorities have clarified that the *Anti-Monopoly Law* does apply to state-owned enterprises, to date they have brought enforcement actions primarily against provincial government-level state-owned enterprises, rather than central government-level state-owned enterprises under the supervision of SASAC. In addition, provisions in the *Anti-Monopoly Law* protect the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. Another key concern relates to how the *Anti-Monopoly Law* is applied to foreign companies. Many U.S. companies have cited selective enforcement of the *Anti-Monopoly Law* against foreign companies seeking to do business in China as a major concern, and they have highlighted in particular the comparatively limited enforcement of this law against state-owned enterprises. In recent years, China has begun to increase the number of actions taken against private Chinese companies and wholly domestic transactions.

Another concern expressed by U.S. industry is that remedies imposed on U.S. and other foreign-owned companies in merger cases do not always appear to be aimed at restoring competition. Instead, these remedies seem to be designed to further China's industrial policy goals, such as when the regulatory authorities seek to require the transfer of technology or a reduction in licensing fees for intellectual property.

U.S. industry has also expressed concern about insufficient predictability, due process and transparency in *Anti-Monopoly Law* investigative processes of foreign companies. For example, U.S. industry reports that, through the threat of steep fines and other penalties, China's regulatory authorities have pressured foreign companies to "cooperate" in the face of unspecified allegations and have discouraged or prevented foreign companies from bringing counsel to meetings. In addition, U.S. companies continue to report that the Chinese regulatory authorities sometimes make "informal" suggestions regarding appropriate company behavior, including how a company is to behave outside China, strongly suggesting that a failure to comply may result in investigations and possible punishment. More recently, high-level policy statements suggest increased *Anti-Monopoly Law* enforcement where technology owned or controlled by foreign companies allegedly implicates national security concerns or implicates technology being prioritized for indigenous innovation in China.

Given the state-led nature of China's economy, the need for careful scrutiny of anti-competitive government restraints and regulation is high. The *Anti-Monopoly Law's* provisions on the abuse of administrative (i.e., government) power are potentially important instruments for reducing the government's interference in markets and for promoting the establishment and maintenance of increasingly competitive markets in China. The State Council's adoption of the *Opinions on Establishing a Fair Competition Review System* in 2016 reflected a useful widening of oversight by China's anti-monopoly enforcement agencies over undue government restraints on competition and anti-competitive regulation of competition. Increased oversight in this area was also reflected in the amendments to the *Anti-Monopoly Law* in 2022, which included a new chapter regarding the abuse of administrative monopoly. SAMR has since issued draft rules regarding the abuse of administrative monopoly, and SAMR has also identified the elimination of administrative monopolies as an enforcement priority. It remains to be seen whether SAMR will have sufficient authority and resources to implement this enforcement priority robustly.

EXPORT POLICIES

EXPORT RESTRAINTS

Over the years, China has deployed a combination of export restraints, including export quotas, export licensing, minimum export prices, export duties and other restrictions, on a number of raw material

inputs where it holds the leverage of being among the world's leading producers. In many instances, through these export restraints, it appears that China has been able to provide substantial economic advantages to a wide range of downstream producers in China at the expense of foreign downstream producers, while creating pressure on foreign downstream producers to move their operations, technologies and jobs to China.

In 2013, China removed its export quotas and duties on several raw material inputs of key interest to the U.S. steel, aluminum and chemicals industries after the United States won a dispute settlement case against China at the WTO. In 2014, the United States won a second WTO case, focusing on China's export restraints on rare earths, tungsten and molybdenum, which are key inputs for a multitude of U.S.-made products, including hybrid automobile batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum and chemicals. China removed those export restraints in 2015. In 2016, the United States launched a third WTO case challenging export restraints maintained by China. The challenged export restraints include export quotas and export duties maintained by China on various forms of 11 raw materials, including antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum and tin. These raw materials are key inputs in important U.S. manufacturing industries, including aerospace, automotive, construction and electronics. While China appears to have removed the challenged export restraints, the United States continues to monitor the situation. In the United States' view, it is deeply concerning that the United States was forced to bring multiple cases to address the same obvious WTO compliance issues.

A more recent concern involves China's potential regulation of rare earth exports under its export controls regime. In this regard, the Ministry of Industry and Information Technology issued the draft *Regulations on the Administration of Rare Earths* for public comment in January 2021, and one of the provisions in the draft measure provides that rare earth exporters need to abide by laws and regulations in the area of export controls. More recently, in November 2023, China began requiring exporters to provide detailed reporting on transactions involving rare earths.

In 2023, China also began applying its export control regime to other critical minerals. As of August 2023, China is requiring export licenses for products containing gallium or germanium. Similarly, as of December 2023, China is requiring export licenses for products containing graphite.

In November 2021, China announced an export ban on certain fertilizers. Despite repeated requests from its trading partners to lift this export ban and help address growing international concern over rising commodity prices and disrupted global supply chains, China continues to impose this export ban.

Meanwhile, U.S. companies report that China has also instituted export restrictions on corn starch, apparently in an effort to stabilize domestic prices. To date, however, the Chinese government still has not published an official notice.

VAT REBATES AND RELATED POLICIES

As in prior years, in 2023, the Chinese government attempted to manage the export of many primary, intermediate and downstream products by raising or lowering the VAT rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty and unfairness in the global markets for some products, particularly downstream products for which China is a leading world producer or exporter, such as products made by the steel, aluminum and soda ash industries. These practices, together with other policies, such as excessive government subsidization, have also contributed to severe excess capacity in these same industries.

An apparently positive development took place at the July 2014 S&ED meeting, when China committed

to improve its VAT rebate system, including by actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade. Once more, however, this promise remains unfulfilled. To date, China has not made any movement toward the adoption of international best practices.

INTELLECTUAL PROPERTY PROTECTION

OVERVIEW

After its accession to the WTO, China undertook a wide-ranging revision of its framework of laws and regulations aimed at protecting the intellectual property rights of domestic and foreign right holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Despite various plans and directives issued by the State Council, inadequacies in China's intellectual property protection and enforcement regime continue to present serious barriers to U.S. exports and investment. As a result, China was again placed on the Priority Watch List in USTR's 2023 Special 301 Report. In addition, in January 2023, USTR announced the results of its 2022 Review of Notorious Markets for Counterfeiting and Piracy, which identifies online and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting and explains the harm not only to U.S. businesses, but also to U.S. workers. Several markets in China were among those named as notorious markets.

The Phase One Agreement addresses numerous longstanding U.S. concerns relating to China's inadequate intellectual property protection and enforcement. Specifically, the agreement requires China to revise its legal and regulatory regimes in a number of ways in the areas of trade secrets, pharmaceutical-related intellectual property, patents, trademarks and geographical indications. In addition, the agreement requires China to make numerous changes to its judicial procedures and to establish deterrent-level penalties. China must also take a number of steps to strengthen enforcement against pirated and counterfeit goods, including in the online environment, at physical markets and at the border.

China has published a number of draft measures for comment and issued some final measures relating to implementation of the intellectual property chapter of the Phase One Agreement. Notably, China amended the *Patent Law*, the *Copyright Law* and the *Criminal Law*. China has also reported increased enforcement actions against counterfeit medicines and increased customs actions against pirated and counterfeit goods. At the same time, China has outstanding work to finalize the draft measures that it has published and to publish other draft measures in accordance with the Intellectual Property Action Plan that it released in April 2020, such as certain patent, geographical indications and trade secret measures. In addition, China has yet to demonstrate that it has published data online regarding enforcement actions against counterfeit goods with health and safety risks, at physical markets and at the border on a quarterly basis, increased enforcement actions against counterfeits with health and safety risks and at physical markets, increased training of customs personnel or ensured the use of only licensed software in government agencies and state-owned enterprises. The United States continues to monitor China's implementation of the intellectual property chapter of the Phase One Agreement, including the impact of the final measures that have been issued.

TRADE SECRETS

Serious inadequacies in the protection and enforcement of trade secrets in China have been the subject of high-profile engagement between the United States and China in recent years. Several instances of trade secret theft for the benefit of Chinese companies have occurred both within China and outside of China. Offenders in many cases continue to operate with impunity. Particularly troubling are reports that actors affiliated with the

Chinese government and the Chinese military have infiltrated the computer systems of U.S. companies, stealing terabytes of data, including the companies' proprietary information and intellectual property, for the purpose of providing commercial advantages to Chinese enterprises.

In high-level bilateral dialogues with the United States over the years, China has committed to issue judicial guidance to strengthen its trade secrets regime. China has also committed not to condone state-sponsored misappropriation of trade secrets for commercial use. In addition, the United States has urged China to make certain key amendments to its trade secrets-related laws and regulations, particularly with regard to a draft revision of the *Anti-unfair Competition Law*. The United States has also urged China to take actions to address inadequacies across the range of state-sponsored actors and to promote public awareness of trade secrets disciplines.

At the November 2016 JCCT meeting, China claimed that it was strengthening its trade secrets regime and bolstering several areas of importance, including the availability of evidence preservation orders and damages based on market value as well as the issuance of a judicial interpretation on preliminary injunctions and other matters. China amended the *Anti-Unfair Competition Law*, effective January 2018 and April 2019, as well as the *Administrative Licensing Law*, effective April 2019, and the *Foreign Investment Law*, effective January 2020. Nevertheless, the amendments still do not fully address critical shortcomings in the scope of protections and obstacles to enforcement. In 2022, China published additional draft amendments to the *Anti-Unfair Competition Law*, but they contain few changes to the law's trade secrets provisions.

The Phase One Agreement significantly strengthens protections for trade secrets and enforcement against trade secret theft in China. In particular, the chapter on intellectual property requires China to expand the scope of civil liability for misappropriation beyond entities directly involved in the manufacture or sale of goods and services, to cover acts such as electronic intrusions as prohibited acts of trade secret theft and to shift the burden of proof in civil cases to the defendants when there is a reasonable indication of trade secret theft. It also requires China to make it easier to obtain preliminary injunctions to prevent the use of stolen trade secrets, to allow for initiation of criminal investigations without the need to show actual losses, to ensure that criminal enforcement is available for willful trade secret misappropriation and to prohibit government personnel and third party experts and advisors from engaging in the unauthorized disclosure of undisclosed information, trade secrets and confidential business information submitted to the government.

In 2020, China published various measures relating to civil, criminal and administrative enforcement of trade secrets. In September 2020, the Supreme People's Court issued the *Provisions on Several Issues Concerning the Application of Law in Civil Cases of Trade Secret Infringement* and *the Interpretation III on Several Issues Concerning the Application of Law in Handling Criminal Cases of Infringement of Intellectual Property Rights.* In September 2020, the Supreme People's Procuratorate and the Ministry of Public Security also issued the *Decision on Amendment of Docketing for Prosecution of Criminal Trade Secrets Infringement Cases Standards*. These measures relate to issues such as the scope of liability for trade secret misappropriation, prohibited acts of trade secret theft, preliminary injunctions and thresholds for initiations of criminal investigations for trade secret theft. In December 2020, the National People's Congress passed amendments to the *Criminal Law* that included changes to the thresholds for criminal investigation and prosecution and the scope of criminal acts of trade secret theft. The *Criminal Law* amendments require revisions to certain previously issued judicial interpretations and prosecution standards. However, three years after the passage of the *Criminal Law* amendments, these other measures remain unchanged, and implementation of the *Criminal Law* amendments

therefore remains incomplete. Indeed, China has only published a draft judicial interpretation. The United States will continue to monitor the effectiveness of all of these measures.

BAD FAITH TRADEMARK REGISTRATION

The continuing registration of trademarks in bad faith in China remains a significant concern. For example, so-called "trademark squatters" have attempted to take advantage of the fact that a genuine trademark owner has not yet registered its trademark in China by registering that trademark and then trying to sell it to the genuine trademark owner. Bad faith trademark registration also occurs when trademarks intending to deceive or confuse consumers are registered.

At the November 2016 JCCT meeting, China publicly noted the harm that can be caused by bad faith trademarks and asserted that it was taking further steps to combat bad faith trademark filings. Amendments to the *Trademark Law* made in 2019 and subsequent implementing measures, including SAMR's *Provisions on Standardizing Applications for Registrations of Trademarks* issued in 2019 and the *Trademark Examination and Review Guidelines* updated in 2021 by the China National Intellectual Property Administration (CNIPA), require the disallowance of bad faith trademark applications. In January 2023, China proposed further amendments to the *Trademark Law* regarding bad faith trademarks.

However, implementation in this area by China to date suggests that right holders remain insufficiently protected, as bad faith trademarks remain widespread and problems persist with the large number of inconsistent decisions, low rate of success for oppositions, lack of transparency in opposition proceedings and unavailability of default judgments against applicants who fail to appear in proceedings. Onerous documentation requirements are also on ongoing concern for right holders. China acceded to the Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents (Apostille Convention), effective November 2023. The United States will monitor China's implementation of the obligations under the Apostille Convention and whether it addresses right holders' concerns regarding foreign government document legalization requirements.

As a result of these deficiencies, U.S. companies across industry sectors continue to face Chinese applicants registering their marks and "holding them for ransom" or seeking to establish a business building off of U.S. companies' global reputations. The Phase One Agreement requires China to address longstanding U.S. concerns regarding bad-faith trademark registration, such as by invalidating or refusing bad faith trademark applications. The United States will continue to monitor developments in this area of long-standing concern closely.

ONLINE INFRINGEMENT

Online piracy continues on a large scale in China, affecting a wide range of industries, including those involved in distributing legitimate music, motion pictures, books and journals, software and video games. While increased enforcement activities have helped stem the flow of online sales of some pirated offerings, much more sustained action and attention is needed to make a meaningful difference for content creators and right holders, particularly small and medium-sized enterprises. In response to the COVID-19 pandemic, reports indicate that many infringers have moved online to distribute their pirated and counterfeit goods, which further increases the need for targeted and sustained enforcement measures in the online environment.

The United States has urged China to consider ways to create a broader policy environment to help foster the growth of healthy markets for licensed and legitimate content. The United States has also urged China to revise existing rules that have proven to be counterproductive.

At the November 2016 JCCT meeting, China agreed to actively promote electronic commerce-related

legislation, strengthen supervision over online infringement and counterfeiting, and work with the United States to explore the use of new approaches to enhance online enforcement capacity. In December 2016 and November 2017, China published drafts of a new *E-Commerce Law* for public comment. In written comments, the United States stressed that the final version of this law should not undermine the existing notice-and-takedown system and should promote effective cooperation in deterring online infringement. In August 2018, China adopted its new *E-Commerce Law*, which entered into force in January 2019. This law was an opportunity for China to institute strong provisions on intellectual property protection and enforcement for its electronic commerce market, which is now the largest in the world. However, as finalized, the law instead introduced provisions that weaken the ability of right holders to protect their rights online and that alleviate the liability of China-based electronic commerce platforms for selling counterfeit and other infringing goods.

The Phase One Agreement requires China to provide effective and expeditious action against infringement in the online environment, including by requiring expeditious takedowns and by ensuring the validity of notices and counter-notifications. It also requires China to take effective action against electronic commerce platforms that fail to take necessary measures against infringement.

In May 2020, the National People's Congress issued the *Civil Code*, which included updated notice-and-takedown provisions. In September 2020, the Supreme People's Court issued *Guiding Opinions on Hearing Intellectual Property Disputes Involving E-Commerce Platform* and the *Official Reply on the Application of Law in Network-Related Intellectual Property Infringement Disputes*. These measures relate to issues such as expeditious takedowns and the validity of notices and counter-notifications, but have only recently taken effect. In November 2020, the National People's Congress adopted long-pending amendments to the *Copyright Law*, including provisions relating to increasing civil remedies for copyright infringement, new rights of public performance and broadcasting for producers of sound recordings, and protections against circumvention of technological protection measures. Right holders have welcomed these developments but have noted the need for effective implementation as well as new measures to address online piracy. The United States will closely monitor the impact of these measures going forward.

In August 2021, SAMR issued draft amendments to the *E-Commerce Law* for public comment. These draft amendments further attempt to address concerns that have been raised about procedures and penalties under China's notice-and-takedown system.

COUNTERFEIT GOODS

Counterfeiting in China remains widespread and affects a wide range of goods. In April 2019, China amended its *Trademark Law*, effective November 2019, to require civil courts to order the destruction of counterfeit goods, but these amendments still do not provide the full scope of civil remedies for right holders. One of many areas of particular U.S. concern involves medications. Despite years of sustained engagement by the United States, China still needs to improve its regulation of the manufacture of active pharmaceutical ingredients to prevent their use in counterfeit and substandard medications. At the July 2014 S&ED meeting, China committed to develop and seriously consider amendments to the *Drug Administration Law* that will require regulatory control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients. At the June 2015 S&ED meeting, China further committed to publish revisions to the *Drug Administration Law* in draft form for public comment and to consider the views of the United States and other relevant stakeholders. In October 2017, China published limited draft revisions to the *Drug Administration Law* and stated that future proposed revisions to the

remainder of this law would be forthcoming. Although the final *Drug Administration Law*, issued in August 2019, requires pharmaceuticals products and active pharmaceutical ingredients to meet manufacturing standards, it remains unclear how these requirements will be implemented or enforced.

The Phase One Agreement requires China to take effective enforcement action against counterfeit pharmaceuticals and related products, including active pharmaceutical ingredients, and to significantly increase actions to stop the manufacture and distribution of counterfeits with significant health or safety risks. The agreement also requires China to provide that its judicial authorities shall order the forfeiture and destruction of pirated and counterfeit goods, along with the materials and implements predominantly used in their manufacture. In addition, the agreement requires China to significantly increase the number of enforcement actions at physical markets in China and against goods that are exported or in transit. It further requires China to ensure, through third party audits, that government agencies and state-owned enterprises only use licensed software.

In August 2020, SAMR issued the *Opinions on Strengthening the Destruction of Infringing and Counterfeit Goods*, and the State Council amended the *Provisions on the Transfer of Suspected Criminal Cases by Administrative Organs for Law Enforcement*, which relate to the transfer of intellectual property cases from administrative authorities to criminal authorities. China has reported increased enforcement actions against counterfeit medicines and increased customs actions against pirated and counterfeit goods, but it also needs to show that it has increased enforcement actions against counterfeits with health and safety risks and at physical markets, increased training of customs personnel and ensured the use of only licensed software in government agencies and state-owned enterprises.

PHARMACEUTICALS AND MEDICAL DEVICES

PHARMACEUTICALS

For several years, the United States has pressed China on a range of pharmaceuticals issues. These issues have related to matters such as overly restrictive patent application examination practices, regulatory approvals that are delayed or linked to extraneous criteria, weak protections against the unfair commercial use and unauthorized disclosure of regulatory data, issues with the implementation of an efficient mechanism to resolve patent infringement disputes, requirements to share ownership with a Chinese partner of patent rights arising from research generated by using human genetic resources in China and implementation of patent term extensions for unreasonable marketing approval delays, including limits on the type of protection provided. While China has implemented some helpful reforms, the United States still has many of the same concerns with China's pharmaceutical market, especially as it pertains to treatment of foreign companies.

In its WTO accession agreement, China committed to provide effective protection against unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. To provide this protection, known as regulatory data protection (RDP), China committed to enact laws and regulations to ensure that no person, other than the submitter of the data, could rely on the submitted data in a product approval application without permission from the submitter for six years from the date on which China granted marketing approval to the submitter.

In 2017, CFDA finally issued several draft notices addressing the issue of RDP. These draft notices set out a conceptual framework to protect against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain

marketing approval for pharmaceutical products, and they also sought to promote the efficient resolution of patent disputes between right holders and the producers of generic pharmaceuticals. However, the proposed framework did not provide for a six-year period of RDP despite the commitment that China had made in its WTO accession agreement in 2001.

In 2018, CFDA's successor agency, NMPA, issued draft *Drug Registration Regulations* and draft implementing measures on drug trial data that would preclude or condition the duration of RDP on whether clinical trials occur in China and whether marketing approval is sought first in China. Subsequently, China issued a revised *Drug Administration Law* in 2019, followed by NMPA's revised draft *Drug Registration Regulations* in 2020 and NMPA's revised draft *Drug Administration Law Implementing Regulations* in 2021. Despite the opportunities that these revised draft measures afforded China's regulatory authorities, the concerning limitations on RDP were not removed, and China still has not created a regulatory framework providing for the six-year period of RDP as it had committed to do in 2001.

