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U.S.–China Trade Relations

2016–2017 Policy Debate Topic

Is China Becoming a Market Economy Under World Trade Organization Rules?

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Editor's Note — This issue focuses on an aspect of the National Forensic League's 2016–2017 Policy Debate Topic: "Resolved: The United States Federal Government should substantially increase its economic and/or diplomatic engagement with the People's Republic of China."

This month's feature:

U.S.–China Trade Relations

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U.S.–China Trade Relations
2016–2017 Policy Debate Topic

"He who decides a case without hearing the other side . . . Tho he decide justly, cannot be considered just." — *Seneca*

FOREWORD

President Richard Nixon's 1972 visit to the People's Republic of China marked a monumental turning point in the U.S.–China relationship, ending 25 years of separation between the two nations, opening a new dialogue, and giving the United States more leverage against the Soviet Union.

Today, as the first and second largest economies in the world, respectively, the United States and China are heavily interdependent. China is the United States' second-largest trading partner (after Canada), its third-largest export market (after Canada and Mexico), and its biggest source of imports.

Despite these growing commercial ties, the economic relationship between the two countries has become increasingly complex and often strained. From the U.S. perspective, this is because although China has liberalized its economic and trade approach over the last several decades, it continues to maintain government-directed policies that have created tensions over a number of issues. These include a large U.S. trade deficit with China and China's mixed record in following through on its obligations to the World Trade Organization (WTO), the intergovernmental organization that regulates international trade.

China formally acceded to the WTO in 2001, following years of negotiations during which the United States insisted that China would first have to commit to substantial changes in its trade policies. A compromise was reached that required China to lower various trade and investment barriers but allowed it to maintain a level of protection for certain sensitive economic sectors. China has a vibrant and fast-growing private sector, but most major heavy industries are state-owned and subsidized.

While the agreement signified China's deeper integration into the world economy, it stipulated that for the first 15 years of China's WTO membership, it would be treated as a "non-market economy" for the purpose of antidumping measures. In international trade, dumping occurs when a country exports a product at a price lower than its normal value in order to gain a bigger market share, drive out competition, and deal with overproduction. China's current non-market economy status allows its trading partners — mainly the United States, the European Union (EU), and Japan — to impose antidumping duties on certain Chinese goods, such as steel and aluminum.

Both the United States and the EU have a number of antidumping measures against China in force; if China attains market economy status, however, that tool will need to be redefined or may no longer be available.

China's transitional period as a WTO member ends on December 11, 2016. Some countries, including New Zealand, Singapore, Malaysia, and Australia, have already accorded it market economy status; however, the United States, EU, Japan, Canada, and several other nations have not.

China asserts that under WTO rules, it will automatically become a market economy when its current non-market status expires. A Chinese Foreign Ministry spokesperson stated that as a WTO member, "China has been earnestly honoring each of its legal obligations since its accession, and must be entitled to all WTO rights."

Analysts who support China's position say that the United States and Europe are using an outdated price-comparison methodology to determine antidumping abuse, and that refusing to honor the WTO agreement will damage their trade relations.

U.S. officials say that China's status must be determined in accordance with each WTO member country's domestic laws, and recently warned China that it had not done enough to qualify. A coalition of U.S. manufacturers is pressuring the U.S. Department of Commerce to oppose China's designation as a market economy, arguing that their industries can compete with other market-oriented competitors but not against the Chinese Government.

In May, the European Parliament passed a nonbinding resolution against market economy status for China, and the European Commission is now seeking a middle way between the two sides.

However the controversy is resolved, the outcome is likely to shape trade rules, disputes, and remedies — and U.S.–China relations — for years to come. ■

U.S.–China Relations Timeline

Chronology of Events — 1945 to Present

1945 — The People's Republic of China (PRC) is established by Chinese Communist Party leader Mao Zedong after communists defeat the nationalist government of Chiang Kai-shek, who, with his followers, flees to Taiwan (formerly Formosa).

1950 — The Soviet-backed North Korean People's Army invades South Korea, marking the start of the Korean War. China supports the communist north.

1953 — U.S. President Dwight Eisenhower, in response to the end of the Korean War, lifts the U.S. naval blockade of Taiwan.

1954 — Chiang Kai-shek authorizes the movement of troops to the nearby islands of Quemoy and Matsu. Mao orders the bombing of the islands.

1955 — The U.S. Congress enacts the Formosa Resolution, pledging the American defense of Taiwan. This leads to indirect negotiations between the United States and China in which the Chinese agree to cease bombing.

1959 — An uprising occurs in PRC-controlled Tibet, thousands die in a crackdown by PRC forces, and the Dalai Lama flees to India. The United States joins the United Nations in condemning Beijing for human rights abuses in Tibet, and the CIA helps arm the Tibetan resistance.

1964 — China conducts its first test of an atomic bomb.

1971 — China's ping pong team invites members of the U.S. team to China. Accompanied by journalists, they are the first Americans allowed to enter the country since 1949. U.S. Secretary of State Henry Kissinger makes a secret trip to China. Shortly thereafter, the UN recognizes the PRC, giving it a permanent seat on the Security Council.

1972 — U.S. President Richard Nixon spends eight days in China, during which he meets with Chairman Mao and signs the Shanghai Communiqué with Premier Zhou Enlai. The Communiqué pledges that it is in the interest of all nations for the United States and China to work toward normalized relations and that neither power will "seek hegemony in the Asia-Pacific region." The United States also agrees to cut back military installations on Taiwan.

1979 — U.S. President Jimmy Carter grants China full diplomatic recognition, while agreeing to mainland China's "One-China" policy and severing normal ties with Taiwan. Congress approves the Taiwan Relations Act, allowing continued commercial and cultural relations between the United States and Taiwan but without officially violating the "One-China" policy.

1989 — Thousands of protestors demonstrate in Beijing's Tiananmen Square, demanding democratic reforms and an end to corruption. The Chinese Government sends in military troops, killing hundreds of protesters. The U.S. Government suspends military sales to Beijing and freezes relations.

1993 — China releases Wei Jingsheng, a political prisoner since 1979, but imprisons him again after Beijing loses its bid to host the 2000 Olympic Games. U.S. President Bill Clinton launches a "constructive engagement" policy with China.

1995 — China recalls its ambassador after President Clinton authorizes a visit by Taiwan Nationalist Party leader Lee Teng-hui, reversing a 15-year U.S. policy against granting visas to Taiwan's leaders.

1996 — In Taiwan's first free presidential vote, Lee is elected by a large margin. Washington and Beijing agree to exchange officials again.

1997 — President Clinton secures the release of Wei and Tiananmen Square protester Wang Dan. Beijing deports both dissidents to the United States.

1999 — NATO accidentally bombs the Chinese embassy in Belgrade during its campaign against Serbian forces occupying Kosovo, shaking U.S.–China relations and leading to protests by thousands of Chinese demonstrators.

2000 — President Clinton signs the U.S.–China Relations Act of 2000, granting Beijing permanent normal trade relations with the United States and paving the way for China to join the World Trade Organization (WTO).

2001 — After 15 years of negotiations, China becomes a member of the WTO, agreeing to certain accession obligations and becoming subject to internationally agreed upon rules, regulations, and practices, with its nonmarket economic status set to expire in December 2016.

2004 — U.S.–China trade reaches of a level of $231 billion, up from $5 billion in 1980.

2005 — Deputy U.S. Secretary of State Robert Zoellick urges China to become a "responsible stakeholder in the international system." He states, "The United States will not be able to sustain an open international economic system — or domestic U.S. support for such a system — without greater cooperation from China."

2006 — China surpasses Mexico as the United States' second-largest trade partner, after Canada.

2007 — China announces an 18 percent budget increase in its defense spending, totaling more than $45 billion. During a tour of Asia, U.S. Vice President Dick Cheney says China's military buildup is inconsistent with the country's stated goal of a "peaceful rise."

2008 — China surpasses Japan to become the largest U.S. foreign creditor, with a holding of U.S. debt of approximately $600 billion.

2010 — China surpasses Japan as the world's second-largest economy, valued at $1.33 trillion.

2011 — U.S. Secretary of State Hillary Clinton calls for "increased investment — diplomatic, economic, strategic, and otherwise — in the Asia-Pacific region" to counter China's growing influence. At the Asia-Pacific Economic Cooperation summit, U.S. President Barack Obama announces that the United States and eight other nations have reached an agreement on the Trans-Pacific Partnership, a multilateral free trade agreement.

2012 — The U.S. trade deficit with China rises to an all-time high of $295.5 billion. The United States, the European Union, and Japan file a "request for consultations" with China at the WTO over its limitations on exports of rare earth metals, contending that the restrictions force multinational firms that use the metals to relocate to China.

Blind Chinese dissident Chen Guangcheng escapes house arrest and flees to the U.S. embassy in Beijing. The development strains diplomatic ties until China allows Chen to visit the United States as a student, rather than as an asylum-seeker.

About 70 percent of the members of China's major leadership bodies are replaced. Li Keqiang becomes premier, while Xi Jinping becomes president, Communist Party general secretary, and chairman of the Central Military Commission.

2013 — President Obama hosts President Xi at a "shirt-sleeves summit" in California. They pledge to cooperate on such pressing issues as climate change and North Korea.

2014 — A U.S. court indicts five Chinese hackers on charges of stealing trade technology from U.S. companies. U.S. authorities say there is evidence that the hackers are behind the breach of U.S. Office of Personnel Management and the theft of data from 22 million current and former Federal employees.

At the Asia-Pacific Economic Cooperation summit, President Obama and President Xi issue a joint statement on climate change, pledging to reduce carbon emissions. ■

Selected Internet Sites

- U.S. Department of State — China
  http://www.state.gov/p/eap/ci/ch
- U.S. Trade Representative Office of China Affairs
  https://ustr.gov/countries-regions/china-mongolia-taiwan
- The World Bank — China
  http://www.worldbank.org/en/country/china
- World Trade Organization
  China's Participation
  http://www.wto.org/english/thewto_e/countries_e/china_e.htm
- U.S.–China Economic and Security Review Commission
  Hearing on China's Shifting Economic Realities and Implications for the United States
  http://www.uscc.gov/Hearings/hearing-china%E2%80%99s-shifting-economic-realities-and-implications-united-states
- U.S. Senate Foreign Relations Committee
  Hearing on the Future of U.S.–China Relations
  http://www.foreign.senate.gov/hearings/the-future-of-us_-china-relations-06-25-14

Overview of the U.S–China Relationship

Remarks by National Security Advisor Susan E. Rice

Allow me to start with a little bit of history.

"There is special news this afternoon — you are lost."

That was how Zhou En-Lai greeted Henry Kissinger at their now-famous meeting in Beijing on July 9, 1971. The trip was a closely guarded secret. No one knew where Kissinger was — he had feigned an illness and decamped from a Pakistani airfield in the dead of night for face-to-face talks with the Chinese. He didn't even pack a clean shirt for his 48-hour mission. But, that first meeting between President Nixon's national security advisor and Chairman Mao's Prime Minister led directly to the first visit by a U.S. President to China and the opening of relations between our nations — a trip that was dubbed "the week that changed the world." Over the past four decades, we've seen how prescient that assessment was.

I recently returned from my own visit to China —my third since becoming national security advisor. None of mine had to be secret. I always brought clean clothes. On each visit, I met with President Xi [Jinping] and China's top leadership, conveying President Obama's personal commitment to advancing the relationship between our countries, while candidly addressing our differences.

On my last trip in late August, I spent more than eight hours in intensive discussions with my Chinese counterpart and many more with other senior officials discussing our nations' priorities, our expectations of one another, and our visions for the future — where they overlap and how we will handle disagreements.

President Obama will continue our frank and comprehensive discussions when he welcomes President Xi to the White House later this week for a state visit. Over the past two years, President Xi and President Obama have spent many hours meeting in formal and informal settings, as well as communicating through phone calls and letters, because many global challenges today can only be met with China and the United States working in concert.

From remarks by National Security Advisor Rice, delivered at George Washington University, Washington, D.C., on September 21, 2015. See https://www.whitehouse.gov/the-press-office/2015/09/21/national-security-advisor-susan-e-rices-prepared-remarks-us-china.

It can be easy to lose sight of the larger arc of progress in our bilateral relationship with China amid the headlines that understandably focus on the differences between our countries. Our differences and America's concerns are real. At the same time, it's important to recognize the long-term trends that increasingly anchor this complex relationship. So today, I'd like to speak about how the United States approaches China, how far we've come, and how we view the future we want to build together.

Let me start with the broader context. Pursuing a productive relationship with China is a critical element of our larger strategy for the Asia-Pacific. The United States is a Pacific power. We've been the guarantor of stability in the region for the past 70 years. President Obama has made it clear that we have vital interests in Asia and the Pacific, and a good part of our foreign policy has been focused on our rebalance to Asia — the President's commitment to expand America's engagement in this region, which had waned under the strain of wars in Iraq and Afghanistan. Our determination to shape the future of this dynamic region continues to benefit the Asia-Pacific today — enhancing security, expanding prosperity, and advancing human dignity.

America's unmatched leadership is grounded in our treaty alliances with Japan, South Korea, Australia, the Philippines, and Thailand. We've modernized these essential partnerships to tackle a full range of regional and global challenges — from providing humanitarian assistance to fighting pandemic disease. We've strengthened our defense posture in the region to ensure our collective security, including new access agreements to rotate U.S. forces to Australia and the Philippines. These alliances, rooted in our shared values, are powerful platforms for advancing a rules-based international system. The work of keeping our alliances strong and prepared for the future is never done, which is why President Obama welcomed Prime Minister [Shinzo] Abe of Japan for a State Visit in April, and in the coming weeks, he will host President Park [Geun-hye] of South Korea.

At the same time, we're building productive new partnerships with emerging regional powers. We're engaging vital voices like India in regional discussions, and in the last year, Prime Minister [Narendra] Modi and President Obama have exchanged formal visits to deepen the relationship between our two great democracies. We've overcome past conflicts and are strengthening cooperation, as when President Obama welcomed Vietnam's General Secretary [Nguyen Phú] Truong to the Oval Office this summer. We've explored an opening to Burma and will continue to press for follow-through on the democratic reforms that have been initiated there as the country prepares for a landmark election. And, we're collaborating with regional leaders to advance our shared agenda, as we will when President [Joko] Widodo of Indonesia visits Washington next month.

We're also investing in regional institutions like the Pacific Islands Forum, as well as the Association of Southeast Asian Nations (ASEAN), the Asia-Pacific Economic Cooperation (APEC), and the East Asia Summit (EAS). President Obama is the first U.S. President to help shape this architecture of cooperation in the region through sustained personal engagement at these regional summits. In November, President Obama will again travel to Asia — to the Philippines and Malaysia — to participate in APEC and EAS. Through our active involvement in all these institutions, we're promoting regional growth and economic integration. We've helped strengthen their capacity to resolve conflicts, support democratic development, advance human rights, and ensure that all countries in the region play by the same rules.

That's especially important for spurring broad-based economic growth in the fastest-growing region in the world. The landmark Trans-Pacific Partnership (TPP) that we're working to conclude will unlock greater trade and investment among countries in the region, while raising standards for worker rights, environmental safeguards, and intellectual property protections. It will bring us closer to our allies and partners, demonstrating our commitment to a shared future. We're working now to complete negotiations for TPP so that we level the playing field for American businesses and workers.

It is against this backdrop — as President Obama has often said—that the United States welcomes a rising China that is peaceful, stable, prosperous, and a responsible player in global affairs. It's natural that China take on greater leadership to match its economic development and growing capabilities. When China is invested in helping resolve regional and global problems, the United States — and the world — benefits. We also recognize that China has prospered within a secure environment and international economic system that depends upon the United States' longstanding commitments to the region. And, we will continue taking steps to build a productive, cooperative relationship with China that delivers benefits for both our peoples. That's a central pillar of our strategy in Asia.

Under President Obama's leadership, we have deepened our engagement with China at every level — maximizing our cooperation on areas of mutual interest while confronting and managing our disagreements. We reject reductive reasoning and lazy rhetoric that says conflict between the United States and China is inevitable, even as we've been tough with China where we disagree. This isn't a zero-sum game. Our capacity to manage our differences is greater than that.

The United States comes to this relationship as an unquestionably strong player— a historic and enduring global leader, with a resurgent economy and a diverse and innovative people — and we welcome a China that joins in upholding the rules-based order that has served both our nations so well for so long. We invite China to work with us to adapt existing regional and international institutions so they are better able to address current realities. That's why President Obama elevated the G-20 [Group of 20 major economies] to be the premier forum for global economic cooperation. And that's why we're committed to passing legislation to implement International Monetary Fund reforms, so that fast-growing nations, including China, can contribute more to the international financial system.

Deeper engagement between our countries yields dividends for both Americans and Chinese. Since President Obama took office, our exports to China have nearly doubled, and China is now the third largest market for American-made goods, following Canada and Mexico. Over that same period, Chinese investment in the United States surged from just about $1 billion to more than $10 billion.

We've extended visas for travel between our countries for business people, students, and tourists, making it easier for our citizens to study and work together. We've increased the number of visas we issue to Chinese travelers — from less than half a million in 2009 to more than 1.7 million last year. And that's important, because the average Chinese tourist contributes more than $7,000 to the U.S. economy when they visit. That adds up.

As two nations that will shape the direction of this century, we want our young people to learn together and develop early connections, so we're encouraging student exchanges and study abroad. Today, there are almost 275,000 Chinese students studying in the United States — up from less than 100,000 in 2009. And, we've already exceeded President Obama's goal of sending 100,000 Americans to study in China. We look forward to setting an ambitious new target during President Xi's visit and continuing to strengthen our people-to-people ties.

Since creating our Strategic and Economic Dialogue with China in 2009, we've used that forum to find new areas for practical cooperation on global issues. This summer, at the seventh session, we committed to strengthening our cooperation on everything from disaster response to combating wildlife trafficking to establishing civilian cooperation in space.

We're also working together to advance our shared security. During the past five years, we've bolstered our military-to-military ties with China. We've increased military exchanges and made high-level visits a regular occurrence. China now participates in our multilateral RIMPAC [Rim of the Pacific] exercise — the largest naval exercise in the world. And last year, when President Obama visited China, we agreed to institute confidence-building measures between our militaries that increase transparency and predictability, thereby reducing the risk of unintended incidents. We've seen a marked improvement in operational safety since we signed these measures and believe this engagement is critical to avoid inadvertent escalation, while promoting constructive cooperation.

China has been a constructive partner in advancing the nonproliferation agenda, supporting efforts to secure nuclear materials and drive global action through the Nuclear Security Summits. Most recently, we've worked through the P5+1 [UN Security Council's five permanent members, plus Germany] to ensure that Iran does not obtain a nuclear weapon. China and the United States are in firm agreement that a nuclear-armed Iran would pose an unacceptable threat to the world, and we cooperated to build and enforce a tough sanctions regime that brought Iran to the negotiating table. China voluntarily agreed to reduce their purchases of Iranian oil to build pressure. And now that we have a deal, we will coordinate closely with China and all our partners to ensure Iran meets its commitments.

China and the United States are equally united in demanding the complete and verifiable denuclearization of the Korean Peninsula. We firmly oppose North Korea's efforts to develop nuclear weapons and ballistic missiles that threaten regional stability and our respective national security interests. China is a fulcrum of influence for the DPRK [Democratic People's Republic of Korea], and this week's meetings between Presidents Obama and Xi will be another opportunity to discuss how we can sharpen Pyongyang's choices between having nuclear weapons and developing economically. Neither the United States nor China will accept North Korea as a nuclear weapons state.

In recent years, we've expanded our cooperation with China to increase stability and spur economic growth in Afghanistan. We're investing in Afghanistan's development and supporting efforts to advance an Afghan-led peace process. Our joint programs train Afghan diplomats, health care workers, and farmers, and we're doing more to embed Afghanistan into regional institutions and economic systems and to increase its resilience to threats.

As the two largest consumers of energy and the two largest carbon emitters in the world, our cooperation on climate change is vital to the security and the prosperity of our world. Here, China and the United States are taking decisive action. We've built an unprecedented bilateral partnership to drive down carbon emissions and promote clean energy in key sectors, including power generation and industry, transportation, and forestry. Through initiatives like the Clean Energy Research Center, we're jointly developing solutions to improve energy efficiency in buildings, advance electric vehicle technology, and explore carbon capture. And last year, President Obama and President Xi made a historic announcement in Beijing, committing our countries to cut carbon emissions and meet ambitious climate targets — the first time that China has ever agreed to reduce its emissions. Both leaders are personally committed to ensuring that the world agrees to a strong, comprehensive climate agreement in Paris this December. This is an example to the world of how sustained U.S.–China engagement can yield historic results to meet the challenges of the twenty-first century.

We've also seen impressive evidence of the difference China and the United States can make when we work together to lift up the lives of people in other countries. At the peak of the Ebola crisis in West Africa, America's leadership, along with the contributions of international partners, helped beat back a devastating epidemic. American and Chinese health care workers labored side-by-side to save lives. Moving forward, the United States and China will help Africa set up its own Center for Disease Control. To prepare for future epidemics, we'll work closely with China to jointly advance our shared Global Health Security Agenda.

So we are steadily and methodically expanding the breadth and depth of our cooperation with China. Our story is, overwhelmingly, one of progress. Still, the reality is we face difficult challenges. And, we never shy away from pressing our concerns.

In our interconnected global economy, American companies and workers can compete and succeed anywhere. But the competition must be fair. When China's economic policies impede the free flow of commerce and worsen trade imbalances, it distorts the global economy. When China forces firms to hand over their technology as a condition for market access, it discourages innovation. When American businesses increasingly question whether the cost of doing business in China is worth it, that reduces trade and investment for everyone, and undercuts the support for the U.S.–China relationship here at home. And as the world's second largest economy, China's actions reverberate through the global financial markets — as we saw recently with China's stock market.

So we want China to advance market reforms that level the playing field for foreign firms, reduce barriers to trade, and unleash its massive domestic consumer potential.

China's economy has gotten too big to rely on an export-driven growth strategy. And, we'll continue to insist that China refrain from competitive currency devaluation. We want a future where businesses in China succeed or fail on their merits, without discriminatory subsidies or markets that are closed to competition. We want a business climate where intellectual property rights and trade secrets are respected, not stolen.

In his meetings with President Xi, President Obama has repeatedly made plain that state-sponsored, cyber-enabled economic espionage must stop. This isn't a mild irritation. It is an economic and national security concern to the United States. It puts enormous strain on our bilateral relationship, and it is a critical factor in determining the future trajectory of U.S.–China ties. Cyber-enabled espionage that targets personal and corporate information for the economic gain of businesses undermines our long-term economic cooperation, and it needs to stop. So, we'll continue to urge China to join us in promoting responsible norms of state behavior in cyberspace.

We've also made clear our position on maritime disputes in the East and South China seas. The United States takes no position on competing territorial claims, but we insist upon and will continue to underscore our fundamental national interest in preserving freedom of navigation and commerce through some of the world's busiest sea lanes. The United States of America will sail, fly, and operate anywhere that international law permits.

We have an interest in preventing territorial disputes from growing into larger conflicts that destabilize the region. The G-7 [Group of Seven industrialized democracies] and ASEAN share our concerns, and we will work with all our partners to establish a peaceful process, based in international law, for resolving maritime claims with diplomacy — not force or coercion. We call on all claimants to reciprocally halt land reclamation, construction of new facilitates, and militarization of outposts on disputed areas. Instead, we urge China and ASEAN countries to conclude a code of conduct and set clear, predictable, binding rules of the road in the South China Sea.

We also have candid exchanges on Taiwan. The longstanding position of the United States is unchanged. We remain committed to our "one China" policy based on the three Joint Communiqués and the Taiwan Relations Act. Our fundamental interest is in peaceful and stable cross-strait relations, and we oppose unilateral changes to the status quo by either side.

Another profound difference between our two governments is human rights. Around the world, the United States never backs away from difficult issues. With China, we speak openly about persistent human rights violations, pressing our concerns at every level. We raise the cases of individuals like Liu Xiaobo, Xu Zhiyong, Gao Yu, Ilham Tohti, and Pu Zhiqiang, who are unjustly detained. China's increasing restrictions on freedom of expression and assembly — including their visa restrictions on American journalists — are not only wrong, they are short-sighted. They hollow out China's potential. Already the environment for civil society organizations is so repressive that many groups are heading elsewhere. The draft foreign NGO [nongovernmental organization] law that China is considering would be another step in the wrong direction, threatening the very organizations that have promoted China's development and advanced the friendship between our peoples.