Since 2018, volume-based procurement has presented a new market access complication for foreign suppliers of pharmaceuticals, largely because of the opaque and unpredictable nature of the bidding processes. In November 2018, a National Drug Centralized Procurement Pilot Scheme was launched. Then, in January 2019, the State Council issued a Pilot Plan for National Centralized Drug Procurement and Use. In January 2023, China's National Healthcare Security Administration (NHSA) published the 2022 edition of its annual National Reimbursement Drug List (NRDL), which became effective on March 1, 2023. U.S. industry also cites the need for increased transparency and greater harmony between national and provincial bidding processes as well as a greater emphasis on a competitive, market-based approach to evaluating a product's value and relevant bids. In December 2022, NHSA and CNIPA jointly issued the *Opinions on Strengthening the Protection of Intellectual Property Rights in the Field of Centralized Pharmaceutical Procurement*, which sets out to establish a coordination mechanism to remove patent-infringing drugs from the NRDL, with further implementing measures to follow.

As part of the Phase One Agreement, the two sides agreed that China would establish a nationwide mechanism for the early resolution of potential pharmaceutical patent disputes that covers both small molecule drugs and biologics, including a cause of action to allow a patent holder to seek expeditious remedies before the marketing of an allegedly infringing product. The United States has been working closely with U.S. industry to monitor developments and to ensure that China's new system works as contemplated. Separately, the agreement also provides for patent term extensions to compensate for unreasonable patent and marketing approval delays that cut into the effective patent term as well as for the use of supplemental data to meet relevant patentability criteria for pharmaceutical patent applications. The United States and China agreed to address data protection for pharmaceuticals in future negotiations.

In October 2020, China amended the *Patent Law* to provide for patent term extensions for unreasonable patent and marketing approval delays, and it also added a mechanism for the early resolution of potential patent disputes, known as patent linkage. Implementing measures for the patent linkage mechanism were issued in July 2021, as NMPA and CNIPA jointly issued the *Trial Implementation Measures for the Mechanism for Early Resolution of Drug Patent Disputes* and the Supreme People's Court issued the *Regulations on Several Issues Concerning the Application of Law in the Trial of Civil Patent Disputes Related to Drug Registration Application*. In 2021 and 2022, CNIPA issued draft implementing rules for the amended *Patent Law* and drafts of amendments to the *Patent Examination Guidelines*. In December 2023, China released the final implementing rules for the amended *Patent Law*.

Among other things, the United States and U.S. industry remain concerned about China's implementation of patent term extensions for unreasonable patent and marketing approval delays, including the limits on the type of protection provided by China's regulatory framework. The United States and U.S. industry also remain concerned about China's patent linkage mechanism.

MEDICAL DEVICES

For many years, working closely with U.S. industry, the United States has raised concerns about China's pricing and tendering procedures for medical devices and its discriminatory treatment of imported medical devices. Notably, at the November 2015 JCCT meeting, China committed that, in terms of accessing the market, it will give imported medical devices the same treatment as medical devices manufactured or developed domestically. Unfortunately, despite this commitment, China continues to pursue a wide range of policies that direct China's purchasing authorities to prioritize the procurement of domestic medical device manufacturers over imported medical device manufacturers.

Separately, the United States has pressed China's regulatory authorities to develop sound payment systems for medical devices that are transparent, predictable and competitive. The United States has also urged China to adequately recognize quality, safety and the costs of R&D in its approach to procurement policy.

In 2019, China's State Council launched a concerning volume-based procurement (VBP) approach for medical devices in a few provinces and municipalities in an attempt to cut healthcare costs. Since then, the VBP approach has become further engrained in China's system, with the formation of multi-province and municipal alliances to conduct joint procurements under VBP. In 2020, China implemented its first national VBP tender, which has been followed by additional national tenders in 2021 and 2022. However, U.S. industry reports that the vast majority of VBP tendering activities are occurring at the sub-national level. In practice, moreover, implementation of China's VBP prioritizes cost over the product's value or quality.

According to U.S. industry, if China continues to pursue VBP without significant changes, it could lead to the creation of a low-cost, low-quality medical devices sector in China, with Chinese medical device companies developing monopolies in the manufacture and sale of various low-quality medical devices in the China market. This outcome would operate to the disadvantage of innovative medical device companies, many of which are foreign companies, and the patients who rely on advanced medical technologies. Currently, medical device companies that are successful at winning bids often have very thin profit margins or even lose money. Reportedly, some medical device companies are reducing training to healthcare providers in order to offer the expected price cuts. In addition, given the size of China's medical device market, monopolies from China could expand and then prioritize exports of their low-quality medical devices to third countries. With the choice between a higher cost but more effective product or a lower cost, lower quality product, countries with greater budget constraints, and greater vulnerability to Chinese influence, may be more inclined to procure China's offerings. Overall, China's VBP approach poses a risk to the medical device sector and the provision of high-quality medical treatment worldwide.

In July 2022, China's Ministry of Finance issued a revised *Government Procurement Law*. While China has a history of distributing unofficial, non-public guidance to give preference to domestic over foreign medical devices companies, China's revisions to the *Government Procurement Law* also officially expands the coverage of products for which domestic alternatives should be given preference.

Meanwhile, the *Made in China 2025* industrial plan announced by the State Council in 2015 seeks to prop up China's domestic medical device sector through a series of support policies, including

targeted funds and procurement policies. The goal of these policies is to significantly increase the market share of domestically owned and domestically manufactured medical devices, and correspondingly decrease market share of foreign medical devices, by 2025. At the same time, some provincial governments directly subsidize the purchase of domestically manufactured medical devices. In addition, some provincial governments have issued guidelines urging medical institutions to prioritize the procurement of local medical equipment over imported equipment. In at least one province, the guidelines suggest that only imported medical devices for which there is not a domestic replacement will be eligible for procurement.

As discussed in more detail in the Government Procurement section below, in August 2023, China's State Council issued the *Opinions on Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment*, known as Document 11. Article 6 of Document 11 offers various suggestions for how central level ministries and sub-central government authorities could work to ensure that foreign-invested enterprises are able to participate fairly in China's government procurement market, consistent with existing Chinese law. One of the suggestions is to provide a definition for "produced in China." To the extent that China follows through on the State Council's suggestions, the United States urges China to make any draft implementing measures public and to provide a reasonable period for the public to submit comments.

U.S. industry also reports that while sub-central governments in China have always provided some financial support to domestic medical devices companies, their support appears to have increased since 2020. U.S. industry notes that this trend could be attributed to the COVID-19 pandemic, China's five-year industrial plan for medical equipment covering the years 2021 to 2025, the *Action Plan to Promote the High-Quality Development of the Medical Equipment Industry (2023-2025)* or perhaps all three of them. The United States will monitor this situation closely and will encourage China to be transparent in its approach.

SERVICES

OVERVIEW

The prospects for U.S. service suppliers in China should be promising, given the size of China's market. Nevertheless, the U.S. share of China's services market remains well below the U.S. share of the global services market, and the OECD continues to rate China's services regime as one of the most restrictive among the world's major economies.

In 2023, numerous challenges persisted in a number of services sectors. As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, case-by-case approvals in some services sectors, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services to achieve their full market potential in China. These policies and practices affect U.S. service suppliers across a wide range of sectors, including cloud computing, telecommunications, film production and distribution, online video and entertainment services, express delivery and legal services. In addition, China's *Cybersecurity Law* and related implementing measures include mandates to purchase domestic information and communications technology (ICT) products and services, while China's *Cybersecurity Law*, *Data Security Law* and *Personal Information Protection Law* and related implementing measures include excessive restrictions on cross-border data flows, and excessive requirements to store and process data locally. These types of data measures undermine U.S. services suppliers' ability to take advantage of market access opportunities in China by prohibiting or severely restricting cross-border transfers of information that are routine in the ordinary course of business and are fundamental to any business activity. China also has failed to fully address U.S.

concerns in areas that have been the subject of WTO dispute settlement, including electronic payment services and theatrical film importation and distribution.

The Phase One Agreement, signed in January 2020, addresses a number of longstanding trade and investment barriers to U.S. providers of a wide range of financial services, including banking, insurance, securities, asset management, credit rating and electronic payment services, among others. The barriers addressed in the agreement include joint venture requirements, foreign equity limitations and various discriminatory regulatory requirements. Removal of these barriers is designed to allow U.S. financial service providers to compete on a more level playing field and expand their services export offerings in the China market. Nevertheless, China's excessive restrictions on cross-border data flows could continue to create significant challenges for U.S. financial service providers in China.

BANKING SERVICES

Although China has opened its banking sector to foreign competition in the form of wholly foreign-owned banks, China has maintained restrictions on market access in other ways that have kept foreign banks from establishing, expanding and obtaining significant market share in China. Recently, however, China has taken some steps to ease or remove market access restrictions.

For example, China has removed a number of long-standing barriers for foreign banks, including the $10 billion minimum asset requirement for establishing a foreign bank in China and the $20 billion minimum asset requirement for setting up a Chinese branch of a foreign bank. China has also removed the cap on the equity interest that a single foreign investor can hold in a Chinese-owned bank.

In the Phase One Agreement, China committed to remove some of these barriers and to expand opportunities for U.S. financial institutions, including bank branches, to supply securities investment fund custody services by considering their global assets when they seek licenses. China also agreed to review and approve qualified applications by U.S. financial institutions for securities investment fund custody licenses on an expeditious basis. In addition, China committed to consider the international qualifications of U.S. financial institutions when evaluating license applications for Type-A lead underwriting services for all types of non-financial debt instruments in China.

SECURITIES, ASSET MANAGEMENT AND FUTURES SERVICES

In the Phase One Agreement, China committed to remove the foreign equity caps in the securities, asset management and futures sectors by no later than April 1, 2020. It also committed to ensure that U.S. suppliers of securities, asset management and futures services are able to access China's market on a non-discriminatory basis, including with regard to the review and approval of license applications.

Consistent with its commitments in the Phase One Agreement, China announced that it would allow wholly foreign-owned companies for the securities and asset (i.e., fund) management sectors as of April 1, 2020, and that it would allow wholly foreign-owned companies for the futures sector as of January 1, 2020. Prior to these announcements, China had maintained a foreign equity cap of 51 percent for these sectors. Over the past four years, some U.S. financial institutions have applied for and received licenses to operate as wholly foreign-owned enterprises in these sectors. The United States is monitoring these and other developments as U.S. companies continue to seek to obtain licenses and undertake operations in these sectors.

INSURANCE SERVICES

In the Phase One Agreement, China committed to accelerate the removal of the foreign equity caps for life, pension and health insurance so that they are removed no later than April 1, 2020. In addition, it confirmed the removal of the 30-year operating

requirement, known as a "seasoning" requirement, which had been applied to foreign insurers seeking to establish operations in China in all insurance sectors. China also committed to remove all other discriminatory regulatory requirements and processes and to expeditiously review and approve license applications.

Consistent with China's commitments in the Phase One Agreement, the China Banking and Insurance Regulatory Commission (CBIRC) announced that China would allow wholly foreign-owned companies for the life, pension and health insurance sectors as of January 1, 2020. Prior to this announcement, China had maintained foreign equity caps and only permitted foreign companies to establish as Chinese-foreign joint ventures in these sectors. In December 2020, CBIRC issued a measure that provided further transparency regarding its intention to allow foreign-invested companies to take advantage of this opening.

In other insurance sectors, the United States continues to encourage China to establish more transparent procedures so as to better enable foreign participation in China's market. Sectors in need of more transparency include export credit insurance and political risk insurance.

Finally, some U.S. insurance companies established in China have encountered difficulties in getting CBIRC, replaced by the National Administration of Financial Regulation (NAFR) in March 2023, to issue timely approvals of their requests to open up new internal branches to expand their operations. The United States continues to urge NAFR to issue timely approvals when U.S. insurance companies seek to expand their branch networks in China.

ELECTRONIC PAYMENT SERVICES

In a WTO case that it launched in 2010, the United States challenged China's restrictions on foreign companies, including major U.S. credit and debit card processing companies, which had been seeking to supply electronic payment services to banks and other businesses that issue or accept credit and debit cards in China. The United States argued that China had committed in its WTO accession agreement to open up this sector in 2006, and a WTO panel agreed with the United States in a decision issued in 2012. China subsequently agreed to comply with the WTO panel's rulings in 2013, but China did not allow foreign suppliers to apply for licenses until June 2017, when China's regulator – PBOC – finalized the establishment of a two-step licensing process in which a supplier must first complete one year of preparatory work before being able to apply for a license.

As of January 2020, when the United States and China entered into the Phase One Agreement, no foreign supplier of electronic payment services had been able to secure the license needed to operate in China's market due largely to delays caused by PBOC. At times, PBOC had refused even to accept applications to begin preparatory work from U.S. suppliers, the first of two required steps in the licensing process. Meanwhile, throughout the years that China actively delayed opening up its market to foreign suppliers, China's national champion, China Union Pay, has used its exclusive access to domestic currency transactions in the China market, and the revenues that come with it, to support its efforts to build out its electronic payment services network abroad, including in the United States. In other words, China consciously decided to maintain market-distorting practices that benefit its own companies, even in the face of adverse rulings at the WTO.

In the Phase One Agreement, China committed to ensure that PBOC operates an improved and timely licensing process for U.S. suppliers of electronic payment services so as to facilitate their access to China's market. In June 2020, four months after the entry into force of the Phase One Agreement, American Express became the first foreign supplier of electronic payment services to secure a license from PBOC to operate in China's market. In November 2023, after years of delays, Mastercard was finally able to secure a license to operate in the

China market. Meanwhile, PBOC has been delaying action for even longer periods of time on the licensing application submitted by another U.S. supplier, Visa. The United States continues to closely monitor this situation with concern.

INTERNET-ENABLED PAYMENT SERVICES

PBOC first issued regulations for non-bank suppliers of online payment services in 2010, and it subsequently began processing applications for licensees. Regulations were further strengthened in 2015, with additional provisions aimed at increasing security and traceability of transactions. According to a U.S. industry report, of more than 200 licenses issued as of June 2014, only two had been issued to foreign-invested suppliers, and those two were for very limited services. This report provided clear evidence supporting stakeholder concerns about the difficulties they faced entering China's market and the slow process foreign firms face in getting licensed. In 2018, PBOC announced that it would allow foreign suppliers, on a nondiscriminatory basis, to supply Internet-enabled payment services. At the same time, as in many other sectors, PBOC requires suppliers to localize their data and facilities in China. In January 2021, PayPal became the first foreign company to obtain full ownership of a payment platform in China, along with a license to supply payment services. The United States will continue to closely monitor developments in this area.

TELECOMMUNICATIONS SERVICES

China's restrictions on basic telecommunications services, such as informal bans on new entry, a 49-percent foreign equity cap, a requirement that foreign suppliers can only enter into joint ventures with state-owned enterprises and exceedingly high capital requirements, have blocked foreign suppliers from accessing China's basic telecommunications services market. Since China acceded to the WTO almost two decades ago, not a single foreign firm has succeeded in establishing a new joint venture to enter this sector.

Restrictions maintained by China on less highly regulated value-added telecommunications services also have created serious barriers to market entry for foreign suppliers seeking to enter this sector. These restrictions include opaque and arbitrary licensing procedures, foreign equity caps and periodic, unjustified moratoria on the issuance of new licenses. As a result, only a few dozen foreign-invested suppliers have secured licenses to provide value-added telecommunications services, while there are thousands of licensed domestic suppliers.

INTERNET REGULATORY REGIME

China's Internet regulatory regime is restrictive and non-transparent, affecting a broad range of commercial services activities conducted via the Internet, and is overseen by multiple agencies without clear lines of jurisdiction. China's Internet economy has boomed over the past decade and is second in size only to that of the United States. Growth in China has been marked in service sectors similar to those found in the United States, including retail websites, search engines, vocational and adult online education, travel, advertising, audio-visual and computer gaming services, electronic mail and text, online job searches, Internet consulting, mapping services, applications, web domain registration and electronic trading. However, in the China market, Chinese companies dominate due in large part to restrictions imposed on foreign companies by the Chinese government. At the same time, foreign companies continue to encounter major difficulties in attempting to offer these and other Internet-based services on a cross-border basis.

China continues to engage in extensive blocking of legitimate websites, imposing significant costs on both suppliers and users of web-based services and products. According to the latest data, China currently blocks most of the largest global sites, and

U.S. industry research has calculated that more than 10,000 sites are blocked, affecting billions of dollars in business, including communications, networking, app stores, news and other sites. Even when sites are not permanently blocked, the often arbitrary implementation of blocking, and the performance-degrading effect of filtering all traffic into and outside of China, significantly impair the supply of many cross-border services, often to the point of making them unviable.

VOICE-OVER-INTERNET PROTOCOL SERVICES

While computer-to-computer voice-over-Internet (VOIP) services are permitted in China, China's regulatory authorities have restricted the ability to offer VOIP services interconnected to the public switched telecommunications network (i.e., to call a traditional phone number) to basic telecommunications service licensees. There is no obvious rationale for such a restriction, which deprives consumers of a useful communication option, and the United States continues to advocate for eliminating it.

CLOUD COMPUTING SERVICES

Especially troubling is China's treatment of foreign companies seeking to participate in the development of cloud computing services, including computer data processing and storage services and software application services provided over the Internet. China prohibits foreign companies established in China from directly providing any of these services. Given the difficulty in providing these services on a cross-border basis (largely due to restrictive Chinese policies), the only option that a foreign company has to access the China market is to establish a contractual partnership with a Chinese company, which is the holder of the necessary Internet data center license, and turn over its valuable technology, intellectual property, know-how and branding as part of this arrangement. While the foreign service supplier earns a licensing fee from the arrangement, it has no direct relationship with customers in China and no ability to independently develop its business. It has essentially handed over its business to a Chinese company that may well become a global competitor. This treatment has generated serious concerns in the United States and among other WTO Members as well as U.S. and other foreign companies.

In major markets, including China, cloud computing services are typically offered through commercial presence in one of two ways. They are offered as an integrated service in which the owner and operator of a telecommunication network also offers computing services, including data storage and processing function, over that network, or they are offered as a stand-alone computer service, with connectivity to the computing service site provided separately by a telecommunications service supplier. Although China's commitments under the WTO's General Agreement on Trade in Services (GATS) include services relevant to both of these approaches, neither one is currently open to foreign-invested companies in China.

AUDIO-VISUAL AND RELATED SERVICES

China prohibits foreign companies from providing film production and distribution services in China. In addition, China's restrictions in the area of theater services have wholly discouraged investment by foreign companies in cinemas in China.

China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers. For example, China prohibits retransmission of foreign TV channels, foreign investment in TV production and foreign investment in TV stations and channels. China also imposes quotas on the amount of foreign programming that can be shown on a Chinese TV channel each day. In addition, in September 2018, the National Radio and Television Administration's (NRTA) issued a problematic draft measure that would impose new restrictions in China's already highly restricted market for foreign creative content. It would require that spending on foreign content account for no more than 30 percent of available total programs in

each of several categories, including foreign movies, TV shows, cartoons, documentaries and other foreign TV programs, made available for display via broadcasting institutions and online audio-visual content platforms. It also would prohibit foreign TV shows in prime time. Although this measure has not yet been issued in final form, it continues to raise serious concerns, as it appears that, as a matter of practice, it has been implemented in China since 2021, including by online audio-visual content platforms.

THEATRICAL FILMS

In February 2012, the United States and China reached an alternative resolution with regard to certain rulings relating to the importation and distribution of theatrical films in a WTO case that the United States had won. The two sides signed a memorandum of understanding (MOU) providing for substantial increases in the number of foreign films imported and distributed in China each year, along with substantial additional revenue for U.S. film producers. However, China has not yet fully implemented its MOU commitments, including with regard to critical commitments to open up film distribution opportunities for imported films. As a result, the United States has been pressing China for full implementation of the MOU.

In 2017, in accordance with the terms of the MOU, the two sides began discussions regarding the provision of further meaningful compensation to the United States in an updated MOU. These discussions continued until March 2018, before stalling when China embarked on a major government reorganization that involved significant changes for China's Film Bureau. Discussions resumed in 2019 as part of the broader U.S.-China trade negotiations that began following a meeting between the two countries' Presidents on the margins of the Group of 20 Heads of State and Government Summit in Buenos Aires in December 2018. To date, no agreement has been reached on the further meaningful compensation that China owes to the United States. The United States will continue pressing China to fulfill its obligations.