Denying ethnic minorities like Tibetans and Uighurs their fundamental freedoms, or closing churches and removing crosses, or placing restrictions on who can enter a mosque — these actions only fuel grievances and raise serious questions about China's commitment to protecting freedom of religion. Detaining lawyers and journalists and anticorruption activists only reduces the credibility of China's efforts to address its challenges, hampering its ability to achieve a prosperous and stable society. Blocking free access to the Internet, at a time when the rest of the world is moving toward greater openness and connection, only cuts off opportunities for the Chinese people to advance.

I raise each of these issues in my meetings with Chinese leaders, and I say the same thing to my counterparts that I have said to you. As my critics allege, I am rather direct. I assure you that President Obama will be just as direct when he sees President Xi. This is a vital relationship of the twenty-first century, and we have to be upfront about our differences, because they are preventing us from reaching the full potential of our cooperation.

Many of our concerns stem from a common root. Steps that erode the international system or that slowly eat away at a rules-based order and universal rights or that give one nation an unfair advantage are detrimental to all. This is true whether we are talking about maritime concerns or cyberspace or human rights. China cannot expect to wield influence selectively or lead only when it's convenient, opting in or out of international norms at will. Everyone has to play by the same rules, regardless of size or power, because that's the way everyone can compete and be treated equally.

I know that some people question why we host China at all. That is a dangerous and short-sighted view. If we sought to punish China by cancelling meetings or refusing to engage them, we would only be punishing ourselves. It is determined, constant engagement that allowed us to reach a climate agreement, while overcoming longstanding trade

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U.S.–China Economic Relations

Addressing Global Financial Challenges

The United States and China recognize their shared interest in promoting a strong and open global economy, inclusive growth and sustainable development, and a stable international financial system, supported by the multilateral economic institutions founded at the end of World War II that have benefited the peoples of both nations. Both countries recognize and value the substantial contributions that the international financial institutions have made to global growth, higher incomes, the alleviation of poverty, and the maintenance of financial stability since their establishment.

The rules-based international economic system has helped to propel China's unprecedented economic growth over the past 35 years, lifting hundreds of millions of people out of poverty. The United States has also benefited from the emergence of a global middle class that, by 2030, is projected to include more than 3 billion consumers in Asia alone. U.S. exports of goods and services supported approximately 12 million jobs in the United States in 2014. China has a strong stake in the maintenance and further strengthening and modernization of global financial institutions, and the United States welcomes China's growing contributions to financing development and infrastructure in Asia and beyond.

The international financial architecture has evolved over time to meet the changing scale, scope, and diversity of challenges and to include new institutions as they incorporate its core principles of high standards and good governance. Both countries are committed to supporting this international architecture and welcome the greater role of the G-20 [Group of 20 major economies] in global economic governance to ensure an inclusive, resilient, and constantly improving international economic architecture to meet challenges now and in the future.

In light of China's increased share of global economic activity and increased capacity, the United States welcomes China playing a more active role in and taking on due responsibility for the international financial architecture, as well as expanded bilateral cooperation to address global economic challenges. To this end:

The United States and China commit to strengthening and modernizing the multilateral development financing system. Both countries resolve to further strengthen the World Bank, Asian Development Bank, African Development Bank, and Inter-American Development Bank by enhancing their financial capacity, reforming their governance, and improving their effectiveness and efficiency.

Consistent with its development, in addition to being a shareholder and borrower, China intends to meaningfully increase its role as a donor in all these institutions. Both sides acknowledge that for new and future institutions to be significant contributors to the international financial architecture, these institutions, like the existing international financial institutions, are to be properly structured and operated in line with the principles of professionalism, transparency, efficiency, and effectiveness, and with the existing high environmental and governance standards, recognizing that these standards continuously evolve and improve.

The United States and China reaffirm the importance of the multilateral development banks (MDBs) in meeting the needs of the poorest countries through robust financial contributions to the International Development Association, Asian Development Fund, and African Development Fund.

China is to meaningfully increase its contributions to the MDB concessional windows, consistent with its capacity. Both countries commit that the MDBs should continue to explore options to increase their lending capacity, including through use of existing resources and regularly reviewing their capital with an assessment of whether a capital increase is warranted. Both countries commit to continued efforts on MDB balance sheet optimization. The United States and China commit to collaborate on the World Bank shareholding review roadmap, including development of a shareholding formula and review of the World Bank's capital needs in 2017. Both sides also recognize that the middle income countries still face challenges in alleviating poverty and that the MDBs have a role in addressing those specific needs.

From the White House fact sheet U.S.–China Economic Relations, *issued September 25, 2015. See https://www.whitehouse.gov/the-press-office/2015/09/25/fact-sheet-us-china-economic-relations*

The United States and China commit to strengthen their cooperation in the International Monetary Fund (IMF), and continue to improve the IMF's quota and governance structure. The United States commits to implement the 2010 IMF quota and governance reforms as soon as possible and reaffirms that the distribution of quotas should continue to shift toward dynamic emerging markets and developing countries to better reflect the relative weight of IMF members in the world economy. The United States and China affirm the efforts of the IMF Executive Board to pursue an interim solution, which aims to converge quota shares to the extent possible to the levels decided under the 14th Review. However, the interim solution should not constitute or be seen in any way as a substitute for the 2010 reforms. The United States and China are to support the Executive Board's work on the 15th Review of Quotas, including a new quota formula, using the 14th Review as a basis.

The United States and China commit to development finance cooperation in a third country through the multilateral development banks, respecting the ownership of the recipient countries.

The United States welcomes China's commitment to release economic data following the IMF's Special Data Dissemination Standards (SDDS) by the end of the year and welcomes China's continued efforts to enhance transparency. China recognizes the importance to successful renminbi (RMB) internationalization of meeting the transparency standards of other major reserve currencies.

The United States supports China's commitment to implement further financial and capital market reforms, and accordingly the United States reiterates its support for the inclusion of the RMB in the special drawing rights (SDR) basket provided the currency meets the IMF's existing criteria in its SDR review. Both countries commit to respect the IMF's procedures and process in the SDR review, and to enhance their communication on this issue.

The United States and China look forward to continuing to discuss mechanisms to facilitate renminbi trading and clearing in the United States.

The United States and China welcome the important progress that has been made in the negotiation of new international guidelines on officially supported export credits since the establishment of the International Working Group on Export Credits (IWG) through a joint high-level commitment in 2012.

The United States and China reaffirm their support for IWG guideline coverage of official export credit support provided by or on behalf of a government, including, but not limited to, official export credit support provided by official export credit policy financial institutions, and look forward to further discussing the scope of the guideline coverage at the next IWG meetings in October. The United States and China reaffirm that the guidelines should help ensure that governments complement commercial export financing, while promoting international trade.

The United States supports China's presidency of the G-20 in 2016 and looks forward to working closely with China to promote strong, sustainable, and balanced global growth. The two sides support the G-20's important role as the premier forum for strengthening international economic cooperation and coordination.

The two sides are committed to working closely with other G-20 members (i) to strengthen macroeconomic policy cooperation to address the shortfall in global aggregate demand and the slow and uneven global recovery by promoting pro-growth fiscal and monetary policies; (ii) to increase potential growth rates through structural reforms and innovation, support a strong G-20 trade and investment agenda, and promote international trade and investment as engines of global growth; (iii) to implement the 2030 Agenda for Sustainable Development; (iv) to enhance dialogue and cooperation on the policy framework for infrastructure lending, including on environmental standards, (v) to phase out inefficient fossil fuel subsidies by a date certain; and (vi) to strengthen cooperation to assist at-risk states to prevent, detect, and respond to infectious disease threats.

The United States and China recognize the positive progress of the ongoing bilateral investment treaty (BIT) negotiation. The Leaders reaffirm as a top economic priority the negotiation of a high standard BIT that reflects a shared commitment to the objectives of non-discrimination, fairness, and transparency, that effectively facilitates and enables market access and market operation, and that represents on each side an open and liberalized investment regime. In light of the progress made in the BIT negotiations and both sides' improved negative list proposals in September, the United States and China commit to intensify the negotiations and to work expeditiously to conclude the negotiation of a mutually beneficial treaty that meets these high standards.

The U.S. side reiterated its commitment to encourage and facilitate exports of commercial high technology items to China for civilian-end users and for civilian-end uses. Both sides commit to continue detailed and in-depth discussion of the export control issues of mutual interest within the U.S.–China High Technology and Strategic Trade Working Group.

The United States and China commit to limit the scope of their respective national security reviews of foreign investments (for the United States, the CFIUS [Committee on Foreign Investment in the United States] process) solely to issues that constitute national security concerns, and not to generalize the scope of such reviews to include other broader public interest or economic issues. The United States and China commit that their respective national security reviews apply the same rules and standards under the law to each investment reviewed, regardless of country of origin.

When an investment poses a national security risk, the United States and China are to use their respective processes to address the risk as expeditiously as possible, including through targeted mitigation rather than prohibition whenever reasonably possible. The national security review of each country is applicable only to investments completed after such review process is established. Once an investment has completed the national security review process of either country, the investment generally should not be subject to review again if the parties close the investment as reviewed under the respective national security review process.

In their respective national security reviews, the United States and China commit not to use information, provided by entities not party to an investment, for the purpose, unrelated to national security, of promoting the commercial interests of a competitor of a party to that investment. The United States and China commit to continue exchanging views on issues regarding their respective national security reviews in the future, including the scope of each country's national security review process and the role in each country's national security review process for entities not party to an investment.

The United States welcomes investment from all countries, including China. The United States commits to maintain an open investment environment for Chinese investors, including state-owned enterprises, as with investors from other countries. The United States reaffirms its open investment policy and a commitment to treat all investors in a fair and equitable manner under the law. The United States and China commit to continue to communicate on bilateral investment issues, to promote development of bilateral investment.

The two sides welcome the promotion of U.S.–China sub-national economic and trade and investment cooperation. In that vein, U.S. Department of Commerce and the Chinese Ministry of Commerce endeavor to complete a memorandum of understanding (MOU) highlighting the priority that each agency places on facilitating sub-national economic, trade, and investment cooperation at this year's U.S.–China Joint Commission on Commerce and Trade. As an example of such cooperation already taking place, the two sides are heartened by the role the Trade and Investment Cooperation Joint Working Groups established between Chinese provinces and cities and the U.S. States of California, Iowa, Texas, Michigan, and Washington and the city of Chicago and welcome the establishment of similar mechanisms.

The United States and China affirm the positive role that Select Reverse Trade Missions play in introducing U.S. advanced technologies to projects of mutual interest and promoting bilateral trade towards a more balanced direction. Both sides affirm that Select Reverse Trade Missions are conducive to promoting cooperation of both countries' enterprises in priority areas including energy, environment, health care, aviation, and agriculture, which serves the common interests of the United States and China.

Based on the discussions at the 7th Strategic and Economic Dialogue, the Ministry of Commerce of China and the U.S. Trade and Development Agency commit to organize two targeted Select Reverse Trade Missions that bring two Chinese delegations to the United States to introduce them to U.S. goods and services, consistent with U.S. laws and policies, related to green infrastructure and green construction, including green engineering and design, green building and building efficiency, construction waste recycling, distributed energy, and smart city construction.

The United States and China highly value the important role the U.S.–China Joint Commission on Commerce and Trade (JCCT) plays in promoting bilateral economic relations and expanding mutually beneficial cooperation. Both countries are to ensure the success of the twenty-sixth JCCT by making progress on key trade matters of their business communities.

Technology is one of the pillars of the bilateral economic relationship between the United States and China. Creating the conditions for expanded two-way trade and investment in the technology sector and avoiding measures that restrict it are critical to sustaining positive momentum in the economic relationship between our countries.

- Both countries affirm the value of adopting technology-product international standards that have been developed in an open, transparent, market-driven, and balanced manner that allow for due process. Furthermore, both countries recognize that industry's participation in standards development without undue government influence is fundamental to rapid innovation and technology development.

- Both countries affirm the importance of competition policy approaches that ensure fair and non-discriminatory treatment of entities and that avoid the enforcement of competition law to pursue industrial policy goals.

- Both countries commit that generally applicable measures to enhance information and communication technology cybersecurity in commercial sectors (ICT cybersecurity regulations) should be consistent with WTO agreements, be narrowly tailored, take into account international norms, be nondiscriminatory, and not impose nationality-based conditions or restrictions, on the purchase, sale, or use of ICT products by commercial enterprises unnecessarily.

- Both countries affirm that generally applicable measures regulating technology products in the commercial sector benefit from meaningful consultation with the private sector, governments, and other stakeholders to encourage innovative, flexible, and cost-effective solutions.

The United States and China affirm the importance of developing and protecting intellectual property, including trade secrets, and commit not to advance generally applicable policies or practices that require the transfer of intellectual property rights or technology as a condition of doing business in their respective markets.

Both countries affirm that states should not conduct or knowingly support misappropriation of intellectual property, including trade secrets or other confidential business information with the intent of providing competitive advantages to their companies or commercial sectors. Both countries affirm that states and companies should not by illegal methods make use of technology and commercial advantages to gain commercial benefits.

The United States and China commit to conduct high-level and expert discussions commencing in early 2016 to provide a forum to support and exchange views on judicial reform and identify and evaluate the challenges and strategies in implementing the rule of law. U.S. participants are to include leading members of the U.S. judiciary, U.S. Government legal policy experts, and officials from the Departments of Commerce and Justice and the Office of the United States Trade Representative. Chinese participants are to include officials from the Central Leading Group on Judicial Reform, leading members of the Chinese judiciary, and Chinese Government legal policy experts.

This dialogue is to result in an improvement in the transparency and predictability of the business environment. This dialogue does not replace, duplicate, or weaken existing regular bilateral legal and human rights dialogues between the United States and China.

With strengthening policies to promote agricultural innovation and food security and to advance sustainable development as the themes of the Strategic Agricultural Innovation Dialogue, the two sides discussed food security, agricultural biotechnology, big data and information technology innovation, environmental management and sustainable development, agricultural and support programs, and plans for future bilateral dialogue and cooperation. Both countries commit to strengthen cooperation and create an enabling environment for agricultural innovation in the two countries and the world at large.

China's minister of agriculture and the U.S. secretary of agriculture held a bilateral meeting on agricultural cooperation and renewed the MOU between the Department of Agriculture of the United States of America and the Ministry of Agriculture of the People's Republic of China on Cooperation in Agriculture and Related Fields, to promote comprehensive, sustained, and balanced development of agricultural cooperation between both countries.

The United States and China conducted in-depth discussions on the administration of agricultural biotechnology, and committed to further improve approval processes. Both sides reaffirmed the importance of implementing timely, transparent, predictable, and science-based approval processes for products of agricultural biotechnology, which are based on international standards.

Both sides committed to strengthen policy formulation and information exchange; share experience in and practices of research and development, regulatory administration, and safety approval of agricultural biotechnology; further revise and improve regulation, based on comprehensive consultations with domestic and international stakeholders; and enhance capabilities in safety administration and safety approval of agricultural biotechnology products.

The United States and China reiterate their support for efforts to enhance the connection between their financial markets, consistent with their respective laws and requirements.

The Financial Intelligence Units (FIUs) of the United States and China are to sign an MOU concerning cooperation in the exchange of information related to money laundering and terrorist financing. According to the MOU, the two FIUs commit to cooperate on the collection, analysis, and exchange of financial information related to money laundering, terrorist financing, and related crimes on a reciprocal basis.

The United States and China acknowledge that green finance can be of great significance to environmental protection, pollution reduction, and sustainable development. Both sides welcome efforts that further green finance and cooperation in this field. ■

China's Compliance With World Trade Commitments

Report of the U.S. Trade Representative

Fourteen years ago, on December 11, 2001, China acceded to the World Trade Organization (WTO). The terms of its accession called for China to implement numerous specific commitments over time, with all key commitments phased in by December 11, 2016. The data confirm a dramatic expansion in trade and investment among China and its many trading partners, including the United States, since China joined the WTO:

- U.S. exports of goods to China totaled $124 billion in 2014, representing an increase of 545 percent since 2001 and positioning China as the United States' largest goods export market outside of North America.
- U.S. services exports reached $43 billion in 2014, representing an increase of 733 percent since 2001. Services supplied through majority U.S.-invested companies in China also have been increasing dramatically, totaling an additional $43 billion in 2013, the latest year for which data is available.

■ The Picture Remains Complex

As in past years, despite these positive results, the overall picture currently presented by China's WTO membership remains complex.

Many of the problems that arise in the U.S.–China trade and investment relationship can be traced to the Chinese Government's interventionist policies and practices and the large role of state-owned enterprises and other national champions in China's economy, which continue to generate significant trade distortions that inevitably give rise to trade frictions. At the same time, the United States notes that China's current leadership has highlighted the need for and has begun to pursue further economic reform in China. If pursued appropriately, this reform effort offers the potential for addressing these problems and for helping to realize the tremendous potential of the U.S.–China trade and investment relationship.

Indeed, the United States views economic reform in China as a win-win for the United States and China. If China is going to deal successfully with its increasing economic challenges at home, it must allow greater scope for market forces to operate, which requires altering the role of the state in planning the economy. It likewise must reform state-owned enterprises, eliminate preferences for domestic national champions, and remove market access barriers currently confronting foreign goods and services. Economic reform in China is also strongly in the United States' interest, not only because the Chinese Government's interventionist policies and practices and the large role of state-owned enterprises in China's economy are principal drivers of trade frictions, but also because sustainable Chinese economic growth will lead to increased U.S. exports and a more balanced U.S.–China trade and investment relationship and also will help drive global economic growth.

In 2015, as in past years, when trade frictions arose, the United States pursued dialogue with China to resolve them. However, when dialogue with China has not led to the resolution of key trade issues, the United States has not hesitated to invoke the WTO's dispute settlement mechanism. Since China's accession to the WTO, the United States has brought 17 WTO cases against China, more than twice as many WTO cases as any other WTO member has brought against China. In doing so, the United States has placed a strong emphasis on the need for China to adhere to WTO rules, holding China fully accountable as a mature participant in, and a major beneficiary of, the WTO's global trading system.

■ China's First 14 Years as a WTO Member

The commitments to which China's leaders agreed when China joined the WTO in 2001 were sweeping in nature and required the Chinese Government to make changes to hundreds of laws, regulations, and other measures affecting trade and investment. These changes largely coincided

From the 2015 Report to Congress on China's WTO Compliance, *issued December 2015 by the U.S. Trade Representative. See https://ustr.gov/sites/default/files2015-Report- to-Congress-China-WTO-Compliance.pdf.*

with the economic reform goals of China's leaders at the time, which built on the economic reforms that China had begun under Deng Xiaoping in 1978. The Chinese leaders who negotiated the terms of China's WTO accession correctly believed that China's economy needed to rely more on market signals and less on Chinese Government economic planners and state-owned enterprises. Indeed, these leaders had initiated a dramatic and rapid reform of state-owned enterprises in the mid-1990s.

Following China's accession to the WTO, the Chinese Government took many steps to implement China's numerous commitments. These steps unquestionably deepened China's integration into the WTO's rules-based international trading system, while also strengthening China's ongoing economic reforms.

New leaders took over in China in 2003, two years after China's WTO accession. While the Chinese Government continued to take steps to implement China's outstanding WTO commitments, it generally did not pursue economic reforms as aggressively as before. Instead, the Chinese Government increasingly emphasized the state's role in the economy, diverging from the path of economic reform that had driven China's accession to the WTO. With the state leading China's economic development, the Chinese Government pursued new and more expansive industrial policies, often designed to limit market access for imported goods, foreign manufacturers, and foreign service suppliers, while offering substantial government guidance, resources, and regulatory support to Chinese industries, particularly ones dominated by state-owned enterprises. This heavy state role in the economy, reinforced by unchecked discretionary actions of Chinese Government regulators, generated serious trade frictions with China's many trade partners, including the United States.

In particular, beginning with the creation of the State-owned Assets Supervision and Administration Commission (SASAC) in 2003, China's new leaders de-emphasized their predecessors' move toward a greater reliance on market forces and a lesser reliance on Chinese Government economic planners and state-owned enterprises. Instead, the new leaders set out to bolster the state sector by seeking to improve the operational efficiency of state-owned enterprises and by orchestrating mergers and consolidations in order to make these enterprises stronger. These actions soon led to institutionalized preferences for state-owned enterprises and the creation of national champions in many sectors.

By 2006, when China had taken steps to implement the last of its key WTO commitments, China's policy shift became more evident. It was at this time that the U.S. Trade Representative (USTR) began reporting on Chinese Government policies and practices that demonstrated a stronger embrace of state capitalism, a trend that continued into 2012, the last full year under the Chinese leaders who had taken over in 2003. USTR also reported that some of these policies and practices suggested that China had not yet fully embraced key WTO principles, such as market access, non-discrimination and transparency. Exacerbating this situation was China's incomplete adoption of the rule of law, including through government officials' abuse of administrative processes.

For example, as we reported in 2012, confidential accounts from foreign enterprises indicate that Chinese Government officials, acting without fear of legal challenge, at times require foreign enterprises to transfer technology as a condition for securing investments approvals, even though Chinese law does not — and cannot under China's WTO commitments — require technology transfer. Similarly, in the trade remedies context, China's regulatory authorities at times seem to pursue antidumping and countervailing duty investigations and impose duties for the purpose of striking back at trading partners that have legitimately exercised their rights under WTO trade remedy rules.

As three WTO cases won by the United States confirm, China's regulatory authorities appear to pursue these investigations even when necessary legal and factual support for the duties is absent. In addition, U.S. industry and industries from other WTO member countries have asserted that China's competition policy enforcement authorities not only are targeting foreign companies, but also at times use anti-monopolylLaw investigations as a tool to protect and promote domestic national champions and domestic industries.

By 2013, when China's next leadership transition was complete, some positive signs of a renewed commitment to economic reform in China began to emerge. The new Chinese leaders' focus on economic reform soon led to a decision reached in November 2013 at the Third Plenum of the Eighteenth Central Committee of the Chinese Communist Party. The Third Plenum Decision endorsed a number of far-reaching economic reform pronouncements, calling for the market to play a "decisive" role in allocating resources, reducing Chinese Government intervention in the economy, accelerating China's opening up to foreign goods and services, reforming China's state-owned enterprises and improving transparency and the rule of law to allow fair competition in China's market. Although these important pronouncements continue to face resistance from entrenched interests and have yet to be fully translated into actions that would significantly change China's trade regime, they would provide tremendous benefits not only to China but also to its trading partners if realized.

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Zika Funding

On July 14, Congress left on a seven-week break without agreeing on an emergency spending bill to combat the outbreak of Zika, a virus primarily spread by mosquitoes that has been linked to birth defects and other health conditions in parts of Latin America.

In February, the Obama Administration sent Congress a request for $1.9 billion in emergency funding to respond to the disease, to be divided among the Department of Health and Human Services, the Agency for International Development, and the State Department. The money was to be used for preparedness efforts, mosquito control, vaccine research and development, testing and diagnostics, health care provider education, and improved services for low-income pregnant women, the most vulnerable group.

On May 18, by a vote of 241 to 184, the House passed legislation providing $622 million to combat the virus and requiring that the money be offset with spending cuts elsewhere in the budget. The following day, the Senate approved a bill containing $1.1 billion in funding to fight Zika, thereby requiring a House–Senate conference to work out the differences.

Republicans were opposed to the appropriation of Zika funds that would add to Federal budget deficits, and argued that their bill, when added to money the Obama Adminsitration had already shifted from unused funds to fight Ebola, would provide enough money to last through the end of the fiscal year. The White House and congressional Democrats favored treating the problem as an emergency, especially with the summer mosquito season starting.

Negotiations seemed to progress when Democrats offered to agree to a handful of offsetting budget cuts they had earlier rejected if the other side agreed to remove what Democrats considered to be "poison pill" provisions in the Republican-crafted conference report: language that would limit access to contraceptives, block clean water regulations to allow for greater spraying of pesticides, and allow the Confederate flag to be flown at veterans cemeteries.

When the stalemate showed no signs of ending before the summer recess, Office of Management and Budget Director Shaun Donovan and Health and Human Services Secretary Sylvia Mathews Burell wrote to the leaders of the House and Senate urging them to pass a plan "that enjoys the bipartisan support needed to secure this critical funding during the short time remaining in the July session."