ONLINE VIDEO AND ENTERTAINMENT SERVICES

China restricts the online supply of foreign video and entertainment services through measures affecting both content and distribution platforms. China requires foreign companies to license their content to Chinese companies and also imposes burdensome restrictions on content, which are implemented through exhaustive content review requirements that are based on vague and otherwise non-transparent criteria. With respect to distribution platforms, NRTA has required Chinese online platform suppliers to spend no more than 30 percent of their acquisition budget on foreign content. NRTA has also instituted numerous measures that prevent foreign suppliers from qualifying for a license, such as requirements that video platforms all be Chinese-owned. NRTA and other Chinese regulatory authorities have also taken actions to prevent the cross-border supply of online video services, which may implicate China's GATS commitments relating to video distribution.

LEGAL SERVICES

China restricts the types of legal services that can be provided by foreign law firms, including through a prohibition on foreign law firms hiring lawyers qualified to practice Chinese law. It also restricts the ability of foreign law firms to represent their clients before Chinese government agencies and imposes lengthy delays on foreign law firms seeking to establish new offices. In addition, beginning with the version of China's *Foreign Investment Negative List* that entered into force in July 2020, China has added an explicit prohibition on the ability of a foreign lawyer to become a partner in a domestic law firm. Reportedly, China is also considering draft regulatory measures that would even further restrict the ability of foreign law firms to operate in China.

EXPRESS DELIVERY SERVICES

The United States continues to have concerns regarding China's implementation of the 2009 *Postal Law* and related regulations through which China prevents foreign service suppliers from participating in the document segment of its domestic express delivery market. Meanwhile, in the package segment, China applies overly burdensome and inconsistent regulatory approaches and reportedly has provided more favorable treatment to Chinese service suppliers when awarding business permits. China also does not always allow foreign service suppliers to participate on an equal basis in the development of laws, regulations and other measures, including standards, for the express delivery services sector, nor does China always publicly announce the requirements for obtaining a business license.

DIGITAL TRADE AND ELECTRONIC COMMERCE POLICIES

DATA RESTRICTIONS

In 2023, China continued to build out its expansive state control over the collection, storage, processing and sharing of data. China's *Data Security Law* entered into force in September 2021, and China's *Personal Information Protection Law* entered into force in November 2021. These laws operate together with the *Cybersecurity Law*, which took effect in June 2017, the *National Security Law*, which has been in effect since 2015, and various implementing measures, including the *Security Assessment Measures for Outbound Transfers of Data*, which took effect in September 2022, to prohibit or severely restrict cross-border transfers of "important data," a broadly and vaguely defined term, and, in certain cases, personal information collected by companies through their operations in China. These laws and implementing measures also impose local data storage and processing requirements on companies operating in China that collect "important data" and, in certain cases, personal information.

It has been reported that, as a result of China's implementation of the *Security Assessment Measures for Outbound Transfers of Data*, China now has a backlog of thousands of applications from companies seeking to export data. In addition, in September 2023, China released a draft of revisions to the *Security Assessment Measures for Outbound Transfers of Data*, while allowing only a two-week public comment period. Many aspects of the draft revisions are troubling.

Cross-border transfers of data are routine in the ordinary course of business in many sectors and are fundamental to business activity in those sectors. Given the wide range of businesses and business activities that are dependent on cross-border transfers of data and flexible access to global computing facilities, these developments continue to generate serious concerns in the United States and many other countries.

SECURE AND CONTROLLABLE ICT POLICIES

Implementing measures for China's *Cybersecurity Law* remain a continued source of serious concern for U.S. companies since the law's enactment in 2016. Of particular concern are the *Measures for Cybersecurity Review*, first issued in 2016 and later updated in 2020 and 2021. This measure implements one element of the cybersecurity regime created by the *Cybersecurity Law*. Specifically, the measure puts in place a review process to regulate the purchase of ICT products and services by critical information infrastructure operators and online platform operators in China. The review process is to consider, among other things, potential national security risks related to interruption of service, data leakage and reliability of supply chains. In addition, in September 2022, China published a draft revision of the *Cybersecurity Law* with a 15-day public comment period. The draft revision would introduce penalties on operators of critical information infrastructure who use products or services that have not undergone the required security review, and it would also raise fines for certain violations of the *Cybersecurity Law*.

As demonstrated in implementing measures for the *Cybersecurity Law*, China's approach is to impose severe restrictions on a wide range of U.S. and other foreign ICT products and services with an apparent goal of supporting China's technology localization policies by encouraging the replacement of foreign ICT products and services with domestic ones. U.S. and other foreign stakeholders and governments around the world expressed serious concerns about requirements that ICT equipment and other ICT products and services in critical sectors be "secure and controllable," as these requirements are used by the Chinese government to disadvantage non-Chinese firms.

In addition to the *Cybersecurity Law*, China has referenced its "secure and controllable" requirements in a variety of measures dating back to 2013. Through these measures, China has mandated that Chinese information technology users purchase Chinese products and favor Chinese service suppliers, imposed domestic R&D requirements, considered the location of R&D as a cybersecurity risk factor and required the transfer or disclosure of source code or other intellectual property. In the 2019 update of the *Measures for Cybersecurity Review*, China added political, diplomatic and other "non-market" developments as potential risk factors to be considered.

In addition, in 2015, China enacted a *National Security Law* and a *Counterterrorism Law*, which include provisions citing not only national security and counterterrorism objectives but also economic and industrial policies. The State Council also published a plan in 2015 that sets a timetable for adopting "secure and controllable" products and services in critical government ministries by 2020.

Meanwhile, sector-specific policies under this broad framework continue to be proposed and deployed across China's economy. A high-profile example from December 2014 was a proposed measure drafted by the China Banking Regulatory Commission that called for 75 percent of ICT products used in the banking system to be "secure and controllable" by 2019 and that would have imposed a series of criteria that would shut out foreign ICT providers from China's banking sector. Not long afterwards, a similar measure was proposed for the insurance sector.

In 2015, the United States, in concert with other governments and stakeholders around the world, raised serious concerns about China's "secure and controllable" regime at the highest levels of government within China. During a state visit in September 2015 in Washington, D.C., the U.S. and Chinese Presidents committed to a set of principles for trade in information technologies. The issue also was raised in connection with the June 2015 S&ED meeting and the November 2015 JCCT meeting, with China making a series of additional important commitments with regard to technology policy. China reiterated many of these commitments at the November 2016 JCCT meeting, where it affirmed that its "secure and controllable" policies are not to unnecessarily limit or prevent commercial sales opportunities for foreign ICT suppliers or unnecessarily impose nationality-based conditions and restrictions on commercial ICT purchases, sales or uses. China also agreed that it would notify relevant technical regulations to the WTO Committee on Technical Barriers to Trade (TBT Committee).

Again, however, China has not honored its promises. The numerous draft and final implementation measures issued by China since 2017 in the area of cybersecurity raise serious questions about China's approach to cybersecurity regulation. China's measures do not appear to be in line with the non-discriminatory, non-trade restrictive approach to which China has committed, and global stakeholders have grown even more concerned about the implications of China's ICT security measures across the many economic sectors that employ digital technologies. Accordingly, throughout the past year, the United States conveyed its serious concerns about China's approach to cybersecurity regulation

through bilateral engagement and multilateral engagement, including at WTO committee and council meetings, in an effort to persuade China to revise its policies in this area in light of its WTO obligations and bilateral commitments. These efforts are currently ongoing.

ENCRYPTION

Use of ICT products and services is increasingly dependent on robust encryption, an essential functionality for protecting privacy and safeguarding sensitive commercial information. Onerous requirements on the use of encryption, including intrusive approval processes and, in many cases, mandatory use of indigenous encryption algorithms (e.g., for WiFi and 4G cellular products), continue to be cited by stakeholders as a significant trade barrier.

In October 2019, China adopted a *Cryptography Law* that includes restrictive requirements for commercial encryption products that "involve national security, the national economy and people's lives, and public interest," which must undergo a security assessment. This broad definition of commercial encryption products that must undergo a security assessment raises concerns that the new *Cryptography Law* will lead to unnecessary restrictions on foreign ICT products and services. In August 2020, the State Cryptography Administration issued the draft *Commercial Cryptography Administrative Regulations* to implement the *Cryptography Law*. This draft measure did not address the concerns that the United States and numerous other stakeholders had raised regarding the *Cryptography Law*.

Going forward, the United States will continue to monitor implementation of the *Cryptography Law* and related measures. The United States will remain vigilant toward the introduction of any new requirements hindering technologically neutral use of robust, internationally standardized encryption.

GOVERNMENT PROCUREMENT

In its WTO accession agreement, China made a commitment to accede to the WTO Agreement on Government Procurement (GPA) and to open up its vast government procurement market to the United States and other GPA parties. More than two decades later, this commitment remains unfulfilled, while China's government procurement has continued to grow. Indeed, government procurement at the central level of government alone now totals approximately $500 billion, even without considering procurement by state-owned enterprises.

The United States, the EU and other GPA parties have viewed China's GPA offers over the years as highly disappointing in scope and coverage. China submitted its sixth revised offer in October 2019. This offer showed progress in a number of areas, including thresholds, coverage at the sub-central level of government, entity coverage and services coverage. Nonetheless, it fell short of U.S. expectations and remains far from acceptable to the United States and other GPA parties as significant deficiencies remain in a number of critical areas, including thresholds, entity coverage, coverage of state-owned enterprises, services coverage and broad exclusions that would require offsets, domestic content requirements and technology transfer for covered procurement. Although China has since stated that it will "speed up the process of joining" the GPA, it has not submitted a new offer since October 2019. China's most recent submission, made in June 2021, was only an update of its checklist of issues, which informs GPA parties of changes to China's existing government procurement regime since its last update.

China's current government procurement regime is governed by two important laws. The *Government Procurement Law*, administered by the Ministry of Finance, governs purchasing activities conducted with fiscal funds by state organs and other

organizations at all levels of government in China, but does not apply to procurements by state-owned enterprises. The *Tendering and Bidding Law* falls under the jurisdiction of NDRC and imposes uniform tendering and bidding procedures for certain classes of procurement projects in China, notably construction and works projects, without regard for the type of entity (e.g., a government agency or a state-owned enterprise) that conducts the procurement. Both laws cover important procurements that GPA parties would consider to be government procurement eligible for coverage under the GPA.

China's *Foreign Investment Law*, which entered into force in January 2020, and the related October 2021 Ministry of Finance Notice 35 state that China will provide equal treatment to foreign companies invested in China and to domestic Chinese companies with regard to government procurement opportunities. However, foreign companies report a marked increase in preference for domestic Chinese companies over foreign companies invested in China.

In July 2022, the Ministry of Finance issued draft amendments to the *Government Procurement Law*. Among other changes, these draft amendments would codify the requirement that officials at all levels of government refrain from purchasing non-domestic products whenever domestic products are available. The draft amendments, which have not yet been finalized, do not define the term "domestic product."

In August 2023, China's State Council issued the *Opinions on Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment*, known as Document 11. One of the 24 topics addressed in Document 11 is government procurement. Specifically, Article 6 of Document 11 offers various suggestions for how central level ministries and sub-central government authorities could work to ensure that foreign-invested enterprises can participate in China's government procurement market, consistent with existing Chinese law. In this article, the State Council recommends clarifying the meaning of "produced in China" as it relates to China's government procurement laws and regulations and providing unspecified support for foreign-invested enterprises to encourage them to develop their cutting-edge products in China. It also recommends accelerating amendments to the *Government Procurement Law*. While China's leadership has been touting Document 11 to the foreign business community as a demonstration of China's sincerity about fostering a more welcoming environment for foreign companies in China, Document 11 provides little clarity as to how its suggestions would be implemented, nor does it identify timelines for acting on them. Moreover, many of the suggestions fail to demonstrate a willingness to make meaningful changes, as they either restate outcomes that China previously achieved or offer outcomes that would fall short of China's WTO commitments. Going forward, the United States expects China to make any forthcoming draft implementing measures accessible to the public, including the foreign business community, and to provide a reasonable period of time to submit comments on them.

Under both its government procurement regime and its tendering and bidding regime, China continues to implement policies favoring products, services and technologies made or developed by Chinese-owned and Chinese-controlled companies through explicit and implicit requirements that hamper foreign companies from fairly competing in China. For example, notwithstanding China's commitment to equal treatment, foreign companies continue to report cases in which "domestic brands" and "indigenous designs" are required in tendering documents. Since China has not yet adopted clear rules on what constitutes a "domestic product," procurement officials often prefer to err on the side of caution and purchase products from domestic Chinese companies.

ADMINISTRATIVE PROCESS

ADMINISTRATIVE LICENSING

U.S. companies continue to encounter significant problems with a variety of administrative licensing processes in China, including processes to secure product approvals, investment approvals, business expansion approvals, business license renewals and even approvals for routine business activities. While there has been an overall reduction in license approval requirements and a focus on decentralizing licensing approval processes, U.S. companies continue to report that one of their key concerns involves China's problematic licensing approval processes.

TRANSPARENCY

OVERVIEW

One of the core principles reflected throughout China's WTO accession agreement is transparency. Unfortunately, after more than 20 years of WTO membership, China still has a poor record when it comes to adherence to its transparency obligations.

PUBLICATION OF TRADE-RELATED MEASURES

In its WTO accession agreement, China committed to adopt a single official journal for the publication of all trade-related laws, regulations and other measures. China adopted a single official journal, to be administered by MOFCOM, in 2006. However, it appears that China only publishes trade-related measures from some, but not all, central-government entities in this journal. It also appears that China rarely publishes trade-related measures from sub-central governments in the journal.

At the central government level, moreover, China tends to take a narrow view of the types of trade-related measures that need to be published in the official journal. For those government entities whose trade-related measures are published in the official journal, China more commonly (but still not regularly) publishes trade-related administrative regulations and departmental rules in the journal, but it is rare for China to publish other measures such as opinions, circulars, orders, directives and notices, which are known as "normative documents" in China's legal system. Normative documents are regulatory documents that do not fall into the category of administrative regulations or departmental rules, but still impose binding obligations on enterprises and individuals. Although the State Council introduced a definition for "administrative normative documents" in 2014, this definition is narrow and does not appear to encompass all normative documents, nor has it resulted in their regular publication as required by China's WTO commitments. Among other things, publication of all normative documents would facilitate compliance by enterprises and individuals with the obligations addressed in them.

Meanwhile, China rarely publishes certain types of trade-related measures from either the central level or the sub-central level of government in the official journal. As discussed above in the Industrial Subsidies section, an important example involves subsidy measures.

NOTICE-AND-COMMENT PROCEDURES

In its WTO accession agreement, China committed to provide a reasonable time period for public comment before implementing new trade-related laws, regulations and other measures. While little progress has been made in implementing this commitment at the sub-central government level, the National People's Congress instituted notice-and-comment procedures for draft laws in 2008, and shortly thereafter China indicated that it would also publish proposed trade- and economic-related administrative regulations and departmental rules for public comment. Subsequently, the National People's Congress began regularly publishing draft laws for public comment. China's State Council often (but not regularly) published draft administrative regulations for public comment, but many of China's ministries were not consistent in

publishing draft departmental rules or normative documents for public comment.

At the May 2011 S&ED meeting, China committed to issue a measure implementing the requirement to publish all proposed trade- and economic-related administrative regulations and departmental rules on the website of the State Council's Legislative Affairs Office (SCLAO) for a public comment period of not less than 30 days. In April 2012, the SCLAO issued two measures that appear to address this requirement.

In the Phase One Agreement, China committed to provide no less than 45 days for public comment on all proposed laws, regulations and other measures implementing the Phase One Agreement. Since the entry into force of this commitment in February 2020, China has generally been providing the required 45-day public comment period and working constructively with the United States whenever it has raised questions or concerns regarding provisions in proposed implementing measures.

Currently, outside the context of Phase One Agreement implementing measures, the process for issuing new measures in China can be opaque and unpredictable and implemented without adequate notice. China still needs to improve its practices relating to the publication of administrative regulations and departmental rules for public comment. China also needs to formalize its use of notice-and-comment procedures for all normative documents. In addition, even when China provides for a notice-and-comment period, too often it issues the final measure immediately after the end of the comment period, suggesting that it did not give serious consideration to the comments received.

China also needs to implement consistently the notice-and-comment obligations applicable to all WTO Members. Most notably, China needs to adhere consistently to the notice-and-comment periods required by the TBT Agreement and the SPS Agreement.

TRANSLATIONS

In its WTO accession agreement, China committed to make available translations of all of its trade-related laws, regulations and other measures at all levels of government in one or more of the WTO languages, i.e., English, French and Spanish. Prior to 2014, China had only compiled translations of trade-related laws and administrative regulations (into English), but not other types of measures, such as departmental rules, normative documents and sub-central government measures. Even for trade-related laws and administrative regulations, China was years behind in publishing these translations. At the July 2014 S&ED meeting, China committed that it would extend its translation efforts to include not only trade-related laws and administrative regulations but also trade-related departmental rules. Subsequently, in March 2015, China issued a measure requiring trade-related departmental rules to be translated into English. This measure also provides that the translation of a departmental rule normally must be published before implementation.

Notably, however, even if China were to fully implement its existing measures requiring translations, they would not be sufficient to bring China into full WTO compliance in this area. China does not consistently publish translations of trade-related laws, administrative regulations and departmental rules in a timely manner (i.e., before implementation), nor does it publish any translations of trade-related normative documents or trade-related measures issued by sub-central governments.

INQUIRY POINT

In its WTO accession agreement, China committed to establish an inquiry point that would respond to requests for information relating to legal measures required to be published in its official journal. At times, however, China has refused to provide copies of legal measures in response to legitimate requests directed to its inquiry point.

In April 2020, for example, the United States submitted a request concerning five Chinese legal measures covering semiconductors and fisheries subsidy programs that had not been published in China's official journal and were not otherwise available online, nor had they been notified to the WTO. Despite the obligation in its WTO accession agreement to either provide the documents or respond in writing within 45 days, China did not meet this deadline. The United States made repeated follow-up requests, to no avail. Five months after the United States submitted its request to China's inquiry point, MOFCOM orally informed the U.S. Embassy in Beijing that it would not be providing any of the requested legal measures because two of the measures would soon be replaced and the other three measures, in China's view, were not relevant to China's WTO obligations. USTR promptly responded to MOFCOM in writing, countering its assertions and urging it to provide the requested documents. Since then, China has continued to refuse to provide a written response to the United States' request or to provide any of the requested legal measures, even though the United States and other WTO Members have repeatedly raised this matter in the WTO's Subsidies Committee and Council for Trade in Goods.

SOCIAL CREDIT SYSTEM

Since 2014, China has been working to implement a national "social credit" system for both individuals and companies. The implementation of this system is at a more advanced stage for companies versus individuals, as 18-digit "unified social credit codes" are assigned to every domestic and foreign company in China. These 18-digit codes will provide a way for the Chinese government to track a company's record of administrative and regulatory compliance and generate public credit information. In his report to the 20th National Party Congress in October 2022, Xi Jinping in his capacity as the General Secretary of the Chinese Communist Party emphasized the need to refine the social credit system. Since then, the Chinese government has continued to take steps to make the social credit system fully operational.

Under the corporate social credit system, government records and market-generated corporate compliance data are collected on every legal entity in China. The collected information contains regulatory and administrative records contributed by at least 44 state agencies and their branch offices across every province in China. Previously disparate information relating to a company's financial records, regulatory compliance, inspection results and other administrative enforcement activities is being consolidated under a company's unified social credit code. All of this data will be aggregated and shared between regulatory agencies via the National Credit Information Sharing Platform. Reportedly, approximately 75 percent of the records collected on companies is intended to be designated as "open to the public," while the remaining 25 percent that is intended to be withheld will include potentially sensitive information, such as approval records related to national development projects and details of any criminal cases.

Nationwide data collection under the corporate social credit system provides mechanisms to penalize companies with poor corporate and legal compliance records by, among other things, subjecting them to public censure via what China calls "blacklists," while rewarding compliant companies with positive incentives via so-called "redlists." Negative ratings or placement on a government agency's censure list can lead to various restrictions on a company's business activities. A company could face increased inspections, reduced access to loans and tax incentives, restrictions on government procurement, reduced land-use rights, monetary fines or permit denials, among other possible penalties.

However, currently, there is no fully integrated national system for assigning comprehensive social credit scores for companies, and the social credit system remains highly fragmented. Certain central

government agencies and sub-central government agencies maintain their own rating systems, with each agency making its own decisions about the types of transgressions that warrant negative ratings or placing a company on a censure list.

In November 2022, NDRC and PBOC jointly published a draft *Social Credit Construction Law* that would give the social credit system a legal basis, further embedding it into China's regulatory network. The draft law seeks to establish NDRC and PBOC as the main government agencies for construction of the social credit system. Their responsibilities would include overall coordination, supervision and guidance of the construction of the social credit system and taking the lead in organizing the formulation and implementation of relevant policies and standards. The draft law also seeks to provide formal legal definitions for certain terms used in implementing the social credit system, such as "untrustworthy," "credit supervision" and "credit information." In addition, the draft law seeks to codify the protection of certain rights, as it calls for the establishment of a social credit system that maintains the security of social credit information and strictly protects state secrets, business secrets and personal privacy, while also protecting the lawful rights and interests of natural persons, legal persons and unincorporated organizations. To date, the draft law has not been issued in final form.

Earlier in 2022, prior to the publication of the draft law, NDRC issued a draft update of the 2021 *National Basic Catalogue of Public Credit Information* and a draft update of the 2021 *National Basic List of Disciplinary Measures against Dishonest Acts*. The draft *Catalogue of Public Credit Information* compiles the scope and types of credit information that can be collected by government agencies. It also stipulates that certain categories of information are exempt from collection, including state secrets and trade secrets. The draft *List of Disciplinary Measures* includes a range of punitive actions that may be applied to violators of trust, such as duties, fees, restrictions on market activity, prohibitions or limitations on occupations and bans from government procurement bidding. Like the draft law, neither the draft *Catalogue of Public Credit Information* nor the draft *List of Disciplinary Measures* has been issued in formal form.

The social credit system has been tied to larger policy objectives as well. For example, the General Office of the State Council and the General Office of the Chinese Communist Party issued a joint opinion on promoting a high-quality credit system in order to further China's "dual circulation" objectives. In addition, in November 2022, the Ministry of Science and Technology (MOST) announced a new pilot project for evaluating science, technology, engineering and mathematics talent. Under MOST's new pilot project, evaluation of scientists' performance is to incorporate metrics related to their moral character, which includes their social credit record, in order to ensure that scientific researchers have no history of plagiarism or academic fraud. This pilot project appears to reflect China's struggle to improve the quality of its scientific research talent.

Foreign companies have numerous concerns with China's social credit system, which is becoming increasingly complex and expansive. They are concerned that the Chinese government will use it to disadvantage foreign companies or provide favorable treatment to domestic companies. They are concerned that the Chinese government will use the social credit system to pressure them to act in furtherance of China's industrial policies or other state priorities or otherwise to make investments or conduct their business operations in ways that run counter to market principles or their own business strategies. In addition, foreign companies are concerned about the opaque nature of the social credit system. Currently, for example, a company sometimes only learns about its negative ratings when, for example, it requests a permit and receives a denial, even though the *Measures for Administration of the List of Serious Violators of Trust and Law* includes a requirement that companies be informed of their being censured in advance. Other times, a company learns for the first

time that it has been censured when a Chinese government agency posts its name on the agency's website, even though the censuring of a company can cause severe harm to the company's reputation and adversely impact its efforts to attract customers, secure needed financing or make new investments. When Chinese government agencies begin to pursue joint punishment in the way that NDRC envisions, it will mean that an infraction in one regulatory context could have wider consequences across the company's entire business operations.

Foreign companies are also concerned about the links between corporate social credit and individual social credit. They can foresee the Chinese government using the social credit system as another tool to ensure that foreign companies and those who work for them do not cross political redlines on sensitive matters like human rights. Foreign companies can also foresee the Chinese government potentially using corporate social credit in the future to exert extraterritorial influence by threatening the social credit standing of foreign companies or their officials for behavior or speech outside of China. Similarly, foreign companies are concerned that China will abuse its legion of laws regulating how data is stored and transferred to access information to use against them.

OTHER NON-TARIFF MEASURES

A number of other non-tariff measures can adversely affect the ability of U.S. industry to access or invest in China's market. Key areas of concern include laws governing land use in China, commercial dispute resolution and the treatment of NGOs. Corruption among Chinese government officials, enabled in part by China's incomplete adoption of the rule of law, is also a key area of concern.

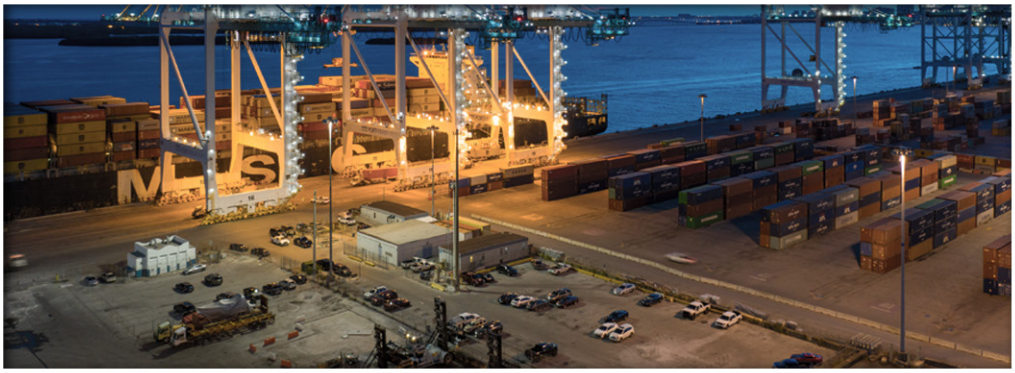
EXHIBIT 93

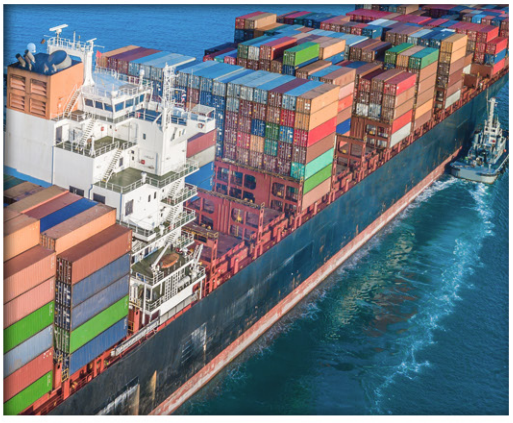
DEA
INTELLIGENCE
REPORT

Fentanyl Flow to the United States

DEA-DCT-DIR-008-20

JANUARY 2020



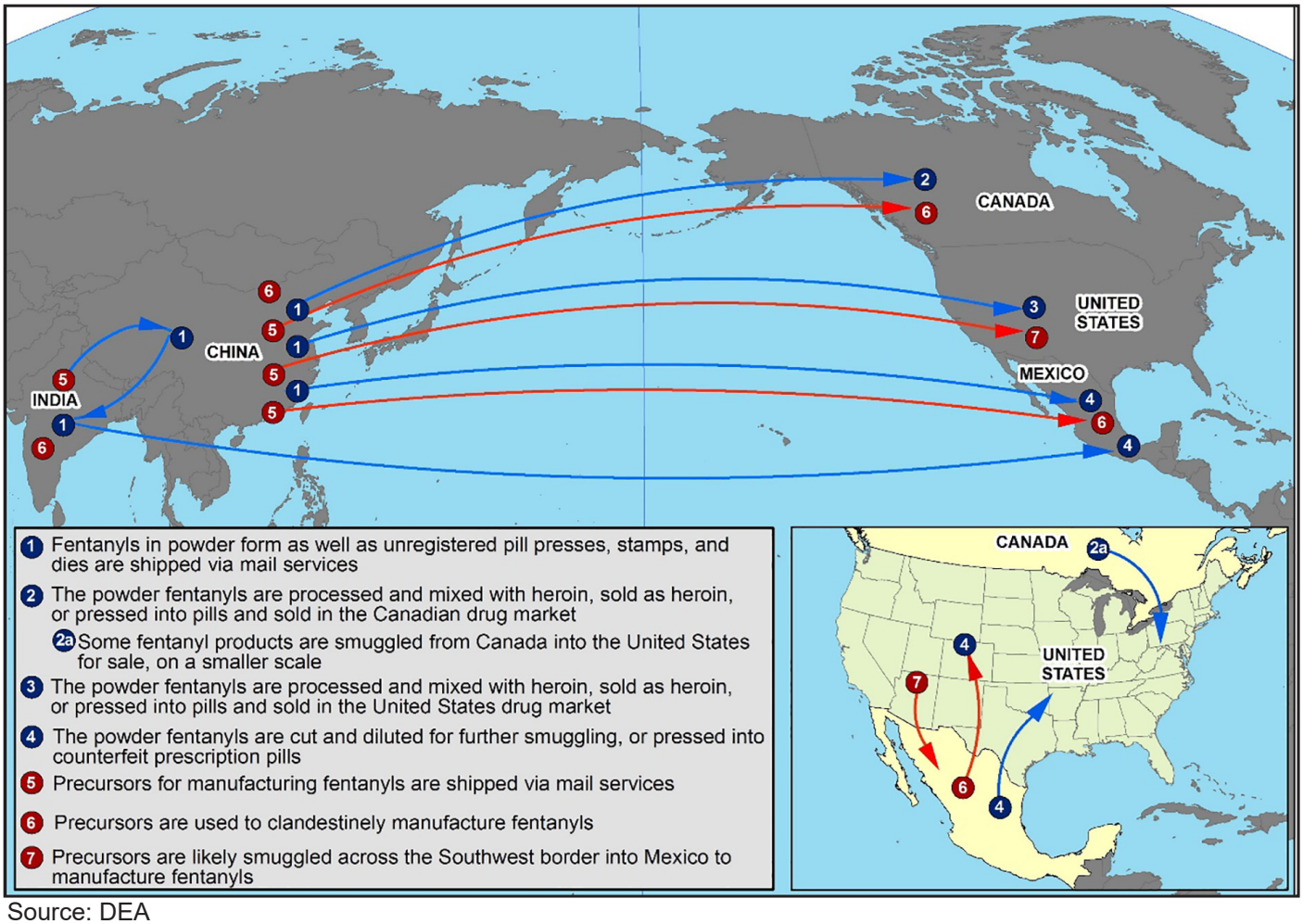


Executive Summary

The flow of fentanyl into the United States in 2019 is more diverse compared to the start of the fentanyl crisis in 2014, with new source countries and new transit countries emerging as significant trafficking nodes. This is exacerbating the already multi-faceted fentanyl crisis by introducing additional source countries into the global supply chain of fentanyl, fentanyl-related substances, and fentanyl precursors. Further, this complicates law enforcement operations and policy efforts to stem the flow of fentanyl into the United States. While Mexico and China are the primary source countries for fentanyl and fentanyl-related substances trafficked directly into the United States, India is emerging as a source for finished fentanyl powder and fentanyl precursor chemicals.

DETAILS

(U) FIGURE 1. FENTANYL FLOW TO THE UNITED STATES 2019



Source: DEA

CHINA

Currently, China remains the primary source of fentanyl and fentanyl-related substances trafficked through international mail and express consignment operations environment, as well as the main source for all fentanyl-related substances trafficked into the United States. Seizures of fentanyl sourced from China average less than one kilogram in weight, and often test above 90 percent concentration of pure fentanyl.

As Beijing and the Hong Kong Special Autonomous Region (SAR) place restrictions on more precursor chemicals, Mexican transnational criminal organizations (TCOs) are diversifying their sources of supply. This is evidenced by fentanyl shipments from India allegedly destined for Mexico. On May 4, 2018, the Hong Kong SAR updated their drug law to control the fentanyl precursors 4-anilino-N-phenethyl-4-piperidine (ANPP) and N-phenethyl-4-piperidone (NPP) as well as the synthetic opioid U-47700. This matches China's scheduling of ANPP and NPP on July 1, 2017. The move by the Hong Kong SAR is considerable, since synthetic opioids produced and shipped from China may transit the Hong Kong SAR en route to the United States.

Effective May 1, 2019, China officially controlled all forms of fentanyl as a class of drugs. This fulfilled the commitment that President Xi made during the G-20 Summit. The implementation of the new measure includes investigations of known fentanyl manufacturing areas, stricter control of internet sites advertising fentanyl, stricter enforcement of shipping regulations, and the creation of special teams to investigate leads on fentanyl trafficking. These new restrictions have the potential to severely limit fentanyl production and trafficking from China. This could alter China's position as a supplier to both the United States and Mexico.

MEXICO

Mexican TCOs are producing increased quantities of fentanyl and illicit fentanyl-containing tablets, with some TCOs using increasingly sophisticated clandestine laboratories and processing methods (i.e., laboratory grade glassware, unregulated chemicals, and industrial size tablet presses). DEA, working in conjunction with Mexican officials, has seized and dismantled numerous fentanyl pill pressing operations and fentanyl synthesis laboratories in 2018 and 2019, highlighting the role TCOs play in supplying the US fentanyl market. Fentanyl is smuggled across the U.S.-Mexico border in low concentration, high-volume loads, kilogram seizures often contain less than a 10 percent concentration of fentanyl.

TCOs are also increasingly producing wholesale quantities of illicit fentanyl pills and smuggling them into the United States. In December 2018, Mexican officials in combination with DEA authorities seized an illicit pill mill in Azcapotzalco, Mexico City. Law enforcement officials seized illicit fentanyl-laced oxycodone M-30 pills, suspected fentanyl powder, precursor chemicals and multiple other items related to the production of fentanyl-laced illicit pills. As with the Mexicali, Mexico fentanyl pill mill seized in September 2018, DEA reporting indicated the organization operating the pill mill in Mexico City is linked to the Sinaloa Cartel.

DEA reporting continues to indicate the Sinaloa and the New Generation Jalisco (Cártel de Jalisco Nueva Generación or CJNG) cartels are likely the primary trafficking groups responsible for smuggling fentanyl into the United States from Mexico. To date, the fentanyl synthesis and fentanyl pill production operations dismantled in Mexico have either occurred in territories controlled by these cartels or have had involvement by members/associates of these cartels. In addition, these TCOs are known to control the trafficking corridors in Mexico that connect to California and Arizona, indicating drugs passing through these associated areas would need to be approved by these organizations.

INDIA

In 2017, the DEA provided information to India's Directorate of Revenue Intelligence, resulting in the takedown of an illicit fentanyl laboratory in Indore, India in 2018. DEA reporting indicates an Indian national associated with the Sinaloa Cartel initially supplied the organization with fentanyl precursor chemicals, NPP and ANPP, after which a Chinese national also affiliated with the Sinaloa Cartel would synthesize the fentanyl and traffic it from India to Mexico.

Between February and March 2018, the India- and China-based suspects shifted their production from China to India, likely due in part to China's regulation of ANPP and NPP. The organization likely transferred their production to India due to difficulties obtaining precursor chemicals in China and the increasing pressure from Chinese authorities on fentanyl manufacturing operations. This may serve as an important precedent, given China's newly imposed restrictions on fentanyl and fentanyl precursors as a class. Fentanyl and fentanyl precursor trafficking from India to TCOs in Mexico or direct to the United States may be poised to increase if China-based traffickers work with Indian nationals to circumvent China's new controls on fentanyl. In addition, in February 2018, India announced controls on the exportation of ANPP and NPP, similar to previous regulations enacted by China, which will likely result in stricter controls on these precursors.

In December 2018, the Mumbai Anti-Narcotics Cell (ANC) seized approximately 100 kilograms of the fentanyl precursor NPP and arrested four Indian nationals in Mumbai, India. India's Narcotics Control Bureau (NCB) reported to DEA in April 2019 that the seizure was identified as NPP through forensic analysis at a state-run laboratory in India. According to the ANC, the NPP was destined for Mexico and deliberately mislabeled. This was the third seizure of a fentanyl-related substance or fentanyl precursor linked to Mexico in 2018, demonstrating growing links between Mexican TCOs and India-based fentanyl precursor chemical suppliers. Given the behavior of Mexican TCOs who obtain fentanyl precursors and finished fentanyl from China, it is highly likely the precursor chemicals purchased from India were to be used in the synthesis of finished fentanyl destined for sale in the United States.

OUTLOOK

The flow of fentanyl to the United States in the near future will probably continue to be diversified. The emergence of India as a precursor chemical and fentanyl supplier as well as China's newly implemented regulations have significant ramifications for how TCOs' fentanyl and fentanyl precursor chemical supply chains will operate. Mexican TCOs are likely poised to take a larger role in both the production and the supply of fentanyl and fentanyl-containing illicit pills to the United States, especially if China's proposed regulations and enforcement protocols are implemented effectively. Fentanyl production and precursor chemical sourcing may also expand beyond the currently identified countries as fentanyl lacks the geographic source boundaries of heroin and cocaine as these must be produced from plant-based materials.

DEA-PRB-01-08-20-01

This product was prepared by the DEA Intelligence Program — Strategic Intelligence Section. Comments and questions may be addressed to the Chief, Indicator Programs Section at DEA.IntelligenceProducts@usdoj.gov. *For media/press inquiries call (202) 307-7977.*

***DFN-701-03**—Destroy 2 years after issuance or when the report is superseded or obsolete.*

EXHIBIT 94

19. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

Vienna, 20 December 1988

ENTRY INTO FORCE: 11 November 1990, in accordance with article 29(1).

REGISTRATION: 11 November 1990, No. 27627.

STATUS: Signatories: 87. Parties: 192.

TEXT: United Nations, *Treaty Series*, vol. 1582, p. 95;
Document of the United Nations Economic and Social Council E/CONF.82/15, Corr.1 and Corr.2 (English only); and depositary notification C.N.31.1990.TREATIES-1 of 9 April 1990 (procès-verbal of rectification of original French and Spanish texts);
C.N.229.2007.TREATIES-1 of 12 March 2007 (Notification under article 12 (2) of the Convention).

Note: The Convention was adopted by the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, held at Vienna from 25 November to 20 December 1988. The Conference was convened pursuant to resolution 1988/8 of 25 May 1988 of the Economic and Social Council acting on the basis of the General Assembly resolutions 39/141 of 14 December 1984 and 42/111 of 7 December 1987. The Convention was open for signature at the United Nations Office at Vienna, from 20 December 1988 to 28 February 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December 1989. In addition to the Convention, the Conference adopted the Final Act and certain resolutions which are annexed to the Final Act. The text of the Final Act was published in document E/CONF.82/14.