The letter warned, "We expect local transmission this summer as mosquito populations continue to become more active." It continued, "Without additional funding from Congress, Puerto Rico and other ... territories facing a Zika epidemic will face exponentially increasing needs for care of patients with Zika, infected pregnant women, and affected infants with limited means of controlling the spread of the virus."

On July 21, the White House announced that it was releasing nearly $60 million in funds to support efforts by States and localities "to protect Americans from the Zika virus." The money comes from $589 million reprogrammed to fight the virus, which Republicans have criticized the Administration for not spending.

When Congress returns in September, there may be less incentive, with the summer over, to compromise, unless the Zika epidemic escalates. ■

Women and the Draft

In 1981, the Supreme Court ruled that women did not have to register for the draft because they did not participate in the front lines of combat. The debate reopened, however, when Defense Secretary Ashton Carter announced in December 2015 that the Pentagon was opening all combat roles to women.

In late April 2016, the House Armed Services Committee, by a vote of 32 to 30, approved an amendment to the National Defense Authorization Act (NDAA) to require women to register for the draft when they turn 18. Representative Duncan Hunter (CA-R), an opponent of the change, offered the amendment only to spur discussion and then voted against it. The House Rules Committee later removed the language before the bill went to the floor.

The version of the NDAA passed by the full Senate on June 14, 85 to 13, did contain a provision expanding the draft to women, however. Under the bill, women who failed to register could lose some forms of Federal aid, including Pell grants, a penalty now faced by men. Meanwhile, the Congressional Budget Office released a report showing how such a policy would actually save the government money, based on estimates of the number of students who would no longer be eligible for benefits.

Senator John McCain, who chairs the Senate Armed Services Committee, supported the draft provision, stating:

> The fact is, every single leader in this country, both men and women, members of the military leadership, believe that it's fair since we opened up all aspects of the military that they would also be registering for Selective Services.

He added, however, that the provision was "kind of a straw man in that everybody knows we are not going back to the draft." The United States has not used the draft since 1973 during the Vietnam War.

Senator Ted Cruz (TX-R), one of three Republicans in the Armed Services Committee to oppose the provision, said, "I cannot in good conscience vote to draft our daughters in to the military, sending them off to war and forcing them into combat."

The House and Senate will have to reconcile their two bills in a conference committee before a final bill goes to President Obama. ■

Student Loan Application Process

Prospective students use the Free Application for Federal Student Aid (FAFSA) to apply for Federal student financial aid, as well as for aid from State governments and most colleges and universities. According to a 2015 report from the college financing website Edvisors, however, an estimated 2 million low-income students would have qualified for a Federal Pell grant, but failed to correctly fill out or complete the FAFSA — a lengthy form with more than 100 questions.

Congress has taken note, and both Republicans and Democrats have introduced legislation to simplify the process and the application.

Senate Health, Education, Labor, and Pensions Committee Chair Lamar Alexander (TN-R) has introduced the FAST Act (S. 108), a bipartisan bill that would reduce the FAFSA to a Student Aid Short Form that asks only two questions: What is our family size? And what was your household income two years ago? The bill would also streamline the process by combining loan programs, discouraging overborrowing, and simplifying repayment options.

Senator Michael Bennett (CO-D), a cosponsor of the bill, said, "We can increase access to college and higher education for students simply by making this government form easier to use. This long overdue change will encourage more students to apply for college."

In the House, Representative Robert C. Scott (VA-D), the Ranking Minority Member of the Education and the Workforce Committee, recently introduced H.R. 5784, the File Once FAFSA Act. His bill would require Pell Grant recipients to file a FAFSA just once before going to college. Currently, low-income students and parents must refile the application annually with updated financial information. It would also allow students to certify via a simple form that they are still dependent students and simply state whether their circumstances have significantly changed.

In another recent move, on July 11, the House passed H.R. 5528, introduced by Representative Joe Heck (NV-D), to codify a change implemented by the Obama Administration that allows students to begin filling out the application earlier by using income data from two years prior.

For more background and legislative history, see the November 2009 issue of *Congressional Digest* on "Federal Student Loans." ■

GMO Update

On July 14, by a vote of 306 to 177, the House approved legislation (S. 764) that would override State laws and establish a national standard for labeling of genetically modified foods. The bill now goes to the President, who is expected to sign it.

Genetically modified crops are grown from seed and have genes removed to produce particular traits, such as resistance to weed killers, and to boost crop yields.

The legislation is intended to avoid a patchwork of mandatory labeling laws, such as the one that recently took effect in Vermont and those pending in other States. It directs the Agriculture Department to establish a labeling process and determine which products should be labeled. Large food companies would be able to use a text label, symbol, or an electronic bar code on their products. Smaller companies would be able to direct consumers to websites or telephone numbers for information.

The final vote caps a longstanding debate over GMO labeling and represents a compromise between House and Senate versions and agricultural and environmental interests.

Opponents of GMO labeling argue that it will be costly to implement, raise food prices, and put some companies out of business. They also maintain that there is no scientific evidence that genetically modified foods differ from conventially produced crops or have adverse effects on human health.

Proponents say the issue is not about the science behind GMO foods but about consumers' right to know how their food is produced. They note that 64 countries require some form of GMO labeling and that major U.S. exporting companies therefore are already forced to label their products.

Critics on both sides will still have a chance to address what they consider to be shortcomings in the new law when the Agriculture Department starts drafting rules to implement it.

To learn more about this topic , see the March 2006 issue of *International Debates* and the March 2001 issue of *Congressional Digest*, both on "Genetically Modified Foods." ■

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The Pros of Granting China

Is China Becoming a Market Economy Under World Trade Organization Rules?

Cato Institute

K. William Watson, Trade Policy Analyst, Herbert A. Stiefel Center for Trade Policy Studies

The Cato Institute, founded in 1977, is a public policy research foundation dedicated to the principles of individual liberty, limited government, free markets, and peace. Its scholars and analysts conduct independent, nonpartisan research on a wide range of policy issues. William Watson's research focuses on U.S. trade remedy policies, disguised protectionism, and the institutional aspects of global trade liberalization. The following is from "It's Time to Dump Nonmarket Economy Treatment," Free Trade Bulletin No. 65, March 9, 2016.

". . . 'nonmarket economy methodology' . . . ignores the actual prices used by Chinese producers and results in unpredictable and unrealistically high antidumping duties."

Trade officials in the United States and Europe use what is called "nonmarket economy methodology" in antidumping cases against imports from China. That practice ignores the actual prices used by Chinese producers and results in unpredictable and unrealistically high antidumping duties.

The use of nonmarket economy methodology is quite rightly prohibited by global trade rules at the World Trade Organization (WTO). But when China joined the WTO in 2001, it agreed to a 15-year transitional period during which other members would be allowed to use the methodology. The transitional period ends on December 11, 2016.

As that deadline approaches, it is not clear whether the United States and the European Union [EU] will honor their new WTO obligation. Some industry representatives and trade lawyers have argued that even after the deadline passes, WTO members will not actually be required to end nonmarket economy treatment until China's government reduces its current level of control over the economy. They claim that China is still a nonmarket economy and warn that granting it market economy status will leave domestic industries defenseless against "unfair" trade practices.

These arguments rely on faulty legal reasoning and a mischaracterization of domestic trade remedy laws. The use of nonmarket economy methodology harms domestic, import-using businesses and consumers by increasing the unpredictable and protectionist nature of antidumping measures.

What Do Global Trade Rules Really Say?

According to Deputy U.S. Trade Representative Michael Punke, "The issue of China's status is not automatic. ... The mere change of date at the end of the year does not automatically result in a change of status for China." He then noted that the U.S. Government was "still considering what our decision will be." The existence of a legal argument to support continued nonmarket economy treatment gives the U.S. Government a convenient excuse

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Is China Becoming a Market Economy Under World Trade Organization Rules?

Office of the U.S. Trade Representative (USTR)

Christopher Wilson, Deputy Chief of Mission

USTR is responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy, and overseeing negotiations with other countries. The head of USTR is a Cabinet member who serves as the President's principal trade advisor, negotiator, and spokesperson on trade issues. Chris Wilson serves as Deputy Chief of Mission at USTR's Geneva, Switzerland, office, the U.S. Mission to the World Trade Organization (WTO). He previously served as Deputy Assistant U.S. Trade Representative for Intellectual Property and Innovation. The following is from a July 20, 2016, statement on behalf of the United States at the WTO Trade Policy Review of the People's Republic of China.

China's accession to the WTO in 2001 brought on dramatic changes, both for China and its trading partners. China's agreement to be bound by the internationally agreed rules of the WTO not only led to many significant revisions to China's trade and investment regime, but also generated a greater willingness in enterprises around the world to strengthen and expand trade and investment ties with China.

The results are plain to see. For many years now, China has served as a key engine of growth for the global economy, and since 2013 it has assumed the role of the WTO's largest trader. Certainly, China benefits immensely from being part of the global trading system, and it is clear that China's increased participation in that system also has had a tremendous and largely positive impact on China's trade partners and the WTO as an institution.

At the time of China's last Trade Policy Review, the United States and many other WTO Members remarked on several positive signs that China's newly installed leaders had decided to focus on re-energizing economic reform following a prolonged period in which China's prior leaders had emphasized the state's role in the economy, diverging from the path of economic reform that had driven its accession to the WTO in 2001.

China's new leaders had endorsed a number of far-reaching economic reform pronouncements — not the least of which was that the market shall be "decisive" in allocating resources. Other positive policy statements followed, and it was clear that serious efforts were being made to realize needed economic reforms, even if the going was slow and difficult and frequently encountered bureaucratic resistance.

Over the past year, however, as growth in China's economy has slowed, the United States has sensed an increasing reluctance among China's economic planners to pursue further reforms. In addition, more and more U.S. enterprises have been expressing concern about a less welcoming business and regulatory environment for foreign enterprises. We are hopeful that these developments are temporary and that once China becomes more comfortable

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". . . as growth in China's economy has slowed, the United States has sensed an increasing reluctance among China's economic planners to pursue further reforms."

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to maintain protectionist policies it already agreed to end. The U.S. Trade Representative will likely employ the argument in dispute settlement at the WTO once China inevitably brings a challenge in 2017.

This statement about China's status under WTO rules, however, is wrong, and any continued use of nonmarket economy methodology will almost certainly lead to WTO-authorized retaliation. For nearly 15 years, there has been a clear understanding among all parties that China's protocol of accession to the WTO only permits the use of nonmarket economy methodology until December 11, 2016, after which time other WTO members will no longer be able to discriminate against Chinese goods in antidumping cases.

Paragraph 15 of China's accession protocol allows other WTO members to "use a methodology that is not based on a strict comparison with domestic prices or costs in China." That is, it exempts WTO members, including the United States and the European Union, from having to follow the rule that prohibits the use of nonmarket economy methodology.

That permission, however, is subject to certain limitations, and WTO members must also employ what is known in U.S. law as the market-oriented industry test. Under that test, if a Chinese exporter can show that market conditions prevail in its industry, the use of nonmarket economy methodology is no longer permitted. Similarly, the Chinese Government must be given the opportunity to establish that its economy as a whole meets the criteria for market economy treatment under a member's domestic law.

These tests were created long before China joined the WTO. Paragraph 15 simply requires countries to use the tests and abide by the results. Also, any positive determinations under these tests must be permanent, meaning that once nonmarket economy treatment is rescinded, it cannot be reapplied.

The basic purpose of Paragraph 15 is to establish a transition period — not for China but for other WTO members that apply antidumping measures against Chinese imports. During that period, existing WTO members can maintain WTO-inconsistent antidumping practices when dealing with China. China's WTO accession protocol states that those practices must end either when China meets the (otherwise WTO-inconsistent) criteria under domestic law for market economy treatment or, "in any event," by December 11, 2016.

". . . any continued use of nonmarket economy methodology will almost certainly lead to WTO-authorized retaliation."

Recently, however, some enterprising trade lawyers have developed an argument to justify continued discrimination even after the 15-year transition period has elapsed. They point out that only one part of Paragraph 15 technically expires after 15 years, leaving other provisions intact after December 11, 2016. One of the remaining provisions says that members must use Chinese prices or costs if producers pass the market-oriented industry test.