Participant	*Signature*	*Ratification, Accession(a), Acceptance(A), Approval(AA), Formal confirmation(c), Succession(d)*
Afghanistan	20 Dec 1988	14 Feb 1992
Albania		27 Jun 2001 a
Algeria	20 Dec 1988	9 May 1995
Andorra		23 Jul 1999 a
Angola		26 Oct 2005 a
Antigua and Barbuda		5 Apr 1993 a
Argentina	20 Dec 1988	28 Jun 1993
Armenia		13 Sep 1993 a
Australia	14 Feb 1989	16 Nov 1992
Austria	25 Sep 1989	11 Jul 1997
Azerbaijan		22 Sep 1993 a
Bahamas	20 Dec 1988	30 Jan 1989
Bahrain	28 Sep 1989	7 Feb 1990
Bangladesh	14 Apr 1989	11 Oct 1990
Barbados		15 Oct 1992 a
Belarus	27 Feb 1989	15 Oct 1990
Belgium	22 May 1989	25 Oct 1995
Belize		24 Jul 1996 a
Benin		23 May 1997 a
Bhutan		27 Aug 1990 a
Bolivia (Plurinational State of)	20 Dec 1988	20 Aug 1990
Bosnia and Herzegovina[1]		1 Sep 1993 d
Botswana		13 Aug 1996 a
Brazil	20 Dec 1988	17 Jul 1991
Brunei Darussalam	26 Oct 1989	12 Nov 1993
Bulgaria	19 May 1989	24 Sep 1992
Burkina Faso		2 Jun 1992 a
Burundi		18 Feb 1993 a
Cabo Verde		8 May 1995 a
Cambodia		7 Jul 2005 a
Cameroon	27 Feb 1989	28 Oct 1991
Canada	20 Dec 1988	5 Jul 1990
Central African Republic		15 Oct 2001 a
Chad		9 Jun 1995 a
Chile	20 Dec 1988	13 Mar 1990

Participant	*Signature*	*Ratification, Accession(a), Acceptance(A), Approval(AA), Formal confirmation(c), Succession(d)*
China[2,3]	20 Dec 1988	25 Oct 1989
Colombia	20 Dec 1988	10 Jun 1994
Comoros		1 Mar 2000 a
Congo		3 Mar 2004 a
Cook Islands		22 Feb 2005 a
Costa Rica	25 Apr 1989	8 Feb 1991
Côte d'Ivoire	20 Dec 1988	25 Nov 1991
Croatia[1]		26 Jul 1993 d
Cuba	7 Apr 1989	12 Jun 1996
Cyprus	20 Dec 1988	25 May 1990
Czech Republic[4]		30 Dec 1993 d
Democratic People's Republic of Korea		19 Mar 2007 a
Democratic Republic of the Congo	20 Dec 1988	28 Oct 2005
Denmark	20 Dec 1988	19 Dec 1991
Djibouti		22 Feb 2001 a
Dominica		30 Jun 1993 a
Dominican Republic		21 Sep 1993 a
Ecuador	21 Jun 1989	23 Mar 1990
Egypt	20 Dec 1988	15 Mar 1991
El Salvador		21 May 1993 a
Eritrea		30 Jan 2002 a
Estonia		12 Jul 2000 a
Eswatini		3 Oct 1995 a
Ethiopia		11 Oct 1994 a
European Union	8 Jun 1989	31 Dec 1990 c
Fiji		25 Mar 1993 a
Finland	8 Feb 1989	15 Feb 1994 A
France	13 Feb 1989	31 Dec 1990 AA
Gabon	20 Dec 1989	10 Jul 2006
Gambia		23 Apr 1996 a
Georgia		8 Jan 1998 a
Germany[5]	19 Jan 1989	30 Nov 1993
Ghana	20 Dec 1988	10 Apr 1990
Greece	23 Feb 1989	28 Jan 1992
Grenada		10 Dec 1990 a
Guatemala	20 Dec 1988	28 Feb 1991
Guinea		27 Dec 1990 a
Guinea-Bissau		27 Oct 1995 a
Guyana		19 Mar 1993 a
Haiti		18 Sep 1995 a
Holy See	20 Dec 1988	25 Jan 2012
Honduras	20 Dec 1988	11 Dec 1991
Hungary	22 Aug 1989	15 Nov 1996
Iceland		2 Sep 1997 a
India		27 Mar 1990 a
Indonesia	27 Mar 1989	23 Feb 1999
Iran (Islamic Republic of)	20 Dec 1988	7 Dec 1992
Iraq		22 Jul 1998 a
Ireland	14 Dec 1989	3 Sep 1996
Israel	20 Dec 1988	20 Mar 2002
Italy	20 Dec 1988	31 Dec 1990 AA
Jamaica	2 Oct 1989	29 Dec 1995
Japan	19 Dec 1989	12 Jun 1992
Jordan	20 Dec 1988	16 Apr 1990
Kazakhstan		29 Apr 1997 a
Kenya		19 Oct 1992 a
Kuwait	2 Oct 1989	3 Nov 2000
Kyrgyzstan		7 Oct 1994 a
Lao People's Democratic Republic		1 Oct 2004 a
Latvia		24 Feb 1994 a
Lebanon		11 Mar 1996 a
Lesotho		28 Mar 1995 a
Liberia		16 Sep 2005 a
Libya		22 Jul 1996 a
Liechtenstein		9 Mar 2007 a
Lithuania		8 Jun 1998 a
Luxembourg	26 Sep 1989	29 Apr 1992
Madagascar		12 Mar 1991 a
Malawi		12 Oct 1995 a
Malaysia	20 Dec 1988	11 May 1993
Maldives	5 Dec 1989	7 Sep 2000
Mali		31 Oct 1995 a
Malta		28 Feb 1996 a
Marshall Islands		5 Nov 2010 a
Mauritania	20 Dec 1988	1 Jul 1993
Mauritius	20 Dec 1988	6 Mar 2001
Mexico	16 Feb 1989	11 Apr 1990

Participant	*Signature*	*Ratification, Accession(a), Acceptance(A), Approval(AA), Formal confirmation(c), Succession(d)*
Micronesia (Federated States of)		6 Jul 2004 a
Monaco	24 Feb 1989	23 Apr 1991
Mongolia		25 Jun 2003 a
Montenegro[6]		23 Oct 2006 d
Morocco	28 Dec 1988	28 Oct 1992
Mozambique		8 Jun 1998 a
Myanmar		11 Jun 1991 a
Namibia		6 Mar 2009 a
Nauru		12 Jul 2012 a
Nepal		24 Jul 1991 a
Netherlands (Kingdom of the)[7]	18 Jan 1989	8 Sep 1993 A
New Zealand[8]	18 Dec 1989	16 Dec 1998
Nicaragua	20 Dec 1988	4 May 1990
Niger		10 Nov 1992 a
Nigeria	1 Mar 1989	1 Nov 1989
Niue		16 Jul 2012 a
North Macedonia		13 Oct 1993 a
Norway	20 Dec 1988	14 Nov 1994
Oman		15 Mar 1991 a
Pakistan	20 Dec 1989	25 Oct 1991
Palau		14 Aug 2019 a
Panama	20 Dec 1988	13 Jan 1994
Paraguay	20 Dec 1988	23 Aug 1990
Peru	20 Dec 1988	16 Jan 1992
Philippines	20 Dec 1988	7 Jun 1996
Poland	6 Mar 1989	26 May 1994
Portugal[2]	13 Dec 1989	3 Dec 1991
Qatar		4 May 1990 a
Republic of Korea		28 Dec 1998 a
Republic of Moldova		15 Feb 1995 a
Romania		21 Jan 1993 a
Russian Federation	19 Jan 1989	17 Dec 1990
Rwanda		13 May 2002 a
Samoa		19 Aug 2005 a
San Marino		10 Oct 2000 a
Sao Tome and Principe		20 Jun 1996 a
Saudi Arabia		9 Jan 1992 a
Senegal	20 Dec 1988	27 Nov 1989
Serbia[1]		12 Mar 2001 d
Seychelles		27 Feb 1992 a
Sierra Leone	9 Jun 1989	6 Jun 1994
Singapore		23 Oct 1997 a
Slovakia[4]		28 May 1993 d
Slovenia[1]		6 Jul 1992 d
South Africa		14 Dec 1998 a
South Sudan		20 Oct 2023 a
Spain	20 Dec 1988	13 Aug 1990
Sri Lanka		6 Jun 1991 a
St. Kitts and Nevis		19 Apr 1995 a
St. Lucia		21 Aug 1995 a
St. Vincent and the Grenadines		17 May 1994 a
State of Palestine		29 Dec 2017 a
Sudan	30 Jan 1989	19 Nov 1993
Suriname	20 Dec 1988	28 Oct 1992
Sweden	20 Dec 1988	22 Jul 1991
Switzerland	16 Nov 1989	14 Sep 2005
Syrian Arab Republic		3 Sep 1991 a
Tajikistan		6 May 1996 a
Thailand		3 May 2002 a
Timor-Leste		3 Jun 2014 a
Togo	3 Aug 1989	1 Aug 1990
Tonga		29 Apr 1996 a
Trinidad and Tobago	7 Dec 1989	17 Feb 1995
Tunisia	19 Dec 1989	20 Sep 1990
Türkiye	20 Dec 1988	2 Apr 1996
Turkmenistan		21 Feb 1996 a
Uganda		20 Aug 1990 a
Ukraine[9,10]	16 Mar 1989	28 Aug 1991
United Arab Emirates		12 Apr 1990 a
United Kingdom of Great Britain and Northern Ireland[3,11]	20 Dec 1988	28 Jun 1991
United Republic of Tanzania	20 Dec 1988	17 Apr 1996
United States of America	20 Dec 1988	20 Feb 1990
Uruguay	19 Dec 1989	10 Mar 1995
Uzbekistan		24 Aug 1995 a
Vanuatu		26 Jan 2006 a

Participant	Signature	Ratification, Accession(a), Acceptance(A), Approval(AA), Formal confirmation(c), Succession(d)
Venezuela (Bolivarian Republic of)	20 Dec 1988	16 Jul 1991
Viet Nam		4 Nov 1997 a
Yemen[12]	20 Dec 1988	25 Mar 1996
Zambia	9 Feb 1989	28 May 1993
Zimbabwe		30 Jul 1993 a

Declarations and Reservations
(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession, acceptance, approval, formal confirmation or succession.)

ALGERIA

The People's Democratic Republic of Algeria does not consider itself bound by the provisions of article 32, paragraph 2, the compulsory referral of any dispute of the International Court of Justice.

The People's Democratic Republic of Algeria declares that for a dispute to be referred to the International Court of Justice the agreement of all the parties to the dispute is necessary in each case.

ANDORRA

With respect to the option provided in paragraph 4 of article 32, the Andorran State does consider itself bound by the provisions of paragraphs 2 and 3 of this article.

With respect to paragraph 2, the Andorran State considers that any dispute which cannot be settled in the manner prescribed in paragraph 1 of the aforementioned article will be referred to the International Court of Justice only with the agreement of all parties involved in the dispute.

Since the Andorran legal system already embodies almost all the measures referred to in the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, accession to the aforementioned Convention will entail only minor changes in the Andorran State's legal system, which will be taken into account in the future legislative activity. From the point of view of the rights and obligations arising from accession to this Convention, without renouncing the specific characteristics of its domestic legislation, in particular with respect to the protection of individual freedoms and the rights of bona fide third parties, and to the preservation of national sovereignty and the common good, Andorra undertakes to assume the obligations among States arising from the Vienna Convention and to cooperate, through its judicial authorities and on the basis of reciprocity, with the other States which have accepted the provisions of the aforementioned Convention.

AUSTRIA

"re. Art. 2:

The Republic of Austria interprets the reference to the fundamental provisions of domestic legislative systems in art. 2 para 1 in the sense that the contents of these fundamental provisions may be subject to change. The same applies to all other references of the Convention to domestic law, its fundamental principles or the national constitutional order like they are contained in art. 3 para 1 lit.c; para 2, para 10 and para 11; art. 5 para 4 lit.c; para 7 and para 9 or art. 11 para 1.

re. Art. 3:

The Republic of Austria interprets art. 3 para 1 and 2 as follows: In cases of a minor nature, the obligations contained in this provision may also be implemented by the creation of administrative penal regulations providing adequate sanction for the offences enumerated therein.

re. Art. 7 para 10 to 12 :

The Republic of Austria declares that in pursuance of its domestic law, a request for the search of persons or rooms, for the seizure of objects or for the surveillance of telecommunication requires the enclosure of the certified copy or photocopy of the decision of the competent authority. If the decision has not been rendered by a court, a declaration of the authority requesting legal assistance has to be furnished, stating that all necessary preconditions are fulfilled, according to the law of the requesting state."

BAHRAIN[13,14]

The State of Bahrain, by the ratification of this Convention, does not consider itself bound by paragraph (2) of article 32 in connection with the obligation to refer the settlement of the dispute relating to the interpretation or application of this Convention to the International Court of Justice.

...

BELIZE

"Article 8 of the Convention requires the Parties to give consideration to the possibility of transferring to one another proceedings for criminal prosecution of certain offences where such transfer is considered to be in the interests of a proper administration of justice.

“The courts of Belize have no extra-territorial jurisdiction, with the result that they will have no jurisdiction to prosecute offences committed abroad unless such offences are committed partly within and partly without the jurisdiction, by a person who is within the jurisdiction. Moreover, under the Constitution of Belize, the control of public prosecutions is vested in the Director of Public Prosecutions, who is an independent functionary and not under Government control.

“Accordingly, Belize will be able to implement article 8 of the Convention only to a limited extent insofar as its Constitution and the law allows."

BOLIVIA (PLURINATIONAL STATE OF)

The Republic of Bolivia places on record its express reservation to article 3, paragraph 2, and declares the inapplicability to Bolivia of those provisions of that paragraph which could be interpreted as establishing as a

criminal offence the use, consumption, possession, purchase or cultivation of the coca leaf for personal consumption.

For Bolivia such an interpretation of that paragraph is contrary to principles of its Constitution and basic concepts of its legal system which embody respect for the culture, legitimate practices, values and attributes of the nationalities making up Bolivia's population.

Bolivia's legal system recognizes the ancestral nature of the licit use of the coca leaf which, for much of Bolivia's population, dates back over centuries. In formulating this reservation, Bolivia considers that:

- The coca leaf is not, in and of itself, a narcotic drug or psychotropic substance;
- The use and consumption of the coca leaf do not cause psychological or physical changes greater than those resulting from the consumption of other plants and products which are in free and universal use;
- The coca leaf is widely used for medicinal purposes in the practice of traditional medicine, the validity of which is upheld by WHO and confirmed by scientific findings;
- The coca leaf can be used for industrial purposes;
- The coca leaf is widely used and consumed in Bolivia, with the result that, if such an interpretation of the above-mentioned paragraph was accepted, a large part of Bolivia's population could be considered criminals and punished as such, such an interpretation is therefore inapplicable;
- It must be placed on record that the coca leaf is transformed into cocaine paste, sulphate and hydrochlorate when it is subjected to chemical processes which involve the use of precursors, equipment and materials which are neither manufactured in or originate in Bolivia.

At the same time, the Republic of Bolivia will continue to take all necessary legal measures to control the illicit cultivation of coca for the production of narcotic drugs, as well as the illicit consumption, use and purchase of narcotic drugs and psychotropic substances.

BRAZIL

"a) The signature of the Convention is made subject to the process of ratification established by the Brazilian Constitution;

" b) It is the understanding of the Brazilian Government that paragraph 11 of article 17 does not prevent a coastal State from requiring prior authorization for any action under this article by other States in its Exclusive Economic Zone."

BRUNEI DARUSSALAM

"In accordance with article 32 of the Convention Brunei Darussalam hereby declares that it does not consider itself bound by paragraphs 2 and 3 of the said article 32."

"The competent authority under article 7 (8) is the following:

Ministry of Foreign Affairs and Trade, Jalan Subok Bandar Seri Begawan BD, 2710, Brunei Darussalam
Telephone: (673) 226 1177; Fax: (673) 226 1709;
Email: mfa@gov.bn

CHINA

Under the Article 32, paragraph 4, China does not consider itself bound by paragraphs 2 and 3 of that article.

COLOMBIA[15]

Colombia formulates a reservation to article 9, paragraph 1, of the Convention, specifically subparagraphs (b), (c), (d) and (e) thereof, since its legislation does not permit outside co-operation with the judiciary in investigating offences nor the establishment of joint teams with other countries to that end. Likewise inasmuch as samples of the substances that have given rise to investigations belong to the proceedings, only the judge, as previously, can take decisions in that regard.

...

2. With respect to article 5, paragraph 7, of the Convention, Colombia does not consider itself bound to reverse the onus of proof.

3. Colombia has reservations in connection with article 9, paragraphs 1 (b), (c), (d) and (e), inasmuch as they conflict with the autonomy and independence of the judicial authorities in their jurisdiction over the investigation and judgement of offences.

1. No provision of the Convention may be interpreted as obliging Colombia to adopt legislative, judicial, administrative or other measures that might impair or restrict its constitutional or legal system or that go beyond the terms of the treaties to which the Colombian State is a contracting party.

2. It is the view of Colombia that treatment under the Convention of the cultivation of the coca leaf as a criminal offence must be harmonized with a policy of alternative development, taking into account the rights of the indigenous communities involved and the protection of the environment. In this connection it is the view of Colombia that the discriminatory, inequitable and restrictive treatment accorded its agricultural export products on international markets does nothing to contribute to the control of illicit crops, but, rather, is a cause of social and environmental degradation in the areas affected. Further, Colombia reserves the right to make an independent evaluation of the ecological impact of drug control policies, since those that have a negative impact on ecosystems contravene the Constitution.

3. It is the understanding of Colombia that article 3, paragraph 7, of the Convention will be applied in accordance with its penal system, taking into account the benefits of its policies regarding the indictment of and collaboration with alleged criminals.

4. A request for reciprocal legal assistance will not be met when the Colombian judicial and other authorities consider that to do so would run counter to the public interest or the constitutional or legal order. The principle of reciprocity must also be observed.

5. It is the understanding of Colombia that article 3, paragraph 8, of the Convention does not imply the non-applicability of the statutory limitation of penal action.

6. Article 24 of the Convention, on "more strict or severe measures", may not be interpreted as conferring on the Government powers that are broader than those conferred by the Political Constitution of Colombia, including in states of exception.

7. It is the understanding of Colombia that the assistance provided for under article 17 of the Convention will be effective only on the high seas and at the express request and with the authorization of the Colombian Government.

8. Colombia declares that it considers contrary to the principles and norms of international law, in particular those of sovereign equality, territorial integrity and non-intervention, any attempt to abduct or illegally deprive of freedom any person within the territory of one State for the purpose of bringing that person before the courts of another State.

9. It is the understanding of Colombia that the transfer of proceedings referred to in article 8 of the Convention will take place in such a way as not to impair

the constitutional guarantees of the right of defence. Further, Colombia declares with respect to article 6, paragraph 10, of the Convention that, in the execution offoreign sentences, the provisions of article 35, paragraph 2, of its Political Constitution and other legal and constitutional norms must be observed

The international obligations deriving from article 3, paragraphs 1 (c) and 2, as well as from article 11 are conditional on respect for Colombian constitutional principles and the above three reservations and nine declarations making the Convention compatible with the Colombian constitutional order.

CUBA

The Government of the Republic of Cuba declares that it does not consider itself bound by the provisions of article 32, paragraphs 2 and 3, and that disputes which arise between the Parties should be settled by negotiation through the diplomatic channel.

CYPRUS

"[Signature is effected] subject to ratification, at the time of which reservations in respect of specific provisions of the Convention may be made and deposited in the prescribed manner. [It is understood] that such reservations, if any, cannot be incompatible with the object and purpose of this Convention."

"As a result of the occupation of 37% of the territory of the Republic of Cyprus, which since 1974 is occupied by Turkish troops in violation of the United Nations Charter and of basic principles of international law, the Government of the Republic of Cyprus is prevented from exercising its legitimate control and jurisdiction throughout the territory of the Republic of Cyprus and consequently over those activities in the illegally occupied area which are related to illicit drug trafficking."

DENMARK

"The Convention shall not apply to the Faroe Islands and Greenland."

"Authorization granted by Danish authority pursuant to article 17 denotes only that Denmark will abstain from pleading infringement of Danish sovereignty in connection with the requesting State's boarding of a vessel. Danish authorities cannot authorize another State to take legal action on behalf of the Kingdom of Denmark."

FRANCE

The Government of the French Republic does not consider itself bound by the provisions of article 32, paragraph 2, and declares that any dispute relating to the interpretation or application of the Convention which cannot be settled in the manner prescribed in paragraph 1 of the said article may not be referred to the International Court of Justice unless all the parties to the dispute agree thereto.

Similarly, the Government of the French Republic does not consider itself bound by the provisions of article 32, paragraph 3.

GERMANY[5]

It is the understanding of the Federal Republic of Germany that the basic concepts of the legal system referred to in article 3, paragraph 2 of the Convention may be subject to change.

HOLY SEE

“Pursuant to article 32.4 of this Convention, the Holy See, acting also in the name and on behalf of Vatican City State, declares that it does not consider itself bound by either article 32.1 or article 32.2 of the Convention. The Holy See, acting also in the name and on behalf of Vatican City State, specifically reserves the right to agree in a particular case, on an ad hoc basis, to any convenient means to settle any dispute arising out of this Convention.”

“The Holy See declares that articles 6.6 and 7.15 of the Convention shall be interpreted in light of its legal doctrine and the sources of its law (Vatican City State Law LXXI, of 1 October 2008).”

“The Holy See is well aware that one of the problems of contemporary society is the phenomenon of drug abuse and the related problem of illicit trafficking in narcotics and psychotropic substances. This trafficking has already become so widespread and so highly organized as to involve both the developed countries and those on the road to development.

Through its Representatives, the Holy See has followed the various phases of the drawing-up of the Convention text, a process that has been long and laborious.

Pope John Paul II, on the occasion of last year’s Conference in Vienna on the abuse of and illicit trafficking in drugs, pointed out that the criminal activity of production and illicit trafficking must be opposed by cooperation between States. He stated that ‘the common struggle against the plague of drug abuse and illicit trafficking is motivated by a serious spirit of mission, on behalf of humanity and for the very future of society, a mission whose success demands a mutual commitment and a generous response on the part of all’ (17th June 1987).

In consideration of this position, the Holy See has decided to sign the Convention against illicit trafficking in narcotics as a gesture of encouragement vis-à-vis the commitment of the countries that intend to fight against such criminal activity. In adhering to this Convention, the Holy See does not intend to prescind in any way from its specific mission which is of a religious and moral character.”

INDONESIA

“The Republic of Indonesia [...] does not consider itself bound by the provision of article 32 paragraphs (2) and (3), and take the position that disputes relating to the interpretation and application [of] the Convention which have not been settled through the channel provided for in paragraph (1) of the said article, may be referred to the International Court of Justice only with the consent of the Parties to the dispute.”

IRAN (ISLAMIC REPUBLIC OF)

"The Government of the Islamic Republic of Iran wishes to express reservation to article 6, paragraph 3, of the Convention, since this provision is incompatible with our domestic law.

"The Government furthermore wishes to make a reservation to article 32, paragraphs 2 and 3, since it does not consider itself bound to compulsory jurisdiction of the International Court of Justice and feels that any disputes arising between the Parties concerning the interpretation or application of the Convention should be resolved through direct negotiations by diplomatic means."

IRELAND

"... the authority now designated by Ireland under Article 17 (7) of the Convention is as follows:

Head of Unit
Liaison & Joint Operations
Customs Drugs Law Enforcement
Revenue Investigations & Prosecutions Division
Ashtown Gate
Dublin 15

Ireland
Telephone No. (office hours):
+ 353 1 827 7512
24 hour Telephone No. (outside office hours):
+ 353 87 254 8201 Fax: + 353 1 827 7680
E-mail address: antidrugs@revenue.ie
Office Hours : 0800 - 1800 (Monday-Friday)
Languages of incoming requests accepted: English
Time zone: GMT:+/-:0"

ISRAEL

"In accordance with paragraph 4 of Article 32, the Government of the State of Israel declares that it does not consider itself bound by the provisions of paragraph 2 of and 3 of this Article."

JAMAICA[16]

KUWAIT

With reservation as to paragraphs (2) and (3) of article 32 of this Convention.

LAO PEOPLE'S DEMOCRATIC REPUBLIC

"In accordance with paragraph 4, Article 32 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Lao People's Democratic Republic does not consider itself bound by paragraph 2, Article 32 of the present Convention. The Lao People's Democratic Republic declares that to refer a dispute relating to interpretation and application of the present Convention to arbitration or the International Court of Justice, the agreement of all parties concerned in the dispute is necessary."

LEBANON[17]

1. The Government of the Lebanese Republic does not consider itself bound by the provisions of article 32, paragraph 2, and declares that disputes relating to the interpretation or application of the Convention which are not settled by the means prescribed in paragraph 1 of that article shall be referred to the International Court of Justice only with the agreement of all of the Parties to the dispute.

Similarly, the Government of the Lebanese Republic does not consider itself bound by the provisions of article 32, paragraph 3.

2. The Government of the Lebanese Republic has reservations regarding article 5, paragraph 3, regarding article 7, paragraph 2 (f), and regarding article 7, paragraph 5, of the Convention.

LITHUANIA

“In accordance with article 6 of the said Convention the Republic of Lithuania declares that this Convention shall not be the legal basis for extradition of the Lithuanian citizens as it is provided in the Constitution of the Republic of Lithuania.”

In accordance with paragraph 4 of article 32 of the said Convention the Republic of Lithuania will not apply provisions of paragraph 2 and 3 of article 32, referring to the disputes relating to the interpretation or application of this Convention to the International Court of Justice.”

MALAYSIA

"The Government of Malaysia does not consider itself bound by paragraphs 2 and 3 of article 32 of the said Convention, wherein if there should arise between two or more Parties a dispute and such dispute cannot be settled in the manner prescribed in paragraph 1 of article 32 of the Convention, Malaysia is not bound to refer the dispute to the International Court of Justice for decision.”

MYANMAR[18]

"The Government [of Myanmar] further wishes to make a reservation on article 32, paragraphs 2 and 3 and does not consider itself bound by obligations to refer the disputes relating to the interpretation or application of this Convention to the International Court of Justice."

NETHERLANDS (KINGDOM OF THE)

During the initial stages of this Conference, [the Government of the Netherlands] proposed to amend articles 15, 17, 18 and 19 (final numbering) in order to replace the generic phrase ‘illicit traffic’ by more specific language (e.g., ‘illicit transport’).

"To some extent the underlying concerns have been met by the introduction in Article 15 of a specific reference to the ‘offences established in accordance with Article 3, paragraph 2’. On the other hand, articles 17, 18 and 19 still contain references to ‘illicit traffic in narcotic drugs, psychotropic substances and substances in table I and table II’.

"It is the understanding [of the Government of the Netherlands] that, given the scope of these articles, the term ‘illicit traffic’ has to be understood in a limited sense, in each case taking into account the specific context. In applying these articles, [it] would therefore have to rely on the chapeau of article 1, allowing for a contextual application of the relevant definition.

“(a). [The Government of the Netherlands] notes with respect to article 3, paragraph 2 (subparagraph (b) (i) and (ii), and subparagraph (c) (i)) that the Drafting Committee has replaced the terms `knowing that such property is derived from an offence or offences set forth in paragraph 2' by: ‘knowing that such property is derived from an offence or offences *established in accordance with paragraph 1’* . [The Government of the Netherlands] accepts this change with the understanding that this does not affect the applicability of the paragraphs referred to in cases where the offender knows that property is derived from an offence or offences that may have been established and committed under the jurisdiction of a foreign State.

"(b). With respect of article 3, paragraph 6, [the Government of the Nethesions cover offences established both under paragraph 1 and paragraph 2. In view of the provisions of paragraph 4 (d) and paragraph 11 of the same article, [the Government of the Netherlands] understands that the measure of discretionary legal powers relating to the prosecution for offences established in accordance with paragraph 2 may in practice be wider than for offences established in accordance with paragraph 1.

"(c). With respect to article 3, paragraphs 7 and 8, it is the understanding of [the Government of the Netherlands] that these provisions do not require the establishment of specific rules and regulations on the early release of convicted persons and the statute of limitations in respect of offences, covered by paragraph 1 of the article, which are different from such rules and regulations in respect of other, equally serious, offences. Consequently, it is [the Government's] understanding that the relevant legislation presently in force within the Kingdom sufficiently and appropriately meets the concerns expressed by the terms of these provisions.

[The Government of the Netherlands] understands the reference (in para.3) to ‘a vessel exercising freedom of navigation’ to mean a vessel navigating beyond the external limits of the territorial sea.

"The safeguard-clause contained in para. 11 of the article aims in [its] view at safeguarding the rights and obligations of Coastal States within the contiguous zone.

"To the extent that vessels navigating in the contiguous zone act in infringement of the Coastal State's customs and other regulations, the Coastal State is entitled to exercise, in conformity with the relevant rules of the international law of the sea, jurisdiction to prevent and/or punish such infringement."

"The Government of the Kingdom of the Netherlands accepts the provisions of article 3, paragraphs 6, 7, and 8, only in so far as the obligations undeese provisions are in accordance with Dutch criminal legislation and Dutch policy on criminal matters."

PANAMA

The Republic of Panama does not consider itself obligated to apply the measures of confiscation or seizure provided for in article 5, paragraphs 1 and 2, of the Convention to property the value of which corresponds to that of the proceeds derived from offences established in accordance with the said Convention, in so far as such measures would contravene the provisions of article 30 of the Constitution of Panama, under which there is no penalty of confiscation of property.

PERU

Peru formulates an express reservation to paragraph 1 (a) (ii) of article 3, concerning offences and sanctions; that paragraph includes cultivation among the activities established as criminal offences, without drawing the necessary clear distinction between licit and illicit cultivation. Accordingly, Peru also formulates an express reservation to the scope of the definition of illicit traffic contained in article 1 in so far as it refers to article 3, paragraph 1 (a) (ii).

In accordance with the provisions of article 32, paragraph 4, Peru declares, on signing the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, that it does not consider itself bound by article 32, paragraphs 2 and 3, since, in respect of this Convention, it agrees to the referral of disputes to the International Court of Justice only if all the parties, and not just one, agree to such a procedure.

PHILIPPINES[19]

SAN MARINO[20]

[The Republic of San Marino declares] that any confiscation activity under article 5 is subject to the fact that the crime is considered as such also by San Marino legal system.

...

SAUDI ARABIA[13]

1. The Kingdom of Saudi Arabia does not regard itself bound by article 32, paragraphs 2 and 3, of the Convention;

2. This ratification does not constitute recognition of Israel and shall not give rise to entry with it into any dealings or to the establishment with it of any relations under the Convention.

SINGAPORE

"With respect to article 6 paragraph 3, the Republic of Singapore declares that it shall not consider the Convention as the legal basis for extradition in respect of any offence to which article 6 applies."

"The Republic of Singapore declares, in pursuance of article 32, paragraph 4 of the Convention that it will not be bound by the provisions of article 32, paragraphs 2 and 3."

SOUTH AFRICA

In keeping with paragraph 4 of article 32, the Republic of South Africa does not consider itself bound by the provisions of paragraphs 2 and 3 of Article 32 of the Convention.

SWEDEN

"Regarding article 3, paragraph 10, Swedish constitutional legislation on extradition implies that in judging whether a specific offence is to be regarded as a political offence, regard shall be paid to the circumstances in each individual case."

SWITZERLAND

Switzerland does not consider itself bound by article 3, paragraph 2, concerning the maintenance or adoption of criminal offences under legislation on narcotic drugs.

Switzerland considers the provisions of article 3, paragraphs 6, 7 and 8 as binding only to the extent that they are compatible with Swiss criminal legislation and Swiss policy on criminal matters.

SYRIAN ARAB REPUBLIC[13]

The accession to this Convention shall not constitute a recognition of Israel or lead to any kind of intercourse with it.

THAILAND

"The Government of the Kingdom of Thailand does not consider itself bound by the provisions of paragraph 2 of Article 32 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances."

TÜRKIYE

Pursuant to paragraph 4 of article 32 of [said Convention], the Republic of Turkey is not bound by paragraphs 2 and 3 of article 32 of the Convention.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

"The United Kingdom of Great Britain and Northern Ireland will only consider the granting of immunity under article 7, paragraph 18, where this is specifically requested by the person to whom the immunity would apply or by the authority designated, under article 7, paragraph 8, of the Party from whom assistance is requested. A request for immunity will not be granted where the judicial authorities of the United Kingdom consider that to do so would be contrary to the public interest."

UNITED REPUBLIC OF TANZANIA

"Subject to a further determination on ratification, the United Republic of Tanzania declares that the provisions of article 17 paragraph 11 shall not be construed as either restraining in any manner the rights and privileges of a coastal State as envisaged by the relevant provisions relating to the Economic Exclusive Zone of the Law of the Sea Convention, or, as according third parties rights other than those so recognized under the Convention."

UNITED STATES OF AMERICA

"(1) Nothing in this Treaty requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States.

"(2) The United States shall not consider this Convention as the legal basis for extradition of citizens to any country with which the United States has no bilateral extradition treaty in force.

"(3) Pursuant to the rights of the United States under article 7 of this treaty to deny requests which prejudice its essential interests, the United States shall deny a request for assistance when the designated authority, after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior government official who will have access to information to be provided under this treaty is engaged in or facilitates the production or distribution of illegal drugs."

"Pursuant to article 32 (4), the United States of America shall not be bound by article 32 (2)."

VENEZUELA (BOLIVARIAN REPUBLIC OF)

1. With respect to article 6: (Extradition)

It is the understanding of the Government of Venezuela that this Convention shall not be considered a legal basis for the extradition of Venezuelan citizens, as provided for in the national legislation in force.

2. With respect to article 11: (Controlled Delivery)

It is the understanding of the Government of Venezuela that publicly actionable offences in the national territory shall be prosecuted by the competent national police authorities and that the controlled delivery procedure shall be applied only in so far as it does not contravene national legislation in this matter.

VIET NAM[21,22]

"[The Government of Viet Nam declares its reservation to] article 32, paragraphs 2 and 3 on Dispute settlement of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988."

YEMEN[12]

[Yemen reserves its] right to enter reservations in respect of such articles as it may see fit at a time subsequent to this signature.

Objections
(Unless otherwise indicated, the objections were received upon ratification, accession, acceptance, approval, formal confirmation or succession.)

AUSTRIA

"Austria is of the view that the reservation raises doubts as to its ratification of the mentioned treaty. Austria is of the view that the reservation raises doubts as to its compatibility with the object and purpose of the Convention concerned, in particular the fundamental principle that perpetrators of drug-related crime should be brought to justice, regardless of their whereabouts. Non-acceptance of this principle would undermine the effectiveness of the [said] Convention.

"Austria therefore objects to the reservation. This objection does not preclude the entry into force of the [said] Convention between Austria and Vietnam."

BELGIUM

Belgium, member State of the European Community, attached to the principle of freedom of navigation, notably in the exclusive economic zone, considers that the declaration of Brazil concerning paragraph 11 of article 17, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted at Vienna on 20 December 1988, goes further than the rights accorded to coastal States by international law.

DENMARK

[*Same objection* , mutatis mutandis, *as the one made by Belgium* .]

FINLAND

[Same objection, mutatis mutandis *, as the one made by France.]*

FRANCE

[*Same objection* , mutatis mutandis, *as the one made by Belgium* .]

The Government of France has taken note of the reservations [made] by the Government of Lebanon in respect of articles 5 and 7 of this Convention and considers these reservations to be contrary to the object and purpose of the Convention.

The Convention indicates that bank secrecy shall not be a ground for a failure to act or for a failure to render mutual assistance. The Government of France considers that these reservations therefore undermine the object and purpose of the Convention, as stated in article 2, paragraph 1, to promote cooperation in order to address more effectively the international dimension of illicit drugs trafficking.

[The Government of France] considers [the reservation made by Viet Nam upon accession] to be contrary to the object and purpose of the Convention of 1988. France therefore objects to it.

The objection does not preclude the entry into force of the 1988 Convention between France and Viet Nam.

GERMANY[4]

[Same objection, mutatis mutandis *, as the one made by Belgium.]*

[*Same objection* , mutatis mutandis, *as the one made by France* .]

"The Government of the Federal Republic of Germany considers this reservation to be problematic in the light of the object and purpose of the Convention. The reservation made in respect of article 6 is contrary to the principle *'aut dedere au iudicare'* which provides that offences are brought before the court or that extradition is granted to the requesting States.

"The Government of the Federal Republic of Germany is therefore of the opinion that the reservation jeopardizes the intention of the Convention, as stated in article 2 paragraph 1, to promote cooperation among the parties so that they may address more effectively the international dimension of illicit drug trafficking.

"The reservation may also raise doubts as to the commitment of the Government of the Socialist Republic of Viet Nam to comply with fundamental provisions of the Convention. It is in the common interest of states that international treaties which they have concluded are respected, as to their object and purpose, and that all parties are prepared to undertake any legislative and

administrative changes necessary to comply with their obligations.

"The Government of the Federal Republic of Germany therefore objects to the reservation.

"This objection does not preclude the entry into force of the Convention between the Federal Republic of Germany and the Socialist Republic of Viet Nam."

GREECE

[*Same objection* , mutatis mutandis, *as the one made by Belgium.*]

IRELAND

[*Same objection* , mutatis mutandis, *as the one made by Belgium* .]

ITALY

[*Same objection* , mutatis mutandis, *as the one made by Belgium.*]

[*Same objection* , mutatis mutandis, *as the one made by France.*]

LUXEMBOURG

[Same objection, mutatis mutandis, *as the one made by Belgium.]*

MEXICO

The Government of the United Mexican States considers that the third declaration submitted by the Government of the United States of America (...) constitutes a unilateral claim to justification, not envisaged in the Convention, for denying legal assistance to a State that requests it, which runs counter to the purposes of the Convention. Consequently, the Government of the United Mexican States considers that such a declaration constitutes a reservation to which it objects.

This objection should not be interpreted as impeding the entry into force of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 as between the Government of the United Mexican States and the Government of the United States of America.

NETHERLANDS (KINGDOM OF THE)

[*Same objection,* mutatis mutandis, *as the one made by Belgium.*]

[*Same objection* , mutatis mutandis, *as the one made by France.*]

PORTUGAL

[*Same objection,* mutatis mutandis, *as the one made by Belgium.*]

SPAIN

[*Same objection,* mutatis mutandis, *as the one made by Belgium.*]

SWEDEN

[*Same objection* , mutatis mutandis, *as the one made by France.*]

"... The Government of Sweden is of the view that the reservation made by the Government of Viet Nam regarding article 6, may raise doubts as to the commitment of Viet Nam to the object and purpose of the Convention.

"It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

"Furthermore, according to the Vienna Convention on the Law of Treaties of 23 May 1969, and well-established customary international law, a reservation contrary to the object and purpose of the treaty shall not be permitted.

"The Government of Sweden therefore objects to the aforesaid [reservation] by the Government of Viet Nam.

"[This objection does] not preclude the entry into force of the [Convention] between Viet Nam and Sweden. The [Convention] will thus become operative between the two States without Viet Nam benefiting from the [reservation]."

"The Government of Sweden has examined the declaration made by San Marino at the time of its accession to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, regarding articles 5, 9 and 11 of the Convention.

In this context, the Government of Sweden would like to recall that under well-established treaty law, the name assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified, does not determine itsreservation to the treaty. Thus, the Government of Sweden considers that the declaration made by San Marino, in the absence of further clarification, in substance constitutes a reservation to the Convention.

The Government of Sweden notes that the said articles of the Convention are being made subject to a general reservation referring to the contents of existing legislation in San Marino.

The Government of Sweden is of the view that, in the absence of further clarification, this reservation raises doubts as to the commitment of San Marino to the object and purpose of the Convention and would like to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Sweden therefore objects to the aforesaid reservation made by the Government of San Marino to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

This objection shall not preclude the entry into force of the Convention between San Marino and Sweden. The Convention enters into force in its entirety between the two States, without San Marino benefiting from its reservation."

TÜRKIYE

"The Republic of Cyprus, founded in 1960 as a partnership state in accordance with the international Cyprus Treaties by the Turkish Cypriot and Greek Cypriot communities, was destroyed in 1963 when the Greek Cypriot side threw the Turkish Cypriots out of the government and administration and thereby rendered the Government of Cyprus unconstitutional.

"Consequently, since December 1963, there has been no single political authority in Cyprus representing both communities and legitimate empowered to act on behalf of the whole island. The Greek Cypriot side does not possess the right or authority to become party to international instruments on behalf of Cyprus as a whole.

"The ratification of this Convention by Turkey shall in no way imply the recognition of the 'Republic of Cyprus'

by Turkey and her accession to this Convention should not signify any obligation on the part of Turkey to enter into any dealings with the 'Republic of Cyprus' as are regulated by this Convention."

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[*Same objection,* mutatis mutandis, *as the one made by Belgium.*]

[*Same objection,* mutatis mutandis, *as the one made by France.*]

"The United Kingdom is not in a position to accept [the] reservation.

"The above objection is not however, to constitute an obstacle to the entry into force of the said [Convention] as between Vietnam and the United Kingdom."

UNITED STATES OF AMERICA

"The Government of the United States of America understands the first reservation to exempt Colombia from the obligations imposed by article 3, paragraphs 6 and 9, and article 6 of the Convention only insofar as compliance with such obligations would prevent Colombia from abiding by article 35 of its Political Constitution (regarding the extradition of Colombian nationals by birth), to the extent that the reservation is intended to apply other than to the extradition of Colombian nationals by birth, the Government of the United States objects to the reservation.

"The Government of the United States of America objects to the first declaration, as it purports to subordinate Colombia's obligations under the Convention to its Constitution and international treaties, as well as to that nation's domestic legislation generally.

"The Government of the United States of America objects to the seventh declaration to the extent it purports to restrict the right of other States to freedom of navigation and other internationally lawful uses of the sea related to that freedom seaward of the outer limits of any State's territorial sea, determined in accordance with the International Law of the Sea as reflected in the 1982 United Nations Convention on the Law of the Sea."

Notifications under article 6, 7 and 17
(Unless otherwise indicated, the notifications were received upon ratification, accession, acceptance, approval, formal confirmation or succession.)