The theory is that the continued existence of this provision demonstrates intent by the drafters of the protocol that some discriminatory treatment for China should still be available after 2016 if particular industries have not yet completed their transition away from state control. The biggest problem with this argument is that the provision that does expire is the only one that allows WTO members to use nonmarket economy methodology in the first place. The remaining provision simply restates, in conditional language, what WTO members are already required to do under the WTO Antidumping Agreement.

The purpose of that remaining provision was to limit the special rights granted under the expiring provision. The expiration of the latter cannot somehow transform the former into a grant of rights.

After the provision allowing members to "use a methodology that is not based on a strict comparison with domestic prices or costs in China" expires, nothing in China's accession protocol exempts WTO members from having to follow the regular rules of the

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with the "New Normal" of slower but still healthy economic growth, it will resume a trajectory toward an economy that is more open and market-oriented and a business and regulatory environment that is more transparent, predictable, and welcoming for foreign traders and investors.

In our view, a truly open and market-oriented economy and a truly transparent, predictable, and welcoming business environment are not achievable so long as the state continues to have a heavy hand in the country's economic development and the state continues to pursue industrial policies guiding, supporting, and favoring domestic industries, particularly ones dominated by state-owned enterprises.

". . . a truly open and market-oriented economy and a truly transparent, predictable, and welcoming business environment are not achievable so long as the state continues to have a heavy hand . . ."

Continued state intervention also will prevent China from realizing the prosperity that its people deserve, and can achieve, if domestic industries are allowed to compete on a level playing field where the market dictates outcomes, nor will China itself be able to assume the role of a full-time responsible stakeholder in the global trading system. State intervention will never be as efficient as the market in creating opportunities for real and sustained advancement, and it can lead to unintended results.

A clear example can be found in the various Chinese Government measures supporting China's steel and aluminum industries over the past several years. These measures fueled significant capacity expansion at times of weak or falling demand and contributed heavily to today's severe global excess capacity.

As we consider the [WTO] Secretariat's Report, we see several examples of Chinese government policies that attempt to skew the playing field in favor of domestic enterprises. These include:

- China's continued use of export quotas and export duties on a large number of raw material inputs;

- the manipulation of value-added tax rebates on exports of steel and a variety of other manufactured products;

- low tariff-rate quota fill rates for many bulk agricultural commodities despite strong demand for these commodities in the China market; and

- prohibitions on foreign investment in the production, distribution, and exhibition of movies, even though China's movie market is the second largest in the world and is projected to become the largest market in only a few more years.

The "Made in China 2025" initiative also falls into this same category. While many of its guiding principles are constructive and should help Chinese manufacturers better address the challenges they face, it also identifies domestic content goals, including the ultimate goal of increasing domestic content of core components and materials to 70 percent by 2025.

These concerns and an array of other U.S. concerns — such as inadequate IPR [intellectual property rights] protection and enforcement, discriminatory "secure and controllable" ICT [information and communications technology] policies, technology transfer initiatives, widespread and massive subsidization, trade remedy abuses, restrictions on services market access, and problematic sanitary and phytosanitary measures — are described in detail in annual reports published by the Office of the U.S. Trade Representative.

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WTO Antidumping Agreement. The use of nonmarket economy methodology is inconsistent with those rules, so WTO members will be in violation of their international obligations if they continue treating China as a nonmarket economy after the deadline.

The Myth of Market Economy Status

The modern justification for nonmarket economy treatment relies on a presumption that excessive state interference in the economy renders domestic prices so out of sync with supply and demand that they cannot serve as a legitimate benchmark for export prices.

". . . WTO members will be in violation of their international obligations if they continue treating China as a nonmarket economy after the deadline."

Advocates for the use of nonmarket economy methodology against imports from China argue that China's economy is so controlled by the central government as to make regular antidumping methodology inappropriate. They want to continue to use nonmarket economy methodology until China can prove that it has met the qualifications necessary for market economy status. The contention may sound reasonable on its face, but it assumes that nonmarket economy treatment makes good sense in the first place and that the test for granting market economy status is reasonable. Neither is true.

The United States began using a special methodology to deal with imports from state-controlled economies in the Soviet bloc during the Cold War. The regular methodology of comparing home market prices and export prices didn't make any sense in those situations, because home market prices were set by central planners and export prices were determined by state-trading companies. There was no relationship at all between those prices.

Rather than acknowledge that antidumping was simply not an appropriate mechanism to regulate trade with Communist countries, U.S. officials chose instead to develop a convoluted formula that fabricated home market prices based on the investigated producer's factors of production and another, unrelated producer's costs for inputs in a third country.

The methodology allows for an incredible amount of bureaucratic discretion, as trade officials have to determine what manufacturers in what countries will provide cost data for dozens — or even hundreds — of surrogate values. While the stated goal of nonmarket economy methodology is to estimate what prices would be in a market economy country, the actual result is an antidumping duty based on "differences between an exporter's price in the U.S. market and a fictitious hodgepodge of estimated components serving as a proxy for his home market price."

While China's economy certainly suffers from a great amount of government interference, it doesn't come close to meeting that strict definition. Not only does China not meet the definition of nonmarket economy under international rules, it doesn't meet the definition under domestic law, either. After the Soviet Union collapsed, the U.S. Government developed criteria to determine whether former Communist countries should no longer be treated as nonmarket economies. The European Union has a similar test.

When people argue that China doesn't meet the criteria for market economy status, this is the test they are talking about. The test is actually a series of vague factors officials are supposed to consider and base their decision on. In the United States, the test has six factors:

1. The extent to which the country's currency is convertible.
2. The extent to which wage rates are determined by free bargaining between labor and management.
3. The extent to which foreign investment is permitted.
4. The extent of government control of the means of production.

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Compounding the challenges underlying these various concerns is China's failure to implement important transparency commitments that China made to the WTO membership when it acceded. For example, in numerous instances, a Chinese regulator has issued a problematic measure without an opportunity for the public to comment on a draft of the measure and without the required advance notification to the WTO.

China also committed to make available in one or more WTO languages all laws, regulations, and other measures pertaining to or affecting trade in goods, services, trade-related intellectual property rights, or the control of foreign exchange; yet, China still does not routinely make available the required translations. China also has a poor record of notifying its subsidies.

The United States is working bilaterally with China to resolve these concerns through cooperative engagement where possible. We commend China for its willingness to engage with us through numerous high-level dialogues, working groups, and other meetings. We also value our relationships with China's team here at the WTO and welcome China's work at the WTO.

"Compounding the challenges . . . is China's failure to implement important transparency commitments that China made to the WTO membership when it acceded."

We welcome signs that China is attempting to become a more active leader. China has notified its readiness to implement the Trade Facilitation Agreement. China participated in the successful negotiations to expand the Information Technology Agreement, and we hope to see its implementation of that important agreement very soon.

At the recent G20 Trade Ministers Meeting, China committed to the goal of concluding an ambitious, future-oriented Environmental Goods Agreement this year. This institution will increasingly depend on this kind of Chinese leadership, as WTO members rightfully have high expectations of its top traders. As one of those top traders, the United States is committed to working with China with a shared and consistent sense of responsibility.

We wish China a successful trade policy review.

Honorable Sherrod Brown

United States Senator, Ohio, Democrat

Senator Brown was first elected to the U.S. Senate in 2006. He served in the Ohio House of Representatives from 1974 to 1982 and from 1992 to 2006, and as Ohio Secretary of State from 1982 to 1990. He sits on the following committees: Banking, Housing, and Urban Affairs, where he is the Ranking Minority Member; Agriculture, Nutrition, and Forestry; Finance; and Veterans' Affairs. The following is from a May 27, 2016, letter to Cecilia Malström, European Commissioner for Trade, signed by Senator Brown and 17 other senators.

We understand the European Commission is evaluating its obligations under the World Trade Organization to determine if China should be considered a market economy for the purpose of the European Union's antidumping laws. Labeling China a market economy before it in fact becomes one will thwart global efforts to secure China's compliance with its international trade obligations. In addition, it could have a destabilizing impact in certain global sectors, including the steel industry.

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5. The extent of government control over pricing and output decisions.
6. Any other factors considered appropriate.

As you can see, the test doesn't tell us how much government control in each area is indicative of a nonmarket economy or how to weigh the different factors. Only one of the factors even considers the price comparability problem originally posed by Soviet economies. The sixth factor expressly permits authorities to consider whatever they want to justify their decision. What's more, Federal statute expressly prohibits judicial review of any decision to impose or revoke nonmarket economy status. The reality is that the question of nonmarket economy status is purely political. The way the test has been used in the past only highlights its absurdity.

The last time U.S. officials considered changing China's nonmarket economy status was in 2006. In justifying the decision to maintain China's nonmarket economy status, the official report stated, "China has a dynamic (but constrained) private sector, but ... the state retains for itself considerable levers of control over the economy."

The most interesting thing about that decision is that only seven months later, the same agency decided — based on the same factors — that China's economy was indeed sufficiently market-driven to allow for the imposition of duties to countervail government subsidies. The analysis was largely the same, but the conclusion was worded very differently:

> Private industry now dominates many sectors of the Chinese economy, and entrepreneurship is flourishing. ... Many business entities in present-day China are generally free to direct most aspects of their operations, and to respond to (albeit limited) market forces. The role of central planners is vastly smaller.

The lesson here is that China is either a market economy or a nonmarket economy depending on which designation will enable trade officials to impose higher tariffs. The test is overly strict, has been inconsistently applied to China in the past, and is immune from judicial scrutiny.

"The lesson here is that China is either a market economy or a nonmarket economy depending on which designation will enable trade officials to impose higher tariffs."

There's Always Regular Antidumping Abuse

The antidumping lobby has urged governments to continue using nonmarket economy treatment by claiming that otherwise there will be no way to protect domestic industries from low-priced Chinese imports. One European steel industry representative went so far as to say, "Granting China [market economy status] is giving it an unlimited license to dump."

Although nonmarket economy treatment is one of the most egregious forms of antidumping abuse, the unfortunate truth is that even if governments stop using nonmarket economy methodology, there are still plenty of ways, consistent with the WTO Antidumping Agreement, to impose excessively high antidumping duties.

The most likely outcome after the end of nonmarket economy treatment is for antidumping authorities to rely heavily on a methodology known as constructed value. Under certain circumstances, domestic prices can be approximated, or "constructed," by adding together a producer's costs of production plus estimated profit.

The WTO rules allow for the use of constructed value when a high portion of domestic sales are not made "in the ordinary course of trade" or when "a particular market situation in the exporting country does not permit a proper comparison with the export price."

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We urge the Commission to maintain China's nonmarket economy status until China has transitioned completely to a market economy.

There is overwhelming evidence that China is not a market economy and that the Chinese Government maintains extensive influence in its economy. Nine of the largest steel producers in the country, for example, are state-owned enterprises (SOEs) and receive a range of benefits from the Chinese Government, including interest-free financing and free capital infusions. These SOEs also have no obligation or expectation to make a profit.

"There is overwhelming evidence that China is not a market economy and that the Chinese Government maintains extensive influence in its economy."

Under European Union (EU) law, China must meet five criteria to prove that it is a market economy. According to the EU's 2008 assessment, China met only one of these requirements, regarding "an absence of state-induced distortion in the operation of enterprises linked to privatization." Although we disagree that there is no state-connected distortion in China's market, particularly when the steel sector is examined, we agree with the assessment's other findings and believe they still hold true today.

China continues to have significant government influence over the allocation of resources and the decisions of enterprises. There is rampant violation of intellectual property rights and a largely ineffective legal framework for conducting business, which discriminates against foreign enterprises. The state continues to dominate the financial sector through state ownership and lending to SOEs. In short, the Chinese Government exerts significant influence in its market, and for many reasons China remains a nonmarket economy.

Contrary to China's claims, China's WTO Accession Protocol does not require countries to treat China as a market economy by the end of 2016. Article 15 of the Accession Protocol clearly allows other WTO members to use something other than Chinese prices or costs as the basis for dumping calculations.

Only one provision of Article 15— subparagraph (a)(ii) — expires in December 2016. The remaining provisions of Article 15 remain in force after that date and authorize WTO members to use an alternative antidumping methodology if the producers under investigation "cannot clearly show that market economy conditions prevail in the industry." Article 15 contains no provision that requires member countries to give China market economy status at any given date.