ARGENTINA

Where a treaty exists, the requirements established therein should be met. If there is no treaty governing extradition, the following requirements should be met:

When the requested person has been charged:

a) A clear description of the offence, with specific information on the date, place and circumstances under which it was committed, and the identity of the victim;

b) The legal characterization of the offence;

c) An explanation of the basis for the competence of the courts of the requesting State to try the case, as well as the reasons for which the limitations period has not expired;

d) Affidavit or certified copy of the court order for the detention of the accused, with an explanation of the grounds on which the person is suspected of taking part in the offence, and the court order for the delivery of the extradition request;

e) The text of the criminal and procedural provisions applicable to the case as they relate to the foregoing paragraphs;

f) All available information for the identification of the requested person, including name, nicknames, nationality, date of birth, marital status, profession or occupation, distinguishing marks, photographs and fingerprints, and any available information on his domicile or whereabouts in Argentine territory.

In the event that the requested person has been convicted, in addition to the foregoing, the following shall be added:

g) An affidavit or certified copy of the court decision of conviction;

h) Certification that the decision is not rendered in absentia and is final. If the judgment is rendered in absentia, assurances must be given that the case will be reopened so that the convicted person may be heard and allowed to exercise the right of defence, and that a new judgment will be issued accordingly;

i) Information on the length of the sentence remaining to be served;

j) An explanation of the reasons for which the sentence has not been completed.

Ministerio de Relaciones Exteriores y Culto
Dirección de Asistencia Jurídica Internacional
Esmeralda 1212, piso 4
C1007ABR-Buenos Aires
Argentina
Phone: (54) 11 4819-7000/7385
Fax: (54) 11 4819-7353
E-mail: dajin@mrecic.gov.ar; cooperacion-penal@mrecic.gov.ar
Languages: Spanish
Office hours: 08.00-20.00
GMT: -3
Request by INTERPOL: yes (only for preventive detention requests prior to extradition)
Documents required for request.

ARMENIA

"… updated data of the national competent authorities designated under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

[Articles 6 and 7]

Name of Authority: Police of the Republic of Armenia
Full postal address: str. Nalbandyan 130
Yerevan 0025

Name of service to be contacted: General Department on Combat Against Organized Crime

Name of person to be contacted: Mr. Artur Minasyan
Title: Police Lieutenant-Colonel, Head of Operational Information Unit, Department on Combat against Illicit Drug Trafficking

Telephone: +374 10 587 155
Fax: +374 10 587 155
Email: ttdpr@mail.ru

Office Hours: 09:00 to 18:00
Lunch breaks: from 13:00 to 14:00
GMT: +3

Languages: Russian

Acceptance of requests through INTERPOL: Yes

Formats and channels accepted: Any, for police purposes

Specific procedure in urgent cases: Depends on the case

[Article 17]

Name of Authority: General Prosecutor's Office of Armenia
Full postal address: 5 V.Sargsyan str.
Yerevan 0010
Armenia

Name of service to be contacted: Department Against Illegal Drug Circulation

Name of person to be contacted: Mr. Vardan Muradyan
Title: Head of Anti-Drugs Department

Telephone: +374 10 511 621
Fax: +374 10 511 632
Email:
vardanmuradyan@yandex.ru

Office Hours: 09:00 to 18:00
Lunch breaks: from 13:00 to 14:00
GMT: +3

Languages: Russian

Formats and channels accepted: Diplomatic, as well as via Interpol."

BAHRAIN

"(Article 6 on Extradition and Article 17 on Illicit Trafficking by Sea)
Name of the authority: Ministry of the Interior
Full Postal address: General Directorate of Criminal Investigation, Public Security, Director General, P.O. Box 26698, Adliya, Kingdom of Bahrain
Telephone: 00973 17 718888
Facsimile: 00973 17 716085
Office hours: from 07:00 hrs to 14:00 hrs
Time in GMT: GMT+3 (Asia/Bahrain)
Languages: Arabic and English
Acceptance of requests through the Interpol: Yes"

BARBADOS

"... the Attorney-General has been designated as the authority for the purposes of articles 7 (8) and 17 (7) of the above-mentioned Convention and that English is the acceptable language for the purposes of paragraph 9 of said article 7. "

BRUNEI DARUSSALAM

"The competent authority under article 7 (8) is the following:
Ministry of Foreign Affairs and Trade, Jalan Subok Bandar Seri Begawan BD, 2710, Brunei Darussalam
Telephone: (673) 226 1177; Fax: (673) 226 1709;
Email: mfa@gov.bn

CHINA

1. The Ministry of Foreign Affairs of the People's Republic of China is designated as the communication authority for cooperation on extradition for the purpose of Article 6 of the Convention.
Address: No. 2 Chao Yang Men Nan Da Jie, Chao Yang District, Beijing, China.
[...]
3. With regard to Macao Special Administrative Region, the Public Prosecutions Office of Macao Special Administrative Region is designated as the competent authority for cooperation on surrender of fugitive offenders for the purpose of Article 6 of the Convention.
Address: Ala. Carlos Assumpção Dynasty Plaza 7o andar.

COOK ISLANDS

"(a) Article 6: Extradition
The Cook Islands Extradition Act 2003 provides for the extradition of persons to and from the Cook Islands.
The objects of the Act are to -
(a) codify the law relating to the extradition of persons from the Cook Islands; and
(b) facilitate the making of requests for extradition by the Cook Islands to other countries, and
(c) enable the Cook Islands to carry out its obligations under extradition treaties.
An offense under the Act is an extradition offence if -
1. (a) it is an offence against a law of the requesting country punishable
by death or imprisonment for not less than 12 months or the imposition of a fine of more than $5,000; and
(b) the conduct that constitutes an offence (however described) in the Cook Islands punishable by death or imprisonment for not less than 12 months or the imposition of a fine of more than $5,000.
2. In determining whether conduct constitutes an offence, regard may be had to only some of the acts and omissions that make up the conduct.
3. In determining the maximum penalty for an offence for which no statutory penalty is imposed, regard must be had to the level of penalty that can be imposed by any court in the requesting country for the offence.
4. An offence may be an extradition offence although:
(a) it is an offence against a law of the requesting country relating to taxation, customs duties or other revenue matters, or relating to foreign exchange controls; and
(b) the Cook Islands does not impose a duty, tax, impost or control of that kind.
(b) Article 7: Mutual Legal Assistance:
The authority in the Cook Islands with the responsibility and power to execute requests for mutual legal assistance is as follows:
Solicitor General, Crown Law Office, PO Box 494, Avarua, Rarotonga, Cook Islands. Tel: (682) 29 337; Fax: (682 20 839.
(c) Article 17: Illicit Traffic at Sea The authority in the Cook Islands with the responsibility for responding to requests for information on vessels flying the Cook Islands flag is as follows:
Secretary, Ministry of Transport, PO Box 61, Avarua, Rarotonga, Cook Islands. Tel: (682) 28 810; Fax: (682) 28 816."

CROATIA

The Ministry of Justice of the Republic of Croatia notified its designation of authorities under the provisions of articles 6, 7 and 17 of the above Convention, as follows:

"Lovorka Cveticanin
Department for Extradition and Mutual Legal Assistance in Criminal Matters
Phone: + 385 1 3714 350
Fax: + 385 1 3714 392

e-mail: lovorka.cveticanin@pravosudje.hr
Languages: Croatian and English
Office hours: 08:00-16:00 (GMT:+1)
Ministry of Justice
Ulica grada Vukovara 84
Zagreb
Croatia.

AnaMarija Barac
Department for Extradition and Mutual Legal Assistance in Criminal Matters
Phone: + 385 1 3714 349
Fax: + 385 1 3714 392
e-mail: anamarija.barac@pravosudje.hr
Languages: Croatian and English
Office hours: 08:00-16:00 (GMT:+1)
Ministry of Justice
Ulica grada Vukovara 84
Zagreb,
Croatia."

CUBA

Lic. Claudio Inocente Ramos Borrego
Director de Relaciones Internacionales
Ministerio de Justicia
Calle O, No. 216, entre las calles 23 y 25, Vedado,
Plaza de la Revolución
La Habana, Cuba
Telephone: (537) 838 3448
(537) 838 3450 to 56 ext. 347
Email: dri@oc.minjus.cu
Language: Spanish
Office hours: 8:00-17:00
GMT: -5
Request by INTERPOL: No
Documents required for Request:
Information on the issuing body, file number or criminal case number, offences committed, persons accused of the offence, description of the acts committed, investigation order, list of the criminal law provisions that criminalize the offences committed, name and function of the official submitting the request.
Formats and channels accepted:
Rogatory Comission, Ministry of Foreign Affairs, Ministry of Justice.
Specific procedure in urgent cases:
This does not exist; there is only a procedure for regular cases.
Fiscalía General de la República
Lic. Patricia María Rizo Cabrera
Fiscal Jefa Dirección Relaciones Internacionales y Colaboración
Calle 1ra, Esquina 18, Miramar, Playa,
La Habana, Cuba
Telephone: (537) 214 0001 ext. 102 and 103
Email: relaciones@5ta.fqr.cu
Language: Spanish
Office hours: 8:00-17:30
GMT: -5
Request by INTERPOL: No
Documents required for Request:
Information on the issuing body, file number or criminal case number, offences committed, persons accused of the offence, description of the acts committed, investigation order, list of the criminal law provisions that criminalize the offences committed, name and function of the official submitting the request.
Formats and channels accepted:
Rogatory Commission, Ministry of Foreign Affairs, Ministry of Justice.
Specific procedure in urgent cases:
This does not exist; there is only a procedure for regular cases.
Dirección General de la Policía Nacional Revolucionaria
General de Brigada Jesús Becerra Morciego
Jefe de la Dirección General de la Policía General Revolucionaria
Sección de Cooperación Operacional de la Policía Técnica de Investigaciones
La Habana, Cuba
Telephone: (537) 873 1665
Fax: (537) 873 1664
Email: dna@mn.mn.co.cu
Language: Spanish
Office hours: 8:00-17:00
GMT: -5
Request by INTERPOL: Yes
Documents required for Request:
Information on the issuing body, file number or criminal case number, offences committed, persons accused of the offence, description of the acts committed, investigation order, list of the criminal law provisions that criminalize the offences committed, name and function of the official submitting the request.
Formats and channels accepted:
Rogatory Commission, Ministry of Foreign Affairs, Ministry of Justice.
Specific procedure in urgent cases:
This does not exist; there is only a procedure for regular cases.

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Ministry of People's Security
Wasan-dong,
Sosong District
Pyongyang, DPR Korea.
Fax: +850-2-381-5833 Tel.: +850-2-381-5833 Maritime Administration Tonghun-dong Central District Pyongang, DPR Korea. Fax: +850-2-381-4410 Tel.: +850-2-18111 ext 8059 E-mail: Mab@silibank.com On the same date, the Government of the Democratic People's Republic of Korea notified the Secretary-General that English has been chosen as its language for the purpose of article 7 (9) of the Convention.

ICELAND

"... the Government of Iceland notified its designation of authority under the provisions of articles 6, 7 and 17 of the above Convention, as follows:
"Ministry of the Interior
Sölvhólsgötu 7
150 Reykjavík
Iceland

Phone: (354) 545-9000
Fax: (354) 552-7340
Email: postur@irr.is

Languages: English, Icelandic
Office hours: 08:30-16:00
GMT: 0
Request by INTERPOL: No."

IRELAND

"... the authority now designated by Ireland under Article 17 (7) of the Convention is as follows:
Head of Unit
Liaison & Joint Operations
Customs Drugs Law Enforcement
Revenue Investigations & Prosecutions Division
Ashtown Gate
Dublin 15
Ireland
Telephone No. (office hours):
+ 353 1 827 7512
24 hour Telephone No. (outside office hours):
+ 353 87 254 8201 Fax: + 353 1 827 7680
E-mail address: antidrugs@revenue.ie
Office Hours : 0800 - 1800 (Monday-Friday)
Languages of incoming requests accepted: English
Time zone: GMT:+/-:0"

LIECHTENSTEIN

"Name of Authority: Ministry of Justice

Full postal address: Haus Risch
Äulestrasse 51
Postfach 684
FL-9490 Vaduz

Name of service to be contacted: Ministry of Justice

Name of person to be contacted: Mr. Harald Oberdorfer

Telephone: 00423/236-6590
Fax: 00423/236-7581
Email:
harald.oberdorfer@regierung.li

Office Hours: 08:30 to 16:30
Lunch breaks: from 11:30 to 13:00
GMT: +/- 1

Languages: English, German

Acceptance of requests through INTERPOL: Yes

Information needed for requests to be executed: Letter rogatory (criminal proceedings pending, summary of facts, requested assistance, legal provisions)

Formats and channels accepted: Fax and transmission through Interpol accepted."
Mag. Harald Oberdorfer
Legal Officer
Office of Justice
Judicial Affairs Division
P.O. Box 684
9490 Vaduz
Principality of Liechtenstein
Phone: +423 236 65 90
Fax: +423 236 75 81
E-Mail: harald.oberdorfer@llv.li
Languages: German, English
Office hours: 08:00-11:30, 13:30-17:00
GMT: +1
Request by Interpol: yes

LUXEMBOURG

Pursuant to article 7 (8), and as a replacement of the initial designation made at the time of the deposit of the instrument of ratification, the Government of the Grand Duchy of Luxembourg has designated the State Attorney General as the authority with the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution.

Pursuant to article 7 (9), the Government of the Grand Duchy of Luxembourg declares that requests for mutual legal assistance must be written in French or German or be accompanied by a translation into French or German.

NICARAGUA

... the Government of the Republic of Nicaragua has designated the Attorney General of the Republic as the Central Authority in charge of fulfilling that which is stipulated in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988.

PARAGUAY

<Right>3 September 2008</Right>Pursuant to the provisions of articles 7 (8) and 17 (7) of the aforementioned Convention, the Republic of Paraguay has designated the following institution as its Central authority:Government Procurator's Department – Office of the Attorney-General – Department of International Affairs and External Legal AssistanceAddress: Nuestra Señora de la Asunción 737 c/Haedo, Piso 8, Asunción, ParaguayTelephone numbers: 595-21-498537/ 595-21-415-5000/ 595-21-415-5100Website: www.ministeriopublico.gov.pyDirector: Juan Emilio Oviedo Cabañas (lawyer)E-mail: jeoviedo@ministeriopublico.gov.pyAlternative contact: Magdalena Quiñonez, Assistant ProsecutorE-mail: mquinonez@ministeriopublico.gov.py

PERU

Notification under articles 6, 7 and 17:
Authority:
Javier Moscoso Flores
Director General of the *Dirección General de Capitanías y Guardacostas, Peru*
Email: jorge.moscoso@dicapi.mil.pe.

PHILIPPINES

The Philippine Drug Enforcement Agency would like to request to amend its point of contacts as follows:

Name of the authority: "UNDERSECRETARY ARTURO G. CACDAC JR, CESE
Director General
Philippine Drug Enforcement Agency

Postal Address: NIA Northside Road, Barangay Pinyahan
Quezon City
Philippines 1111

Telephone: (+63)29209916

Email: pdeaodg@yahoo.com

Languages: English and Filipino
Office hours: 0800-1700

GMT: +8

Name of the authority: ATTY GIL T. PABILONA
Director
Legal and Prosecution Service
Philippine Drug Enforcement Agency

Postal Address: NIA Northside Road, Barangay Pinyahan
Quezon City
Philippines 1111

Telephone: (+63)29203395

Email: giltpabilona@yahoo.com

Languages: English

Name of the authority: DERRICK ARNOLD C. CARREON, CESE
Director
International Cooperation and Foreign Affairs Service
Philippine Drug Enforcement Agency

Postal Address: NIA Northside Road, Barangay Pinyahan
Quezon City
Philippines 1111

Telephone: (63)29200105

Email: icfaspdea@gmail.com."

SERBIA

"The Permanent Mission of the Republic of Serbia ... has the honour to notify of the Serbian competent authorities for the implementation of the Article 6 (Extradition) and 7 (Mutual Legal Assistance) of the Convention.

The requests shall be addressed to:

Name of Authority: Ministry of Justice of the Republic of Serbia

Full postal address: Ministry of Justice, 22-26 Nemanjina Street, 11000 Belgrade, Republic of Serbia

Name of Service to be contacted: Normative Affairs and International Cooperation Department, Mutual Legal Assistance Sector

Telephone: +381 11 311 14 73; +381 11 311 21 99

Fax: +381 11 311 45 15; +381 11 311 29 09

Office hours: from 08:30 to 16:30

Time zone: GMT 1

Languages English, Russian

In urgent matters the requests may be forwarded through NCB INTERPOL-Belgrade:

Contact: INTERPOL BELGRADE

Full postal address: NCB INTERPOL BELGRADE, Terazije 41,

11000 Belgrade, Republic of Serbia

Telephone: +381 11 33 45 254

Fax: +381 11 33 45 822

Office hours: from 08:30 to 16:30

Permanent service: until 22:00 hours

Time zone: GMT 1

Languages: English, French

Acceptance of requests

Through INTERPOL: YES.

The Permanent Mission of the Republic of Serbia ... has the honour to notify of the Serbian competent authority for the implementation of the Article 17 (Illicit Traffic by Sea) of the Convention.

The requests shall be addressed to:

Name of Authority: Ministry of Infrastructure of the Republic of Serbia

Full postal address: Ministry of Infrastructure, 22-26 Nemanjina Street, 11000 Belgrade, Republic of Serbia

Name of Service to be contacted: Department for Water Traffic and Navigation Safety

Name of Person to be contacted: Mr. Veljko Kovacevic, Department for Water Traffic and Navigation Safety

Telephone: +381 11 202 90 10

Fax: +381 11 202 00 01

E-mail: vkpomorstvo@mi.gov.rs

Office hours: from 08:30 to 16:30

Time zone: GMT 1

Languages: English."

SRI LANKA

20 May 2013

"Mrs. Kamalini de Silva
Secretary
Ministry of Justice
Superior Courts Complex
Colombo 12
Sri Lanka"

SWEDEN

The Government of Sweden notified the Secretary-General that, as from 1 October 2000, the Ministry of Justice has been designated as the authority under the provisions of article 7 (8) and article 17 (7) of the Convention, instead of the Ministry for Foreign Affairs.1

The address of the Ministry of Justice:

Ministry of Justice

Division for Criminal Cases and International Judicial Co-operation

Central Authority

S-103 33 Stockholm

Sweden

Telephone: +46 8 405 45 00 (Secretariat)

Fax: +46 8 405 46 76

E-mail: birs@justice.ministry.se.

"The following addition shall be made to the declaration on Article 7.8: Regarding request for service of documents under Article 7.2 (b) of the Convention, County Administrative Board of Stockholm is the central authority."

THAILAND

"Name of Authority:
Attorney General
Full postal address:
Office of the Attorney General
Rajaburi Direkriddhi Building
Government Complex Chaeng
Wattana Road
Lak Si
Bangkok 10210 Thailand
Telephone:
662-515-4656
Fax:
662-515-5657
Email:
inter@ago.go.th
Office Hours:
08:30 to 16:30
Lunch breaks:
12:00 to 13:00
GMT:
+ 6
Languages:
Thai, English
Acceptance of requests through INTERPOL:
No
Formats and channels accepted:

[For mutual legal assistance:] The State having a mutual legal assistance treaty with Thailand shall submit its request directly to the Central Authority. The State having no such treaty shall submit its request through the diplomatic channel.

[For extradition:] if the State has and extradition treaty with Thailand, the request shall be transmitted through the Central Authority unless stipulated otherwise. The State having no such treaty shall submit its request through the diplomatic channel."

TRINIDAD AND TOBAGO

Head, Central Authority Unit
Ministry of the Attorney General
Cabildo Chambers
23-27 St. Vincent Street
Port of Spain
Trinidad and Tobago
Telephone: (868) 625-6579/(868) 623-7010 extension 2622
Facsimile: (868) 627-9171
Electronic mail: centralauthorit@tstt.net.tt
Lieutenant Commander Jason Kelshall
Commander Operations
Trinidad and Tobago Coast Guard
Staubles Bay
Chaguaramas
Trinidad and Tobago
Telephone: (868) 634-4440
Facsimile: (868) 634-4944
Electronic mail: ttcgops@gmail.com."

VENEZUELA (BOLIVARIAN REPUBLIC OF)

The authority designated by Venezuela under Article 7 of the Convention is as follows:

Name of Authority: Ministerio Público

Full postal address: Edificio Sede Principal del Ministerio Público

Esquinas de Misericordia a Pelé el Ojo

Avenida México, Caracas 1010
Venezuela
Name of person to be contacted: Sra. Genny Rodriguez
Title: Coordinadora de Asuntos Internacionales
Telephone: + 58 212 509 8342
Fax: + 58 212 578 0215
Office Hours: 08:00 to 16:00
GMT: - 4:30

Languages: Spanish
Acceptance of requests through INTERPOL: Yes
Information needed for requests to be executed: As per article 7 (10)
Formats and channels accepted: Central authority, Diplomatic channel
Specific procedure in urgent cases: Fax transmission or via email followed by post.