Granting China market economy status before it has met the EU criteria will have significant, negative implications for the global economy. Chinese steel exports that were previously considered dumped will flood the European market. Such a decision will also hinder international efforts to increase China's compliance with its trade obligations.

China has not complied with many provisions of its Accession Protocol, including those related to state-owned enterprises operating under commercial considerations. It has failed to keep promises to reduce steel overcapacity, and it maintains policies and enforces laws in ways that discriminate against foreign companies operating on Chinese soil. Giving China market economy status will allow China to continue to ignore these ongoing and serious trade concerns.

China's persistent and often flagrant violations of its WTO obligations are troubling and have caused severe harm for the U.S. steel industry. We understand European manufacturers, including steel producers, have been similarly affected. We urge the Commission to work with the United States on efforts to secure China's full compliance with its WTO commitments. Only after China has become a market economy should the EU treat it as such.

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Antidumping authorities will enjoy the latitude to claim that Chinese prices are unreliable because of government interference in the market. This would enable them to resort to constructed value, which (while not nearly as unpredictable and unrealistic as nonmarket economy methodology) tends to produce unrealistically high estimates of domestic prices and so inflates the values of the antidumping duties ultimately imposed.

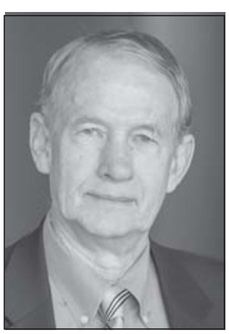
There is also the option of imposing countervailing duties that directly target Chinese subsidies. Protectionists often conflate antidumping, which deals with private pricing practices, and countervailing duties, which directly address the price distortions of foreign subsidies. They are, in fact, two totally separate remedies. In 2015, every U.S. antidumping duty order against Chinese goods was accompanied by a countervailing duty order. The average countervailing duty in those cases was approximately 103 percent. Far from defenseless in the face of Chinese market intervention, protection-seeking U.S. companies have numerous weapons in their arsenals.

". . . ending nonmarket economy treatment will not leave other countries defenseless against 'unfair' trade practices."

Conclusion

Advocates for maintaining the status quo discrimination in antidumping treatment of Chinese imports are trying to frame the question of China's nonmarket economy designation in ways that misdirect the debate. There is no real question about what WTO rules require. China does not still need to show that it meets the criteria for market economy status. And ending nonmarket economy treatment will not leave other countries defenseless against "unfair" trade practices.

The United States and European Union have already agreed to end nonmarket economy treatment of Chinese goods by no later than December 11, 2016. Refusing to honor that agreement will serve to frustrate important economic and political relationships with China and harm U.S. and European businesses and consumers.



Peterson Institute for International Economics (PIIE)

Gary Clyde Hufbauer, Reginald Jones Senior Fellow

The Peterson Institute for International Economics is a private, nonprofit, nonpartisan research institution devoted to the rigorous and intellectually open study of international policy. Gary Clyde Hufbauer, Reginald Jones Senior Fellow since 1992, was formerly the Maurice Greenberg Chair and Director of Studies at the Council on Foreign Relations.The following is from February 24, 2016, testimony before a U.S.–China Economic and Security Review Commission hearing on "China's Shifting Economic Realities and Implications for the United States."

Article 15 of China's Protocol of Accession to the World Trade Organization, dated November 10, 2001, generally allowed other WTO members to disregard Chinese prices and costs in antidumping (AD) cases and instead base the calculation of dumping margins using external benchmarks.

An exception was made if Chinese producers could "clearly show" that market economy conditions prevailed in the industry. Article 15 essentially authorized "nonmarket economy" (NME) methodologies long used by the United States and the European Union in AD cases against imports from communist countries.

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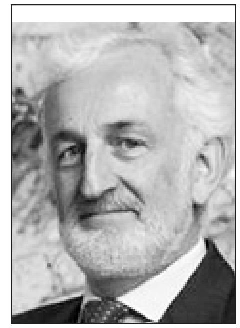
Bernard O'Connor

Trade Lawyer, NCTM



Bernard O'Connor manages the Brussels office of NCTM, a law firm with offices in Milan, Verona, Rome, London, and Shanghai. His areas of work are EU and WTO law, subsidies, food, agriculture, geographical indications, competition, and litigation. The following is from February 24, 2016, testimony before a U.S.–China Economic and Security Review Commission hearing on "China's Shifting Economic Realities and Implications for the United States."

China is clearly defined as a non-market economy (NME) in EU law.

Article 2(7) of the basic Anti-Dumping Regulation (Regulation 1225/2009) allows the use of the analog country methodology for determining normal value for NMEs.

If the EU is to change the methodology for determining normal value in relation to goods from China, there has to be a change in the law. This is why the EU is the first mover on interpreting Section 15 of China's WTO Protocol of Accession.

Changing the provisions of the basic EU antidumping regulation requires a legislative proposal from the EU Commission and the assent of the EU Council (made up of the 28 member states) and the European Parliament (directly elected by EU citizens). Slightly differently from the United States, where there is a difference of opinion between the two chambers of the legislature, the resolution is reached in a trilogue between the Commission, the Council and the Parliament.

The EU Commission has indicated that it will make a legislative proposal in relation to China before the summer of 2016. It hopes that the two chambers will be able to reach agreement on the proposal such that change (if that is what is proposed) can be effected before December 2016 or, if not, that the EU will have sufficiently progressed towards change that China would not initiate dispute settlement in the WTO.

This is an ambitious timetable. Normally, in the best case scenario, it takes one year for a legislative proposal to be adopted in the EU. Changing the law in relation to China would not be in the best case scenario.

Among the member states, only Italy has expressed an opinion against recognizing China as an NME. However, that many other member states have informally expressed views against granting market status to China. Overall it is difficult to call the issue.

"China is clearly defined as a non-market Economy (NME) in EU law."

In the European Parliament, the second largest grouping has come out against MES, and the largest group is moving in that direction.

In this scenario the approach taken by the Commission in its legislative proposal is crucial to the possibility of reaching agreement.

Does the Commission Consider China a Market Economy?

The Commission does not consider that China is a market economy.

In 2003 a dialogue was initiated between China and the EU on the nature of China's economy. China sought to show that its economy met the five criteria set out in EU practice to determine the nature of an economy. The five EU criteria are not materially different from those of the US. The five criteria are:

- Decisions of firms regarding prices, costs and inputs, including, for instance, raw materials, cost of technology and labor, output, sales and investment, are made in response

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Taking advantage of this provision, authorities in the United States, European Union, Japan, and Canada, among others, almost always use surrogate prices and costs to calculate Chinese dumping margins. Rarely are the authorities satisfied that market economy conditions prevail in Chinese industries.

The comparison of Chinese export prices with surrogate prices and costs, rather than Chinese prices and costs, typically leads to much higher dumping margins. Since China is a leading target of dumping cases worldwide, the NME methodology is a sore point with Chinese officials. In fact, more than 10 years ago, China mounted a vigorous diplomatic campaign asking trade partners to accord China market economy status (MES). The campaign succeeded with New Zealand (April 2004), Singapore (May 2004), Malaysia (May 2004), Australia (April 2005), and other countries, but not with the United States, the European Union, Japan, Canada, and several others. Which brings us to the looming WTO issue. Article 15(a)(ii) of the Protocol states: "The importing WTO Member may use a 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."

However, buried in Article 15(d) is the critical sentence: "In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession."

Chinese officials insist that this sentence requires all countries to accord China market economy status on December 11, 2016, 15 years after China's accession, and that WTO members can no longer use surrogate costs and prices in AD cases.

Some lawyers read the text differently. While they agree that Article 15(a)(ii) effectively disappears on December 11, 2016, they do not agree that the Protocol confines WTO members to a binary choice between MES (strict comparison of export prices with Chinese prices or costs) and NME (comparison with surrogate prices or costs). They point to the opening language in Article 15(a), which states: "... the importing WTO member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China."

". . . authorities in the United States, European Union, Japan, and Canada, among others, almost always use surrogate prices and costs to calculate Chinese dumping margins."

The United States might well argue, come December 11, 2016, that China has not established that it has become, in all important respects, a market economy. The Commerce Department could modify its current surrogate practices and instead use a "mix-and-match" approach — claiming on a case-by-case basis that some Chinese prices or costs reflect market conditions and others do not. For the prices or costs that do not reflect market conditions, the Commerce Department could use surrogate prices or costs. This seems most likely in industries, such as steel, dominated by state-owned enterprises, with large losses financed by state-controlled banks.

Whether the United States takes a "mix-and-match" approach, rather than granting China blanket market economy status, will turn primarily on policy considerations, not legal parsing. The policy decision may reflect the general atmosphere of commercial relations with China late in 2016, including the evolution of the renminbi exchange rate (manipulated devaluation would inspire a harder line) and the outcome of U.S.–China bilateral investment treaty negotiations (success would have the opposite effect).

Assuming the United States adopts a "mix-and-match" approach, the stage will be set for China to initiate WTO litigation. In this scenario, the year 2018 seems the earliest date for a final decision by the WTO Appellate Body. My guess is that the Appellate Body would rule against the "mix-and-match" approach. Even so, China would not receive retroactive refunds for antidumping duties collected prior to the ruling. Moreover, within China, the U.S. denial of full-fledged MES would resonate strongly, in a negative way. Antagonism

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to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values.

- Firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes.

- The production costs and financial situation of firms are not subject to significant distortions carried over from the former nonmarket economy system, in particular in relation to depreciation of assets, other write-offs, barter trade, and payment via compensation of debts.

- The firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms.

- Exchange rate conversions are carried out at the market rate.

In a 2008 report the Commission concluded:

> The conclusion of this report is that China now has in place almost all the legislation which is necessary for granting of Market Economy Status. That is a considerable achievement. The focus has now switched to the effective implementation of these laws which are crucial for the functioning of any market economy. Market Economy status is assessed on the basis of five criteria. In the judgement of the European Commission, China has clearly fulfilled one of these criteria, Criterion 2 which relates to the absence of state intervention in enterprises linked to privatization and the absence of nonmarket forms of exchange or compensation such as barter trade. China has made considerable progress on the remaining four.

In a 2011 report the Commission did not materially change its views.

In 2013, we understand that China informed the Commission that it did not wish to continue the dialogue. So no further evaluation has been made. It can be concluded that the Commission views from 2008 and 2011 remain the Commission views today.

Thus, the formal position of the Commission is that China is not a market economy. In recent months, this finding that China is not a market economy has been reaffirmed in numerous statements both from commissioners and Commission staffers.

"In recent months, this finding that China is not a market economy has been reaffirmed in numerous statements both from [European] commissioners and Commission staffers."

If China Is Not a Market Economy, Why Change the Law?

A legal opinion from the Legal Service of the Commission states that the EU is obliged, on the basis of the Legal Service's interpretation of Section 15 of China's Protocol of accession, to treat China as a market economy for the purposes of determining normal value. This legal opinion seems to be driving Commission thinking on the issue.

The Commssion has not taken on board the fact that there are legal opinions which reach different conclusions. Given its importance and the fact that it is contested, it is surprising that the opinion has not been made public. The concern is that it is results-oriented rather than analytical.

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". . . the United States would lose more than it gains from withholding full-fledged MES."

would be particularly strong if, as I expect, the European Union and other major countries accord MES in December 2016. Consequently, China would likely retaliate in opaque ways against U.S. exporters and investors.

On balance, the United States would lose more than it gains from withholding full-fledged MES. A very large irritant would be thrown into U.S.–China commercial relations, with a modest benefit to U.S. industries that initiate AD proceedings.

International Centre for Trade and Sustainable Development (ICTSD)

Shuaihua Cheng, Managing Director for China

Founded in 1996, ICTSD is an independent, nonprofit organization based in Geneva, Switzerland. Its goal is to advance sustainable development through trade-related policymaking. Shuaihua Cheng co-manages WTO Post-Nairbobi Programme and China, G20 and Global Economic Governance, New Industrial Policy Group, the E15 Initiative in partnership with the World Economic Forum. The following is from "The EU and US should treat China fairly in international trade," posted on the ICTSD website on August 5, 2016.

It is just six months until the fifteenth anniversary of China's accession to the World Trade Organization (WTO), and the world's second-largest economy believed this would be the time when it would automatically be granted market economy status. Unfortunately, the European Union and the United States do not agree.