Notes:

[1] The former Yugoslavia had signed and ratified the Convention on 20 December 1988 and 3 January 1991, respectively. See also note 1 under “Bosnia and Herzegovina”, “Croatia”, “former Yugoslavia”, “Slovenia” and “Yugoslavia” in the “Historical Information” section in the front matter of this volume.

[2] On 7 July 1999, the Government of Portugal informed the Secretary-General that the Convention would apply to Macao.

Subsequently, the Secretary-General received communications regarding the status of Macao from China and Portugal (see also note 3 under “China” and note 1 under “Portgual” in the “Historical Information” section in the front matter of this volume). Upon resuming the exercise of sovereignty over Macao, China notified the Secretary-General that the Convention will also apply to the Macao Special Administrative Region.

[3] The Secretary-General, received on 6 and 10 June 1997 communications regarding the status of Hong Kong from China and the United Kingdom of Great Brtiain and Northern Ireland (see also note 2 under “China” and note 2 under “United Kingdom of Great Britain and Northern Ireland” in the “Historical Information” section in the front matter of this volume). Upon resuming the exercise of sovereignty over Hong Kong, China notified the Secretary-General that the Convention with declaration made by China will also apply to the Hong Kong Special Administrative Region.

[4] Czechoslovakia had signed and ratified the Convention on 7 December 1989 and 4 June 1991, respectively. See also note 1 under “Czech Republic” and note 1 under “Slovakia” in the “Historical Information” section in the front matter of this volume.

[5] The German Democratic Republic had signed and ratified the Convention on 21 June 1989 and 21 February 1990, respectively. The instrument of ratification contained the following declarations:

Requests for mutual legal assistance under article 7 shall be directed to the German Democratic Republic through diplomatic channel in one of the official United Nations languages or in the German language unless existing agreements on mutual legal assistance include other provisions or direct communication between legal authorities has been determined or developed on a mutual basis.

The Ministry of Foreign Affairs shall be the competent authority to receive and respond to requests of another state to board or search a vessel suspected of being involved in illicit traffic (article 17).

See also note 2 under “Germany” in the “Historical Information” section in the front matter of this volume.

[6] See note 1 under "Montenegro" in the "Historical Information" section in the front matter of this volume.

[7] The signature was affixed for the Kingdom in Europe, the Netherlands Antilles and Aruba. The instrument of acceptance specifies that it is for the Kingdom in Europe. As from 10 March 1999: for the Netherlands Antilles and Aruba with the following reservation: “The Government of the Kingdom of the Netherlands accepts the provisions of article 3, paragraph 6, 7 and 8, only in so far as the obligations under these provisions are in accordance with Netherlands Antillean and Aruban criminal legislation and Netherlands Antillean and Aruban policy on criminal matters.” See also note 2 under “Netherlands” regarding Netherlands Antilles in the “Historical Information” section in the front matter of this volume.

[8] See note 1 under “New Zealand” regarding Tokelau in the “Historical Information” section in the front matter of this volume.

[9] On 20 October 2015, the Government of Ukraine made a communication. The text can be found here: C.N.605.2015.TREATIES-VI.19 of 20 October 2015.

[10] On 4 March 2022, the Government of Ukraine made a communication. The text can be found here: C.N.74.2022.TREATIES-VI.19 of 8 March 2022.

[11] On 2 December 1993, the Government of the United Kingdom of Great Britain and Northern Ireland notified the Secretary-General that the Convention would apply to the Isle of Man with the following reservation:

"The United Kingdom of Great Britain and Northern Ireland will only consider the granting of immunity under article 7, paragraph 18, in relation to the Isle of Man, where this is specifically requested by the person to whom the immunity would apply or by the authority designated under article 7, paragraph 8 of the party from whom assistance is requested. A request for immunity will not be granted where the judicial authorities of the Isle of Man consider that to do so would be contrary to the public interest.”

Subsequently, in a notification received on 8 February 1995, the Government of the United Kingdom notified the Secretary-General that the Convention should apply, as from that same date, to the following territories: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Monserrat and Turks and Caicos Islands.

In this regard, on 6 August 1996, the Secretary-General received from the Government of the United Kingdom of Great Britain and Northern Ireland, the following communication:

"... In relation to the aformentioned Territories the granting of immunity under article 7, paragraph 18, of the said Convention will only be considered where this is specifically requested by the person to whom the immunity would apply or by the authority designated, under article 7, paragraph 8, of the Party from whom assistance is requested. A request for immunity will not be granted where the judicial authorities of the Territory in question consider to do so would be contrary to the public interest."

Further, on 15 May and 7 July 1997, respectively, the Government ofthe United Kingdom of Great Britain and Northern Ireland notified the Secretary-General that the Convention shall extend to Hong Kong *(see also note 2)* and the Bailiwick of Jersey. The applicatn of the Convention to the Bailiwick of Jersey is subject to the following reservation:

(1) article 7, paragraph 18 (Reservation)

"The United Kingdom of Great Britain and Northern Ireland will only consider the granting of immunity under article 7, paragraph 18, in relation to Jersey, where this is specifically requested by the person to whom the immunity would apply or by the authority designated under article 7, paragraph 8 of the party from whom assistance is requested. A request for immunity will not be granted where the judicial authorities of Jersey consider that to do so would be contrary to the public interest."

Further, on 3 April 2002, the Government of the United Kingdom informed the Secretary-General that the Convention would extend to Guernsey, with the following reservation:

"(1) Article 7, Paragraph 18 (Reservation)

The United Kingdom of Great Britain and Northern Ireland will only consider the granting of immunity under Article 7, Paragraph 18, in relation to Guernsey, where this is specifically requested by the person to whom the immunity would apply or by the authority designated under Article 7, Paragraph 8 of the party from whom assistance is requested. A request for immunity will not be granted where the judicial authorities of Guernsey consider that to do so would be contrary to the public interest.

On 2 July 2014, the Government of the United Kingdom of Great Britain and Northern Ireland notified the Secretary-General that the Convention would extend to the territory of Gibraltar with reservation:

"… The Government of the United Kingdom of Great Britain and Northern Ireland wishes the United Kingdom's Ratification of the Convention be extended to the territory of Gibraltar for whose international relations the United Kingdom is responsible.

The Government of the United Kingdom of Great Britain and Northern Ireland considers the extension of the Convention to the territory of Gibraltar to enter into force on the day of receipt of this notification by [the depositary] for deposit… "

Reservation

"The United Kingdom of Great Britain and Northern Ireland will only consider the granting of immunity under Article 7, paragraph 18, in relation to Gibraltar, where this is specifically requested by the person to whom the immunity would apply or by the authority designated under Article 7, paragraph 8, of the party from whom assistance is requested. A request for immunity will not be granted where the judicial authorities of Gibraltar consider that to do so would be contrary to the public interest."

[12] The formality was effected by the Yemen Arab Republic. See also note 1 under "Yemen" in the "Historical Information" section in the front matter of this volume.

[13] The Secretary-General received from the Government of Israel objections identical in essence, *mutatis mutandis* , as the one referenced in note 17 in chapter VI.16, on 14 May 1990 in regard to the declaration made by Bahrain upon ratification, on 15 November 1991 in regard to the declaration made by the Syrian Arab Republic upon accession and on 10 April 1992 in regard to the declaration made by Saudi Arabia upon accession.

[14] On 8 July 2021, the Government of Bahrain notified the Secretary-General of its withdrawal of the following declaration made upon ratification:

Moreover, the State of Bahrain hereby declares that its ratification of this Convention shall in no way constitute recognition of Israel or be a cause for the establishment of any relations of any kind therewith.

[15] On 30 December 1997, the Government of Colombia notified the Secretary-General that it had decided to withdraw its reservation with regard to article 3 (6) and (9) and article 6 made upon ratification. The reservation reads as follows.

1. Colombia is not bound by article 3, paragraphs 6 and 9, or article 6 of the Convention since they contravene article 35 of the Political Constitution of Colombia regarding the prohibition on extraditing Colombians by birth.

[16] On 10 December 1996, the Government of Jamaica informed the Secretary-General that it had decided to withdraw its declaration made upon accession. The declaration read as follows:

Declaration:

"The Government of Jamaica understands paragraph 11 of article 17 of the said Convention to mean that the consent of the coastal State is required as a precondition for action under paragraphs 2, 3 and 4 of article 17 of the said Convention in relation to the Exclusive Economic Zone and all other maritime areas under the sovereignty or jurisdiction of the coastal State."

[17] In regard to the reservation made by Lebanon, the Secretary-General received communications identical in essence, *mutatis mutandis* , as the one made by France under ***Objections"*** , from the following Governments on the dates indicated hereinafter:

Participants:	***Date of the communication:***		
Austria	11	Jul	1997
Greece	18	Jul	1997

[18] In a communication received in 17 September 2012, the Government of Republic of the Union of Myanmar notified the Secretary-General of the withdrawal of the following reservation made upon accession to the Convention:

"The Government of the Union of Myanmar wishes to express reservation on article 6 relating to extradition and does not consider itself bound by the same in so far as its own Myanmar nationals are concerned.

[19] On 24 July 1997, the Government of the Philippines informed the Secretary-General that it had decided to withdraw its reservations made upon accession, which read as follows:

"[The Government of the Philippines declares] that it does not consider itself bound by the following provisions:

1. " Paragraph 1 (b) (i) and paragraph 2 (a) (ii) of article 4 on jurisdiction;

2. "Paragraph 1 (a) and paragraph 6 (a) and (b) of article 5 on confiscation; and

3. "Paragraph 9 (a) and (b) and 10 of article on extradition."

On that same date, the Government of the Philippines declared the following:

"The Philippines, does not consider itself bound by the mandatory jurisdiction of the International Court of Justice as provided for in article 32, paragraph 2 of the same Convention."

In keeping with the depositary practice followed in similar cases, the Secretary-General proposed to receive the declaration in question for deposit (in the absence of any objection on the part of any of the Contracting States, either to the deposit itself or to the procedure envisaged) within a period of 90 days from the date of the present notification (3 September 1997). No objection having been recieved within the said period, the above declaration was deemed accepted for deposit upon the expiration of the 90-day period, that is to say on 2 December 1997.

[20] On 16 October 2019, the Government of San Marino notified the Secretary-General of its decision to partially withdraw the declaration it made upon accession. The text of the declaration withdrawn reads as follows:

Moreover, it declares that the establishment of "joint teams" and "liaison officers", under article 9, item 1, letters c) and d), as well as "controlled delivery" under article 11 of the above-mentioned Convention, are not provided for by San Marino legal system.

[21] In a communication received on 15 January 1999, the Government of Finland notified the Secretary-General of the following:

"The Government of Finland is of the view that [this reservation] raise[s] doubts as to [its] compatibility with the object and purpose of the [Convention] concerned, in particular the [reservation] to article 6, paragraphs 2 and 9. According to the Vienna Convention on the Law of Treaties, and well-established customary international law, a reservation contrary to the object and purpose of the treaty shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become Parties are respected as to their object and purpose by all Parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Finland therefore objects to [this reservation] made by the Government of Viet Nam to the [Convention].

This objection does not preclude the entry into force of the [Convention] between Viet Nam and Finland. The [Convention] will thus become operative between the two States without Viet Nam benefitting from [this reservation].

[22] On 31 October 2022, the Government of Viet Nam notified the Secretary-General of its decision to withdraw the reservation to article 6 on extradition made upon accession to the above Convention.

EXHIBIT 95

出口退税率查询

商品代码：

商品名称： 芬太尼

提交 重置

例如 商品名称：改良种用濒危野马，商品代码：0101210010

查询结果

商品编码	商品名称	计量单位	征税税率%	增值税税率%
29333300	阿芬太尼、阿尼利定、氰苯双哌酰胺、溴西泮、地芬诺新、地芬诺酯、地匹哌酮、芬太尼、凯托米酮、哌醋甲酯、喷他左辛、哌替啶、哌替啶中间体A、苯环利定、苯哌利定、哌苯甲醇、哌氰米特、丙吡兰和三甲利定以及它们的盐	千克	13	13.0
29333400	其他芬太尼及它们的衍生物	千克	13	13.0
29349200	其他芬太尼以及它们的衍生物	千克	13	13.0

注：本模块仅为提供出口商品的征税税率和出口退税率查询，相关商品出口[illegible]法规及出口贸易管理等有关规定。

ENGLISH VERSION

Export tax rebate rate inquiry

Product Code:

Product Name: 芬太尼

submit Reset

For example, product name: Endangered wild horses for breeding, product code: 0101210010

Query results

Product Code	Product Name	Units of measurement	Tax rate%	VAT refund rate %
29333300	Alfentanil, anileridine, cyanobenzamide, bromazepam, difenoxin, diphenoxylate, dipipanone, fentanyl, ketobemidone, methylphenidate, pentazocine, pethidine, pethidine intermediate A, phencyclidine, phenperidine, phenphenanol, piramide, propiram and trimelidine and their salts	kilogram	13	13.0
29333400	Other fentanyl and their derivatives	kilogram	13	13.0
29349200	Other fentanyls and their derivatives	kilogram	13	13.0

Note: This module only provides inquiries on the tax rates and export tax reba
goods. The export of relevant goods must comply with national laws, regulatio
manage and other relevant provisions.

EXHIBIT 96

出口退税率查询

商品代码：29333600

商品名称：

提交 重置

例如 商品名称：改良种用濒危野马，商品代码：0101210010

查询结果

商品编码	商品名称	计量单位	征税税率%	增值税税率%
29333600	4-苯氨基-N-苯乙基哌啶（ANPP）	千克	13	13.0

注：本模块仅为提供出口商品的征税税率和出口退税率查询，相关商品出口时法规对出口贸易管理等有关规定。

上一页 1 下一页 到第 1 页 确定

ENGLISH VERSION

Export tax rebate rate inquiry

Product Code: 29333600

Product Name:

submit Reset

For example, product name: Endangered wild horses for breeding, product code: 0101210010

Query results

Product Code	Product Name	Units of measurement	Tax rate%	VAT refund rate %
29333600	4-phenylamino-N-phenylethylpiperidine (ANPP)	kilogram	13	13.0

Note: This module only provides inquiries on the tax rates and export tax reba
goods. The export of relevant goods must comply with national laws, regulatio
manage and other relevant provisions.

Previous page 1 Next Page To 1 Page Sure

EXHIBIT 97

出口退税率查询

商品代码：29333700

商品名称：

提交 重置

例如 商品名称：改良种用濒危野马，商品代码：0101210010

查询结果

商品编码	商品名称	计量单位	征税税率%	增值税税率%
29333700	N-苯乙基-4-哌啶酮（NPP）	千克	13	13.0

注：本模块仅为提供出口商品的征税税率和出口退税率查询，相关商品出口时法规对出口贸易管理等有关规定。

上一页 1 下一页 到第 1 页 确定

ENGLISH VERSION

Export tax rebate rate inquiry

Product Code: 29333700

Product Name:

submit Reset

For example, product name: Endangered wild horses for breeding, product code: 0101210010

Query results

Product Code	Product Name	Units of measurement	Tax rate%	VAT refund rate %
29333700	N-Phenylethyl-4-piperidone (NPP)	kilogram	13	13.0

Note: This module only provides inquiries on the tax rates and export tax reba
goods. The export of relevant goods must comply with national laws, regulatio
manage and other relevant provisions.

Previous page 1 Next Page To 1 Page Sure

EXHIBIT 98

出口退税率查询

商品代码：29333400

商品名称：

提交 重置

例如 商品名称：改良种用濒危野马，商品代码：0101210010

查询结果

商品编码	商品名称	计量单位	征税税率%	增值税税率%
29333400	其他芬太尼及它们的衍生物	千克	13	13.0

注：本模块仅为提供出口商品的征税税率和出口退税率查询，相关商品出口时法规对出口贸易管理等有关规定。

上一页 1 下一页 到第 1 页 确定

ENGLISH VERSION

Export tax rebate rate inquiry

Product Code: 29333400

Product Name:

submit Reset

For example, product name: Endangered wild horses for breeding, product code: 0101210010

Query results

Product Code	Product Name	Units of measurement	Tax rate%	VAT refund rate %
29333400	Other fentanyl and their derivatives	kilogram	13	13.0

Note: This module only provides inquiries on the tax rates and export tax reba
goods. The export of relevant goods must comply with national laws, regulatio
manage and other relevant provisions.

EXHIBIT 99

出口退税率查询

商品代码：29349200

商品名称：

提交 重置

例如 商品名称：改良种用濒危野马，商品代码：0101210010

查询结果

商品编码	商品名称	计量单位	征税税率%	增值税税率%
29349200	其他芬太尼以及它们的衍生物	千克	13	13.0

注：本模块仅为提供出口商品的征税税率和出口退税率查询，相关商品出口时法规对出口贸易管理等有关规定。

上一页 1 下一页 到第 1 页 确定

ENGLISH VERSION

Export tax rebate rate inquiry

Product Code: 29349200

Product Name:

submit Reset

For example, product name: Endangered wild horses for breeding, product code: 0101210010

Query results

Product Code	Product Name	Units of measurement	Tax rate%	VAT refund rate %
29349200	Other fentanyls and their derivatives	kilogram	13	13.0

Note: This module only provides inquiries on the tax rates and export tax reba
goods. The export of relevant goods must comply with national laws, regulatio
manage and other relevant provisions.

EXHIBIT 100

出口退税率查询

商品代码：29333300

商品名称：

提交 重置

例如 商品名称：改良种用濒危野马，商品代码：0101210010

查询结果

商品编码	商品名称	计量单位	征税税率%	增值税税率%
29333300	阿芬太尼、阿尼利定、氰苯双哌酰胺、溴西泮、地芬诺新、地芬诺酯、地匹哌酮、芬太尼、凯托米酮、哌醋甲酯、喷他左辛、哌替啶、哌替啶中间体A、苯环利定、苯哌利定、哌苯甲醇、哌氰米特、丙吡兰和三甲利定以及它们的盐	千克	13	13.0

注：本模块仅为提供出口商品的征税税率和出口退税率查询，相关商品出口申
法规及出口贸易管理等有关规定。

ENGLISH VERSION

Export tax rebate rate inquiry

Product Code: 29333300

Product Name:

submit Reset

For example, product name: Endangered wild horses for breeding, product code: 0101210010

Query results

Product Code	Product Name	Units of measurement	Tax rate%	VAT refund rate %
29333300	Alfentanil, anileridine, cyanobenzamide, bromazepam, difenoxin, diphenoxylate, dipipanone, fentanyl, ketobemidone, methylphenidate, pentazocine, pethidine, pethidine intermediate A, phencyclidine, phenperidine, phenphenanol, piramide, propiram and trimelidine and their salts	kilogram	13	13.0

Note: This module only provides inquiries on the tax rates and export tax reba
goods. The export of relevant goods must comply with national laws, regulatio
manage and other relevant provisions.

EXHIBIT 101

出口退税率查询

共1条 1页 1/1 页

商品编码	商品名称	计量单位	增值税退税率%
29333300	阿芬太尼、阿尼利定、氨苯双哌酰胺、溴西泮、地芬诺新、地芬诺酯、地匹哌酮、芬太尼、凯托米酮、哌醋甲酯、喷他左辛、哌替啶、哌替啶中间体A、苯环利定、苯哌利定、哌苯甲醇、哌氢米特、丙吡兰和三甲利定以及它们的盐	千克	10.0

查 询

商品代码：

29333300

商品名称：

提交 重置

网站标识码：bm29000002 京ICP备13021685号-2

ENGLISH VERSION

Export tax rebate rate inquiry

Total 1 Article 1 Page 1/1 page

Commodity code	product name	unit of measurement	VAT refund rate%
29333300	Alfentanil, anilidine, cyanidinamide, bromine, diphenoxy, diphenoxylate, dipyridone, fentanyl, ketomifen, methylphenidate, spray Levoxine, pethidine, meperidine intermediate A, phencyclidine, bepiridine, piperoxymethanol, piperidinide, propiline and trimethylididine and their salts	kilogram	10.0

Inquire

Product code:

29333300

product name:

submit Reset

EXHIBIT 102