This has become one of the most hotly debated issues in trade talks this year. But while it is important to China, it may be better for the country to shift its focus to what really matters. China would gain more if it concentrates on ensuring the EU and United States stop using the analog country method in their antidumping investigations against imported goods from China.

The analog country method is an approach used in antidumping investigations. Under the method, investigative authorities do not use the product price in the exporting country as a basis when determining whether to impose tariffs, but rather third-country reference prices. What this means in practice is that more Chinese products end up being investigated, and in most cases they have to pay higher antidumping duties. It should be acknowledged, however, that there are problematic issues related to price estimation in China.

Unfortunately, part of the distracting focus on the matter of market economy status stems from the fact that many commentators and government officials think of this and the question of analog country method as one and the same. While the two concepts are linked, there are important differences.

A country that is considered by the EU or United States to be a "market economy" may have a better chance of being treated fairly, but that is not always the case. In practice, the EU and United States also use an approach similar to the analog country method to investigate exports from a market economy country. Several of these EU measures are actually being challenged in the WTO, including the EU's antidumping duty on biodiesel imported from Argentina. Another example to illustrate this point is Australia, a WTO

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Most importantly, the Legal Services of the European Parliament, in a more detailed andcomprehensive analysis, has reached a conclusion different from the Commssion and considers that the provisions of Section 15 do not provide that the EU must consider China a market economy or clearly indicate what methodologies must be used for determining normal value after December 2016. Neither of the opinions is publicly available. However, the Parliament's opinion has been leaked to the press. And Commissioner Malmström has said publicly that the Commission legal position is that MES must be granted.

What Is Current Commission Thinking?

For the EU Commission, it appears that a distinction can be made between the nature of the Chinese economy, is it or is it not a market economy, and the methodology that must be used to determine normal value after December 2016.

This distinction is reflected in two documents recently made public: i) an Inception Impact Assessment and ii) an open public consultation regarding a change in metholodogy in TDI cases.

The Impact Assessment looks to evaluate the consequences of the different options available to the EU: i) maintain status quo; ii) remove China from the list of NMEs in the basic AD regulation but allow, where a sector is NME, use of non-China costs and prices; and iii) remove the analog country approach but reenforce the normal trade defebse instruments [TDI] in various ways.

The Public Consultation asks a series of questions to stakeholders on the implications of the expiry part of Section 15 of the Protocol of accession, as well as the functionality of the changes to the TDI.

Next Steps

The College of Commission will meet during the summer of 2016 to decide what approach to take. If the Commission proposes legislative change the Parliament and the Council will begin review of the proposal in the autumn of 2016. Agreement between the two Chambers will be difficult to achieve.

"China is not a market economy. China itself calls its market a socialist market economy."

China is Not a Market Economy

China is not a market economy. China itself calls its market a socialist market economy. It is clear that China is different from the socialist economies in the Soviet Union and Eastern Europe in the 40 years after the Second World War. China uses different tools for managing the economy. There are currently 72 five-year plans applicable in China at a national, provincial, and industry-sector level. These plans have resulted in the massive buildup of overcapacities in certain sectors. Bankruptcy and antitrust laws are not enforced. The "market" is not allowed to function to reward winners and eliminate losers.

Section 15 of China's WTO Accession Protocol

Section 15 paragraph (d) clearly provides that it is China which must show that it is a market economy. It is not up to the EU or the United States to grant it unilaterally. The criteria to be met are those of the importing WTO member.

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ICTSD,

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member that recognized China as a market economy in 2005 but still uses cost adjustments, instead of original costs in China, to establish the normal value of Chinese imports in antidumping cases.

From a strictly legal perspective, Section 15 of the Accession Protocol of China to the WTO does not explicitly say that other WTO members should grant China market economy status, and it does not set a deadline by which this must happen. In addition, the WTO itself does not actually have a definition of what is considered to be a market economy. Domestic trade laws have created this concept of market economy status and the criteria to grant it.

But the protocol does say that "in any event" WTO members may not use the analog country method against Chinese exports beyond the 15-year transition period following accession. This means that after December 16, 2016, the EU and United States should treat Chinese exported goods like those from other WTO members, unless an agreement to prolong the transition period is renegotiated with China, which Beijing may or not agree.

What this means is simple: Whatever decision the EU and United States decide to take regarding China's market economy status, from December this year, they will have to stop using the analog country method in their antidumping investigations against Chinese products.

Experts like Bernard O'Connor argue that other provisions imply that after December 2016, China will still need to meet the market economy criteria of importing countries before it can stop being treated using the analog country method.

This logic, however, has two major flaws. First, if China still needs to prove that it qualifies for market economy status after December 2016, as O'Connor argues, then the expiry date in the protocol is meaningless. Why would negotiators have included this paragraph?

". . . we are witnessing a degree of hypocrisy here from EU and U.S. officials, who apply criteria to other countries that they themselves do not meet.."

Second, the most likely intention of the negotiators writing this specific negotiated text was to allow for a 15-year transition period during which China accepted discriminatory treatment in antidumping investigations; it should not be read as a permanent arrangement. The use of the term "in any event" in the protocol was clearly intended to imply an end to the transition period during which the analog country method was applied, regardless of China's (non-) market economy status.

More importantly, we are witnessing a degree of hypocrisy here from EU and U.S. officials, who apply criteria to other countries that they themselves do not meet. No government intervention in productions and sales? There are numerous cases where WTO panels have ruled against the EU and United States for their government interventions, including billions of dollars of subsidies to domestic civil aircraft manufacturing as well as cotton subsidies.

And what about the requirement that genuine financial institutions do not benefit from government interventions, as indicated in the market economy criteria set out by the EU and United States? CNN Money tracker shows the U.S. Government pledged $11 trillion and actually spent $3 trillion on rescuing its financial institutions from 2008 to 2009. Europe spent at least $1 trillion to bail out its banks.

Yes, China is still far from being a smooth-functioning market economy, although it has steadily made progress in that direction over the past 20 years. Chinese President Xi Jinping himself acknowledged this in a speech in May 2014.

This is what China should be focusing on over the coming months: to continue improving its market institutions for the good of its own development rather than fighting for recognition of market economy status from its EU and U.S. partners. And for these Western trading powers, it is time to respect the negotiated agreement of a 15 year-transition on the application of analog country methods and start treating the world's second-largest economy equally and fairly.

O'Connor,

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The expiry of paragraph (a)(ii) in December 2016 does not mandate the use of any particular methodology for determining normal value after that date.

In fact, the use of Chinese costs and prices is only mandated if the producers under investigation can show that market economy conditions prevail in their sector.

If China is not a market economy, then the use of Chinese costs and prices for determining normal value is inherently inappropriate as they are, in fact and in law, distorted by the nature of the economy that gives rise to them.

Section 15 must be read in conjunction with Section 9 of China's WTO Accession Protocol. In Section 9, China committed to allowing all prices to be set by the market with some exceptions for pharmaceuticals and certain vital services. China has not met that commitment. If prices were set by the market there would be no need for the provisions of Section 15.

"It is in the interest of the United States to ensure that the EU does not grant MES to China."

The United States and the European Union

The United States and the EU are currently negotiating the TransAtlantic Trade and Investment Partnership Agreement [TPP]. U.S. industry hopes to benefit from better access to the EU market.

If, at the same time, the EU was to start calculating normal value on the basis of Chinese costs and prices, it would, in effect, undermine the effectiveness of the EU antidumping instrument allowing massive dumping onto the EU market.

In this scenario, the benefit that the United States might get from TTIP would be undermined by unfair Chinese trade into the EU.

Conclusions

It is in the interest of the United States to ensure that the EU does not grant MES to China. Thus the United States should make its legal interpretation of the meaning of Section 15 of the Accession Protocol known to the EU.

The text of Section 15 was negotiated between the United States and China. Towards the end of those negotiations, the parties agreed that the expiry provisions should only apply to paragraph (a)(ii) and not to all of paragraph (a). This change was to allow the continued use of methodologies other than Chinese costs and prices for determining normal value.

The final determination of how Section 15 should be interpreted will be made in WTO dispute settlement. If the U.S. view is to succeed in that forum, it is essential that its main trading partner supports its views. The United States must now ensure that the EU does not prejudice its position by taking a different view.

The U.S.–China Relationship

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disputes. And determined, constant engagement is necessary to manage our differences. If America chose to remove itself from China, we would only ensure that the Chinese are not challenged on the issues where we differ and are not encouraged to peacefully rise within the international system that we have done so much to build.

We want the Chinese people to succeed. When China and the United States work together, the world is more secure and more prosperous. That's the truth. But success isn't winning at all costs or getting ahead at the expense of others. In this century, success is measured by the partners you draw together through principled leadership. It's growing your economy while giving everyone an equal chance to compete. It's tapping the talents of all your people by expanding the space for them to contribute, not shrinking it. It's applying your strength to reinforce international norms, not to revise them. And when we welcome President Xi, we will continue exploring practical ways to advance our agenda for shared success.

At that first secret meeting back in 1971, Henry Kissinger delivered a message about how the United States came to the table with China. "We consider," he said, that China, "must participate on the basis of equality in all matters affecting the peace of Asia and the peace of the world. We consider it in our interest, and above all in the interest of the world, that you play your appropriate role in shaping international arrangements."

That bottom line continues to hold true today. Perhaps more than ever, it is in our interest for China to participate and play an active and responsible role on the global stage, because the futures of our two nations — the futures of people around the world-grow more deeply intertwined by the day. In the coming decades, strong and wise American leaders must, necessarily, maintain a relationship with China that promotes cooperation, while allowing for healthy competition.

China and the United States can do great things together. We have unmatched resources and unique capabilities to address global challenges. The real points of friction between us cannot be papered over, and we will continue to deal forthrightly with our differences. But this relationship is too big and too important to treat with anything less than our full, good-faith effort. And, you can be sure that our relationship with China — one that is stable, productive, and resilient — will remain at the center of American foreign policy for years to come. ■

China's WTO Compliance

Continued from page 13

Another notable development took place in July 2013, when China announced that it was prepared to negotiate a high-standard Bilateral Investment Treaty (BIT) with the United States. Since then, the BIT negotiations have proceeded with China's full engagement, although to date China has decided not to pursue a material reduction of its investment restrictions in anticipation of the successful conclusion of those negotiations.

Despite China's re-focusing on economic reform, a wide range of Chinese policies and practices continued to generate significant concerns among U.S. stakeholders in 2015. Major areas of specific concern continue to include: serious problems with intellectual property rights enforcement in China, including in the area of trade secrets; the Chinese Government's wide-ranging use of industrial policies favoring state-owned enterprises and domestic national champions in many sectors; troubling agricultural policies that block U.S. market access; numerous continuing restrictions on services market access; and inadequate transparency. China's slow movement toward accession to the WTO Government Procurement Agreement also hinders development of the U.S.–China trade relationship.

Going forward, as reported in prior years, the United States looks to China to reduce market access barriers, uniformly follow the fundamental principles of nondiscrimination and transparency, significantly reduce the level of government intervention in the economy, fully institutionalize market mechanisms, require state-owned enterprises to compete with other enterprises on fair and non-discriminatory terms, and fully embrace the rule of law. Taking these steps is critical to realizing the tremendous potential presented by China's WTO membership, including the breadth and depth of trade and investment — and prosperity — possible in a thriving, balanced global trading system. China's new leaders seem to have embraced many elements of this approach, and the United States will continue to work with China going forward to help make it a reality. ■

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The 114th Congress

First Session of 114th Congress convened on January 3, 2015. (Information below as of August 15, 2016.)

The U.S. Senate

Total Membership, 100:
54 Democrats
44 Republicans
2 Independents

Presiding Officer:
Vice President
Joseph R. Biden

President Pro Tempore:
Orrin Hatch (UT)

Floor Leaders:
Majority Leader
Mitch McConnell (KY)
Minority Leader
Harry Reid (NV)

Party Whips:
Majority Whip
John Cornyn (TX)
Minority Whip
Dick Durbin (IL)

The U.S. House of Representatives

Total Membership, 435:
247 Republicans
186 Democrats
2 Vacancies

Presiding Officer:
Speaker of the House
Paul Ryan (WI)

Floor Leaders:
Majority Leader
Kevin McCarthy (CA)
Minority Leader
Nancy Pelosi (CA)

Party Whips:
Majority Whip
Steve Scalise (LA)
Minority Whip
Steny Hoyer (MD)

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